

# ElecLink Open Season Rules

Issue 2.0

## **ElecLink Open Season Rules**

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### **Preamble (not forming part of the Rules)**

The French and British transmission systems are or will be connected by a 1,000MW Interconnector between Peuplingues in France and Sellindge in England known as the ElecLink Interconnector. The Interconnector will support electricity trading in both directions. The Interconnector is or will be operated by ElecLink.

ElecLink offers rights to use the Interconnector to third parties.

These are the ElecLink Open Season Rules established by ElecLink for allocating rights to use the Interconnector by explicit Auction and setting out the terms of use in respect of Open Season Units. They do not cover the operation of Long-Term, Daily and Intraday Auctions and the Implicit Daily Auction.

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## **SECTION A: GENERAL INTRODUCTION**

### **Rule A1: Introduction**

#### **Scope**

- A1.1 These Rules set out (in particular):
- (a) the procedures for auctioning rights to use Open Season Interconnector Capacity;
  - (b) the terms on which Open Season Users may participate in Auctions; and
  - (c) the terms for use of Open Season Interconnector Capacity.

#### **Structure**

- A1.2 The Rules are divided into six (6) sections as follows:
- (a) Section A: General Introduction;
  - (b) Section B: Rules Applicable to Participation;
  - (c) Section C: Financial Matters Applicable to these Rules;
  - (d) Section D: Auction Rules for Open Season Units;
  - (e) Section E: Capacity Usage Rules; and
  - (f) Section F: General Conditions.
- A1.3 The Rules also contain nine (9) Schedules as follows:
- 1. Definitions and Interpretation;
  - 2. Form of ElecLink Open Season User Agreement;
  - 3. Standing Data;
  - 4. Business Rules for Use of Open Season Interconnector Capacity;
  - 5. List of Open Season Products;
  - 6. Credit Ratings and Tangible Net Worth Requirements;
  - 7. Example of the Open Season Auction Credit Requirement;
  - 8. Letter of Acknowledgement and Undertaking in relation to Assignment of the ElecLink Open Season User Agreement; and
  - 9. Market Share Declaration Template.

## **Rule A2: Parties and Participation**

### **Participation in Auctions and use of Interconnector**

- A2.1 A person wishing to participate in any Auction and/or in the Secondary Market and/or wishing to use Open Season Interconnector Capacity shall comply with Rule B2 and agrees to be bound by and comply with these Rules. These Rules apply to all persons on a non-discriminatory basis. These Rules do not apply to participation in Long-term, Daily and Intraday Auctions.
- A2.2 Only a person who is a party to an ElecLink Open Season User Agreement with ElecLink may participate in an Auction and in the Secondary Market for Open Season Units.

### **Operator**

- A2.3 ElecLink operates the Interconnector.
- A2.4 ElecLink may commission a third party to operate the Auctions and/or the processes in relation to the Secondary Market and Nominations on behalf of ElecLink in which case good discharge of an obligation under these Rules by such third party shall be construed as good discharge of the relevant obligation by ElecLink and vice versa.

### **ElecLink Open Season User Forum**

- A2.5 ElecLink will from time to time, and at least once per year, invite all Open Season Users to meet with ElecLink to discuss future Auctions and the commercial and operational aspects in relation to the Interconnector. Details of those who may attend the meetings, the agenda and location will be notified by ElecLink within a reasonable time before the meeting.

## **Rule A3: Definitions and Interpretation**

### **Definitions**

A3.1 In these Rules, unless the context otherwise requires, capitalised words and phrases have the meanings given to them in Part I of Schedule 1.

### **Interpretation**

A3.2 The rules of interpretation applicable to these Rules are set out in Part II of Schedule 1.

### **Time**

A3.3 All timings referred to within these Rules are CET time, unless otherwise stated.



## **Rule A4: Amendment**

### **Amendment**

- A4.1.1 This Rule A4.1 applies to the amendment of these Rules as they apply to and are incorporated in the ElecLink Open Season User Agreements.
- A4.1.2 ElecLink is entitled to amend these Rules under the circumstances described in Rules A4.5, A4.6 , A4.8 and A4.9 and subject always to the provisions of this Rule A4.
- A4.1.3 In the event of an amendment of these Rules, ElecLink will give an Amendment Notice to Open Season Users.
- A4.1.4 Nothing in this Rule A4 shall prevent an Open Season User from proposing in writing amendments to these Rules at any time.
- A4.1.5 In the event that a Rule amendment is proposed by an Open Season User, ElecLink shall, within five (5) Business Days, confirm receipt of the proposed amendment and provide timescales for consideration of the proposal.

### **Effective time**

- A4.2 Subject to Rule A4.5, an amendment made under Rule A4.1 takes effect from the later of:
  - (a) the start of the Contract Day commencing 10 Business Days after the Amendment Notice is notified to Open Season Users by ElecLink; or
  - (b) the date and time specified in the Amendment Notice.

### **Application**

- A4.3.1 Each amendment applies to any aspect of these Rules, including but not limited to all Auctions conducted after the date on which the amendment takes effect.
- A4.3.2 Unless expressly stated otherwise by ElecLink, the amended Rules shall govern all rights to use Open Season Interconnector Capacity and all other rights and obligations acquired under these Rules and any ElecLink Open Season User Agreement including those acquired before but for use after the amendment takes effect.
- A4.3.3 Subject as provided above, any amendment of these Rules will apply automatically to the ElecLink Open Season User Agreements in force between ElecLink and each Open Season User, without the need for the Open Season User to sign any acknowledgement or acceptance of the amendment or the Amendment Notice or the amended Rules. In the event of any amendment, an Open Season User may request termination of its ElecLink Open Season User Agreement for Open Season Interconnector Capacity in accordance with Rule F6.2 but, for the avoidance of doubt, ElecLink has no obligation whatsoever to accept any such request.

### **Open Season User comments**

- A4.4 Before making any amendment to these Rules under Rule A4.1, ElecLink will, in accordance with the conditions of the ElecLink Interconnector Licence, give Open Season Users a reasonable opportunity, and in any event not less than 28 days, to review and give written comments to ElecLink on the proposed amendment. If ElecLink decides to modify a proposed amendment as a result of comments from Open Season Users, it may give Open Season Users

a further opportunity to review and comment on the modified proposals under this Rule indicating timescales for provision of such comments.

#### **Amendments due to legal requirements**

A4.5 These Rules are subject to the law prevailing at the time at which they take effect. In the event that there is a change in law or any action by Competent Authorities at national or international level which have an effect on these Rules then, notwithstanding any other provision of these Rules, the Rules will be amended accordingly and, where possible, pursuant to this Rule A4.

#### **Amendments due to the requirements of the Exemption Decision**

A4.6 In accordance with the Exemption Decision, in regards to Open Season Units, the capacity usage rules relating to that part of the Product Period which coincides with the product period of Regulated Units must respect the same provisions, including compensation in case of Curtailment, as these Regulated Units and must comply with the provisions of the European Network Codes, in particular the Network Code on forward capacity allocation (FCA).

In the event that it becomes necessary to amend the Rules to comply with this Rule A4.6, notwithstanding any other provision of these Rules, the Rules will be amended accordingly pursuant to the provisions of this Rule A4.

#### **Rules approval**

A4.7 These Rules are approved by the relevant regulatory authorities. Accordingly, any Amendment Notice will be issued to Open Season Users only after such approval(s) (as required) has/have been received by ElecLink. Following receipt of such approval(s) the amended Rules will be published on ElecLink's website.

#### **Business process timings**

A4.8 Schedule 4 and its Appendix contain the Business Rules for use of Open Season Interconnector Capacity. Modifications may be made to Schedule 4 and its Appendix by ElecLink to reflect changes in either the French or British electricity markets and/or changes to ElecLink's operational practices by giving at least ten (10) Business Days' notice to Open Season Users.

#### **Open Season products**

A4.9 Schedule 5 contains the list of Open Season products available at the time of entry into force of these Rules. Subject to Rule A4.7 and any applicable requirements of the ElecLink Interconnector Licence, modifications may be made to Schedule 5 by ElecLink by means of notification on ElecLink's website and/or as specified in the relevant Auction Specification.

## **SECTION B: RULES APPLICABLE TO PARTICIPATION**

### **Rule B1: Introduction**

#### **Scope**

B1.1 This Section B of the Rules sets out Rules which are applicable to participation by Open Season Users in Auctions, the Secondary Market and the Nominations process.

#### **Structure**

B1.2 Section B is divided into four (4) Rules as follows:

- (a) Rule B1: Introduction;
- (b) Rule B2: Participation Requirements;
- (c) Rule B3: ElecLink Open Season User Agreement; and
- (d) Rule B4: Open Season User Systems.

### **Rule B2: Participation Requirements**

#### **Eligibility to participate in Auctions, the Secondary Market for Open Season Interconnector Capacity and the Nominations process for Open Season Interconnector Capacity.**

B2.1.1 To be eligible to participate in the Auctions or the Secondary Market for Open Season Interconnector Capacity, a person must:

- (a) be a party to an ElecLink Open Season User Agreement with ElecLink (see Schedule 2);
- (b) not have had its eligibility to participate suspended under Rule F6.3.1 (unless it has been reinstated under Rule B2.5);
- (c) have given its Standing Data to ElecLink in accordance with Rule B3.8;
- (d) declare to ElecLink in accordance with Rule B2.2.1 and as provided in the Market Share Declaration Template (see Schedule 9) if its Market Share in France or Great Britain exceeds 40%;
- (e) in the case of Auctions only, submit a non-binding and indicative offer stating the maximum number of Open Season Units that it intends to bid for at the Minimum Starting Price and the Maximum Starting Price respectively (this non-binding and indicative offer will be used to set its Initial Eligibility in accordance with Rule D1.5.3); and
- (f) have satisfied (for the purposes of any Auction) the Open Season Auction Credit Requirement in accordance with Rule B 2.3.1.

B2.1.2 A person wishing to participate in an Auction must:

- (a) meet the participation requirements provided in Rule B2.1.1 no later than the end of the First Qualification Period for the relevant Auction; and

- (b) if requested by ElecLink, promptly respond to ElecLink's satisfaction to any requests for clarification of documents or information provided or the provision of any additional or outstanding information in connection with the person's participation in the relevant Auction, no later than the end of the Second Qualification Period.

B2.1.3 A person wishing to participate only in the Secondary Market for Open Season Interconnector Capacity must meet the participation requirements provided in Rule B2.1.1 no later than fifteen (15) Business Days prior to the first day on which it wishes to start participating in the Secondary Market for Open Season Interconnector Capacity.

B2.1.4 In addition, to be eligible to use the capacity rights obtained in an Auction or through the Secondary Market for Open Season Interconnector Capacity and/or to participate in the Nominations process for Open Season Interconnector Capacity a person must:

- (a) have established its interface between its Open Season User System and the CMS and/or the Nomination Platform in accordance with Rule B4 to the reasonable satisfaction of ElecLink;
- (b) be a party to the following agreements:
  - (i) a Use of System Interconnector Agreement with NGESO and the Framework Agreement established under CUSC;
  - (ii) a Framework Agreement as defined in the Balancing and Settlement Code; and
  - (iii) an Accord de Participation with RTE; and

- (c) register and provide to ElecLink its BM Units for the ElecLink Interconnector.

B2.1.5 To be eligible to use the capacity rights obtained in an Auction or through the Secondary Market for Open Season Interconnector Capacity and/or to participate in the Nominations process for Open Season Interconnector Capacity, a person must provide evidence, satisfactory to ElecLink, that it has met the requirements provided in Rule B2.1.4 above by no later than fifteen (15) Business Days prior to the first day on which it wishes to start using the capacity rights obtained in an Auction or through the Secondary Market for Open Season Interconnector Capacity and/or to start participating in the Nominations process for Open Season Interconnector Capacity.

### **Capacity limits on Bids for Open Season Units**

B2.2.1 To be eligible to participate in the Auctions, an Open Season User:

- (a) must declare to ElecLink, by no later than the end of the First Qualification Period for the relevant Auction, if its Market Share in France or Great Britain exceeds 40%; and
- (b) must certify that its Bid will comply with Rule B2.2.2.

B2.2.2 Each Open Season User must ensure that its total Bid in any Auction shall not result in the following:

- (a) the Open Season User and its Related Undertaking(s) acquiring, at any one time, more than 400 MW of Interconnector Capacity in either direction; or
- (b) if the Open Season User has a Market Share of more than 40%, the Open Season User and its Related Undertaking(s) acquiring, at any one time, more than 200 MW of

Interconnector Capacity in the direction of import to the market in which the Open Season User holds such a Market Share.

B2.2.3 If at any time the Open Season User fails to meet the requirements in Rule B2.2.1 and/or Rule B2.2.2, the Open Season User shall be liable for and must indemnify ElecLink against any and all liability, claims, payments, costs and expenses arising directly or indirectly from such failure, including but not limited to any penalty imposed by the French Regulator and/or the GB Regulator in accordance with paragraph 1.48 of the Exemption Decision and all or any powers in connection therewith.

### **Credit requirements for Open Season Users**

B2.3.1 An Open Season User may only submit a Bid in an Auction if:

- (a) it satisfies the Open Season Auction Credit Requirement in relation to that Bid; and
- (b) where it wishes to satisfy the Open Season Auction Credit Requirement on the basis of its own or its Parent Company's Credit Rating, it has declared to ElecLink, by no later than the end of the First Qualification Period, its or its Parent Company's most recent Credit Rating and has delivered to ElecLink, by no later than the end of the First Qualification Period, evidence satisfactory to ElecLink of its, or its Parent Company's, most recent Credit Rating; and
- (c) where it wishes to satisfy the Open Season Auction Credit Requirement on the basis of its own or its Parent Company's Tangible Net Worth, it has declared to ElecLink, by no later than the end of the First Qualification Period, its or its Parent Company's current Tangible Net Worth (and the basis for the Open Season User's calculation thereof) and has delivered to ElecLink, by no later than the end of the First Qualification Period, its, or its Parent Company's, latest audited statutory accounts evidencing its, or its Parent Company's, current Tangible Net Worth, together with confirmation that there has been no Material Adverse Change affecting the Open Season User or such Parent Company since the date to which such statutory accounts were prepared; and
- (d) where it wishes to satisfy the Open Season Auction Credit Requirement on the basis of its Parent Company's Credit Rating or Tangible Net Worth, it has delivered to ElecLink, by no later than the end of the First Qualification Period, and at the Open Season User's own cost:
  - (i) a Parent Company Guarantee executed by that Parent Company; and
  - (ii) evidence satisfactory to ElecLink that the Parent Company is a parent undertaking of the Open Season User; and
  - (iii) such evidence (including a legal opinion addressed to ElecLink in relation to the laws of the place of incorporation of the Parent Company) regarding the power, capacity and authority of the Parent Company to issue the Parent Company Guarantee, due execution of the Parent Guarantee and such other matters in relation to the Parent Company Guarantee as ElecLink may in its sole discretion require; and
- (e) where it wishes to satisfy the Open Season Auction Credit Requirement on the basis of a Letter of Credit, it has (at the Open Season User's own cost) procured and

delivered the Letter of Credit to ElecLink by no later than the end of the First Qualification Period; and

- (f) ElecLink has confirmed in writing to the Open Season User that ElecLink is satisfied that the applicable requirements of paragraphs (a) - (e) above have been fulfilled.

B2.3.2 If at any time prior to the commencement of an Auction, and notwithstanding the issue by ElecLink of confirmation as provided in Rule B2.3.1(f), ElecLink has reasonable grounds for believing that an Open Season User does not in fact, or no longer, satisfies the Open Season Auction Credit Requirement, ElecLink shall promptly give notice of such grounds to the Open Season User, and the Open Season User shall be deemed not to satisfy the Open Season Auction Credit Requirement until such time as the Open Season User provides ElecLink with evidence satisfactory to ElecLink that it does, or continues to, satisfy the Open Season Auction Credit Requirement.

B2.3.3 In any Auction ElecLink shall be entitled to reject any Bid by an Open Season User who does not satisfy or is deemed in accordance with Rule B2.3.2 not to satisfy the Open Season Auction Credit Requirement for that Bid.

B2.3.4 Where an Open Season User wishes to satisfy the Open Season Auction Credit Requirement on the basis of its own or its Parent Company's Tangible Net Worth in accordance with Rule B2.3.1 (c), and its or its Parent Company's Tangible Net Worth, as evidenced in its or its Parent Company's latest audited statutory accounts, is denominated in a currency other than euro, ElecLink will assess the Open Season User's compliance with the Open Season Auction Credit Requirement by converting its or its Parent Company's Tangible Net Worth into a euro equivalent using the Euro Foreign Exchange Reference Rates, as published by the European Central Bank on the last day of the Second Qualification Period, rounding up to the nearest million.

### **Eligibility Notice**

B2.4.1 An Open Season User may not submit any Bid in an Auction and/or participate in the Secondary Market and/or, as the case may be, Nominate, until ElecLink has provided the Open Season User with a notice ("Eligibility Notice") stating that ElecLink is satisfied that the Open Season User has complied with the requirements of Rules B2.1 – B2.3. The Eligibility Notice shall take effect upon the date and time specified within the Eligibility Notice and shall state whether it applies to Auctions and/or the Secondary Market for Open Season Interconnector Capacity and/or the Nominations process for Open Season Interconnector Capacity.

In the case of Auctions, the Eligibility Notice shall also state the Initial Eligibility of the Open Season User.

B2.4.2 The Open Season User shall immediately (and in any case before submitting any Bid in an Auction and/or participating in the Secondary Market and/or, as the case may be, Nominating) acknowledge receipt of the Eligibility Notice by e-mail.

B2.4.3 Once effective in accordance with Rules B2.4.1 and B2.4.2, the Open Season User is eligible to participate in Auctions to which the Eligibility Notice applies and/or the Secondary Market to which the Eligibility Notice applies and/or, as the case may be, in the Nominations process to which the Eligibility Notice applies.

B2.4.4 If ElecLink is not satisfied that an Open Season User has complied with the requirements of Rules B2.1 – B2.3, ElecLink will:

- (a) not provide the Open Season User with an Eligibility Notice; and

- (b) notify the Open Season User of the requirements that the Open Season User has not complied with and the reasons why.

### **Suspension and reinstatement**

- B2.5 An Open Season User, in receipt of a notice under Rule F6.3.1, is prohibited from submitting Bids in any Auction and/or participating in the Secondary Market and/or, as the case may be, from Nominating, from the date its eligibility is suspended until ElecLink gives the Open Season User notice in writing terminating such suspension (a "Reinstatement Notice").

### **Regulatory and legal requirements**

- B2.6 It is the responsibility of each Open Season User to ensure that it has complied with all requirements, including Applicable Laws and the requirements of any Competent Authority, and obtained all necessary authorisations in connection with its participation in Auctions and its use of Open Season Interconnector Capacity.

### **Costs of participation**

- B2.7 All Open Season Users will participate in Auctions and/or the Secondary Market, and/or will Nominate at their own cost, expense and risk. ElecLink will not be liable to any person for any cost, claim, or expense of any Open Season User in connection with the Open Season User participating in Auctions, the Secondary Market and/or the Nominations process.

### **Practices that may affect competition**

- B2.8.1 All Open Season Users participate in Auctions on the terms of these Rules and the relevant Auction Specifications.
- B2.8.2 Any Open Season User who offers any inducement, fee or reward to ElecLink, the Auction Manager, any employee or agent of ElecLink or any person acting as an adviser to ElecLink in connection with any Auction which would constitute a breach of the Bribery Act 2010 may be disqualified by ElecLink acting reasonably (in either case without prejudice to any other civil remedies available to ElecLink and without prejudice to any criminal liability which the Open Season User may attract).
- B2.8.3 An Open Season User must not communicate to any person other than ElecLink and the Auction Manager any information relating to its Bid, amend its Bid by arrangement with any other person, make any arrangement with any other person about whether or not he or that other person should or should not submit a Bid, engage in, or attempt to engage in Market Manipulation, or enter into an agreement or understanding with another person that is likely to prevent or restrict competition in the Auction. Any breach of or non-compliance with this Rule B2.8.3 by the Open Season User will, without affecting the Open Season User's civil or criminal liability for such breach or non-compliance, invalidate the Open Season User's Bid.
- B2.8.4 There must be no collusion by any Open Season User with any other Open Season User and Open Season Users must not otherwise seek improperly to influence the outcome of any Auction. If ElecLink has evidence of a breach of Rule B2.8.2 or B2.8.3 or of collusive or other improper behaviour which might be considered as unlawful, ElecLink will refer the matter to the relevant Competent Authorities or jurisdictions, and inform the GB Regulator and the French Regulator and, upon decision of the Competent Authority or jurisdiction that the Open Season User's behaviour is unlawful, may disqualify the relevant Bids.

### **Disclosure of Bid information**

B2.9 ElecLink may provide or disclose any information related to any Open Season User or any Bid(s) which is required for the proper performance of its obligations and duties, or by Applicable Laws or in accordance with the requirements of any Competent Authority.



## **Rule B3: ElecLink Open Season User Agreement**

### **Application for an agreement**

- B3.1 Any person ("Applicant") may apply to enter into an ElecLink Open Season User Agreement with ElecLink by submitting a completed Application Form to ElecLink together with all the information and documents required by the Application Form and the Application Pack.
- B3.2 The Applicant must complete one Application Form only and can only enter into one ElecLink Open Season User Agreement.

### **Form of Application Form**

- B3.3 The form of the Application Form and the Application Pack and the requirements for its completion and submission will be specified by ElecLink from time to time. As a minimum, the Application Form will require the Applicant to:
- (a) identify itself and provide its contact details and names of authorised representatives;
  - (b) attach evidence of the authority of the person signing the Application Form and the ElecLink Open Season User Agreement to do so on behalf of the Applicant; and
  - (c) agree to be bound by and comply with Rule B3.7 (Costs of application).

### **Return of agreements**

- B3.4 Once the Applicant has submitted an Application Form and sent the relevant information required under this Rule B3, the Applicant shall sign the ElecLink Open Season User Agreement and then send it in duplicate to ElecLink. ElecLink will return one copy of the ElecLink Open Season User Agreement executed by ElecLink to the Applicant concerned in conjunction with the Eligibility Notice. Execution of the ElecLink Open Season User Agreement by ElecLink will not waive any Eligibility Condition and does not itself indicate compliance with any other Eligibility Condition or oblige ElecLink to issue an Eligibility Notice.

### **Additional information**

- B3.5 ElecLink may ask an Applicant to provide additional or outstanding information reasonably required by ElecLink in connection with the Applicant's eligibility in accordance with these Rules to be party to an ElecLink Open Season User Agreement and otherwise in connection with ElecLink's approval and execution of an ElecLink Open Season User Agreement with that Applicant.

### **Refusal**

- B3.6 ElecLink may refuse to enter into an ElecLink Open Season User Agreement with an Applicant:
- (a) if ElecLink has previously terminated an ElecLink Open Season User Agreement with the Applicant pursuant to Rule F6 either (i) as a result of a failure by the Open Season User (as it was at the time) to pay any amount owed under or in connection with these Rules and the Open Season User has not paid all amounts owed by it to ElecLink in connection with that termination, or (ii) for any other Termination Event of Default which (where capable of remedy) remains unremedied; or
  - (b) If ElecLink has previously terminated an ElecLink User Agreement with the Applicant pursuant to the relevant Allocation Rules; or

- (c) if any act or omission of the Open Season User causes ElecLink to breach any condition of the ElecLink Interconnector Licence; or
- (d) if any act or omission of the Open Season User causes ElecLink to breach any condition of the French Electricity law; or
- (e) if any act or omission of the Open Season User causes ElecLink to breach any condition of the Exemption Decision; or
- (f) if any act or omission of the Open Season User causes ElecLink to breach any Applicable Law or regulation.

### **Costs of application**

B3.7 Applicants shall bear their own costs and expenses of any application under this Rule B3.

### **Information provided by Open Season Users**

- B3.8.1 Applicants and Open Season Users must provide ElecLink with the data and information in Schedule 3 ("Standing Data") before they are eligible to participate in any Auction. Initially, the information will be provided by Open Season Users in their Application Forms.
- B3.8.2 An Applicant or an Open Season User must notify ElecLink if there is any change to the Standing Data at least ten (10) Business Days before the change comes into effect and, where that is not possible, as soon as practicable after the Open Season User becomes aware of the change.
- B3.8.3 An Applicant or an Open Season User must notify ElecLink if it does not consent to ElecLink publishing its name as an Open Season Unit Holder for the facilitation of the Secondary Market.
- B3.8.4 Pursuant to any notification sent by the Open Season User in accordance with Rule B3.8.3, ElecLink will (subject and without prejudice to Rule D1.10) reflect such notification in the CMS as soon as practicable and in any event within two (2) Business Days of the receipt of the notification.

### **Accuracy and completeness**

B3.9 Each Open Season User must ensure that all data and other information that it provides to ElecLink pursuant to these Rules (including information in its Application Form) is and remains accurate and complete in all material respects and must promptly notify ElecLink of any change.

## **Rule B4: Open Season User Systems**

### **General requirement**

- B4.1 Each Open Season User must establish and maintain, at its own cost, its own Open Season User Systems. ElecLink shall have no liability in the event that the Open Season User's System fails, for any reason, to communicate with the CMS.

### **Interfaces with the Capacity Management System (CMS)**

- B4.2 ElecLink will give Open Season Users the information (including updates as applicable) reasonably necessary to enable Open Season User Systems to interface with the CMS.

### **Interface testing**

- B4.3.1 Each Open Season User must demonstrate to the reasonable satisfaction of ElecLink its ability to exchange information with the CMS before being eligible to participate in the Auctions, the Secondary Market and the Nominations process.
- B4.3.2 In this context, ElecLink shall endeavour to give access to Open Season Users to a CMS test platform to test their interfaces.

### **Security and confidentiality of communications**

- B4.4.1 ElecLink may from time to time, where reasonably necessary for the purpose of protecting the security and authenticity of communications under these Rules, including those between the CMS and Open Season User Systems, establish communication protocols and standards with which Open Season Users must comply.
- B4.4.2 Open Season Users accept that data sent to the CMS is binding, and that Open Season Users are fully responsible for those individuals who have access to the CMS on behalf of the Open Season User.

### **Training**

- B4.5 Training is available to each Open Season User. In relation to Auctions, Open Season Users that have received an Eligibility Notice in accordance with Rule B2 will receive an Open Season User Guide outlining access to and use of the Open Season Auction Software. Prior to the Auction, ElecLink will offer eligible Open Season Users the opportunity to participate in a training session relating to the Open Season Auction Software. The training session will provide eligible Open Season Users the opportunity to submit mock Bids over the course of several rounds and ask questions to the Auction Manager regarding the Bid submission process.
- B4.6 Standard Training for the use of the CMS will be available to the Open Season Users free of charge.

**SECTION C: FINANCIAL MATTERS APPLICABLE TO THESE RULES**

**Rule C1: Introduction**

**Scope**

C1.1 This Section C of the Rules sets out Rules which are applicable to invoicing, payments and payment security.

**Structure**

C1.2 Section C is divided into four (4) Rules as follows:

- (a) Rule C1: Introduction;
- (b) Rule C2: Invoicing and Payment;
- (c) Rule C3: Payment Security;
- (d) Rule C4: Credit Cover for Open Season Unit Holders.

## **Rule C2: Invoicing and Payment**

### **Obligation to pay independent of use**

C2.1 Each Open Season User must pay ElecLink the Unit Prices for all Unit Quantities acquired even if all or some of the Open Season Units have been Resold or Capacity Transferred as set out in Rule E4 (except as provided for in Rule E4.4.10(b)), and even if the Open Season User does not use the corresponding Open Season Interconnector Capacity.

### **Currency**

C2.2.1 All prices referred to in Rule C2 are indicated in Euros.

C2.2.2 All payments made according to Rule C2 must be in Euros.

### **Invoices**

C2.3.1 No later than the 11<sup>th</sup> Business Day of each month M, ElecLink will send by email as a PDF attachment (or by any other means as determined from time to time by ElecLink) to the Open Season User an invoice or credit note stating:

- (a) the monthly instalments payable by the Open Season User in respect of the portion related to month M+1 of Open Season Units which have been allocated before the 3<sup>rd</sup> Business Day of month M; and such monthly instalment is calculated as the product of a) the number of Open Season Units (in megawatts) allocated to the Open Season User for month M+1, b) the aggregate hours of the Unit Validity Times of such Open Season Units within month M+1, and c) the Unit Price applicable to month M+1, rounded down to the nearest Euro cent for each monthly instalment. For example, an Open Season Unit with a Product Period of 5 calendar years starting on 1 January of year Y will be invoiced in sixty (60) monthly instalments, starting in December of year Y-1 and ending in November of year Y+4;
- (b) the monthly instalments payable by the Open Season User in respect of the portion related to month M of Open Season Units which have been allocated on or after the 3<sup>rd</sup> Business Day of month M-1; and such monthly instalment is calculated in the same way as in Rule C2.3.1(a) above;
- (c) the monthly instalments payable by ElecLink to the Open Season User in respect of the portion related to month M+1 of Open Season Units which have been Resold, for a Product Period equal to or greater than one (1) month in Long-Term Auctions, and which have been Resold before the third (3<sup>rd</sup>) Business Day of month M and such monthly instalment is calculated as the product of the Resold Unit Quantity and the Unit Resale Price, prorated by one (1) month over the total number of months in the Product Period for the Resold Open Season Units, rounded down to the nearest Euro cent for each monthly instalment, with the balance payable in the last monthly instalment. For example the Resale of an Open Season Unit for a Product Period from January to March is credited in three (3) monthly instalments, starting in December the year before and ending in February;
- (d) the monthly instalments payable by ElecLink to the Open Season User in respect of the portion related to month M of Open Season Units which have been Resold for a Product Period equal to or greater than one (1) month in Long-Term Auctions, and which have been Resold on or after or on the third (3<sup>rd</sup>) Business Day of month M-1. The monthly instalment receivable is calculated in the same way as in Rule C2.3.1 (c);

- (e) the full amount payable by ElecLink in respect of the Open Season Units which have been Resold in Long-Term Auctions for a Product Period of less than one (1) month and which starts in month M-1, calculated as the product of the Resold Unit Quantity and the Unit Resale Price;
- (f) the amount payable by ElecLink in respect of Unused Units as set out in Rule E5.2, and in respect of Contract Days within month M-1;
- (g) where practicable, the notification of the portion related to month M-1 of the Open Season Units subject to Capacity Transfer by or to the Open Season User;
- (h) any amounts payable by ElecLink or credits due to the Open Season User under Rule E7 (Curtailment and Curtailment Reconciliation);
- (i) any amount payable by the Open Season User to ElecLink for any training requested by the Open Season User, in addition to the Standard Training provided to the use of the CMS pursuant to Rules B4.5 and B4.6;
- (j) any Taxes payable by the Open Season User or ElecLink in respect of amounts in the invoice;
- (k) the total amounts payable by the Open Season User to ElecLink and receivable by the Open Season User from ElecLink under the above paragraphs (a)-(g), and the balance after setting off payments due from the Open Season User and payments due from ElecLink under the above paragraphs (a)-(g); and
- (l) any other information required to be included in the invoice under English law.

### **Payment of invoices**

- C2.4.1 In case of a balance due from the Open Season User under an invoice, the Open Season User must pay the full value of that balance invoiced to it under this Rule C2 in full, free of any charge, set off or counterclaim, except as provided by Rule C2.3.1(k), by the due date for payment, even if it disputes any amount in the invoice, by making payment to the bank account notified from time to time to the Open Season User by ElecLink for the purpose of these Rules.
- C2.4.2 In case of a balance due from ElecLink under a credit note, ElecLink must pay the full value of that balance under this Rule C2 in full, free of any charge, set off or counterclaim, except as provided by Rule C2.3.1(k), by the due date for payment, even if it disputes any amount in the invoice, by making payment to the bank account notified from time to time to ElecLink by the Open Season User for the purpose of these Rules.
- C2.4.3 Payments are due no later than fourteen (14) calendar days after the date of issuance of the invoice or credit note. If the day that payment is due is not a Business Day, then the payment is due on the next Business Day.

### **Payment disputes**

- C2.5.1 Subject to Rule C2.7, if an Open Season User disputes an invoice (or credit note) rendered under this Rule C2, then it must as soon as practicable and in any event within ten (10) Business Days after the date of issuance of the invoice (or credit note) notify ElecLink by registered mail of the nature of the dispute and the amount in dispute. The notification of a dispute does not suspend any obligation to pay the amounts invoiced. If the Open Season User and ElecLink are unable to resolve the difference within ten (10) Business Days of the notice then such difference

will constitute a Dispute which will be submitted for resolution in accordance with Rule F8 (Dispute resolution).

C2.5.2 If it is agreed or determined pursuant to Rule F8 that an amount paid by the Open Season User was not properly payable then ElecLink will refund such amount to the Open Season User no later than twenty (20) Business Days after the agreement or determination.

C2.5.3 If it is agreed or determined pursuant to Rule F8 that an amount paid by ElecLink was not properly payable then the Open Season User will refund such amount to ElecLink no later than twenty (20) Business Days after the agreement or determination.

### **Late payments**

C2.6 Without prejudice to the other rights of ElecLink and Open Season Users, interest will be charged without further notice on amounts due for payment by an Open Season User or by ElecLink but unpaid at the date due for payment at the rate of four percent (4%) per annum above the interest rate applied by the European Central Bank for the main refinancing operations. This interest shall be charged from the date due for payment until the date of actual payment. In all cases the minimum amount to be charged for late payment is one hundred and forty euros (€140). Interest will be charged without further notice. Interest will be increased to include taxes and levies in force.

### **Payment Incident**

C2.7.1 Without prejudice to the other rights of ElecLink, if any amount due for payment by the Open Season User to ElecLink is not paid in full by the Open Season User within five (5) Business Days after the due date for payment, ElecLink will register such non-payment as a payment incident (a "Payment Incident") and inform the Open Season User by formal notice.

C.2.7.2 Immediately after registering a Payment Incident pursuant to Rule C2.7.1, ElecLink may invoke the Credit Cover.

C2.7.3 From the day of notice of a Payment Incident, the rights of the Open Season User to participate in Auctions or in the Secondary Market and to Nominate the Open Season Units that are the subject of the Payment Incident may be suspended by ElecLink as set out in Rule F6. This suspension will run until the two following conditions are cumulatively met:

- (a) The Open Season User pays ElecLink all overdue invoices and all interest for late payments; and
- (b) The Open Season User readjusts its Credit Cover as necessary to the level required pursuant to Rules C3 - C4 to cover its unpaid commitments.

Provided that the above two conditions are met, the Open Season User is entitled to request ElecLink to end its suspension. ElecLink will formally end the suspension by notice to the Open Season User as described in B2.6.

C2.7.4 The Open Season User agrees that, at any time during the period of suspension as referred to in Rule C2.7.3, ElecLink may Resell the Open Season Units acquired by it and that are the subject of the Payment Incident. In this event the proceeds of the Resale shall not be returned to the Open Season User, and ElecLink shall not be liable for any direct or indirect loss or liabilities which the Open Season User may suffer or incur as a result of a Resale under this Rule.

**Taxes**

C2.8 Taxes at the rate and to the extent applicable will be applied to all amounts invoiced under these Rules.



## **Rule C3: Payment Security**

### **Continuing credit requirements for Open Season Users**

- C3.1.1 At all times after any Open Season Units have been allocated to an Open Season User and until the expiry of the Product Period for those Open Season Units and payment in full of all instalments of the total Unit Price of those Open Season Units in accordance with Rule C2, the Open Season Unit Holder shall ensure that it satisfies, and continues to satisfy, the Open Season Continuing Credit Requirement.
- C3.1.2 Each Open Season Unit Holder shall:
- (a) notify ElecLink in writing within ten (10) Business Days if the Open Season Unit Holder ceases to satisfy the Open Season Continuing Credit Requirement; and
  - (b) at least annually by no later than 31 May in each year, and at any other time promptly upon ElecLink's written request, provide evidence to ElecLink of its continued satisfaction of the Open Season Continuing Credit Requirement.
- C3.1.3 An Open Season Unit Holder who satisfies the Open Season Continuing Credit Requirement on the basis of its or its Parent Company's Credit Rating will within ten (10) Business Days notify ElecLink of any deterioration in such Credit Rating and provide evidence of the revised Credit Rating.
- C3.1.4 An Open Season Unit Holder who satisfies the Open Season Continuing Credit Requirement on the basis of its or its Parent Company's Tangible Net Worth will within ten (10) Business Days of any Material Adverse Change affecting it or its Parent Company (as the case may be) notify ElecLink of such Material Adverse Change and the effect of that Material Adverse Change on its or its Parent Company's Tangible Net Worth, such notice to set out the basis for the Open Season User's calculation thereof.
- C3.1.5 If an Open Season Unit Holder at any time (the "Relevant Time") ceases to satisfy the Open Season Continuing Credit Requirement for any reason (and regardless of whether it has notified ElecLink of such occurrence), the Open Season Unit Holder shall within thirty (30) days after the Relevant Time take such action as may be necessary to ensure that it does satisfy, and thereafter will continue to satisfy, the Open Season Continuing Credit Requirement. A failure to take such action within such time shall be a Termination Event of Default for the purposes of Rule F6.

## **Rule C4: Credit Cover for Open Season Unit Holders**

- C4.1 Except where an Open Season Unit Holder satisfies the Open Season Continuing Credit Requirement on the basis of a Letter of Credit, an Open Season Unit Holder shall provide and maintain Credit Cover in accordance with this Rule C4 in respect of any Open Season Units allocated to that Open Season User.
- C4.2 The Credit Cover provided under Rule C4.1 must be provided by no later than one (1) month prior to the due date of the first instalment of the Unit Price for those Open Season Units and shall be maintained until the Unit Price for the full Product Period of those Open Season Units has been paid in full.
- C4.3 Credit Cover provided by an Open Season Unit Holder must be in the form of:
- (a) a Letter of Credit; and/or
  - (b) Cash Collateral in a Deposit Account charged in favour of ElecLink.
- C4.4 If Credit Cover in respect of any Open Season Units is provided in the form of a Letter of Credit, the Letter of Credit must have a Validity Period extending until at least one (1) month after the last date on which the Open Season User is required to make a payment of an instalment for the Open Season Units.
- C4.5 The minimum amount of Credit Cover to be provided under Rule C4.1 in respect of any Open Season Units shall be in euros and equal to one month's instalment of the Unit Price of those Open Season Units (as calculated in accordance with Rule C2).

### **Calls on Credit Cover**

- C4.6 ElecLink is entitled to call on the Credit Cover of an Open Season User in the event of a Payment Incident pursuant to Rule C2.7.
- C4.7 If the Credit Cover of an Open Season User is called in accordance with Rule C4.6, the Open Season User shall restore the Credit Cover to at least the minimum amount required by Rule C4.5 within two (2) Business Days of the call.

### **Credit Cover renewal**

- C4.8 If the Credit Cover of an Open Season User, in the form of a Letter of Credit, is due to expire, the Open Season User shall renew the Credit Cover to at least the minimum amount required by Rule C4.5 and with a Validity Period no shorter than that specified in Rule C4.4, not less than thirty (30) Business Days before it is due to expire.
- C4.9 Where an Open Season User wishes to renew its Letter of Credit, it shall use its reasonable endeavours to achieve this by providing a new Letter of Credit and not by an amendment to its existing Letter of Credit.

### **Credit Cover Incident**

- C4.10 Without prejudice to the other rights of ElecLink, if the Credit Cover is not renewed in accordance with Rule C4.8, or not restored in accordance with Rule C4.7, or a substitute Letter of Credit is not procured in accordance with Rule C4.13, ElecLink will register such circumstance as a credit cover incident (a "Credit Cover Incident") and inform the Open Season User by formal notice.

- C4.11 From the day of notice of a Credit Cover Incident, the rights of the Open Season User to participate in Auctions or in the Secondary Market and to Nominate Open Season Units may be suspended as set out in Rules F6.3.1(a) and F6.3.1(b). This suspension will run until the Open Season User restores its Credit Cover to the minimum amount required pursuant to Rule C4.5 and the Open Season User's eligibility is reinstated as described in Rule B2.3.
- C4.12 The Open Season User agrees that, at any time during its suspension pursuant to Rule C4.11, ElecLink may Resell the Open Season Units that such Open Season User is prohibited from using during the period of such suspension in accordance with Rule F6.3.1. In this event the proceeds of the Resale shall not be returned to the Open Season User, and ElecLink shall not be liable for any direct or indirect loss or liabilities which the Open Season User may suffer or incur as a result of a resale under this Rule.

**Bank's credit rating**

- C4.13 If the bank issuing an Open Season User's Letter of Credit ceases to have the credit rating set out in the definition of 'Letter of Credit', the Open Season User shall within five (5) Business Days procure the issue of a substitute Letter of Credit by a bank that has such a credit rating or shall deposit Cash Collateral in a Deposit Account.
- C4.14 If the bank with which Cash Collateral is deposited ceases to have the credit rating referred to in the definition of 'Deposit Account', the Open Season User shall within five (5) Business Days deposit Cash Collateral in a Deposit Account with a bank that has such a credit rating or shall procure the issue of a Letter of Credit.

## **SECTION D: AUCTION RULES FOR OPEN SEASON UNITS**

This Section D of the Rules sets out the Rules relating to the Auction processes.

### **Rule D1.1: Introduction**

#### **Scope**

- D1.1.1 This Rule D1 sets out the Rules relating to the Auction process for Open Season Units.
- D1.1.2 The Auction process for Open Season Units will be conducted as a simultaneous, multiple-round, ascending clock auction. The Auction process for Open Season Units is called simultaneous because all the Open Season Units in the Auction are offered for sale at the same time. The Auction process for Open Season Units is called ascending clock auction because the price of Open Season Units increases from one round to the next, starting at a given level and increasing gradually until the demand for each product of Open Season Units is not greater than the Target for the product.
- D1.1.3 Rule D1 is divided into twelve (12) Rules as follows:
- (a) Rule D1.1: Introduction;
  - (b) Rule D1.2: Auction Overview;
  - (c) Rule D1.3: Overview of Bidding;
  - (d) Rule D1.4: Extensions or Time-Outs in the Auction;
  - (e) Rule D1.5: Bidding Rules for each Section;
  - (f) Rule D1.6: Failure to Submit a Bid;
  - (g) Rule D1.7: End of Auction;
  - (h) Rule D1.8: Open Season Contracted Revenue Target;
  - (i) Rule D1.9: Open Season Revenue Cap;
  - (j) Rule D1.10: Publication of Results;
  - (k) Rule D1.11: Cancellation, Suspension, Deferral; and
  - (l) Rule D1.12: Enduring Limits for Open Season Unit Holders.

### **Rule D1.2: Auction Overview**

#### **General**

- D1.2.1 This Rule D1.2 provides an overview of:
- (a) the requirements preceding the commencement of the Auction; and
  - (b) the rules governing the simultaneous ascending clock auction for Open Season Units.
- Detailed bidding rules for the Auction are provided in Rules D1.3 – D1.7.

- D1.2.2 An Open Season User must satisfy the participation requirements provided for in Rule B2 before that Open Season User may submit a Bid in the Auction.
- D1.2.3 A Bid in the Auction must be submitted in accordance with this Rule D1. Only a Bid confirmed by the Auction Manager will be valid.
- D1.2.4 Each valid Bid will constitute an unconditional and irrevocable offer by the Open Season User to ElecLink to buy Open Season Units for the quantity specified in the Bid, at the price at which the Bid is submitted, and on the terms and conditions of these Rules, the relevant Auction Specification, and the ElecLink Open Season User Agreement.

#### **Electronic operation of the Auction**

- D1.2.5 The Auction will be conducted electronically via the Open Season Auction Software.
- D1.2.6 Open Season Users that have received an Eligibility Notice in accordance with Rule B2 will receive an Open Season User Guide outlining access to and use of the Open Season Auction Software. Prior to the Auction, ElecLink will offer eligible Open Season Users the opportunity to participate in a training session relating to the Open Season Auction Software. The training session will provide eligible Open Season Users the opportunity to:
- (a) submit mock Bids over the course of several rounds; and
  - (b) ask questions to the Auction Manager regarding the Bid submission process.

#### **Backup procedure**

- D1.2.7 If, during the Auction, an Open Season User encounters difficulties in accessing the Auction server or is unable to utilise the Open Season Auction Software, the Open Season User may submit a Bid using the backup procedure described in Rules D1.2.8 – D1.2.10.
- D1.2.8 If it is not practicable for an Open Season User to submit its Bid electronically in accordance with Rule D1.2.5, the Open Season User may phone the Auction Manager and, upon providing authenticating information, the Auction Manager will access the Open Season Auction Software and enter the Bid on behalf of the Open Season User. Telephone conversations between the Auction Manager and Open Season Users will be recorded. By using the backup procedure provided in this Rule D1.2.8, the Open Season User consents to and irrevocably authorises the Auction Manager to enter the Bid on behalf of the Open Season User. Nothing contained or implied in this Rule D1.2.8 constitutes or is deemed to constitute ElecLink or the Auction Manager and an Open Season User, the partner, agent, fiduciary or legal representative of the other for any purpose whatsoever or create or be deemed to create any partnership, agency, fiduciary or legal relationship or trust whatsoever.
- D1.2.9 The Open Season User must notify the Auction Manager promptly and allow the Auction Manager reasonably sufficient time to complete the submission of a Bid under the backup procedure provided in Rule D1.2.8 before the end of the relevant Round. Neither ElecLink nor the Auction Manager will be liable to the Open Season User for any and all liability, losses or claims resulting

from an incorrect or late submission of a Bid by the Auction Manager on behalf of the Open Season User under the backup procedure.

D1.2.10 When participating in the backup procedure specified in Rules D1.2.7 - D1.2.9, the Open Season User must comply with the instructions provided in the Open Season User Guide.

**What will be auctioned?**

D1.2.11 Each Auction of Open Season Units will be divided into products as specified by ElecLink by designating, in respect of each product:

- (a) the direction of Open Season Units in that product, designated by the point of origin (“FR” for the France to Great Britain direction, or “EN” for the Great Britain to France direction);
- (b) the Initial Forecast Commercial Delivery Date for each product;
- (c) the duration of the Product Period of the Open Season Units in each product, expressed in number of years (for example, “5” for a Product Period of 5 years, or “10” for a Product Period of 10 years);
- (d) the applicable Unit Validity Times of Open Season Units in each product;
- (e) any other terms applicable to that product; and
- (f) the terms applicable to the Planned Outage Period(s).

**Auction Specification**

D1.2.12 At least thirty (30) Business Days before the day of the start of the Bidding Period of an Auction, the Auction Manager will publish the provisional Auction Specification for that Auction stating in particular:

- (a) the products being auctioned;
- (b) the provisional Target for each product;
- (c) the direction of Open Season Units for each product;
- (d) the provisional Initial Forecast Commercial Delivery Date for each product;
- (e) the duration of the Product Period of Open Season Units for each product;
- (f) the terms applicable to the Planned Outage Period(s) for the Product Period;
- (g) the applicable Unit Validity Times of Open Season Units for each product;

- (h) the Minimum Starting Price;
- (i) the Maximum Starting Price;
- (j) the Adjustment Coefficient;
- (k) the Discount Rate;
- (l) the Price Increment Formula for each product;
- (m) the provisional dates and times of the Bidding Period for that Auction; and
- (n) any other relevant information or terms applicable to the Open Season Units or the Auction.

D1.2.13 At least fifteen (15) Business Days before the day of the start of the provisional Bidding Period of an Auction, the Auction Manager will inform the Open Season Users that have received an Eligibility Notice in accordance with Rule B2 of the final Auction Specification for that Auction, stating in particular:

- (a) the definitive Target for each product;
- (b) the Starting Price for each product;
- (c) the definitive Initial Forecast Commercial Delivery Date for each product;
- (d) the definitive dates and times of the Bidding Period; and
- (e) any other update of relevant information or terms applicable to the Open Season Units or the Auction.

For the avoidance of doubt, and pursuant to these Rules, the information specified in Rule D1.2.13 (a), (c), (d) and (e) may be different from the information contained in the provisional Auction Specification for the relevant Auction; the information contained in the final Auction Specification shall prevail.

## **Sections**

D1.2.14 The Auction will be divided into two Sections, where a Section includes products with the same direction, Initial Forecast Commercial Delivery Date and Unit Validity Times, but of different Product Periods. Section “FR” refers to all products in the France to Great Britain direction and Section “EN” refers to all products in the Great Britain to France direction.

D1.2.15 Each Section shall comprise a maximum of two products.

### **Target for each product of Open Season Units**

D1.2.16 The quantity of Open Season Units to be auctioned for each product in a given Section will be divided into Blocks across products of Open Season Units with different Product Periods in accordance with one of the following options:

- (a) eighty (80) Blocks in the form of Open Season Units with a Product Period of five (5) years; or
- (b) zero (0) to thirty (30) Blocks in the form of Open Season Units with a Product Period of three (3) years and fifty (50) to eighty (80) Blocks in the form of Open Season Units with a Product Period of five (5) years; or
- (c) zero (0) to sixty (60) Blocks in the form of Open Season Units with a Product Period of ten (10) years and twenty (20) to eighty (80) Blocks in the form of Open Season Units with a Product Period of five (5) years.

D1.2.17 The quantity available for each product, measured in Blocks, is the Target for that product.

D1.2.18 The sum of the Targets for both products in a Section shall not exceed eighty (80) Blocks.

D1.2.19 After the commencement of the Bidding Period, the Auction Manager will not change the Target for each product except in the circumstances described in Rule D1.2.20.

D1.2.20 If, at the end of Round 1, demand for a product is less than the Target for that product, the Auction Manager may:

- (a) reduce the Target for that product by a number of Blocks not greater than the volume lacking in demand; and
- (b) make a corresponding increase in the Target for the other product in the same Section.

For the avoidance of doubt, if demand in Round 1 exceeds the Target for every product in a given Section, the Auction Manager may not change the Target for either of the products in that Section.

D1.2.21 The Auction Manager will notify the Open Season Users of any change to the Target for a product made in accordance with Rule D1.2.20 prior to the commencement of Round 2.

### **Product Periods of Open Season Units**

D1.2.22 The duration of the Product Period of Open Season Units in each product:

- (a) shall not be greater than ten (10) years; and
- (b) shall not be shorter than three (3) years.



D1.2.23 The Product Period of Open Season Units shall not extend beyond the twentieth (20<sup>th</sup>) year from the Operational Start Date.

### **Acquisition of Open Season Units**

D1.2.24 Where the Auction Manager accepts a Bid by allocating to an Open Season User one or more Open Season Unit(s) in accordance with these Rules, then the Open Season User will acquire such Open Season Unit(s) for the Unit Price on the terms and conditions of these Rules, the relevant Auction Specification and the ElecLink Open Season User Agreement. The rights and obligations of Open Season Unit Holders are set out in these Rules and the ElecLink Open Season User Agreement.

D1.2.25 If a change in any currency of a country occurs, these Rules may be amended to the extent ElecLink (acting reasonably and after consultation with the Open Season User) determines that it is necessary to reflect the change. Such change includes, but is not limited to, any Participating Member State leaving the euro or the euro ceasing to be the lawful currency of the Member States participating in the European Monetary Union. Such amendments may include the redenomination of the currency of liabilities and obligations under these Rules.

## **Rule D1.3: Overview of Bidding**

### **Auction format**

D1.3.1 The Auction process for Open Season Units will be undertaken in Rounds. In each Round, the Auction Manager will state the Going Price (in €/MWh) for each product of Open Season Units.

D1.3.2 The Going Price is deemed to be exclusive of Taxes.

D1.3.3 In each Round, the Open Season User may submit Bids for both products in both Sections at the same time.

D1.3.4 In each Bid, the Open Season User must state, for each product, the number of Blocks it wishes to buy at the Going Price announced by the Auction Manager.

D1.3.5 Every Bid is a binding and irrevocable offer to purchase the product at the Going Price at which the Bid is made. By submitting a Bid, the Open Season User is declaring that it stands ready, willing and able to purchase the Blocks that it bid, or any subset of the quantity corresponding to these Blocks (in whole MW) that it may be allocated by the Auction Manager, at the Going Price for the product.

D1.3.6 If the total number of Blocks bid for a given product is greater than the Target for that product, in the forthcoming Round the Auction Manager will increase the price for that product by one Increment.

- D1.3.7 In the subsequent Round, Open Season Users may submit Bids for both products in both Sections again.
- D1.3.8 The Open Season User must not increase, from one Round to the next, the total number of Blocks it bids across both products in the same Section. In any given Round, the total number of Blocks bid by an Open Season User across both products in a given Section must not exceed the total number of Blocks that the Open Season User bid, in the preceding Round, across both products in the same Section.
- D1.3.9 The Open Season User may (subject to the express provisions of these Rules) decrease, from one Round to the next, the number of Blocks it bids on a particular product by making a request to Withdraw Blocks in accordance with Rules D1.5.7 - D1.5.11 and Rule D1.5.16. If the Open Season User makes a request to Withdraw Blocks from one or both products in a given Section, then the number of Blocks that the Open Season User may bid, in subsequent Rounds, across both products in that Section will (subject to the express provisions of these Rules) be reduced accordingly. The Open Season User's request to Withdraw Blocks may be denied by the Auction Manager in accordance with Rules D1.5.18 - D1.5.23.
- D1.3.10 The Open Season User may Switch Blocks from one product in a Section to the other product in the same Section by making a request to Switch Blocks in accordance with Rules D1.5.12 - D1.5.16. The Open Season User is not permitted to request a Switch from a product in Section FR to a product in Section EN or a Switch from a product in Section EN to a product in Section FR. The Open Season User's request to Switch Blocks may be denied by the Auction Manager in accordance with Rules D1.5.24 - D1.5.28.
- D1.3.11 In any given Round, if the total number of Blocks bid on a given product does not exceed the Target for that product, the Going Price for that product will not increase in the forthcoming Round. However, as the Auction progresses and the Going Price for the other product in the same Section increases, Open Season Users may Switch Blocks from one product to the other and, as a result, cause the number of Blocks bid on that particular product to exceed the respective Target again. This will cause the Going Price for the product to increase again in subsequent Rounds.
- D1.3.12 If the Open Season User has submitted a Bid for a product and the Going Price for that product does not increase in the forthcoming Round, then in the forthcoming Round the Open Season User may not:
- (a) Withdraw Blocks from that product; or
  - (b) Switch Blocks from that product to the other product in the same Section.
- D1.3.13 The Winning Bidders for each product will be determined in accordance with Rule D1.7 when bidding has closed for all products in a given Section.

D1.3.14 Except in the circumstances described in Rules D1.8 and D1.9, a Winning Bidder is awarded the full number of Blocks allocated to it by the Auction Manager pursuant to Rule D1.7.4.

### **Increments**

D1.3.15 The Increment is specific to each product in the Auction. The Increment may be set as an absolute value or as a percentage of the Going Price for the product in the previous Round. The Increment for each product will be expressed in multiples of 0.5 Euro cents per MWh.

D1.3.16 In any given Round, the Auction Manager will set the Increment in accordance with the Price Increment Formula for the relevant product. The Price Increment Formula may take into consideration factors including, but not limited to, the level of Excess Demand for each product and the relative level of demand for products within the same Section or across different Sections.

### **Rounds**

D1.3.17 No later than five (5) Business Days before the day of the commencement of the Bidding Period, the Auction Manager will provide to all Open Season Users that have received an Eligibility Notice in accordance with Rule B2 a timetable for the first day of the Auction specifying, in particular, the time at which Round 1 will start.

D1.3.18 Round 1 will start not earlier than 10:00 hours CET and not later than 16:00 hours CET on the day of the start of the Bidding Period.

D1.3.19 Each Round will be divided into three (3) phases:

- (a) the Bidding Phase;
- (b) the Calculating Phase; and
- (c) the Reporting Phase.

D1.3.20 In the Bidding Phase, Open Season Users must submit their Bids for each product at the Going Prices announced by the Auction Manager.

D1.3.21 The Calculating Phase will commence immediately after the Bidding Phase. In the Calculating Phase, the Auction Manager will tabulate the results of the Bidding Phase and set the Going Price of each product for the forthcoming Round. During the Calculating Phase, Open Season Users cannot submit Bids and do not yet have access to the results of the Bidding Phase.

D1.3.22 The Reporting Phase commences immediately after the Calculating Phase. In the Reporting Phase, the Auction Manager will:

- i. notify all participating Open Season Users of:

- (a) the Going Price for each product in the forthcoming Round; and
  - (b) the Range of Total Excess Demand in each Section for the preceding Round.
- ii. report privately to each participating Open Season User:
- (a) the number of Blocks bid by the Open Season User for each product at the respective Going Price;
  - (b) the Open Season User's Eligibility for the next Round, calculated in accordance with Rule D1.5.6;
  - (c) whether the Open Season User's request(s) to Withdraw Blocks or Switch Blocks under Rules D1.5.7 – D1.5.16 have been accepted:
    - (i) if the Open Season User's request(s) to Withdraw Blocks or Switch Blocks have been accepted, the Auction Manager reports this to the Open Season User;
    - (ii) if some or all of the Open Season User's requests to Withdraw Blocks have been denied pursuant to Rules D1.5.18 - D1.5.23, the Auction Manager reports to the Open Season User the number of Withdrawn Blocks which have been retained and the respective Exit Price;
    - (iii) if some or all of the Open Season User's requests to Switch Blocks have been denied pursuant to Rules D1.5.24 - D1.5.28, the Auction Manager reports to the Open Season User the number of Switched Blocks which have been retained and the price at which such Switched Blocks have been retained;
  - (d) the number of Withdrawn Blocks (in relation to the Open Season User), which had been retained in a previous Round, that are now being released in accordance with Rules D1.5.21 - D1.5.23;
  - (e) the number of Switched Blocks (in relation to the Open Season User) which had been retained in a previous Round and which have been Outbid pursuant to Rules D1.5.26 - D1.5.28; and
  - (f) the Open Season User's Free Eligibility, calculated in accordance with Rule D1.5.27.

D1.3.23 The minimum duration of each phase will be as follows:

- (a) Bidding Phase: minimum of ten (10) minutes;
- (b) Calculating Phase: no minimum duration; and
- (c) Reporting Phase: minimum of five (5) minutes.

D1.3.24 The three (3) phases (individually or collectively) are subject to no maximum duration, however:

- (a) the duration of the Bidding Phase will typically last between ten (10) and twenty (20) minutes, unless one or more Open Season Users request an Extension in accordance with Rule D1.4;
- (b) the combined duration of the Calculating Phase and the Reporting Phase will typically be less than thirty (30) minutes unless the Auction Manager requests a Time-Out in accordance with Rule D1.4.6.

D1.3.25 The Auction for Open Season Units does not have a pre-determined number of Rounds or a set time at which it ends. The bidding in each Section is separate and may end at different times. The Auction ends when the bidding in both Sections has closed. If the Auction lasts more than one (1) Business Day, the Auction Manager will provide to all participating Open Season Users a timetable for the following bidding day in the evening of the previous Business Day.

#### **Rule D1.4: Extensions or Time-Outs in the Auction**

D1.4.1 Open Season Users or the Auction Manager may extend or Time-Out (as the case may be) the Auction in accordance with this Rule D1.4.

##### **Request for Extension by the Open Season Users**

D1.4.2 During the Bidding Phase, an Open Season User may extend the Auction by requesting an Extension. An Open Season User may request a maximum of two (2) Extensions during the Auction.

D1.4.3 Each Extension will last fifteen (15) minutes, unless specified otherwise by the Auction Manager and notified by the Auction Manager to the Open Season Users by message in the Open Season Auction Software prior to the start of the Bidding Phase.

D1.4.4 If an Open Season User requests an Extension, such a request extends the Bidding Phase of the Round for all Open Season Users and for both Sections.

D1.4.5 If there are multiple requests for an Extension during the Bidding Phase of any given Round, the Extensions will proceed concurrently and the Bidding Phase of the relevant Round will be extended by only fifteen (15) minutes or such other period of time as may be specified by the Auction Manager pursuant to Rule D1.4.3. For the avoidance of doubt, an Open Season User may request a maximum of two (2) Extensions during the Auction irrespective of whether there are multiple requests for an Extension during the Bidding Phase of the same Round or not.

##### **Time-Out imposed by the Auction Manager**

D1.4.6 The Auction Manager may impose a Time-Out at any time during a Round. A Time-Out will typically last no more than fifteen (15) minutes. However, the Auction Manager reserves the right to extend the duration of the Time-Out, if in the reasonable opinion of the Auction Manager this is necessary for the proper conduct of the Auction.

## **Rule D1.5: Bidding Rules for each Section**

### **Overview**

D1.5.1 This Rule D1.5 details (a) the possible Bids that an Open Season User is permitted to submit in the Auction for Open Season Units, and (b) the terms and conditions governing such Bids. This Rule D1.5 applies separately to each Section without limiting any other Rule or provision of the ElecLink Open Season User Agreement.

### **Round 1**

D1.5.2 In the Bidding Phase of Round 1, the Open Season User must submit, for each product in each Section, a Bid identifying the number of Blocks being bid for at the Going Price for each product.

D1.5.3 In Round 1, the total number of Blocks an Open Season User may submit a Bid for across both products in a Section must not exceed the Open Season User's Initial Eligibility for that Section.

D1.5.4 The Auction Manager will refuse any Bid that does not comply with Rule D1.5.3.

### **Round 2 and subsequent Rounds**

D1.5.5 In the Bidding Phase of Round 2 and of all subsequent Rounds, the Open Season User must submit, for each product in each Section, a Bid identifying the number of Blocks being bid for at the Going Price of each Round. The Open Season User may:

- (a) bid the same number of Blocks for each product as in the preceding Round; or
- (b) make a request to Withdraw Blocks or Switch Blocks in accordance with Rules D1.5.7 - D1.5.16.

D1.5.6 In Round 2 and in all subsequent Rounds, the total number of Blocks bid by the Open Season User, across all products in a given Section, must not exceed the Open Season User's Eligibility for that Section, calculated as follows:

- (a) in Round 2, the Open Season User's Eligibility for a given Section is equal to the total number of Blocks bid by the Open Season User, in Round 1, across all products in that Section.
- (b) in Round 3 and in all subsequent Rounds, the Open Season User's Eligibility equals the difference between:
  - i. The Eligibility of the Open Season User in the preceding Round; and
  - ii. The number of Blocks Withdrawn by the Open Season User in the preceding Round, calculated in accordance with Rules D1.5.7 - D1.5.11.

In Round 2 and in all subsequent Rounds, the Auction Manager will reject any Bid that does not comply with this Rule D1.5.6.

### **Withdrawals**

- D1.5.7 In Round 2 and in all subsequent Rounds, the Open Season User may request to Withdraw Blocks from a given product, only if the Going Price for that product has increased from the preceding Round.
- D1.5.8 The Auction Manager shall accept the Open Season User's request to Withdraw Blocks from a given product except in the circumstances described in Rules D1.5.18 – D1.5.23.
- D1.5.9 An Open Season User that requests to Withdraw Blocks must state an Exit Price for the Blocks to be Withdrawn. The Exit Price is the Open Season User's best and final offer for the number of Blocks which are to be Withdrawn. The Exit Price must be:
- (a) the same for all Blocks to be Withdrawn that correspond to the same product;
  - (b) greater than or equal to the Going Price, in the preceding Round, of the product from which the Blocks are to be Withdrawn; and
  - (c) less than the Going Price of that same product in the Round in which the request to Withdraw the relevant Blocks is being made.
- D1.5.10 An Open Season User that requests to Withdraw Blocks from more than one product is permitted to specify a different Exit Price for each product.
- D1.5.11 If the Open Season User requests to Withdraw Blocks from a product in a given Section, the Open Season User's Eligibility for that Section in the subsequent Rounds is decreased by the number of Blocks Withdrawn, whether or not some of all of these Blocks are retained in accordance with Rules D1.5.18 – D1.5.23. An Open Season User that requests to Withdraw Blocks forfeits the right to bid these Blocks again on any product in the same Section in the subsequent Rounds.

### **Switches**

- D1.5.12 In Round 2 and in all subsequent Rounds, an Open Season User may make a request to Switch Blocks pursuant to Rules D1.5.13 – D1.5.14.
- D1.5.13 In Round 2 and in all subsequent Rounds, an Open Season User may make a request to Switch Blocks from product A to product B in the same Section, only if the Going Price for product A has increased from the preceding Round.
- D1.5.14 An Open Season User is permitted to remove, through a Switch, one or more Blocks from product A and increase, by a corresponding amount, the number of Blocks bid on product B in the same Section, even if the Going Price for product B has not increased from the previous Round.
- D1.5.15 The Auction Manager shall accept the Open Season User's request to Switch Blocks from product A to product B in the same Section except in the circumstances described in Rules D1.5.24 – D1.5.27.

### **Simultaneous Withdrawals and Switches**

D1.5.16 In Round 2 and in all subsequent Rounds, an Open Season User may make both a request to Withdraw Blocks and a request to Switch Blocks in the same Round.

#### **Filling the Target for each product**

D1.5.17 In any given Round, the Auction Manager must achieve the Target for each product in the following order:

- i. firstly, the Auction Manager utilises the Blocks bid at the Going Price of the relevant Round;
- ii. secondly, if the total number of Blocks bid at the Going Price of the relevant Round is less than the Target for the product, the Auction Manager will deny, to the extent necessary, the Open Season Users' requests to Withdraw Blocks in accordance with Rules D1.5.18 – D1.5.23 and will utilise the relevant Withdrawn Blocks to achieve the Target; and
- iii. thirdly, if the total number of Blocks specified in Rule D1.5.17 (i) – (ii) is less than the Target for the product, the Auction Manager will deny, to the extent necessary, the Open Season Users' requests to Switch Blocks in accordance with Rules D1.5.24 – D1.5.28 and will utilise the relevant Switched Blocks to achieve the Target.

#### **Denied Withdrawals**

D1.5.18 In any given Round, if the total number of Blocks bid on a particular product at the Going Price for the product is less than the Target for that product, the Auction Manager will deny some or all of the requests to Withdraw Blocks so as to achieve the Target for that product.

D1.5.19 If some or all of the requests to Withdraw Blocks are denied in accordance with Rule D1.5.18, the Auction Manager will retain the Withdrawn Blocks starting with those Blocks with the highest Exit Price first. The Withdrawn Blocks will be retained at the Exit Price stated by the Open Season User in accordance with Rule D1.5.9. For the avoidance of doubt, the Open Season User, whose Withdrawn Blocks are retained, must surrender the Eligibility corresponding to such Withdrawn Blocks, even if such Withdrawn Blocks are retained.

D1.5.20 If two or more Open Season Users have stated the same Exit Price and the Auction Manager must retain some but not all of the Withdrawn Blocks from such Open Season Users, the Auction Manager will determine, for each Withdrawn Block that must be retained at a time, the Open Season User whose Withdrawn Blocks will be retained using a random draw.

- i. For the first Withdrawn Block that must be retained, the probability that an Open Season User is chosen is equal to:
  - (a) the number of Withdrawn Blocks that the Open Season User has bid at the Exit Price,  
divided by



- (b) the total number of Withdrawn Blocks with the same Exit Price.
  - ii. If further Withdrawn Blocks must be retained at the Exit Price, the probability that any one Open Season User is chosen is equal to:
    - (a) the number of Withdrawn Blocks that the Open Season User has bid at the Exit Price which have not yet been retained,  
divided by
    - (b) the total number of Withdrawn Blocks with the same Exit Price which have not yet been retained.
  - iii. The Auction Manager repeats the procedure described in Rule D1.5.20 (ii) for every Withdrawn Block that must be retained.
- D1.5.21 Withdrawn Blocks, which have been retained, will be released (and the Open Season User's request to Withdraw such Blocks will be accepted), if in a subsequent Round:
- (a) new Blocks are bid on the same product at the Going Price; and
  - (b) such new Blocks can serve to achieve the Target for the product in place of the Withdrawn Blocks which have been retained.
- D1.5.22 Withdrawn Blocks will be released, in accordance with Rule D1.5.21, starting with those Blocks with the lowest Exit Price first. Withdrawn Blocks subject to this Rule D1.5.22 will be irrevocably removed from the Auction.
- D1.5.23 If Withdrawn Blocks from more than one Open Season User have been retained at the same Exit Price and only some of those Blocks can be released in accordance with Rule D1.5.21, the Auction Manager will determine the Open Season User whose retained Blocks will be released using a random draw.
- i. For the first retained Block to be released, the probability that an Open Season User is chosen is equal to:
    - (a) the number of Withdrawn Blocks retained from that Open Season User at the Exit Price,  
divided by
    - (b) the total number of Withdrawn Blocks retained at the same Exit Price.
  - ii. If further retained Blocks must be released, the probability that an Open Season User is chosen is equal to:

- (a) the number of Withdrawn Blocks retained from that Open Season User at the Exit Price, which have not already been released,  
divided by
  - (b) the total number of Withdrawn Blocks retained at the same Exit Price, which have not already been released.
- iii. The Auction Manager repeats the procedure described in Rule D1.5.23 (ii) until the required number of retained Blocks has been released.

### **Denied Switches**

D1.5.24 In any given Round, the Auction Manager will deny requests to Switch Blocks as necessary to achieve the Target for a product after all Withdrawn Blocks for that product, if any, have been retained in accordance with Rules D1.5.18 - D1.5.20. The Blocks relating to denied Switches will be retained at the Going Price of the product in the preceding Round.

D1.5.25 If two or more Open Season Users have requested to Switch Blocks from a given product and some but not all of the Switched Blocks must be retained in accordance with Rule D1.5.24, the Auction Manager will determine, for each Switched Block at a time, the Open Season User(s) whose Switched Block(s) will be retained using a random draw.

- i. For the first Switched Block that must be retained, the probability that an Open Season User is chosen is equal to:
  - (a) the number of Blocks that the Open Season User has requested to Switch from the product,  
divided by
  - (b) the total number of Blocks that all Open Season Users have requested to Switch from that product in the same Round.
- ii. If further Switched Blocks must be retained, the probability that an Open Season User is chosen is equal to:
  - (a) the number of Blocks that the Open Season User has requested to Switch from the product, which have not already been retained,  
divided by
  - (b) the total number of Blocks that all Open Season Users have requested to Switch from the product in the same Round and which have not already been retained.

- iii. The Auction Manager will repeat the procedure described in Rule D1.5.25 (ii) until the Target for the product is achieved.

D1.5.26 A Switched Block which has been retained may be Outbid, if in a subsequent Round:

- (a) new Blocks for the same product are bid at the Going Price for that product; and
- (b) such new Blocks can serve to achieve the Target for that product in place of the Switched Blocks which have been retained.

D1.5.27 An Outbid Block relating to an Open Season User is subject to the following conditions:

- i. if the Block was Outbid by another Open Season User, the relevant Outbid Block becomes Free Eligibility in the forthcoming round. A Block of Free Eligibility must be bid by the Open Season User in the Round in which it becomes available. Otherwise, the Open Season User's Eligibility for that Block will be lost. A Block of Free Eligibility can be bid on any product in the same Section. If the Open Season User does not bid the Block of Free Eligibility, the relevant Block is considered to be Withdrawn. When a Block of Free Eligibility is Withdrawn, the Open Season User is not allowed to state an Exit Price and the Block will not be retained by the Auction Manager in the circumstances described in Rules D1.5.18 – D1.5.20.
- ii. if the Block was Outbid by the Open Season User itself, the relevant Outbid Block is deemed as a Block bid by the Open Season User at the Going Price for the product. For the avoidance of doubt, if an Open Season User had one or more Switched Blocks retained for a product and bids new Blocks on this same product at the Going Price, the Open Season User will be deemed to have bid all Blocks (both the new Blocks and the Switched Blocks which had been retained) at the Going Price. In such case, the Outbid Blocks become Blocks that are bid at the Going Price.

D1.5.28 If, for a given product, Switched Blocks from more than one Open Season User have been retained and not all of these Switched Blocks are Outbid, the Auction Manager will determine, for each Switched Block at a time, the Open Season User whose Switched Block(s) will be Outbid using a random draw.

- i. For the first Switched Block to be Outbid, the probability that an Open Season User is chosen is equal to:
  - (a) the total number of Switched Blocks associated with the Open Season User which have been retained for the product,  
divided by
  - (b) the total number of Switched Blocks, associated with all Open Season Users, which have been retained for the same product.

- ii. For each subsequent Switched Block to be Outbid, the probability that an Open Season User is chosen is equal to:
  - (a) the total number of Switched Blocks, associated with the Open Season User which have been retained for the product, and which have not already been Outbid,  
divided by
  - (b) the total number of Switched Blocks, associated with all Open Season Users, for the same product, which have not already been Outbid.
- iii. The Auction Manager will repeat the procedure described in Rule D1.5.28 (ii) until the required number of Switched Blocks has been Outbid.

### **Rule D1.6: Failure to Submit a Bid**

- D1.6.1 An Open Season User with positive Eligibility must submit a Bid in every Round of the Auction, even if the Bid remains unchanged from the preceding Round or if the Going Price for the product has not increased from the preceding Round.
- D1.6.2 If an Open Season User with positive Eligibility does not submit a Bid during the Bidding Phase of the Round and the Open Season User has Extensions remaining pursuant to Rule D1.4, the Open Season User is automatically granted an Extension by the Auction Manager.
- D1.6.3 If the Open Season User:
  - (a) has already expended the Extensions permitted to it in accordance with Rule D1.4; or
  - (b) does not submit a Bid during the Extension granted to it by the Auction Manager in accordance with Rule D1.6.2,
 the Open Season User is a Default Bidder.
- D1.6.4 A Default Bidder will be assigned a Default Bid in accordance with the following:
  - i. In Round 1, the Default Bid will be zero (0) Block for each and every product;
  - ii. In Round 2 and in all subsequent Rounds:
    - (a) If the Default Bidder had some Blocks of Free Eligibility, these Blocks will be Withdrawn and removed from the Auction;
    - (b) If, in the preceding Round, the Default Bidder did not submit a Bid for any Blocks on a particular product and, in the Reporting Phase of that Round, did not have any denied Withdrawals or denied Switches for the relevant product, the Default Bid will be zero (0) Block for that product;

- (c) If, in the preceding Round, the Default Bidder had submitted a Bid for one or more Blocks on a particular product at the Going Price and the price for that product increased from the preceding Round to the present Round, the Default Bidder is deemed to have submitted a request to Withdraw the relevant Blocks at the Default Exit Price. In the event that such Blocks must be retained pursuant to Rule D1.5.18 in order to achieve the Target for the product, the relevant Blocks will be retained last and only after the application of the procedure described in Rule D1.5.20. In the event that Blocks from more than one Default Bidders must be retained, the Auction Manager will determine, for each Block at a time, the Default Bidder whose Block will be retained using a random draw.
- i. For the first Block that must be retained, the probability that a Default Bidder is chosen is equal to:
    - (a) the number of Blocks associated with the Default Bidder for a given product;  
divided by
    - (b) the total number of Blocks of all Default Bidders for the same product.
  - ii. If further Blocks must be retained, the probability that a Default Bidder is chosen is equal to:
    - (a) the number of Blocks associated with the Default Bidder for a given product, which have not yet been retained,  
divided by
    - (b) the total number of Blocks associated with all Default Bidders for the same product, which have not yet been retained.
  - iii. The Auction Manager will repeat the procedure described in D1.6.4 (c) (ii) for each Block that must be retained from Default Bidders.

- (d) If, in the preceding Round, the Default Bidder:
- i. submitted a Bid for one or more Blocks on a given product at the Going Price of the preceding Round; and/or
  - ii. had Withdrawn Blocks retained; and/or
  - iii. had Switched Blocks retained;

and the price for the product did not increase from the preceding Round to the present Round, then:

- (a) if there is Excess Demand for the product in the present Round so that the price for the product will increase in the next Round, the following apply:
- i. all Blocks that the Default Bidder had previously bid at the Going Price of the preceding Round are bid again at the same price;
  - ii. all Withdrawn Blocks that had been previously retained are released and the Default Bidder is discharged from any remaining obligation that relates to the relevant Blocks; and
  - iii. all Switched Blocks that had previously been retained are Outbid and the Default Bidder is assigned Free Eligibility for the relevant Blocks.
- (b) if there is no Excess Demand for the product in the present Round so that the price for the product will not increase in the next Round, the following apply:
- i. all Blocks that the Default Bidder had previously bid at the Going Price of the preceding round are bid again at the same price;
  - ii. if any new Blocks are bid on the same product at the Going Price of the present Round, the Blocks associated with a Default Bidder's denied Switches are Outbid first (before the Blocks associated with the denied Switches of Non-Default Bidders). If there is more than one Default Bidder and not all of the Blocks associated with the denied Switches from such Default Bidders can be Outbid, then for each Switched Block that must be Outbid, the Auction Manager will determine the Default Bidder whose Switched Block will be Outbid using a random draw, in a procedure analogous to that used for Blocks associated with the denied Switches of Non-Default Bidders;

- iii. if any new Blocks are bid on the same product at the Going Price of the present Round, and if all Blocks associated with the denied Switches from both Default Bidders and Non-Default Bidders are Outbid, then any Withdrawn Blocks that have been retained from Default Bidders will be released first and, in any case, before the Withdrawn Blocks of Non-Default Bidders. If there is more than one Default Bidder with retained Withdrawn Blocks and only some of the retained Withdrawn Blocks can be released, then the Auction Manager will determine at random, for each retained Withdrawn Block at a time, the Default Bidder whose retained Withdrawn Block be will released in a procedure analogous to that used for the retained Withdrawn Blocks of Non-Default Bidders.

## **Rule D1.7: End of Auction**

D1.7.1 The Auction closes at the same time for both products in the same Section.

D1.7.2 The Auction for both products in the same Section closes in the Reporting Phase of the first Round in which Total Excess Demand for a Section is less than or equal to zero (0) ("Final Round").

### **Winning Bidders**

D1.7.3 When the Auction for both products in the same Section closes, Blocks are allocated to the Winning Bidders. The Winning Bidders for each product are determined in accordance with the following:

- (a) if, in the Final Round, the number of Blocks bid at the Going Price of the Final Round is equal to the Target for the product, the Winning Bidders are the Open Season Users that submitted valid Bids for the product at the Going Price of the Final Round;
- (b) if, in the Final Round, the number of Blocks bid at the Going Price of the Final Round is less than the Target for the product, then:
  - i. if Withdrawn Blocks have been retained in order to achieve the Target for the product, but no Switched Blocks have been retained, then the Winning Bidders are the Open Season Users that submitted valid Bids for the product at the Going Price of the Final Round and the Open Season Users that had Withdrawn Blocks retained.
  - ii. If Switched Blocks must be retained in order to achieve the Target for the product, the Winning Bidders are the Open Season Users that submitted valid Bids for the product at the Going Price of the Final Round, the Open Season Users that had Withdrawn Blocks retained (if any) and the Open Season Users that had Switched Blocks retained.

D1.7.4 Except in the circumstances described in Rules D1.8 and D1.9, each Winning Bidder will be allocated, for each product, a quantity of Open Season Units corresponding (in MW) to the sum of:

- (a) the number of Blocks that the Winning Bidder bid for the product at the Going Price of the Final Round; and
- (b) the number of Blocks corresponding to the Winning Bidder's denied Withdrawals, if any, for that product in the Final Round; and
- (c) the number of Blocks corresponding to the Winning Bidder's denied Switches, if any, for that product in the Final Round.



D1.7.5 Open Season Users acknowledge and accept that their Bids may be partially accepted according to the methodology described in Rules D1.8 and D1.9.

### **Auction Price**

D1.7.6 The Winning Bidders for a given product pay the Auction Price (in €/MWh) for that product, calculated in accordance with the following rule:

- (a) if the total number of Blocks bid on the product at the Going Price of the Final Round is equal to the Target for that product, then the Auction Price for that product is the Going Price of the Final Round; or
- (b) if the total number of Blocks bid on the product at the Going Price of the Final Round is less than the Target for that product, then:
  - i. if Withdrawn Blocks have been retained in order to achieve the Target for the product, but no Switched Blocks have been retained, then the Auction Price for the product is the Exit Price of the last Withdrawn Block that has been retained, i.e. the lowest Exit Price associated with a Withdrawn Block that has been retained;
  - ii. if Switched Blocks have been retained in order to achieve the Target for the product, then the Auction Price for that product is the price at which the Switched Blocks which were retained were last freely bid, i.e. the Going Price of the Round preceding the Round in which the relevant request to Switch was denied.

### **Capacity Agreement Confirmation**

D1.7.7 As soon as practicable after the Auction closes, ElecLink will provide each Winning Bidder written confirmation (the "Capacity Agreement Confirmation") setting out for each product:

- (a) the quantity (in MW) of Open Season Units allocated to it in accordance with Rules D1.7 – D1.9; and
- (b) the Auction Price.

Each Winning Bidder shall sign the Capacity Agreement Confirmation and send it immediately to ElecLink in duplicate. ElecLink will return to each Winning Bidder concerned one copy of the Capacity Agreement Confirmation executed by ElecLink.

### **Rule D1.8: Open Season Contracted Revenue Target**

D1.8.1 At the close of the Auction, ElecLink will calculate the Total Contracted Revenues from the Auction of Open Season Units.

- D1.8.2 If the Total Contracted Revenues are greater than or equal to the Open Season Contracted Revenue Target, ElecLink will allocate Open Season Units to Winning Bidders in accordance with the terms and conditions of these Rules and the ElecLink Open Season User Agreements.
- D1.8.3 If the Total Contracted Revenues are less than the Open Season Contracted Revenue Target, ElecLink reserves the right not to allocate Open Season Units to Winning Bidders, in which case ElecLink shall have no liability or obligation whatsoever to any Open Season User arising from the Auction or in relation to the products or Open Season Units which were the subject of the Auction. ElecLink will notify the Winning Bidders as soon as practicable regarding any decision by ElecLink not to allocate Open Season Units and, in any case, by no later than one (1) Business Day after the last day of the Financial Close Period.
- D1.8.4 After the close of the Auction, the Auction Manager will inform all Open Season Users if the Total Contracted Revenues from the Auction of Open Season Units are greater than or equal to the Open Season Contracted Revenue Target.
- D1.8.5 The Open Season Contracted Revenue Target will not be disclosed either prior to, during or after the Auction for Open Season Units and ElecLink's determination of whether the Total Contracted Revenues are greater than, equal to or less than the Open Season Contracted Revenue Target shall be final and binding on the Open Season Users.

## **Rule D1.9: Open Season Revenue Cap**

- D1.9.1 In accordance with the Exemption Decision, the present value of the Open Season Revenues shall not exceed an amount determined in advance of the Auction by ElecLink in accordance with the Exemption Decision (the “Open Season Revenue Cap”). The Open Season Revenue Cap will not be disclosed either prior to, during or after the Auction of Open Season Units and ElecLink’s determination of whether the Open Season Revenues exceed the Open Season Revenue Cap shall be final and binding on the Open Season Users.
- D1.9.2 If, at the close of the Auction, the present value of the Open Season Revenues exceeds the Open Season Revenue Cap, the quantity of Open Season Units (in MW) allocated to Winning Bidders will be reduced in accordance with Rule D1.9.3 until such point that the present value of the Revised Open Season Revenues does not exceed the Open Season Revenue Cap. The Auction Price for the products in the relevant Auction will not be changed.
- D1.9.3 If it is necessary to reduce the quantity (in MW) allocated to Winning Bidders in accordance with Rule D1.9.2, the Auction Manager will apply the following procedure:
- (a) for each product in each Section, Winning Bidders that were allocated a quantity greater than ten (10) MW will be ranked using a random draw;
  - (b) starting with the product with the shortest Product Period in Section EN, a quantity of one (1) MW will be deducted from the quantity allocated to the highest ranked Winning Bidder followed by the next ranked Winning Bidder. Following the iterative process described in this Rule D1.9.3(b) the relevant quantity will be deducted until one of the following conditions is met:
    - i. the present value of the Revised Open Season Revenues does not exceed the Open Season Revenue Cap; or
    - ii. a quantity of one (1) MW has been deducted from the quantity allocated to all Winning Bidders for that product.
  - (c) if, after the application of the procedure described in Rule D1.9.3(b), the present value of the Revised Open Season Revenues still exceeds the Open Season Revenue Cap, the same procedure will be repeated for the remaining products in the following order:
    - i. first, the product with the longest Product Period in Section EN;
    - ii. second the product with the shortest Product Period in Section FR; and
    - iii. third, the product with the longest Product Period in Section FR.

- (d) if, after the application of the procedure described in Rule D1.9.3 (c), the present value of the Revised Open Season Revenues still exceeds the Open Season Revenue Cap, the Auction Manager will repeat the procedure described in Rule D1.9.3 (b) - (c) for each product in each Section until the present value of the Revised Open Season Revenues no longer exceeds the Open Season Revenue Cap;
- (e) if, after the application of the procedure described in Rule D1.9.3 (a) - (d), the quantity allocated to a Winning Bidder is reduced to ten (10) MW, such Winning Bidder will be excluded from the ranking and will not be subject to any further deductions except in the circumstances described in Rule D1.9.3 (f) below;
- (f) if, after the application of the procedure described in Rule D1.9.3 (a) - (e), the quantity allocated to all Winning Bidders for all products has been reduced to ten (10) MW and further deductions are necessary, the Auction Manager will apply the procedure described in Rule D1.9.3 (g);
- (g) for each product in each Section, all Winning Bidders will be ranked again using a random draw. The Auction Manager will repeat the procedure described in Rule D1.9.3 (b) - (d) for each product in each Section until the present value of the Revised Open Season Revenues no longer exceeds the Open Season Revenue Cap.

#### **Rule D1.10: Publication of Results**

D1.10.1 ElecLink will publish the results of the Auction as soon as practicable and within two (2) Business Days after the day the Auction closed.

D1.10.2 In accordance with the Exemption Decision, the results will state:

- (a) the names of the Winning Bidders;
- (b) for each product allocated through the Auction:
  - i. the total quantity (in MW) allocated;
  - ii. the breakdown of the allocated quantity (in MW) across Winning Bidders on an anonymised basis;
  - iii. the Product Period; and
  - iv. the Auction Price.

### **Rule D1.11: Cancellation, Suspension, Deferral**

- D1.11.1 The Auction Manager may be forced to cancel, suspend or defer an Auction of Open Season Units for reasons of Force Majeure or in the unlikely event of unavailability of the Open Season Auction Software or technical difficulties before or during the course of the Auction itself.
- D1.11.2 The Auction Manager will notify eligible Open Season Users as soon as practicable of any cancellation, suspension or deferral of the relevant Auction as well as of the reasons for cancelling, suspending or deferring the Auction.
- D1.11.3 The Auction Manager may defer the dates or times of an Auction for Open Season Units by notifying eligible Open Season Users of the revised date or time of such Auction. In this event, the Bidding Period will open and close at the revised time as notified by the Auction Manager. Only Bids submitted during the revised Bidding Period and confirmed by the Auction Manager will be valid.
- D1.11.4 If an Auction of Open Season Units is deferred pursuant to Rule D1.11.3, the Auction Manager may notify that the Maximum Starting Price and the Minimum Starting Price for the products in the Auction must be revised. In this event, the Auction Manager will request Open Season Users to revise their indicative offers on the basis of the revised Maximum Starting Price and the revised Minimum Starting Price and the Open Season Users shall promptly comply with such request.

### **Rule D1.12: Enduring Limits for Open Season Unit Holders**

- D1.12.1 If, at any time after the award of contracts to Open Season Users in accordance with these Rules and the terms and conditions of the ElecLink Open Season User Agreements, an Open Season Unit Holder and its Relating Undertaking(s) obtain a Market Share of more than 40% in France and/or in Great Britain, then the Open Season Unit Holder must notify ElecLink, by email or fax and accompanied by a phone call, immediately and in any case not later than ten (10) Business Days after the date on which the Open Season Unit Holder's Market Share exceeded 40% (a "Market Share Notice").
- D1.12.2 The Market Share Notice must:
- (a) state the Market Share of the Open Season Unit Holder and its Related Undertaking(s) in France and in Great Britain;
  - (b) state the total number of Open Season Units held by the Open Season Unit Holder; and
  - (c) subject to Rule D1.12.3 specify the process and the timetable for the sale of such number of Open Season Units (the "Excess Units") as will result, by no later than the completion of the next forthcoming Long-Term Auction, in the total number of Open Season Units held by the Open Season Unit Holder being no greater than 200 MW in

the direction of import to the market in which the Open Season Unit Holder and its Related Undertaking(s) hold a Market Share of more than 40%.

- D1.12.3 The Open Season Unit Holder must offer for Resale the Excess Units in the next forthcoming Long-Term Auction or ensure the Capacity Transfer of the Excess Units before the completion of the next forthcoming Long-Term Auction, in accordance with the Market Share Notice and the process described in Rule E4 (Secondary Market).
- D1.12.4 To the extent that the Open Season Unit Holder does not sell the Excess Unit(s) in accordance with the Market Share Notice, it will lose the right to use such Excess Unit(s). In the event that two or more Open Season Units Holders, falling within the scope of this Rule D1.12, are Related Undertakings, each Open Season Unit Holder will lose a portion of its Open Season Units (rounded up to the nearest MW), calculated as follows:
- (a) number of Open Season Units held by the Open Season Unit Holder divided by the cumulative number of Open Season Units held by all Open Season Unit Holders who are Related Undertakings,  
multiplied by
  - (b) the number of Excess Units.
- D1.12.5 Subject to Rule E7, Excess Units resulting from the process described in Rule D1.12.4 are then subject to the following:
- (a) these Excess Unit(s) will be unavailable for subsequent use by the Open Season Unit Holder;
  - (b) the Open Season Unit Holder's rights and obligations in relation to its other Open Season Units, whether Unused Units or not Unused Units, will not be affected; and
  - (c) the Open Season Unit Holder must still pay ElecLink for its Excess Unit(s), except where such Open Season Excess Units were acquired in a Capacity Transfer in accordance to Rule E4.4.10(b).
- D1.12.6 ElecLink will make the Excess Unit(s) available in the appropriate Long-Term Auction or Daily Auction if in ElecLink's reasonable opinion the Open Season Unit Holder has not complied with Rules D1.12.2 and D1.12.3.
- D1.12.7 The proceeds of the sale of the Excess Units specified in Rules D1.12.4 – D1.12.6 will be paid by ElecLink to the Open Season Unit Holder at the Auction Price of such Long-Term Auction or Daily Auction.
- D1.12.8 If at any time, the Open Season Unit Holder fails to satisfy the requirements in Rule D1.12.1, Rule D1.12.2 and Rule D1.12.3, or the Open Season Unit Holder's actions or omissions result

in ElecLink being unable to make the Excess Units available in the appropriate Long-Term Auction or Daily Auction as specified in Rule D1.12.6, the Open Season Unit Holder is liable for and must indemnify ElecLink against any and all liability, claims, payments, costs and expenses (arising directly or indirectly from such failure, action or omission), including but not limited to any penalty imposed by the French Regulator and/or the GB Regulator in accordance with the Exemption Decision and all or any powers in connection therewith.

D1.12.9 If ElecLink has reasonable cause to suspect that an Open Season User or Open Season Unit Holder and its Related Undertaking(s) have a Market Share of more than 40%, the Open Season User or the Open Season Unit Holder must promptly respond, to ElecLink's reasonable satisfaction, to any requests by ElecLink for the provision of information in relation to such Market Share.

## **SECTION E: CAPACITY USAGE RULES**

### **Rule E1: Introduction**

#### **Scope**

E1.1 This Section E of the Rules sets out terms for use of Open Season Interconnector Capacity.

#### **Structure**

E1.2 Section E is divided into seven (7) Rules as follows:

- (a) Rule E1: Introduction;
- (b) Rule E2: Rights Documents;
- (c) Rule E3: Mid-Interconnector Nominations;
- (d) Rule E4: Secondary Market;
- (e) Rule E5: Use-it-or-Sell-It;
- (f) Rule E6: Outages; and
- (g) Rule E7: Curtailment and Curtailment Reconciliation.



## **Rule E2: Rights Documents**

### **Introduction**

E2.1 Each Open Season Unit entitles the Open Season User that acquires it (whether at an Auction or in the Secondary Market) to use Open Season Interconnector Capacity by issuing a Mid-Interconnector Nomination in accordance with Rule E3, for an Energy Transmission of 1MW at Mid-Interconnector but only:

- (a) in the direction specified for that category of Open Season Unit; and
- (b) in Settlement Periods during the Unit Validity Times of that Open Season Unit,

and subject to and on the terms and conditions of these Rules including any Curtailment and as specified in the relevant Auction Specification.

E2.2 ElecLink will make available via the CMS, at its sole discretion, the Open Season Users' summary of acquired Open Season Units for any given Contract Day.

### **Rights Documents**

E2.3.1 The Rights Document of an Open Season Unit Holder for a Contract Day in a direction is a schedule showing, the total number of MW of Open Season Interconnector Capacity the Open Season Unit Holder is entitled to Nominate during each hour of that Contract Day in that direction determined in accordance with these Rules. Each Open Season User will for a Contract Day and in each direction be notified of its Rights Documents.

E2.3.2 ElecLink will notify each Open Season User of its Rights Document for the Contract Day "D" before the Nomination Gate Closure for that Contract Day at the times specified in Schedule 4.

## **Rule E3: Mid-Interconnector Nominations**

### **Principles applicable to Mid-Interconnector Nominations**

- E3.1 For each hour in a Contract Day for which a Rights Document has been published by ElecLink, each Open Season Unit Holder may Nominate to ElecLink an Energy Transmission at Mid-Interconnector up to but not exceeding the Open Season User's Rights Document in the relevant direction in that hour ("Mid-Interconnector Nomination").
- E3.2 Mid-Interconnector Nominations shall be submitted on the Nomination Platform in compliance with the Nominations Rules, including any annex applicable to the France-Great Britain bidding zone border.

### **Potential limitation to the operation of the Interconnector**

- E3.3 Each Open Season User acknowledges that, without prejudice to the rights of Open Season Users under this Rule E3, Open Season Unit Holders do not have a right to control Energy Transmissions over the Interconnector and the actual level of Energy Transmissions over the Interconnector at any time is determined by ElecLink having regard to a range of factors including other Mid-Interconnector Nominations, operational requirements and use of the Interconnector by NGESO and/or RTE as Transmission System Operators (including any limitation due to emergency or reasons of operational system security or under other arrangements such as the provision of emergency support and balancing services). Nothing in these Rules restricts ElecLink from Transmitting electricity over the Interconnector at any time in either direction.

### **Restrictions on use**

- E3.4 An Open Season User will not be entitled to use any Open Season Interconnector Capacity other than at the times, in the manner and to the extent provided for under these Rules.

## **Rule E4: Secondary Market**

### **Introduction**

E4.1 The Secondary Market means the mechanisms of Resale of the Open Season Interconnector Capacity by an Open Season Unit Holder, as specified under Rule E4.3, and of Capacity Transfer of Open Season Interconnector Capacity between Open Season Unit Holders, as specified under Rule E4.4. These mechanisms enable an Open Season User to acquire or surrender Open Season Units which have previously been Auctioned by ElecLink.

### **Electronic operation of the Secondary Market**

E4.2.1 The Secondary Market for Capacity Transfers in respect of Open Season Interconnector Capacity is described in Rule E4.2.7 – E4.2.8.

E4.2.2 Resale Requests and Capacity Transfer Notices will comply with the format specified from time to time by ElecLink, which will be consistent with the ENTSO-E format recommendations.

E4.2.3 ElecLink will acknowledge receipt of the Resale Requests to Open Season Users by a message indicating whether the Resale Requests have been correctly registered. This message of acknowledgment will be sent manually if the CMS fails. Only Resale Requests confirmed as correctly registered will be valid.

E4.2.4 If the CMS fails and, in the reasonable opinion of ElecLink, it is not practicable to operate the Secondary Market electronically, ElecLink may use a backup procedure by email and/or fax, as specified from time to time, in order to conduct the Secondary Market and to allocate the Open Season Units resulting from the Secondary Market.

E4.2.5 If the backup procedure described in Rule E4.2.4 cannot, in the reasonable opinion of ElecLink, be implemented as necessary to enable the Secondary Market to be operated, the Secondary Market will be deferred.

E4.2.6 If deferral of the Secondary Market is not considered by ElecLink as being possible, the Secondary Market will be cancelled and all Resale Requests already submitted will automatically be cancelled.

### **Secondary Market for Capacity Transfers in respect of Open Season Interconnector Capacity**

E4.2.7 An Open Season Unit Holder may make a written Capacity Transfer Notice to ElecLink in accordance with Rule E4.2.8 and Rules E4.4.1 – E4.4.12.

E4.2.8 A Capacity Transfer of an Open Season Unit Holder's rights described in Rule E4.2.7 is subject to the following:

- (a) the Open Season Unit Holder must execute and send the Capacity Transfer Notice to ElecLink by email or fax accompanied by a phone call to ElecLink;
- (b) ElecLink will acknowledge the receipt of the Capacity Transfer Notice;
- (c) ElecLink will send the Capacity Transfer Notice to the Open Season User to whom the Open Season Units are being Transferred;
- (d) the Open Season User to whom the Open Season Units are being Transferred must also execute the Capacity Transfer Notice and send the completed Capacity Transfer Notice to ElecLink by email or fax accompanied by a phone call to ElecLink;

- (e) subject to the conditions set out in these Rules for a Capacity Transfer being satisfied (including the conditions in Rule E4.4.1), ElecLink will execute and send the Capacity Transfer Notice to both the Open Season Unit Holder requesting the Capacity Transfer and the Open Season User to whom the Open Season Units are being Transferred.

## **Resale**

### **Resale Requests**

E4.3.1 An Open Season Unit Holder may make a Resale Request for a forthcoming Long-Term Auction in accordance with this Rule E4.3.

### **Conditions**

E4.3.2 A Resale of an Open Season Unit by an Open Season Unit Holder is permitted under these Rules only if the following conditions are satisfied:

- (a) the Open Season Unit Holder must specify at which forthcoming Long-Term Auction it intends to Resell Open Season Units;
- (b) the Resale Request must be for Resale of Open Season Units with a Product Period that wholly includes the Product Period of the Units being offered in the relevant forthcoming Long-Term Auction;
- (c) all Open Season Units which are the subject of the Resale Request must have been allocated from one Auction;
- (d) the Unit Validity Times of the relevant forthcoming Long-Term Auction are also Unit Validity Times of the Auction in which they were previously allocated;
- (e) the Resale Request must be for the same number of Open Season Units across all Unit Validity Times within the Product Period of the Units being offered in the relevant forthcoming Long-Term Auction; and
- (f) only one Resale Request may be registered per Open Season Unit Holder in respect of a forthcoming Long-Term Auction for Open Season Units acquired in a certain previous Auction.

E4.3.3 Each Resale Request must state the number and category of the Open Season Units requested to be Resold. This must be a whole number of Open Season Units and must not exceed the number of Open Season Units in that category in all applicable Unit Validity Times held by the Open Season Unit Holder making the Resale Request (taking into account any Capacity Transfer of Open Season Interconnector Capacity under Rule E4.4 and Curtailment under Rule E7).

E4.3.4 A Resale Request can be made or modified in respect of a forthcoming Long-Term Auction within the applicable times specified under Schedule 4.

### **Resale Request**

E4.3.5 A Resale Request submitted by an Open Season Unit Holder to ElecLink must:

- (a) identify the Open Season Unit Holder making the Resale;

- (b) identify the Long-Term Auction in which the Open Season Units are requested to be Resold;
- (c) state the Product Period of the Open Season Units which are requested to be Resold; and
- (d) state the number of the Open Season Units being requested to be Resold.

E4.3.6 An Open Season Unit Holder making a Resale Request must promptly respond to ElecLink's satisfaction to any request by ElecLink for clarification of such Resale Request.

E4.3.7 ElecLink will acknowledge receipt of Resale Requests pursuant to Rule E4.2.3. ElecLink may reject any Resale Request that is invalid or that purports to Resell capacity in circumstances not permitted by this Rule E4.3 or if the Open Season Unit Holder has failed to respond satisfactorily to a request under Rule E4.3.6.

#### **Conditions of withdrawal**

E4.3.8 An Open Season Unit Holder may modify its Resale Request within the relevant period as detailed under Schedule 4.

#### **Effect of Resale Request**

E4.3.9 Where one Resale Request is made for a forthcoming Long-Term Auction, ElecLink will include the total associated Open Season Units ("Resale Units") from such Resale Request in the forthcoming Auction Specification, but only to the extent that Interconnector Capacity is available.

E4.3.10 The price at which Resale Units are sold is the Marginal Price of the Long-Term Auction specified in the Resale Request.

#### **Nature of relationship**

E4.3.11.1 Resale Units are made available in Long-Term Auctions (to the extent that Interconnector Capability is available), and are allocated by ElecLink in accordance with the Harmonised Allocations Rules, as principal and not as agent of the Open Season Unit Holder making the Resale Request. No rights or obligations arise or exist in connection with allocation of Resale Units as between the Open Season Unit Holder making the Resale Request and the entity to whom the Resale Units are allocated.

E4.3.11.2 ElecLink will not charge a transaction fee for allocated Resale Units.

#### **Obligations of ElecLink**

E4.3.12 ElecLink's obligations in respect of a Resale Request to the Open Season Unit Holder making the Resale Request are only those expressly set out in this Rule E4.3. For the avoidance of doubt, ElecLink is under no obligation, express or implied, to ensure that demand in any Long-Term Auction is such that Resale Units will be allocated in that Long-Term Auction.

#### **Effect of allocation of Resale Units**

E4.3.13 Rules E4.3.14 to E4.3.17 apply if Resale Units are allocated to entities in a Long-Term Auction. In those Rules, "Relevant Open Season Unit Holder" means, in relation to a Long-Term Auction, an Open Season Unit Holder who made a Resale Request in respect of that Long-Term Auction.

## Payment

E4.3.14 Subject to Rules E4.3.16 and E4.3.18 each Relevant Open Season Unit Holder will be entitled to a payment calculated as follows:

$$A = (B * C)$$

where:

- A is the amount of the payment;
- B is the Marginal Price (in euros per megawatt-hour) of the Long-Term Auction in which the Resale was made;
- C is (in megawatt-hours) the product of (a) the number of MW specified in the Relevant Open Season Unit Holder's Resale Request to the extent allowed by ElecLink under Rule E4.3.9 and (b) the applicable aggregate hours of the Unit Validity Times within the Product Period of the Long-Term Auction in which the Resale was made.

## Effect on Open Season Unit Holder's rights and obligations resulting from a Resale

E4.3.15 Each Relevant Open Season Unit Holder will lose its entitlement to use corresponding Open Season Interconnector Capacity for the Resale Period stated in its Resale Request and accordingly its rights will be reduced except in the circumstances specified in Rule E4.3.16. In all other respects, Relevant Open Season Unit Holders' rights and obligations relating to Open Season Units will not be affected. For example, they are still required to pay the full Unit Price for all Open Season Units acquired in Auctions (whether or not subsequently Resold).

## Cancellation of a Long-Term Auction including Open Season Units resulting from a Resale

E4.3.16 In the case where a Long-Term Auction in which Open Season Units have been requested to be Resold is cancelled, any associated Resale Request(s) is/are cancelled and the corresponding Open Season Units are returned to the Relevant Open Season Unit Holder.

## Invoicing and payment resulting from a Resale

E4.3.17 Resale invoicing and payments are made pursuant to Rule C2.

E4.3.18 For the proportion of Resale Units specified in the Resale Request that have not been allocated in the relevant Long-Term Auction, the following will apply:

- (a) the Open Season Unit Holder will not be entitled to a payment for the proportion of Resale Units specified in the Resale Request that have not been allocated in such Long-Term Auction;
- (b) those Resale Unit(s) will be unavailable for subsequent use by the Open Season Unit Holder;
- (c) the Open Season Unit Holder will still pay ElecLink for those Resale Unit(s), subject to Rule E4.4.10;
- (d) ElecLink will make those Resale Unit(s) available in subsequent Long-Term Auctions; and

- (e) the proceeds of the sale in the subsequent Long-Term Auctions of those Resale Unit(s) will not be paid by ElecLink to the Open Season Unit Holder.

## Capacity Transfer

### Conditions

E4.4.1 A Capacity Transfer of an Open Season Unit Holder's rights to use Open Season Units is permitted under these Rules only if the following conditions are satisfied:

- (a) the Open Season Unit Holder gives ElecLink a notice of the Capacity Transfer ("Capacity Transfer Notice") that complies with Rule E4;
- (b) Open Season Units are being subject to Capacity Transfer for whole hours and for at least one hour of one Contract Day;
- (c) the Capacity Transfer is made to an existing Open Season User who has not been suspended in any way pursuant to Rule F6.3.1;
- (d) the duration of the Capacity Transfer ("Capacity Transfer Period") is one or more consecutive Contract Days of the specified Day Type, and is within the Product Period of the Open Season Units being subject to Capacity Transfer;
- (e) at least one (1) Open Season Unit is being subject to Capacity Transfer and the number of Open Season Units being subject to Capacity Transfer is a whole number;
- (f) the MW profile being subject to Capacity Transfer is the same for each Contract Day associated with the Capacity Transfer;
- (g) the Open Season Unit Holder has at least as many Open Season Units as the number it wishes to Capacity Transfer in each Hour of each associated Contract Day (taking into account any reduction(s) due to previous Capacity Transfer(s), Resale(s) or Curtailment(s));
- (h) at the time it gives the Capacity Transfer Notice, the Open Season Unit Holder is not in default under these Rules and its rights to use Open Season Interconnector Capacity and participate in Auctions have not been suspended;
- (i) the Unit Validity Times of the relevant Open Season Units are not affected by any Curtailment;
- (j) the Capacity Transfer would not result in an Open Season User and its Related Undertakings holding, at any time, more than:
  - i. 400 MW of Interconnector Capacity in either direction; or
  - ii. 200 MW of Interconnector Capacity in the direction of import to the market in which the Open Season User and its Related Undertakings hold a Market Share of more than 40%.
- (k) in addition, the Open Season User to whom the Open Season Units are being Transferred must:
  - i. be a party to an ElecLink Open Season User Agreement;

- ii. confirm in the Capacity Transfer Notice whether it wishes to assume the obligations of the Open Season Unit Holder making the Capacity Transfer;
- iii. demonstrate that it meets the Open Season Auction Credit Requirement corresponding to:
  - (A) the cumulative number of Open Season Units it would possess if the Capacity Transfer were confirmed; and
  - (B) the Product Period of such Open Season Units; and
- iv. declare if its Market Share, at the time the Capacity Transfer Notice is submitted to ElecLink, is greater than 40% in France or Great Britain.

E4.4.2 An Open Season Unit Holder may give more than one Capacity Transfer Notice covering the same period of time, subject to each notice complying with this Rule. Any Capacity Transfer covering more than one (1) calendar month must be notified in separate Capacity Transfer Notices, one for each affected month.

E4.4.3 The Capacity Transfer does not modify the period of time or any other categorisation upon which the Capacity Transferred Open Season Units were initially acquired.

#### **Timing**

E4.4.4 Following the publication of the final results of an Auction, an Open Season Unit Holder may give a Capacity Transfer Notice in relation to Open Season Interconnector Capacity acquired in such Auction to ElecLink in accordance with the relevant timings specified in Schedule 4.

#### **Capacity Transfer Notice**

E4.4.5 The Capacity Transfer Notice submitted by the Open Season Unit Holder making the Capacity Transfer must:

- (a) identify the Open Season Unit Holder making the Capacity Transfer;
- (b) identify the Open Season User to whom the Open Season Units are being Transferred;
- (c) state the Capacity Transfer Period;
- (d) state the Day Types for which the Capacity Transfer is to apply;
- (e) specify the hours of the Contract Days in which the Capacity Transfer is to be made;
- (f) state the number and category (including the hour periods) of the Open Season Units which are the subject of the Capacity Transfer Notice; and
- (g) specify whether the Open Season Unit Holder wishes to novate its obligations under the ElecLink Open Season User Agreement relating to the Open Season Units to be Transferred to the Open Season User to whom the Open Season Units are being Transferred.

E4.4.6 An Open Season Unit Holder giving a Capacity Transfer Notice and the Open Season User to whom the Open Season Units are being Transferred must promptly respond to ElecLink's satisfaction to any request by ElecLink for clarification of the Capacity Transfer Notice.



- E4.4.7 ElecLink will acknowledge receipt of Capacity Transfer Notices pursuant to Rule E4.4.9. ElecLink may reject any Capacity Transfer Notice that is invalid or that purports to make a Capacity Transfer in circumstances not permitted by this Rule E4 or if the Open Season Unit Holder has failed to respond satisfactorily to a request under Rule E4.4.6 in relation to that Capacity Transfer Notice.
- E4.4.8 A Capacity Transfer Notice cannot be withdrawn without the consent of ElecLink and the Open Season User to whom that Capacity Transfer has been made.

#### **Capacity Transfer Confirmation / acknowledgment**

- E4.4.9.1 Both Open Season Users who are party to a Capacity Transfer will be informed by ElecLink whether the Capacity Transfer Notice is registered.
- E4.4.9.2 A Capacity Transfer Notice is valid only when confirmed by the Open Season User to whom the Capacity Transfer was made, during the period of time specified in Schedule 4. Both Open Season Users who are party to the Capacity Transfer will be informed by ElecLink of its successful registration.
- E4.4.9.3 Where the Open Season User to whom the Capacity Transfer was made does not confirm the Capacity Transfer Notice during the relevant period of time, the Capacity Transfer Notice is not valid and the Open Season User who had sought to make the Capacity Transfer remains the Open Season Unit Holder of the Open Season Units. Both Open Season Users who had been party to the attempted Capacity Transfer will be informed by ElecLink of the failure of completion of the Capacity Transfer.

#### **Effect of Capacity Transfer**

- E4.4.10 If a Capacity Transfer Notice for Open Season Interconnector Capacity is confirmed in accordance with this Rule E4.4, then for the duration of the Capacity Transfer Period:

- (a) if the Open Season User to whom the Open Season Units are being Transferred:
- i. does not meet the Open Season Auction Credit Requirement in accordance with Rule E4.4.1(k); or
  - ii. has not confirmed in accordance with Rule E4.4.1(k) that it wishes to assume the obligations of the Open Season Unit Holder making the Capacity Transfer,

the Open Season User to whom the Open Season Units are being Transferred is treated as the Open Season Unit Holder of those Open Season Units for the purpose of Rules A2.1, E2, E3, E4, E5 (excluding E5.2.2(c)), E6, E7, Schedule 4 the Capacity Transfer Period, Day Types and hours specified in the Capacity Transfer Notice in accordance with Rule E4.4.5. The original Open Season Unit Holder, although obliged to pay for the capacity that has been the subject of a Capacity Transfer, loses its entitlement to use such Open Season Interconnector Capacity. In all other respects, the original Open Season Unit Holder's rights and obligations relating to its Open Season Units being Transferred will not be affected, except in the case of Curtailment Reconciliation pursuant to Rule E7. For example, the original Open Season Unit Holder is still required to pay the full Unit Price for all Open Season Units acquired in the Auction (whether or not subsequently Resold).

- (b) if the Open Season User to whom the Open Season Units are being Transferred:

- i. meets the Open Season Auction Credit Requirement in accordance with Rule E4.4.1(k); and
- ii. has confirmed in accordance with Rule E4.4.1(k) that it wishes to assume the obligations of the Open Season Unit Holder making the Capacity Transfer,

the Open Season User to whom the Open Season Units are being Transferred will be treated as the Open Season Unit Holder of those Open Season Units for the purpose of these Rules for the Capacity Transfer Period, Day Types and hours specified in the Capacity Transfer Notice in accordance with Rule E4.4.5. The original Open Season Unit Holder loses its entitlement to use such Open Season Interconnector Capacity.

E4.4.11 ElecLink may, by giving notice to both the Open Season Unit Holder who made a Capacity Transfer and the Open Season User to whom it was Capacity Transferred, terminate any Capacity Transfer confirmed under Rule E4.4.10(a) with immediate effect upon:

- (a) termination of the ElecLink Open Season User Agreement of the Open Season User to whom the Open Season Units were Capacity Transferred; or
- (b) if a notice of suspension under Rule F6.3.1 is given to the Open Season User to whom the Open Season Units were Capacity Transferred.

E4.4.12 ElecLink will not charge a transaction fee for allocated Capacity Transfers.

## **Rule E5: Use-It-or-Sell-It**

### **Introduction**

E5.1 These provisions under this Rule E5 detail the means by which capacity unused by an Open Season Unit Holder can be made available in the relevant Daily Auction in accordance with the Harmonised Allocation Rules.

### **Use-It-or-Sell-It applying on Open Season Nominations**

E5.2.1 To the extent that any Open Season Unit Holder does not Nominate any Open Season Unit(s) associated with its Open Season Rights Document for any hour of a Contract Day (“Unused Units”), it will lose the right to use such Open Season Unit(s) in accordance with this Rule E5.2 and the Harmonised Allocation Rules.

E5.2.2 Subject to Rules E4 and E7, Unused Units are then subject to the following:

- (a) Unused Unit(s) will be unavailable for subsequent use by the Open Season Unit Holder;
- (b) the Open Season Unit Holder’s rights and obligations in relation to its other Open Season Units, whether Unused or not Unused, will not be affected;
- (c) the Open Season Unit Holder will still pay ElecLink for its Unused Unit(s), except where such Unused Units were acquired in a Capacity Transfer pursuant to Rule E4.4.10(a);
- (d) ElecLink will make Unused Unit(s) available in the applicable Daily Auction for the same Contract Day; and
- (e) the proceeds of the sale of Unused Units will be paid by ElecLink to the Open Season Unit Holder of the Unused Units in accordance with the relevant provisions of the Harmonised Allocation Rules.

## **Rule E6: Outages**

### **Introduction**

E6.1 ElecLink will give Open Season Users information about Outages in accordance with this Rule E6.

### **Annual indicative Outage schedule**

E6.2 Between the first of September and the first of December in each year ElecLink will publish an indicative schedule of Planned Outages for the forthcoming year. The schedule will specify the expected start and end dates of each Planned Outage Period and the expected Interconnector Capability during each Outage.

### **Updates**

E6.3 ElecLink will update the information given under Rule E6.2 as soon as practicable after any changes are known.

### **Changes**

E6.4.1 ElecLink will use reasonable endeavours to ensure that the information provided under this Rule E6 is accurate and that Planned Outages take place as indicated by the information.

E6.4.2 Notwithstanding Rule E6.4.1, each Open Season User acknowledges that circumstances may arise that require ElecLink to take Planned Outages at times other than those planned in accordance with Rules E6.2 and E6.3 and therefore ElecLink remains free to plan and execute any Planned Outages that it considers necessary.

E6.4.3 Without prejudice to Rule F7, ElecLink is not liable for any or all claims, payments, costs and expenses arising out of any differences between the information provided under this Rule E6 and actual Outages (other than credits calculated under Rule E7), whether the claim arises in contract or on any other basis, except to the extent that liability cannot be excluded by law save as provided in Rule E6.4.4.

E6.4.4 In the case of Open Season Rights Document:

- (a) ElecLink will not be liable for any or all claims, liabilities, payments, costs and expenses resulting from the reduction of the Open Season Unit Holder's Open Season Units as detailed within the Rights Documents during any Planned Outage Period or due to a change in any Planned Outage Period pursuant to Rule E6.4.2 and any such reduction in the Open Season Unit Holder's Rights Document will not constitute a Curtailment for the purpose of Rule E7; and
- (b) The Open Season Unit Holder is not required to pay the Unit Price for the Open Season Units which are unavailable as a result of a Planned Outage or a change in the Planned Outage Period pursuant to Rule E6.4.2.

### **Unexpected availability**

E6.5 If Open Season Interconnector Capacity becomes available as a result of early return to service after an Outage or rescheduling of a Planned Outage, ElecLink will return the corresponding Open Season Units to the Open Season Unit Holder.

## **Forced Outages and Trips**

- E6.6 ElecLink will notify Open Season Users of any Forced Outages or Trips as soon as practicable after the Forced Outage is arranged or the Trip occurs. Following this initial notice, ElecLink will as soon as practicable give Open Season Users information about the Forced Outage or the Trip including where possible the expected Interconnector Capability and its expected duration. These details will be given for information purposes only and they are not binding on ElecLink and Rules E6.4.3 and E6.4.4 will apply.

## **Rule E7: Curtailment and Curtailment Reconciliation**

### **Curtailment**

- E7.1.1 ElecLink will Curtail Open Season Interconnector Capacity secured by all Open Season Unit Holders, and if necessary their Mid-Interconnector Nominations, in accordance with the Harmonised Allocation Rules. The Curtailment shall be applied to Open Season Units and long-term Units on a pro rata basis, regardless of the time of allocation.
- E7.1.2 Each Open Season Unit Holder whose Open Season Units are Curtailed by ElecLink in accordance with the Harmonised Allocation Rules will lose its entitlement to use Open Season Interconnector Capacity to the extent of that Curtailment.

### **Curtailment reconciliation**

- E7.2.1 When Curtailment occurs according to Article E7.1.1, Open Season Unit Holders will be compensated in accordance with the relevant provisions of the Harmonised Allocation Rules.
- E7.2.2 Any Curtailed capacity or Curtailed MIN of an Open Season Unit Holder will be shown by ElecLink as a credit on the relevant invoice(s), in accordance with this Rule E7.
- E7.2.3 For the avoidance of doubt, whilst the relevant invoice will show as payable by the Open Season Unit Holder all Open Season Units acquired in the Auctions and the Open Season Unit Holder will pay the total amount shown on such invoice, any Curtailed Open Season Units will be shown as a credit on the relevant invoice.
- E7.2.4 If there is a Curtailment of Open Season Units notified for Resale by an Open Season Unit Holder to ElecLink (but not already Resold), the corresponding notifications for Resale are cancelled in their entirety, without credit from ElecLink and the corresponding Open Season Units are retained by the Open Season Unit Holder. These Open Season Units are then subject to Curtailment in accordance with Rule E7.
- E7.2.5 If there is a Curtailment of Open Season Units notified for Capacity Transfer by an Open Season Unit Holder to ElecLink:
- i. if the Capacity Transfer has been confirmed by both ElecLink and the party to whom the Capacity Transfer was made before the Curtailment, the Open Season Units are Curtailed and a credit is made to such Party in accordance with Rule E7;
  - ii. if the Capacity Transfer has not been confirmed by both ElecLink and the party to whom the Capacity Transfer was made before the Curtailment, the Capacity Transfer is cancelled in its entirety by ElecLink, the corresponding Open Season Units are returned to the party which submitted the associated Capacity Transfer Notice and no credit is due to the party which had not confirmed the Capacity Transfer. These Open Season Units are then subject to Curtailment in accordance to Rule E7.

## **SECTION F: GENERAL CONDITIONS**

### **Rule F1: Introduction**

#### **Scope**

F1.1 This Section F of the Rules sets out the general conditions applicable to the arrangements established by these Rules.

#### **Structure**

F1.2 Section F is divided into ten (10) Rules as follows:

- (a) Rule F1: Introduction;
- (b) Rule F2: Notices and other communications;
- (c) Rule F3: Confidentiality;
- (d) Rule F4: Assignment and subcontracting;
- (e) Rule F5: Force Majeure;
- (f) Rule F6: Termination and suspension;
- (g) Rule F7: Liability;
- (h) Rule F8: Dispute resolution;
- (i) Rule F9: Rights under Funding Arrangements in relation to the ElecLink Open Season User Agreements; and
- (j) Rule F10: Miscellaneous.

## **Rule F2: Notices and other communications**

### **Language**

F2.1 Any notice or other communication to be given under or in connection with these Rules or an ElecLink Open Season User Agreement shall be in English.

### **Contact details**

F2.2 Save as otherwise expressly provided in these Rules, all notices or other communications between ElecLink and each Open Season User shall be sent to the address or facsimile number or email address and marked for the attention of the addressee's representative as set out in the Open Season User's ElecLink Open Season User Agreement or as notified by the addressee from time to time.

### **Method and time of delivery**

F2.3.1 Save as otherwise expressly provided in these Rules, all notices or other communications shall be in writing and shall be given by letter delivered by hand against receipt, sent by prepaid post (airmail if overseas) and using a recorded delivery service (registered post, *lettre RAR* or equivalent) or sent by facsimile or email and shall be deemed to have been received:

- (a) in the case of delivery by hand, when delivered against receipt; or
- (b) in the case of recorded delivery prepaid post, on the day following the recorded day of delivery; or
- (c) in the case of facsimile, on acknowledgement of receipt by the addressee's facsimile receiving equipment; or
- (d) in the case of email, when delivered to the other Party but only if a delivery receipt is requested and obtained by the Party sending the e-mail and a printed copy of the transmission and of the delivery receipt is retained by that Party.

F2.3.2 If a notice or other communication would otherwise be deemed to have been received outside normal business hours (being 08:30hrs to 17:00hrs (local time) on a Business Day) under this Rule F2.3, it is deemed to have been received at the opening of business on the next Business Day.



## Rule F3: Confidentiality

### Obligation of confidentiality

F3.1 Subject to Rule F3.2 (exceptions), ElecLink and each Open Season User who is a Recipient must, in relation to the Confidential Information of a Disclosing Party, preserve the confidentiality of each item of Confidential Information of the Disclosing Party and must not directly or indirectly reveal, report, publish, disclose or transfer any item of Confidential Information of the Disclosing Party and must not use any item of Confidential Information of the Disclosing Party other than for the purpose for which it was disclosed.

### Exceptions

F3.2 Notwithstanding Rule F3.1, a Recipient may disclose Confidential Information of a Disclosing Party:

- (a) to the extent expressly permitted or contemplated by the Rules;
- (b) with the prior written consent of the Disclosing Party;
- (c) to any person who is one of the directors, officers, employees, agents, advisers (including financial advisers and legal advisers) or insurers of the Recipient and who needs to know the Confidential Information in connection with these Rules;
- (d) as may be directed or ordered under or required in order to comply with any Applicable Law;
- (e) as may be required to comply with the requirements of the GB Grid Code, the RTE Grid Code, the Balancing and Settlement Code, or the RTE Settlement Arrangements;
- (f) as may be required by:
  - (i) a court, or administrative tribunal having jurisdiction over the Recipient, or
  - (ii) an arbitrator or expert in the course of proceedings before it to which the Recipient is a party; or
- (g) in order to obtain clearances or consents from a Competent Authority or if requested by or required to be disclosed under any applicable powers of a Competent Authority;

and in addition ElecLink may disclose Confidential Information of an Open Season User:

- (h) to any Affiliate of ElecLink that needs to know the Confidential Information as may be required in order for ElecLink to achieve Financial Close (and/or in connection with securing re-financing facilities at any relevant time) or to comply with these Rules, provided that the scope of the Confidential Information permitted to be disclosed to an Affiliate of ElecLink shall be limited to:
  - (A) for each product of Open Season Units to be auctioned in an Auction:
    - (i) the number of Open Season Users that have received an Eligibility Notice in accordance with Rule B2.4.1;

- (ii) the non-binding and indicative offers, received by ElecLink in accordance with Rule B2.1.1, on an anonymous basis;
  - (iii) the number of Open Season Users that have met the Open Season Auction Credit Requirement on the basis of their or their Parent Company's Credit Rating and/or Tangible Net Worth and the Credit Rating and/or Tangible Net Worth of such Open Season Users, or such Open Season Users' Parent Companies as applicable, on an anonymous basis;
  - (iv) the number of Open Season Users that have met the Open Season Auction Credit Requirement on the basis of a Letter of Credit and the amount covered by each such Letter of Credit on an anonymous basis; and
  - (v) the number of Open Season Users with a Market Share of more than 40% in either France or Great Britain;
- (B) for each product of Open Season Units which has been auctioned in an Auction:
- (i) the identities of the Winning Bidders;
  - (ii) the relevant Unit Price;
  - (iii) the number of Blocks allocated to each Winning Bidder on an anonymous basis; and
  - (iv) the Credit Rating and/or Tangible Net Worth and/or amount of Letter of Credit as applicable of each Winning Bidder on an anonymous basis;
- (i) to any Funders or Funders' Agent who need to know the Confidential Information as may be required in order for ElecLink to achieve Financial Close (and/or in connection with securing re-financing facilities at any relevant time) or comply with these Rules, provided that the scope of the Confidential Information permitted to be disclosed to any Funders or Funders' Agent shall be limited to:
- (A) for each product of Open Season Units which has been auctioned in an Auction:
- (i) the identities of the Winning Bidders;
  - (ii) the relevant Unit Price;
  - (iii) the number of Blocks allocated to each Winning Bidder on an anonymous basis; and
  - (iv) the Credit Rating and/or Tangible Net Worth and/or amount of Letter of Credit as applicable of each Winning Bidder on an anonymous basis;
- (j) (without prejudice to the generality of paragraph (g) of this Rule F3.2) in order to comply with the terms and conditions of the Exemption Decision as the same may be amended from time to time, including:

- (i) the obligation to make public the results of the Auction(s);
  - (ii) the obligation to respect the transparency requirements set out in Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity; and
  - (iii) the obligation to provide information to Competent Authorities; or
- (k) to the extent required by the rules of any security commission or stock exchange.

F3.3 Notwithstanding Rule F3.1, a Recipient may use or reveal, report, publish or disclose any Confidential Information which:

- (a) at the time of disclosure to the Recipient is in, or subsequently comes (otherwise than as a result of a breach by the Recipient of this Rule F3) into, the public domain; or
- (b) at the time of disclosure to the Recipient is already in its possession and not subject to any obligation of confidentiality.

#### **Survival**

F3.4 The obligations of confidentiality in this Rule F3 shall continue for a period of 5 years after termination of the Open Season User's ElecLink Open Season User Agreement.

## **Rule F4: Assignment and subcontracting**

### **Operator assignment**

- F4.1.1 ElecLink may assign its rights and novate its obligations under ElecLink Open Season User Agreement and these Rules to any entity which is to succeed it as operator of the Interconnector and provider of the services sold to Open Season Users under these Rules.
- F4.1.2 ElecLink may assign by way of security all or any of its rights under the ElecLink Open Season User Agreements in favour of any Funders or any Funders' Agent, and on the enforcement of any security referred to in this Rule F4.1.2 any administrator, administrative receiver or other receiver of ElecLink or its Affiliate or of its relevant assets or any person having the benefit of such security may further assign all or any of such rights to any other person.
- F4.1.3 Upon receipt of a written notice of assignment as referred to in Rule F4.1.2, each Open Season User agrees to sign and deliver to ElecLink and to the assignee named in that notice a form of acknowledgement and undertaking in the form set out in Schedule 8.
- F4.1.4 These Rules shall be binding upon and enure for the benefit of the assigns and successors in title of ElecLink.
- F4.1.5 Each Open Season User will do all things reasonably requested of it by ElecLink to assist with an assignment and/or novation as permitted by this Rule F4.1.

### **Open Season User assignment**

- F4.2 Subject to Rule E4 and Rule F4.3, an Open Season User may not assign, novate or otherwise transfer or grant any interest in or over, or create any trust in respect of, any of its rights or obligations under its ElecLink Open Season User Agreement or these Rules without the prior written consent of ElecLink.

### **Capacity Subcontracting Arrangement**

- F4.3 Nothing in Rule F4.2 prevents an Open Season User from entering into a Capacity Subcontracting Arrangement. Entry into a Capacity Subcontracting Arrangement by an Open Season User does not relieve the Open Season User of any obligation or liability under its ElecLink Open Season User Agreement or these Rules and is subject to the indemnity in Rule F7.4.

## **Rule F5: Force Majeure**

### **Definition of Force Majeure**

F5.1 Force Majeure means, in relation to ElecLink or an Open Season User, any unforeseeable event or any situation which is beyond the reasonable control of that person, and not due to a fault of such person, which cannot be reasonably avoided or overcome, and which makes it impossible for such person to fulfil temporarily or permanently its obligations (other than the obligations referred to in Rule F5.3(a) and (b)) under an ElecLink Open Season User Agreement and/or these Rules.

### **Notification and limitation of the consequences of Force Majeure**

F5.2.1 The Party which invokes Force Majeure shall promptly send to the other a notification describing the nature of the Force Majeure and (so far as it can be determined) its expected duration and must continue to furnish reports with respect thereto with reasonable frequency during the period of Force Majeure.

F5.2.2 The Party invoking the Force Majeure shall make every reasonable effort to limit the consequences of the Force Majeure.

F5.2.3 A Party to an ElecLink Open Season User Agreement shall give notice to the other Party when it ceases to be affected by the Force Majeure.

### **Suspension of the obligations**

F5.3 The obligations of a Party subject to Force Majeure, with the exception of:

- (a) the confidentiality provisions contained within Rule F3; and
- (b) any payment obligations of such Party under an ElecLink Open Season User Agreement and/or these Rules,

shall be suspended from the beginning of the Force Majeure.

### **Limits of suspension of performance**

F5.4 Suspension under Rule F5.3 is subject to the following:

- (a) suspension of performance will be of no greater scope and of no longer duration than is required by the Force Majeure;
- (b) the suspension of performance applies only for so long as the Party relying on Rule F5.3 is (where it is possible to do so) using reasonable efforts to remedy or mitigate their inability to perform.

### **Other consequences of Force Majeure**

F5.5.1 In the event of Force Majeure:

- (i) the person invoking Force Majeure shall not be in breach of the affected ElecLink Open Season User Agreement or these Rules and shall be under no liability to any other Party for any failure to perform or delay in performing the affected obligations during the period of and as a result of the Force Majeure;

- (ii) the acquired Open Season Units which have been entirely paid and become subject to Force Majeure are reimbursed for the duration of the Force Majeure; and
- (iii) where the Open Season Unit Holder is the Party claiming the Force Majeure event, ElecLink may, for its own benefit, reallocate the Open Season Unit Holder's Open Season Units to the subsequent Implicit Daily Auctions or Explicit Daily Auction (as a fallback in case the Implicit Daily Auction is not available) and for the duration of the Force Majeure event.

F5.5.2 If Force Majeure affects the ability of ElecLink to perform its obligations to more than one Open Season User under their respective ElecLink Open Season User Agreements, but ElecLink continues to be able to perform those obligations in part, ElecLink may determine the manner and extent of partial performance of those obligations under each affected ElecLink Open Season User Agreement but shall act fairly and in good faith in allocating such performance between the affected ElecLink Open Season User Agreements.

### **Termination**

F5.6 If suspension under Rule F5.3 claimed and relied on by the affected person continues for a continuous period of six (6) months then ElecLink or the affected Open Season User may, by notice to the other given at any time while the suspension continues beyond that period but not thereafter, terminate the Open Season User's ElecLink Open Season User Agreement. Termination takes effect ten (10) Business Days after the notice is given or on any later date specified in the notice. An Open Season Unit Holder whose ElecLink Open Season User Agreement is terminated under this Rule F5.6 is under no obligation to pay remaining instalments of the Unit Price and is entitled to a refund to the extent that any instalment includes an amount in respect of use after the date of termination, to be calculated pro-rata from the date termination takes effect.

## **Rule F6: Termination and suspension**

### **Introduction**

- F6.1.1 An Open Season User may cease to be an Open Season User only in accordance with Rule F6.2 (termination by mutual consent), Rule F5 (termination for Force Majeure) or Rule F6.4 (termination by ElecLink).
- F6.1.2 An Open Season User's rights may be suspended under Rule F6.3.
- F6.1.3 This Rule F6 is without prejudice to other remedies available to ElecLink under these Rules or under the law.

### **Termination by mutual consent**

- F6.2.1 Subject to Rule F6.2.2, an Open Season User and ElecLink may agree at any time to terminate the ElecLink Open Season User Agreement to which the Open Season User is a party. Termination takes effect at the time and on the terms agreed by the Open Season User and ElecLink.
- F6.2.2 ElecLink and an Open Season User shall only agree to the termination of an Open Season User Agreement with the prior written consent of any Funders' Agent to which the benefit of the Open Season User Agreement has been assigned.

### **Suspension by ElecLink**

- F6.3.1 If any of the events in Rule F6.3.2 (each a "Suspension Event of Default") occurs in relation to an Open Season User, ElecLink may by notice to the Open Season User:
  - (a) suspend temporarily the Open Season User's rights to participate in Auctions and/or the Secondary Market until the Open Season User has remedied the Suspension Event of Default specified in the notice; and/or
  - (b) suspend temporarily the Open Season User's rights to use Open Season Interconnector Capacity (and reduce its ICEs to zero) until the Open Season User has remedied the Suspension Event of Default specified in the notice,

and, consequently, the Open Season User will no longer be entitled to Nominate, Resell or enter into a Capacity Transfer in respect of the Open Season Units it has acquired and such Open Season Units will not be taken into account in relation to the "Use It Or Sell It" provisions within these Rules. For the avoidance of doubt, the Open Season Units which the Open Season Unit Holder is prohibited from using as a result of suspension may be offered by ElecLink in subsequent auctions and ElecLink shall not return the corresponding proceeds to the Open Season Unit Holder.

- F6.3.2 The Suspension Events of Default referred to in Rule F6.3.1 are the following:
  - (a) subject to Rule C2.7.3, if an Open Season User fails to pay any amount properly due and owing to ElecLink pursuant to these Rules;
  - (b) the occurrence in relation to an Open Season User of a Credit Cover Incident or a Payment Incident;
  - (c) if the Open Season User ceases to satisfy the Open Season Continuing Credit Requirement and fails to comply with Rule C3;

- (d) if ElecLink is satisfied on reasonable grounds that the Open Season User no longer satisfies one or more of the Eligibility Conditions;
- (e) if ElecLink has required an Open Season User, based on reasonable grounds and prior to the application of Rule F6.4.2 (d), to remedy its breach of these Rules or its breach of its ElecLink Open Season User Agreement (other than a failure to pay);
- (f) if the Open Season User has taken any action which damages or adversely affects (or which may damage or adversely affect) the performance of, or which prejudices (or may prejudice) the security of the CMS, the CMS's hosting system, the Open Season Auction Software or the Open Season Auction Software's hosting system, including any attack or attempted attack on the CMS such as, but not limited to, by way of denial of service, spam, virus, brute forcing or a Trojan horse;
- (g) if the Open Season User's rights referred to in Section H3.2.2(c) of the Balancing and Settlement Code are suspended under Section H3.2.1 of that Code;
- (h) if the Open Season User becomes a Dormant CUSC Party (as defined in CUSC); or
- (i) if any request is made under CUSC for NGENSO or RTE to cease or procure the cessation of the transport of power across the Interconnector by or on behalf of the Open Season User.

F6.3.3 A notice under Rule F6.3.1 takes effect from the time it is given or any later time specified in it. ElecLink may withdraw a notice under Rules F6.3.1(a) or F6.3.1(b) at any time. Having given a notice under Rule F6.3.1, ElecLink may give a further or other notice at any time in respect of the same or a different Suspension Event of Default.

F6.3.4 Once the Open Season User has remedied the Suspension Event of Default specified in the notice sent by ElecLink, ElecLink will as soon as reasonably practicable give notice (a "Reinstatement Notice") reinstating the Open Season User's rights which have been suspended under Rule F6.3.1 with effect from the first Business Day after the date of the Reinstatement Notice.

### **Termination by ElecLink**

F6.4.1 If any of the events in Rule F6.4.2 (each a "Termination Event of Default") occurs in relation to an Open Season User, ElecLink may by notice to the Open Season User terminate any ElecLink Open Season User Agreement to which the Open Season User is a party, including the Open Season User's rights to use Open Season Interconnector Capacity. A notice under this Rule F6.4.1 takes effect from the time it is given or any later time specified in it.

For the avoidance of doubt, as from the time at which the notice referred to at F6.4.1 takes effect, the Open Season User will no longer be entitled to participate in an Auction or in the Secondary Market, or Nominate, or Resell, or Capacity Transfer the Open Season Units it has acquired and such Open Season Units will not be taken into account in relation to the "Use It Or Sell It" provisions within these Rules.

For the avoidance of doubt, the Open Season Units which the Open Season Unit Holder is prohibited from using as a result of termination may be offered by ElecLink in subsequent auctions or in the Secondary Market and ElecLink shall not return the corresponding proceeds to the Open Season Unit Holder.

F6.4.2 The Termination Events of Default referred to in Rule F6.4.1 are the following:



- (a) if an Open Season User fails to pay in full any amount properly due and owing to ElecLink pursuant to these Rules and ElecLink gives the Open Season User notice requiring such failure to be remedied within ten (10) Business Days from the date of that notice (or within any longer period specified in the notice) and such failure continues unremedied after such period;
- (b) if a Credit Cover Incident occurs in relation to an Open Season User and ElecLink gives the Open Season User notice requiring such Credit Cover Incident to be remedied within ten (10) Business Days from the date of that notice (or within any longer period specified in the notice) and such failure continues unremedied after such period, or if the Open Season User ceases to satisfy the Open Season Continuing Credit Requirement and fails to comply with Rule C3.1.5;
- (c) if an Open Season User undergoes or is subject to an Insolvency Event;
- (d) if an Open Season User:
  - (i) commits a material breach of these Rules or an ElecLink Open Season User Agreement (other than a failure to pay) which cannot be remedied; or
  - (ii) commits a breach of these Rules or an ElecLink Open Season User Agreement (other than a failure to pay) which is capable of remedy and ElecLink gives the Open Season User notice requiring such breach to be remedied within ten (10) Business Days from the date of that notice (or within any longer period specified in the notice) and such breach continues unremedied after such period;
- (e) if an Open Season User persistently breaches these Rules or an ElecLink Open Season User Agreement, whether or not the breach is capable of remedy;
- (f) if the Open Season User commits a breach of any of the provisions of the RTE Grid Code or NGENSO Grid Code applicable to it and such breach has or can reasonably be expected to have an adverse effect on the operation of the Interconnector or the arrangements contemplated by these Rules and (if capable of remedy) the breach has not been remedied within ten (10) Business Days of a notice from ElecLink requiring remedy;
- (g) if a Competent Authority (i) determines that the Open Season User has committed a breach of Rules B2.8.1-B2.8.4 or a fraudulent act and (ii) requests ElecLink to terminate the ElecLink Open Season User Agreement to which such Open Season User is a Party or (iii) agrees that ElecLink has reasonable grounds to believe that the Open Season User has committed a breach of Rules B2.8.1-B2.8.4 or a fraudulent act in participating in Auctions, Secondary Market or in Nominating on ElecLink; or
- (h) (in the case of an Open Season User which is an Open Season Unit Holder) the Open Season User fails to comply with Rule C3.1.5.

## **Payments**

- F6.6.1 If ElecLink gives a notice to an Open Season User under Rule F6.3.1 and/or Rule F6.4.1, then respectively such notice of suspension or termination does not relieve the Open Season User from its payment obligations pursuant to Rule C2, including its payment obligations in relation to the Open Season Units for which the Open Season User loses the right of use pursuant to Rule F6.3.

F6.6.2 Where ElecLink gives a notice to an Open Season User pursuant to Rule F6.4.2 (c), the Open Season User shall be obliged to fulfil its payment obligations, including its payment obligations in relation to the Open Season Units for which the Open Season User loses the right of use pursuant to Rule F6.3. Nevertheless, for the sole application of this Rule F6.4.2 (c) and notwithstanding Rule F6.4.1, the Open Season User's debt shall be reduced by the amounts of the Open Season Units initially acquired by him and finally re-auctioned by ElecLink.

#### **Preservation of rights**

F6.7.1 Termination of an ElecLink Open Season User Agreement does not affect any rights and liabilities under or in connection with the ElecLink Open Season User Agreement and these Rules which arose prior to that termination. Accordingly, any Open Season User whose ElecLink Open Season User Agreement is terminated will remain liable, subject to and in accordance with the Rules, in respect of all such rights and liabilities.

F6.7.2 This Rule F6 is without prejudice to any other rights or remedies available to ElecLink under these Rules or by law, including any right to claim damages in respect of any breach of the Rules or the ElecLink Open Season User Agreement which existed at or before the date of termination.

**Rule F7: Liability**

**Liability for breach**

- F7.1 Subject to Rule F7.2.1, Rule F7.2.2, Rule F7.4, Rule F7.5.3 and Rule F7.5.4, ElecLink and each Open Season User agrees and acknowledges that neither ElecLink nor an Open Season User nor any of their respective officers, employees or agents shall be liable to any other of them for loss arising from any breach of these Rules other than for loss directly resulting from such breach and which at the date of these Rules was foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:
  - (a) loss of or physical damage to the property of ElecLink or the Open Season User (as the case may be), or their respective officers, employees or agents; or
  - (b) the liability of ElecLink or the Open Season User (as the case may be) to any other Open Season User for loss in respect of loss of or physical damage to the property of that other Open Season User.

**Death and personal injury and fraud**

- F7.2.1 Nothing in these Rules excludes or limits the liability of ElecLink or an Open Season User for death or personal injury resulting from that person’s negligence or the negligence of any of its officers, employees or agents and ElecLink and each Open Season User shall indemnify and keep indemnified the other and their respective officers, employees or agents, from and against all such and any loss or liability (including legal costs) which the person having the benefit of the indemnity may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the person giving the indemnity or any of its officers, employees or agents.
- F7.2.2 Nothing in these Rules excludes or limits the liability of ElecLink or an Open Season User for fraud or fraudulent misrepresentation.

**Excluded losses**

- F7.3 Subject to Rule F7.2.1, 7.2.2, Rule F7.4, Rule F7.5.3 and Rule F7.5.4, neither ElecLink nor any Open Season User nor any of their respective officers, employees or agents shall in any circumstances whatsoever be liable to any other of them for:
  - (a) any loss of profit; or
  - (b) any loss of revenue; or
  - (c) any loss of use; or
  - (d) any loss of contract; or
  - (e) any loss of goodwill; or
  - (f) any indirect loss; or
  - (g) any consequential loss; or

- (h) any loss resulting from the liability of ElecLink or an Open Season User (as the case may be) to any other person (including another Open Season User) howsoever and whensoever arising save as provided in rules F7.1(a) and F7.2.

### **Indemnity**

- F7.4 An Open Season User shall indemnify and keep indemnified ElecLink and its officers, employees and agents from and against any and all loss or liability (including legal costs) which any of them may suffer or incur by reason of any claim by any third party ("claimant") on account of any and all loss (whether direct or indirect) suffered by the claimant or any of the claimant's officers, agents, subcontractors or employees in connection with any Capacity Subcontracting Arrangement to which that Open Season User is a party.

### **General**

- F7.5.1 Each of the provisions of this Rule F7 shall survive termination of any ElecLink Open Season User Agreement.
- F7.5.2 ElecLink and each Open Season User acknowledges and agrees that it holds the benefit of Rules F7.1, F7.2, F7.3 and F7.4 above for itself and as trustee and agent for its officers, employees and agents.
- F7.5.3 For the avoidance of doubt, nothing in this Rule F7 prevents or restricts either ElecLink or an Open Season User from enforcing any obligation (including suing for a debt) owed to it under or pursuant to these Rules.
- F7.5.4 For the avoidance of doubt, nothing in this Rule F7 shall operate so as to exclude or limit any indemnity provided by any Open Season User under Rules B2.2.3 and/or D1.12.8.

## **Rule F8: Dispute Resolution**

### **Application**

- F8.1 Any disagreement, difference of opinion or other dispute between ElecLink and an Open Season User under or in relation to these Rules and/or an ElecLink Open Season User Agreement (including any non-contractual obligations arising out of or in connection with them) ("Dispute") must be resolved in accordance with this Rule F8.

### **Debt Proceedings**

- F8.2.1 ElecLink or an Open Season User may bring proceedings ("Debt Proceedings") against the other for any amount owing under or in connection with these Rules and unpaid for more than twenty (20) Business Days after the date the monies were due.
- F8.2.2 Any Debt Proceedings shall be subject to the exclusive jurisdiction of the English courts, provided that any Debt Proceedings brought by ElecLink or an Open Season User may be brought in any court having jurisdiction to hear such claim. Each Open Season User hereby consents for the purposes of such proceedings to submit to the jurisdiction of any court having jurisdiction to hear such claim. Each Open Season User irrevocably waives any objection which it may have now or hereafter to the laying of a venue of such proceedings in any court in accordance with Rule F8.2.1 and any claim that any such proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgement in any such proceedings brought in any such court may be enforced in the courts of any other jurisdiction.

### **Prescribed procedure**

- F8.3 Where there is a Dispute (other than Debt Proceedings) ElecLink and Open Season Users shall first seek amicable settlement through mutual consultation pursuant to Rule F8.4.

### **Amicable resolution**

- F8.4 If there is any Dispute (other than in respect of any claim for any amount owing and unpaid under or in connection with these Rules), a senior representative of each of ElecLink and the Open Season User with authority to resolve the Dispute must meet within twenty (20) Business Days of a request to meet and seek to resolve the Dispute. If the representatives are unable to resolve the Dispute within twenty (20) Business Days of the meeting (or such longer time as may be agreed) then the Dispute (other than a Debt Proceeding) must be determined by arbitration in accordance with Rule F8.5. This Rule F8.4 does not prevent the commencement of proceedings under Rule F8.2.1.

### **Arbitration**

- F8.5.1 Subject to Rule F8.4, where a Dispute is to be referred to arbitration under this Rule F8, either ElecLink or the Open Season User may give notice to the other stating the nature of the Dispute and referring the Dispute to arbitration. Arbitration under this Rule F8.5 shall be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC). The arbitration shall be conducted before three (3) arbitrators. The claimant shall nominate one (1) arbitrator and the respondent shall nominate one (1) arbitrator. The arbitrators nominated by each Party shall then nominate the chairman of the arbitral tribunal within three (3) business days from the confirmation of the appointment of the second arbitrator by the respondent. If the arbitrators nominated by each Party cannot agree on the appointment of the chairman, the chairman shall be appointed by the ICC Court. The arbitration shall take place in Geneva and

the language of the arbitration proceedings shall be English. The arbitrators shall decide in law and not as *amiables compositeurs*. The arbitration will be a first hearing and the arbitrators shall hear arguments and evidence.

- F8.5.2 Arbitration awards under this Rule F8.5 shall be final and binding on ElecLink and the relevant Open Season User as from the date that they are made. Each of ElecLink and the Open Season User must carry out any award of an arbitrator relating to any Dispute without delay and each waive their right to any form of appeal or recourse to a court of law or other judicial authority, in so far as such waiver may validly be made.

**Other issues**

- F8.6.1 Notwithstanding any reference to amicable settlement, expert resolution or arbitration under this Rule F8 ElecLink and the Open Season User shall continue to perform their respective obligations under these Rules and the Open Season User's ElecLink Open Season User Agreement.
- F8.6.2 This Rule F8 survives termination of the Open Season User's ElecLink Open Season User Agreement.

## **Rule F9: Rights under Funding Arrangements in relation to the ElecLink Open Season User Agreements**

### **Application of this Rule**

F9.1 This Rule F9 applies only to the Open Season User Agreements.

### **Cure Period for an Operator Default**

F9.2 If an Open Season User intends:

- (a) to terminate or suspend, or claim or purport to terminate or suspend, its ElecLink Open Season User Agreement or the performance of its obligations under its ElecLink Open Season User Agreement; or
- (b) to commence any court or arbitration proceedings to enforce any claim against ElecLink under its ElecLink Open Season User Agreement; or
- (c) to commence any proceedings for the winding up or dissolution of ElecLink or for the opening of any other insolvency proceedings in respect of ElecLink,

in any such case as a result of any Operator Default, it shall first give to the Funders' Agent and to ElecLink prior written notice of at least three (3) months (in the case of an Operator Payment Default) or at least six (6) months (in the case of an Other Operator Default) (a "Cure Period Notice") of the Open Season User's intention to take the action referred to in paragraphs (a)-(c) above. The Cure Period Notice shall specify (i) the action which the Open Season User intends to take ("Enforcement Action") and (ii) reasonable details of the Operator Default on which the Open Season User relies and (iii) whether the Operator Default is an Operator Payment Default or an Other Operator Default.

F9.3 In the case of an Other Operator Default only, the Cure Period shall be extended:

- (a) for a period of three (3) months after the expiry of the period of notice given by the Open Season User in the Cure Period Notice, if the Funders' Agent is promptly taking and diligently pursuing all reasonable steps to cure the Other Operator Default, and reasonably expects to cure that Other Operator Default within such extended period and notifies the relevant Open Season User of those steps; or
- (b) until the Step-out Date if a Step-in Period commences before the expiry of the period of notice given by the Open Season User in the Cure Period Notice.

F9.4 Subject to Rule F9.5, during the Cure Period an Open Season User shall not take the Enforcement Action specified in the Cure Period Notice.

F9.5 During the Cure Period, the Funders' Agent shall have the option to remedy or procure the remedy of the Operator Default, and if it does so the rights of the Open Season User to take any action described in Rule F9.2(a)-(c) in respect of that Operator Default shall cease.

F9.6 If the Funders' Agent decides during the Cure Period not to remedy the Operator Default pursuant to Rule F9.4, it shall promptly notify the Open Season User and ElecLink of that decision and on the giving of that notice the Cure Period shall terminate and the Open Season User may proceed with that Enforcement Action.

## Step-in Rights

- F9.7 The Funders' Agent shall be entitled to give a Step-in Notice to all or any of the Open Season Users at any time during a Funding Breach Period (and the certificate of the Funders' Agent that a Funding Breach Period is subsisting shall be conclusive and binding as between the Funders' Agent and the Open Season Users).
- F9.8 A Step-in Notice shall:
- (a) specify the Step-In Date, which shall be not less than five (5) Business Days after the date of the Step-in Notice; and
  - (b) specify the identity of the Step-In Operator, who shall be a person who has demonstrated compliance with all legal and regulatory obligations for participating in the operation of an electricity interconnector and has:
    - (i) the legal capacity, power and corporate authority;
    - (ii) all necessary regulatory approvals;
    - (ii) the requisite technical knowledge, ability, skills and experience; and
    - (iv) the requisite financial standing and resources,to operate the Interconnector and all associated functions (including the holding of Auctions) and to perform and discharge the obligations and liabilities of ElecLink during the Step-In Period; and
  - (c) be counter-signed by the nominated Step-in Operator to confirm its acceptance of its appointment as Step-in Operator on the terms and conditions of the ElecLink Open Season User Agreements including its acceptance of its obligations and duties under this Rule F9.
- F9.9 During the Step-in Period:
- (a) the Step-In Operator shall assume jointly and severally with ElecLink all of the rights, obligations and liabilities of ElecLink under the ElecLink Open Season User Agreements and which arise during the Step-In Period;
  - (b) performance in favour of the Step-In Operator by the Open Season Users of their obligations under the ElecLink Open Season User Agreements shall be a good discharge of those obligations owed to ElecLink;
  - (c) any instructions, demands, directions, approvals, consents, notices or other actions of the Step-in Operator shall prevail over any conflicting instructions, demands, directions, approvals, consents, notices or other actions of ElecLink; and
  - (d) the rights of each Open Season User under its ElecLink Open Season User Agreement shall continue in full force and effect, including (but subject always to Rules F9.2 – F9.5) the right to take Enforcement Action in respect of any breach or default of any obligation or liability owed to the Open Season User and whether occurring before or during the Step-in Period.



- F9.10 The Step-In Operator shall be entitled to give a Step-out Notice to the Open Season Users at any time during a Step-in Period, specifying the Step-out Date, which shall be not less than five (5) Business Days after the date of the Step-out Notice.
- F9.11 At the end of a Step-in Period the Step-in Operator shall be released from all obligations and liabilities to the Open Season Users arising after the Step-in Period but shall continue to be liable for the obligations and liabilities assumed by it during the Step-in Period and for any failure fully to discharge those obligations and liabilities during the Step-in Period.

### **Novation**

F9.12 The Funders' Agent shall be entitled to give a Novation Notice to the Open Season Users at any time during a Funding Breach Period (and the certificate of the Funders' Agent that a Funding Breach Period is subsisting shall be conclusive and binding as between the Funders' Agent and the Open Season Users).

F9.13 A Novation Notice shall:

- (a) specify the Novation Date, which shall be not less than five (5) Business Days after the date of the Novation Notice; and
- (b) specify the identity of the Substitute Operator, who shall be a person who has demonstrated compliance with all legal and regulatory obligations for participating in the operation of an electricity interconnector and has:
  - (i) the legal capacity, power and corporate authority;
  - (ii) all necessary regulatory approvals;
  - (ii) the requisite technical knowledge, ability, skills and experience; and
  - (iv) the requisite financial standing and resources,to operate the Interconnector and all associated functions (including the holding of Auctions) and to perform and discharge the obligations and liabilities of ElecLink during the remainder of the term of the ElecLink Open Season User Agreements; and
- (c) be counter-signed by the nominated Substitute Operator to confirm its acceptance of the novation of the ElecLink Open Season User Agreements on the terms of this Rule F9.

F9.14 With effect from 00.01 hours on the Novation Date:

- (a) all ElecLink's present and future rights and obligations under the ElecLink Open Season User Agreements shall be transferred to the Substitute Operator, the Substitute Operator shall enjoy all the rights and benefits of ElecLink under the ElecLink Open Season User Agreements, and all references to ElecLink in the ElecLink Open Season User Agreements shall be read and construed as references to the Substitute Operator;
- (b) the Substitute Operator agrees to perform each ElecLink Open Season User Agreement and be bound by its terms and assume all of ElecLink's present and future obligations and liabilities in every way as if it were the original party to it in place of ElecLink;

- (c) each Open Season User agrees to perform its ElecLink Open Season User Agreement and be bound by its terms in every way as if the Substitute Operator were the original party to it in place of the ElecLink; and
- (d) ElecLink and each Open Season User release each other from all present and future obligations to the other under the ElecLink Open Season User Agreements.

**Notices to the Funders' Agent**

F9.15 Any notice to the Funders' Agent under this Rule F9 shall be given to the Funders' Agent at such address as the Funders' Agent may notify to the Open Season Users and to ElecLink from time to time.

## **Rule F10: Miscellaneous**

### **Governing law**

F10.1 These Rules shall be governed by and construed in all respects in accordance with English Law.

### **Language**

F10.2 These Rules will be produced both in English and French. For the avoidance of doubt, in the event of inconsistency between the English and French versions, the English language version shall prevail.

### **Intellectual Property**

F10.3 No Open Season User shall acquire any right, title, licence or interest in or to any Intellectual Property used by ElecLink in connection with these Rules or used by or belonging to ElecLink in connection with the Interconnector or its use or operation.

### **Relationship and nature of rights**

F10.4.1 The relationship of ElecLink and Open Season Users is that of service provider and service user respectively. Except as expressly provided in these Rules, nothing contained or implied in these Rules constitutes or is deemed to constitute ElecLink or an Open Season User, the partner, agent or legal representative of the other for any purpose whatsoever or create or be deemed to create any partnership, agency or trust whatsoever.

F10.4.2 The rights granted to Open Season Users under these Rules are physical transmission rights of electrical energy. The Auctions and Secondary Market are in respect of capacity only and the Open Season Users can invoke no other right than capacity made available to them in accordance with the provisions of these Rules.

### **No third party rights**

F10.5.1 Except as expressly provided to the contrary in Rule F10.5.2, ElecLink and each Open Season User each acknowledges and agrees that a person who is not a party to the ElecLink Open Season User Agreement between them (including any other Open Season User) has no rights to enforce these Rules or the ElecLink Open Season User Agreement as between ElecLink and that Open Season User.

F10.5.2 The Funders' Agent, any Step-in Operator and any Substitute Operator shall be entitled pursuant to the Contracts (Rights of Third Parties) Act 1999 to, and to enforce, the rights and benefits given to those parties under Rule F9.

### **Waiver**

F10.6.1 No omission to exercise or delay in exercising any right, power or remedy provided by law or under these Rules shall constitute a waiver of such right, power or remedy or any other right, power or remedy or impair such right, power or remedy. No single or partial exercise of any such right, power or remedy precludes or impairs any other or further exercise thereof or the exercise of any other right, power or remedy provided by law or under these Rules.

F10.6.2 Any waiver of any right, power or remedy under these Rules must be in writing and may be given subject to any conditions thought fit by the grantor. Unless otherwise expressly stated, any waiver is effective only in the instance and only for the purpose for which it is given.

## **Variation**

- F10.7.1 No variation to these Rules or an ElecLink Open Season User Agreement shall be effective unless made in accordance with Rule A4.
- F10.7.2 In addition, no variation of Rule F9 shall be effective unless the Funders' Agent has consented in writing to such variation. The Parties acknowledge that the Funders' Agent relies on the provisions of Rule F9.

## **No advice**

- F10.8 The Open Season User acknowledges that neither ElecLink nor any person acting on behalf of or associated with ElecLink makes any representation, gives any advice or gives any warranty or undertaking of any kind in respect of these Rules, the ElecLink Open Season User Agreements or the Disclosed Information or otherwise in relation to or in connection with these Rules, the ElecLink Open Season User Agreements and the Disclosed Information or any transaction or arrangement contemplated by these Rules, the ElecLink Open Season User Agreements and the Disclosed Information except as specifically provided in these Rules or the ElecLink Open Season User Agreement. Nothing in this Rule F10.8, however, limits or excludes any liability for fraud, including fraudulent misrepresentation.

## **Entire agreement**

- F10.9 These Rules and the ElecLink Open Season User Agreement contain or expressly refer to the entire agreement between ElecLink and each Open Season User with respect to the subject matter hereof and expressly exclude any warranty, condition or other undertaking implied at law or by custom and supersede all previous agreements and understandings between ElecLink and each Open Season User with respect thereto and each of them acknowledges and confirms that it does not enter into these Rules or the ElecLink Open Season User Agreement in reliance on any representation, warranty or other undertaking (other than where made fraudulently) not fully reflected in the terms of these Rules or the ElecLink Open Season User Agreement.

## **Remedies exclusive**

- F10.10 Except as otherwise expressly provided, the rights and remedies provided by these Rules and the ElecLink Open Season User Agreement to ElecLink and each Open Season User are exclusive and not cumulative and, to the extent permissible by law, shall exclude and be in place of all substantive (but not procedural) rights or remedies express or implied and provided by law or statute in respect of the subject matter of these Rules and the ElecLink Open Season User Agreement. Accordingly, each of ElecLink and each Open Season User hereby waives to the fullest extent possible all such rights and remedies provided by law or statute, and releases each other of them if it is liable to any other of them, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by law or statute in respect of the matters dealt with in these Rules and the ElecLink Open Season User Agreement and undertakes not to enforce any of the same except as expressly provided herein.

## **Severance of terms**

- F10.11.1 If any provision of these Rules or an ElecLink Open Season User Agreement is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject or pursuant to arbitration or by order of any Competent Authority, such invalidity, unenforceability or illegality shall not prejudice or affect either the remaining provisions of these Rules and the ElecLink

Open Season User Agreement, which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality, or the validity, enforceability or legality of such provision under the laws of any other jurisdiction.

F10.11.2 If any provision would otherwise be invalid, unenforceable or illegal under Rule F10.11 but would cease to be invalid, unenforceable or illegal if some part of it were deleted, the relevant part shall be deemed to be deleted.

## SCHEDULE 1: DEFINITIONS AND INTERPRETATION

### Part I: Definitions

In these Rules, capitalised words and phrases have the meanings given to them below unless the context requires otherwise.

<b>"Accord de Participation"</b>	means an Accord de Participation signed by an Open Season User and RTE by which an Open Season User agrees to abide by the <i>Règles d'Accès au Réseau Public de Transport Français pour des Importations et des Exportations</i> ;
<b>"Accord de participation en qualité de Responsable d'Equilibre"</b>	means an agreement between RTE and another party under which that party agrees to be responsible for payment of charges associated with imbalances between scheduled and actual generation output and demand from the RTE Transmission System;
<b>"Affiliate "</b>	means (a) any shareholder of ElecLink, (b) any parent company or subsidiary company of ElecLink, (c) any other subsidiary company of a holding company of ElecLink and (d) any other person who directly or indirectly controls, or is directly or indirectly controlled by, or is under direct or indirect common control with, ElecLink; and a person will be deemed to control another person if such person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of such other person, whether through the ownership of voting securities, by contract or otherwise. For the avoidance of doubt, an Affiliate of ElecLink includes any of ElecLink's shareholders, subsidiaries or holding companies or any other subsidiary of holding companies from time to time;
<b>"Adjustment Coefficient"</b>	means such number, being greater than zero (0) and less than or equal to one (1), as designated by ElecLink prior to the relevant Auction in accordance with Rule D1.2.12;
<b>"Allocation Rules"</b>	means the Harmonised Allocation Rules, the shadow allocation rules applied by the Joint Allocation Office S.A. which are the rules in respect of the fallback procedure for the allocation of cross-zonal capacity in the day-ahead market timeframe and/or the allocation rules for intraday capacity allocation on the Interconnector;
<b>"Amendment Notice"</b>	means the notification and any associated documents issued by ElecLink pursuant to Rule A4, provided to the Open Season Users and which notify Open Season Users of ElecLink's amendment(s) to the Open Season Rules;
<b>"Applicable Law"</b>	means any European Union directives, regulations or codes, any statute, statutory instrument, licence (including ElecLink's Interconnector Licence), law (whether English or French) or decree ( <i>décret</i> ) or order in council or directive, or any code including the GB Grid Code, the RTE Grid Code and the Balancing and Settlement Code, or any request, requirement, instruction, direction or rule of any Competent Authority but only, where not having the force of law, if compliance with the Applicable Law is in accordance with the general practice of persons to whom the Applicable Law is addressed;

<b>"Applicant"</b>	has the meaning given to it in Rule B3.1;
<b>"Application Form"</b>	means the form designated by ElecLink as such for the purposes of these Rules from time to time and included in the Application Pack;
<b>"Application Pack"</b>	means the package of information and other documents designated by ElecLink as such for the purposes of these Rules from time to time;
<b>"Assets"</b>	in relation to an Open Season User or its Parent Company has the meaning given to that term by the International Financial Reporting Standards (IFRS) or (if an Open Season User's or its Parent Company's audited statutory accounts are not prepared in accordance with IFRS) by UK GAAP or such other national generally accepted accounting standards as may be approved by ElecLink for this purpose from time to time and in accordance with which the Open Season User's or (as the case may be) its Parent Company's audited statutory accounts are prepared;
<b>"Auction"</b>	means any auction of Open Season Units under these Rules;
<b>"Auction Manager"</b>	means ElecLink or a third party appointed by ElecLink to operate the Auction(s);
<b>"Auction Price"</b>	means the value of the Marginal Price of an Auction, and which is payable by all Open Season Unit Holders resulting from such Auction;
<b>"Auction Specification"</b>	means, the specification for the Auction published by ElecLink, as described in Rule D1.2;
<b>"Balancing and Settlement Code" or "BSC"</b>	means the code of that name established under the NGESO Transmission Licence;
<b>"Bid"</b>	means an Open Season User's offer to buy Open Season Units in an Auction, and made in accordance with these Rules;
<b>"Bidding Period"</b>	means, in relation to an Auction, the time during which Bids may validly be submitted in that Auction in accordance with these Rules;
<b>"Block"</b>	means, in relation to a product of Open Season Units, a quantity of ten (10) MW;
<b>"BM Unit"</b>	means an Open Season User's Production Interconnector BM Unit and Consumption Interconnector BM Unit under the Balancing and Settlement Code;
<b>"Business Day"</b>	means a week-day on which banks in London are open for domestic business and for dealings in sterling and euro deposits;
<b>"Business Rules"</b>	means the rules for day to day use of Interconnector Capacity in Schedule 4;
<b>"Capacity Agreement Confirmation"</b>	has the meaning given to it in Rule D1.7.7;

<b>"Capacity Subcontracting Arrangement"</b>	means any arrangement between an Open Season Unit Holder and another person under which the Open Season Unit Holder allows the person, either directly or indirectly, to use the Open Season Interconnector Capacity of the Open Season Unit Holder;
<b>"Capacity Management System" or "CMS"</b>	means the IT system(s) or system(s) used for conducting Auctions and other associated Interconnector Capacity activities;
<b>"Capacity Transfer"</b>	means the mechanism by which an Open Season Unit Holder passes over Open Season Units to another Open Season User in accordance with Rule E4.4, and "Transfer Capacity", "Transferred", "Transferee" shall have corresponding meanings;
<b>"Capacity Transfer Notice"</b>	has the meaning given to it in Rule E4.4.1(a);
<b>"Capacity Transfer Period"</b>	has the meaning given to it in Rule E4.4.1(d);
<b>"Cash Collateral"</b>	means in relation to any Open Season User: <ul style="list-style-type: none"> <li>(a) cash (in euros) paid by or on behalf of that Open Season User into a dedicated Deposit Account, and</li> <li>(b) all moneys from time to time credited to and for the time being standing to the credit of that account and all interest from time to time paid or payable thereon or with respect thereto, over which account, moneys and interest ElecLink has a first fixed charge (in such form as ElecLink may from time to time require) as security for the performance of that Open Season User's payment obligations under its ElecLink Open Season User Agreement and the Rules;</li> </ul>
<b>"CET"</b>	means central European time;
<b>"Competent Authority"</b>	means the Secretary of State (as defined in the Governing Act), the GB Regulator, the French Regulator and any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom, France or the European Union;
<b>"Confidential Information"</b>	means any item of information, regardless of its form, disclosed by ElecLink or an Open Season User to the other under or in connection with these Rules, other than any item of information which: <ul style="list-style-type: none"> <li>(a) was, at the time of the disclosure, within the public domain;</li> <li>(b) not being within the public domain at the time of disclosure, enters the public domain otherwise than as a result of a breach of a confidentiality obligation owed in relation to that item of information of which the Recipient is aware; or</li> </ul>



	(c) was already known to the Recipient or was independently (of the Disclosing Party) acquired or developed by the Recipient without being in breach of its obligations under the Rules;
<b>"Contract Day"</b>	in relation to a Contract Day D, means a period of 24 hours commencing at 00:00 hours on day D;
<b>"Contracted Revenues"</b>	means, in relation to a product in an Auction of Open Season Units, the product of (a) the quantity (in MWh) allocated to Winning Bidders in accordance with Rule D1.7.4, and (b) the Auction Price (in €/MWh) for that product;
<b>"Credit Cover"</b>	means security for payment of amounts owed under these Rules provided under Rule C4;
<b>"Credit Cover Incident"</b>	has the meaning given in Rule C4.10;
<b>"Credit Rating"</b>	means, in relation to an entity, a rating for its long-term unsecured and non credit-enhanced debt obligations by Standard & Poor's Rating Services or by Moody's Investors Service or at ElecLink's sole discretion a comparable rating from an internationally recognised credit rating agency;
<b>"Cure Period"</b>	means, in relation to an Operator Default, the period of notice given under a Cure Period Notice, subject to Rule F9.3 and Rule F9.6;
<b>"Cure Period Notice"</b>	has the meaning given in Rule F9.2;
<b>"Curtail"</b>	means to reduce Open Season Unit Holders' Open Season Interconnector Capacity and MINs in accordance with Rule E7 and "Curtailed", "Curtailedment" have corresponding meanings;
<b>"CUSC"</b>	means the Connection and Use of System Code established under the NGESO Transmission Licence;
<b>"Daily Auction"</b>	means any auction of daily Units, which are Units with a Product Period equal to one (1) Contract Day;
<b>"Daily Offered Capacity"</b>	means capacity offered by ElecLink in a Daily Auction;
<b>"Day Type"</b>	means any of Business Days, non-Business Day or all days as the case may be, in the context of a Capacity Transfer Notice;
<b>"Debt Proceedings"</b>	has the meaning given to it in Rule F8.2.1;
<b>"Default Bid"</b>	has the meaning given to it in Rule D1.6;
<b>"Default Bidder"</b>	has the meaning given to it in Rule D1.6.3;
<b>"Default Exit Price"</b>	means, in relation to a Default Bid for a given product of Open Season Units in any given Round, the price of that product in the preceding Round;
<b>"Deposit Account"</b>	means a deposit account at a bank that satisfies the criteria outlined in the definition of Letter of Credit where:

- (a) the account is in ElecLink's name and the Open Season User's name jointly;
- (b) interest on the amount deposited in the account accrues for the benefit of the Open Season User, after deduction for any tax or bank charges;
- (c) ElecLink and the Open Season User have irrevocably instructed the bank to make a payment against the sole signature of ElecLink;
- (d) the bank has agreed that the amounts deposited in the account must not be set off or otherwise applied by the bank in respect of any indebtedness of the Open Season User or other person; and
- (e) amounts (other than interest) standing to the credit of the account will not be paid to the Open Season User without the prior written agreement of ElecLink;

**"Discount Rate"** means such percentage rate, being greater than or equal to 0% and less than or equal to 5%, as designated by ElecLink prior to the relevant Auction in accordance with Rule D1.2.12;

**"Disclosed Information"** means all information and data provided by or on behalf of ElecLink to Open Season Users and Applicants in connection with the Rules including the Application Pack and the Open Season User Guide;

**"Disclosing Party"** means, in relation to an item of Confidential Information, the person that disclosed the item;

**"Dispute"** has the meaning given to it in Rule F8;

**"ElecLink"** means ElecLink Limited, a company incorporated in England and Wales with registration number 07595420;

**"ElecLink Interconnector"** means the Interconnector owned and operated by ElecLink;

**"ElecLink Interconnector Circuits"** means the switching bays, cables, converter stations and other plant and apparatus owned by ElecLink connecting the NGESO Transmission System to the RTE Transmission System as such switching bays, cables, converter stations and other plant, apparatus and meters are replaced, modified, developed or added to from time to time;

**"ElecLink Interconnector Licence"** means the electricity interconnector licence granted to ElecLink under section 6(1)(e) of the Electricity Act 1989;

**"ElecLink Open Season User Agreement"** means an agreement between ElecLink and an Open Season User in or substantially in the form set out in Schedule 2;

**"ElecLink User Agreement"** means any agreement between ElecLink and a user covering the participation of that user in Long-Term, Daily and Intraday Auctions of Interconnector Capacity;

<b>“Eligibility”</b>	has the meaning given to it in Rule D1.5.6;
<b>"Eligibility Conditions"</b>	means the conditions set out in Rules B2.1 – B2.3;
<b>"Eligibility Notice"</b>	has the meaning given to it in Rule B2.4;
<b>"Energy Account"</b>	means in relation to an Open Season User: <ul style="list-style-type: none"> <li>(a) the Open Season User’s Production Interconnector BM Unit and Consumption Interconnector BM Unit under the Balancing and Settlement Code; and</li> <li>(b) the account established under an Accord de participation en qualité de <i>Responsable d'Equilibre</i> linked to that Open Season User for the purposes of the RTE Settlement Arrangements to which the Open Season User’s programmes are submitted,</li> </ul> both as specified by the Open Season User in its Standing Data;
<b>"Energy Transmission"</b>	means the transmission of electricity across the Interconnector and "Transmitting" has a corresponding meaning;
<b>"Enforcement Action"</b>	has the meaning given in Rule F9.2;
<b>“ENTSO-E”</b>	means the European Network of Transmission System Operators for Electricity;
<b>"€", "EUR" and "euro"</b>	denote the single currency of the Participating Member States;
<b>“Euro Foreign Exchange Reference Rate”</b>	means the euro foreign exchange reference rates published by the European Central Bank;
<b>“European Central Bank”</b>	means the European Central Bank;
<b>"Excess Units"</b>	has the meaning given to it in Rule D1.12;
<b>"Exchange Rate"</b>	means, in relation to a Contract Day when the Implicit Daily Auction is cancelled, the Pound Sterling:Euro exchange rate for that Contract Day determined by ElecLink and published on CMS, being a rate equal to the rate used by the British power exchanges for the purposes of the Implicit Allocation Algorithm;
<b>“Excess Demand”</b>	means, in relation to a particular product of Open Season Units in a given Round, the greater of: <ul style="list-style-type: none"> <li>(a) the total number of Blocks bid for that product minus the Target for that product; and</li> <li>(b) zero (0);</li> </ul>
<b>"Exemption Decision"</b>	means the decision, by the Commission de regulation de l’énergie of France (“CRE”) and Office of Gas and Electricity Markets of Great

Britain (“Ofgem”) to exempt ElecLink under Article 17 of the Electricity Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003;

<b>“Exit Price”</b>	means, in relation to a product of Open Season Units, a best and final binding offer (in €/MWh) for the number of Blocks that are to be Withdrawn;
<b>"Explicit Daily Auction"</b>	means a Daily Auction as described in the shadow allocation rules applied by the Joint Allocation Office S.A. which are the rules in respect of the fallback procedure for the allocation of cross-zonal capacity in the day-ahead market timeframe;
<b>“Extension”</b>	means, in relation to a Round in an Auction of Open Season Units, extending the duration of the Bidding Phase of the Round for all Open Season Users and for both Sections at the request of an Open Season User;
<b>“First Qualification Period”</b>	means, in relation to an Auction, the period of time, as specified by ElecLink from time to time and published on ElecLink’s website, within which a person wishing to participate in the relevant Auction must provide to ElecLink and the Auction Manager all of the documents and information required to meet the participation requirements provided in Rule B2.1.1, including but not limited to all information and documents required by the Application Form and the Application Pack;
<b>“Final Round”</b>	means the first Round in which Total Excess Demand for a Section is zero (0);
<b>“Financial Close”</b>	has the meaning given to it in Schedule 2 (Form of ElecLink Open Season User Agreement);
<b>“Financial Close Period”</b>	has the meaning given to it in Schedule 2 (Form of ElecLink Open Season User Agreement);
<b>"Force Majeure"</b>	has the meaning given to it in Rule F5.1;
<b>"Forced Outage"</b>	means any Outage of which notice was given after the publication of the Auction Specification for the Daily or Intraday Auctions for the Contract Day on which the Outage occurs;
<b>“Free Eligibility”</b>	has the meaning given to it in Rule D1.5.27;
<b>"French Electricity Law"</b>	means Law no. 2000-108 of 10 February 2000 as amended from time to time and relating to the modernisation and development of public electricity services ( <i>Loi no 2000-108 du 10 février 2000 relative à la modernisation et au développement du service public de l'électricité</i> );
<b>"French Regulator"</b>	means the <i>Commission de Régulation de l'Energie</i> established under the French Electricity Law;

<b>"Funders"</b>	means the bank(s) and/or other financial institutions or lenders from time to time providing the Funding Arrangements to ElecLink;
<b>"Funders' Agent"</b>	means any security trustee, security agent, intercreditor agent or facility agent (including their successors in that capacity) appointed by the Funders from time to time and in whose favour ElecLink may at any relevant time have assigned by way of security the ElecLink Open Season User Agreements and whose identity and address for the service of notices has been notified by ElecLink or the Funders to the Open Season Users;
<b>"Funding Arrangements"</b>	means the arrangements from time to time entered into by ElecLink or Affiliate of ElecLink with any bank(s) and/or other financial institution(s) or lenders for the borrowing of money by and/or the provision of other financial facilities to ElecLink for the principal purpose of funding the design and/or construction and/or other project costs and/or operation of the Interconnector and/or any re-financing of any such borrowing or financial facilities;
<b>"Funding Breach Period"</b>	means any period during which the Funders and/or the Funders' Agent are entitled to exercise their rights of enforcement under the terms of the Funding Arrangements consequent upon either a breach by ElecLink of its obligations to the Funders and/or to the Funders' Agent under the terms of the Funding Arrangements or the occurrence of an Insolvency Event in relation to ElecLink;
<b>"GB Grid Code"</b>	means the document referred to as the Grid Code in the NGESO Transmission Licence;
<b>"GB Regulator"</b>	means the Gas and Electricity Markets Authority, as established under the Governing Act;
<b>"Going Price"</b>	means, in relation to a product of Open Season Units in any given Round, the price announced by the Auction Manager for that product in that Round;
<b>"Governing Act"</b>	means the Electricity Act 1989 as amended and supplemented by the Utilities Act 2000;
<b>"Harmonised Allocation Rules"</b>	means the harmonised allocation rules for long-term transmission rights in accordance with Article 51 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (including the France – Great Britain border specific annex applicable to ElecLink);
<b>"Implicit Daily Auction"</b>	means the process whereby ElecLink at day-ahead stage allocates the Daily Offered Capacity via the Implicit Allocation Algorithm;
<b>"Implicit Allocation Algorithm"</b>	means the price coupling algorithm referred to in the Framework Guidelines on Capacity Allocation and Congestion Management for Electricity published by ACER (FG-2011-E-002, 29 July 2011);
<b>"Increment"</b>	means the amount by which the price of a particular product increases from one Round of the Auction to the next Round of the Auction;

<b>“Initial Eligibility”</b>	means, in relation to a Section, the lesser of: <ul style="list-style-type: none"> <li>(a) the sum of the Open Season User’s indicative offers (in Blocks) across both products in that Section at the Minimum Starting Price in accordance with Rule B2.1; and</li> <li>(b) the number of Blocks that the Open Season User is permitted to bid for in accordance with Rule B2.2; and</li> <li>(c) the number of Blocks that the Open Season User is permitted to bid for in accordance with the Open Season Auction Credit Requirement;</li> </ul>
<b>“Initial Forecast Commercial Delivery Date”</b>	means, in relation to a product of Open Season Units, the date specified by ElecLink in the relevant Auction Specification;
<b>"Insolvency Event"</b>	means in relation to any Party, any of the following events: <ul style="list-style-type: none"> <li>(a) an order of a competent court is made or a resolution is passed for its insolvent winding up or dissolution;</li> <li>(b) a receiver of the whole or any material part of its assets or undertaking is appointed (whether under contract or by a court) or a decision for the opening of insolvency proceedings has been made by a competent court;</li> <li>(c) an administration order is made or a voluntary arrangement is proposed or a decision is made to appoint a mediator or to approve a voluntary arrangement with creditors;</li> <li>(d) anything analogous to, or having a substantially similar effect to, any of the circumstances specified in paragraphs (a) to (c) above occurs in relation to the Open Season User in any jurisdiction;</li> </ul>
<b>"Intangible Assets"</b>	in relation to an Open Season User or its Parent Company has the meaning given to that term by the International Financial Reporting Standards (IFRS) or (if an Open Season User's or its Parent Company's audited statutory accounts are not prepared in accordance with IFRS) by UK GAAP or such other national generally accepted accounting standards as may be approved by ElecLink for this purpose from time to time and in accordance with which the Open Season User's or (as the case may be) its Parent Company's audited statutory accounts are prepared;
<b>"Intellectual Property"</b>	means patents, trademarks, design rights, copyright, database rights, know-how (whether registrable or otherwise), information including these Rules (whether patented or not), applications for any of the foregoing, and other similar rights or obligations, whether registrable or not, in any country (including the United Kingdom and France);
<b>"Interconnector"</b>	means the interconnection of the NGESO Transmission System with the RTE Transmission System by the ElecLink Interconnector Circuits;

<b>"Interconnector Capability"</b>	means the capability (in MW, at Mid-Interconnector) of the Interconnector to Transmit electrical energy between England and France via the ElecLink Interconnector Circuits taking into account the effects of any event or circumstance affecting such capability at any relevant time, including events or circumstances on the NGESO Transmission System or the RTE Transmission System or disconnection or de-energisation of the Interconnector from either of those transmission systems;
<b>"Interconnector Capacity"</b>	means the right of use of the Interconnector made available by ElecLink, to facilitate the Transmission of energy by users between Great Britain and France, to the extent that Interconnector Capability permits and as provided for in these Rules and the Allocation Rules;
<b>"Intraday Auction"</b>	means any auction of intraday Units, which are Units with a Product Period shorter than one (1) Contract Day;
<b>"Letter of Credit"</b>	means an irrevocable stand by letter of credit: <ul style="list-style-type: none"> <li>(a) in such form as ElecLink may reasonably approve from time to time;</li> <li>(b) issued for the account of the Open Season User in favour of ElecLink;</li> <li>(c) issued by any United Kingdom clearing bank or banks or any other bank or banks which has (have) a Credit Rating of not less than A or such other bank as ElecLink may in its sole discretion approve;</li> <li>(d) allowing for partial drawings and providing for payment to ElecLink forthwith on demand and in Euros; and</li> <li>(e) available for payment at a branch of the issuing bank, provided that the branch so specified shall be located within the boundaries of the mainland of Great Britain;</li> </ul>
<b>"Long-Term Auction"</b>	means any auction of long-term Units, which are Units with Product Periods greater than one (1) Contract Day and less than or equal to one (1) year, and associated Interconnector Capacity activities;
<b>"Marginal Price"</b>	means the lowest winning Bid received by ElecLink in an Auction;
<b>"Market Manipulation"</b>	has the meaning given in Article 2 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency;
<b>"Market Share"</b>	in relation to an Open Season User means the market share of the Open Season User and all its Related Undertakings with reference to its generation interests in France and/or Great Britain;
<b>"Market Share Declaration Template"</b>	means the template set out in Schedule 9 of the ElecLink Open Season Rules;

**"Market Share Notice"**

has the meaning given in Rule D1.12.1;

**"Material Adverse Change"**

means, in relation to an Open Season User or a Parent Company, any event, condition, circumstance or change which materially and adversely affects, or which could reasonably be expected to materially and adversely affect:

- (a) the business, operations, performance, assets, liabilities, condition (financial or otherwise), financial result or prospects of that Open Season User or Parent Company; or
- (b) the ability of that Open Season User to perform its obligations under its ElecLink Open Season User Agreement or of that Parent Company to perform its obligations under its Parent Company Guarantee; or
- (c) the validity or enforceability of or the rights or remedies of ElecLink under that Open Season User's ElecLink Open Season User Agreement or that Parent Company's Parent Company Guarantee;

**"Maximum Potential Credit Exposure"**

means:

- (a) in relation to any Open Season User and for the purposes of the Open Season Auction Credit Requirement, the product of:
  - (i) the Adjustment Coefficient; and
  - (ii) the net present value, discounted at an annual rate equal to the Discount Rate, of the maximum potential commitment throughout the applicable Product Period associated with the Open Season User's Bid ("NPV(Max Potential Commitment)"), calculated as follows:

$$NPV_{(Max\ Potential\ Commitment)} = \sum_{t=i}^N \frac{(Bid\ Capacity_t * Hours_t * Bid\ Price_t)}{(1 + DR)^{(t-Base\ Year)}}$$

where:

t denotes a calendar year included (wholly or partially) within the Product Period of the Open Season Units for which the Open Season User submits a Bid in the relevant Auction;

i means the calendar year t in which the Product Period of the relevant Open Season Units starts;



N means the calendar year t in which the Product Period of the relevant Open Season Units ends;

Base Year means the calendar year t in which the Product Period of the relevant Open Season Units starts;

DR means the Discount Rate;

Bid Capacity<sub>t</sub> means the capacity (in MW) in year t for which the Open Season User submits a Bid in the relevant Auction;

Hours<sub>t</sub> means the product of (a) the number of days in year t which fall within the Product Period of the relevant Open Season Units and (b) 24;

Bid Price<sub>t</sub> means the price (in EUR/MWh) in year t at which the Open Season User submits a Bid for the Bid Capacity<sub>t</sub> in the relevant Auction;

*[Explanatory Note: Schedule 7 contains a worked example of this formula, which is by way of illustration only and is not to be used for the purposes of construction of these Rules.]*

(b) in relation to any Open Season Unit Holder and for the purposes of the Open Season Continuing Credit Requirement, at any given time in a Reference Year the product of:

(i) the Adjustment Coefficient; and

(ii) the net present value, discounted at an annual rate equal to the Discount Rate, of the total outstanding commitment of an Open Season Unit Holder in relation to the total number of Open Season Units held by the Open Season Unit Holder and for the remainder of the applicable Product Period ("NPV(Total Outstanding Commitment)"), calculated as follows:

$$NPV_{(\text{Total Outstanding Commitment})} = \sum_{t=i}^N \frac{(\text{Number of Units}_t * \text{Hours}_t * \text{Unit Price}_t)}{(1 + DR)^{(t - \text{Reference Year})}}$$

where:

t denotes a calendar year included (wholly or partially) within the Product Period of the Open Season Units allocated to the Open Season Unit Holder;

i means the calendar year t in which the Product Period of the Open Season Units allocated to the Open Season Unit Holder starts;

N means the calendar year t in which the Product Period of the Open Season Units allocated to the Open Season Unit Holder ends;

Reference Year means the calendar year t in which the Open Season Unit Holder's compliance with the Open Season Continuing Credit Requirement is being assessed;

DR means the Discount Rate;

Number of Units<sub>t</sub> means the total number of Open Season Units (in MW) allocated to the Open Season Unit Holder for year t;

Hours<sub>t</sub> means the product of (a) the total number of days remaining in year t as at the time the Open Season Unit Holder's compliance with the Open Season Continuing Credit Requirement is being assessed, and (b) 24;

Unit Price<sub>t</sub> means the price (in EUR/MWh) at which the Open Season Units were allocated to the Open Season Unit Holder;

*[Explanatory Note: Schedule 7 contains a worked example of this formula, which is by way of illustration only and is not to be used for the purposes of construction of these Rules]*

**“Maximum Starting Price”**

means, in relation to a product of Open Season Units, the price (in €/MWh) designated as such by ElecLink in advance of the relevant Auction in accordance with Rule D1.2.12;

**“Mid-Interconnector”**

means the point on the Interconnector on which the losses between this point and either end of the Interconnector (Sellindge in England and Peuplingues in France) are symmetrical;

**“Mid-Interconnector Day Ahead Market Spread”**

means, in relation to a Contract Day and a specific hour and direction:

- (a) when an Implicit Daily Auction occurs, the difference of the power exchange prices (in €/MWh) on the British and French day ahead markets on such power exchanges as may be chosen by ElecLink in its absolute discretion from time to time (i) as adjusted at Mid-Interconnector by application of the loss factor (as published on ElecLink's website) for such Contract Day and specific hour and (ii) as set the day prior to the Contract Day by the Implicit Allocation Algorithm in €/MWh and (iii) as published by ElecLink on the CMS; and
- (b) when an Implicit Daily Auction has been cancelled, the difference of the power exchange prices (in €/MWh) on the British and French day ahead markets on such power

exchanges as may be chosen by ElecLink in its absolute discretion from time to time (i) as adjusted at Mid-Interconnector by application of the loss factor (as published on ElecLink's website) for such Contract Day and specific hour and (ii) as calculated by ElecLink using the Exchange Rate and (iii) as published by ElecLink on the CMS;

and for the avoidance of doubt the Mid-Interconnector Day Ahead Market Spread for the direction France to England for a Contract Day and a specific hour is:

$\text{Price GB} * (1 - \text{loss factor}) - \text{Price FR} * (1 + \text{loss factor})$   
where:

- (i) Price GB is the chosen power exchange price (in €/MWh) on the British day ahead market for such Contract Day and specific hour;
- (ii) Price FR is the power exchange price (in €/MWh) on the French day ahead market for such Contract Day and specific hour;

and vice versa for the direction England to France:

$\text{Price FR} * (1 - \text{loss factor}) - \text{Price GB} * (1 + \text{loss factor})$

**"Mid-Interconnector Nomination" or "MIN"**

has the meaning given to it in Rule E3.1;

**"Minimum Starting Price"**

means, in relation to a product of Open Season Units, the price (in €/MWh) designated as such by ElecLink in advance of the relevant Auction in accordance with Rule D1.2.12;

**"Network Code"**

has the meaning given to it in Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 and includes all applicable regulations in the form of binding guidelines;

**"NGESO Transmission Licence"**

means the licence granted by the Secretary of State to NGESO under Section 6(1)(b) of the Governing Act permitting, inter alia, the transmission of electricity in England and Wales, as amended from time to time;

**"NGESO Transmission System"**

means the system comprising electric lines operated by NGESO for the transmission of electricity as defined in the GB Grid Code;

**"NGESO"**

means National Grid Electricity System Operator Limited, a company incorporated in England and Wales with company number 11014226;

<b>"Nominate"</b>	means, in relation to an Open Season User, the action to submit a MIN to the Nomination Platform, and "Nomination" shall have corresponding meaning;
<b>"Nomination Gate Closure"</b>	means, in relation to a Settlement Period, the last time at which Nominations can be made in relation to that Settlement Period (as specified in Schedule 4);
<b>"Nomination Platform"</b>	means the relevant system used by Open Season Users to Nominate Mid-Interconnector Nominations as designated from time to time by ElecLink;
<b>"Nomination Rules"</b>	means the nominations rules, applicable to ElecLink, in respect of physical transmission rights for the bidding zone borders of the Channel region in accordance with Article 36 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation;
<b>"Non-Default Bidder"</b>	means an Open Season User who is not a Default Bidder;
<b>"Novation Date"</b>	means the date specified as such in a Novation Notice;
<b>"Novation Notice"</b>	means a notice given in accordance with Rules F9.12 and F9.13;
<b>"Open Season"</b>	means processes relating to Auctions with Product Periods greater than one (1) year and less than or equal to ten (10) years, and associated Open Season Interconnector Capacity activities;
<b>"Open Season Auction Credit Requirement"</b>	<p>means, in relation to an Open Season User and any Bid by that Open Season User in an Auction for a particular number of Open Season Units in a particular direction with a particular Product Period, that any one (at the Open Season User's option) of the following conditions (a) – (e) is satisfied:</p> <ul style="list-style-type: none"> <li>(a) the Open Season User has a Credit Rating not lower than shown in Table 1 in Schedule 6 for that number of Open Season Units and that Product Period; or</li> <li>(b) the Open Season User has a Tangible Net Worth not lower than shown in Table 1 in Schedule 6 for that number of Open Season Units and that Product Period; or</li> <li>(c) a Parent Company of that Open Season User has a Credit Rating not lower than shown in Table 1 in Schedule 6 for that number of Open Season Units and that Product Period and that Parent Company has executed, and the Open Season User has delivered to ElecLink, a Parent Company Guarantee; or</li> <li>(d) a Parent Company of that Open Season User has a Tangible Net Worth not lower than shown in Table 1 in Schedule 6 for that number of Open Season Units and that Product Period and that Parent Company has executed, and the Open Season User has delivered to ElecLink, a Parent Company Guarantee; or</li> </ul>

- (e) the Open Season User has delivered to ElecLink a Letter of Credit which:
  - (i) has an Expiry Date no earlier than one month following the due date for payment (in accordance with Rule C2) of the last instalment of the Unit Price for those Open Season Units and that Product Period, on the assumption that all those Open Season Units for that Product Period will be allocated to the Open Season User in that Auction; and
  - (ii) is for a maximum amount, in Euros, of not less than the Maximum Potential Credit Exposure in relation to that number of Open Season Units and that Product Period;

**“Open Season Auction Software”**

means the web-based secure auctioning platform for the operation of the Auction as designated from time to time by ElecLink and the Auction Manager;

**"Open Season Continuing Credit Requirement"**

means, at any time and in relation to an Open Season Unit Holder and the total number of Open Season Units of a particular original Product Period which have been allocated to that Open Season Unit Holder at that time, that any one (at the Open Season Unit Holder's option) of the following conditions (a) – (e) is satisfied:

- (a) the Open Season Unit Holder has at that time a Credit Rating not lower than shown in Table 2 in Schedule 6 for that total number of Open Season Units and that original Product Period; or
- (b) the Open Season Unit Holder has a Tangible Net Worth not lower than shown in Table 2 in Schedule 6 for that total number of Open Season Units and that original Product Period; or
- (c) a Parent Company of that Open Season Unit Holder has a Credit Rating not lower than shown in Table 2 in Schedule 6 for that total number of Open Season Units and that original Product Period and that Parent Company has executed, and the Open Season Unit Holder has delivered to ElecLink, a Parent Company Guarantee; or
- (d) a Parent Company of that Open Season Unit Holder has a Tangible Net Worth not lower than shown in Table 2 in Schedule 6 for that total number of Open Season Units and that original Product Period and that Parent Company has executed, and the Open Season Unit Holder has delivered to ElecLink, a Parent Company Guarantee; or
- (e) the Open Season Unit Holder has delivered to ElecLink a Letter of Credit which:
  - (i) has an Expiry Date no earlier than one month following the due date for payment (in accordance

with Rule C2) of the last instalment of the Unit Price for those Open Season Units and that Product Period; and

- (ii) is for a maximum amount, in Euros, of not less than the Maximum Potential Credit Exposure as at that time in relation to that total number of Open Season Units and that original Product Period;

<b>“Open Season Contracted Revenue Target”</b>	means the minimum level of contracted revenues from the sale of Open Season Units required by ElecLink to achieve Financial Close;
<b>“Open Season Revenues”</b>	means, in relation to an Auction of Open Season Units, the sum of: <ul style="list-style-type: none"><li>(a) realized and Total Contracted Revenues from the sale of Open Season Units prior to the relevant Auction; and</li><li>(b) Total Contracted Revenues from the relevant Auction of Open Season Units.</li></ul>
<b>“Open Season Revenue Cap”</b>	has the meaning given to it in Rule D1.9;
<b>“Open Season Unit”</b>	means a Unit with a Product Period greater than one (1) year and less than or equal to ten (10) years, as specified in the relevant Auction Specification;
<b>“Open Season Unit Holder”</b>	means an Open Season User who has been allocated Open Season Units under these Rules, any of which at the relevant time have not yet reached the end of their Product Period and, for the purposes of the Rules specified in Rule E4.4.10, Open Season Users to whom a Capacity Transfer is made;
<b>“Open Season User”</b>	means any person, other than ElecLink, who for the time being is a party to an ElecLink Open Season User Agreement;
<b>“Open Season User Guide”</b>	means the guide to the auction rules for Open Season Units published by ElecLink or the Auction Manager prior to the relevant Auction;
<b>“Open Season User Systems”</b>	means, in relation to an Open Season User, the hardware, software and other systems needed by the Open Season User to exercise its rights and perform its obligations under these Rules, including communicating electronically with ElecLink, participating in Auctions and using Interconnector Capacity;
<b>“Operational Start Date”</b>	means the date on which commissioning of the Interconnector is completed and certified as such by NGESO and RTE and ElecLink can commence commercial operations;
<b>“Operator Default”</b>	means any breach or default by ElecLink (and/or, as the case may be, any Step-in Operator) of its obligations and liabilities to an Open Season User under an ElecLink Open Season User Agreement;

<b>"Operator Payment Default"</b>	means an Operator Default which relates only to the non-payment of money due and owing;
<b>"Other Operator Default"</b>	means any Operator Default other than an Operator Payment Default;
<b>"Outage"</b>	means any reduction of Interconnector Capability in either direction and includes Forced Outages and Trips;
<b>"Outbid"</b>	has the meaning given to it in Rule D1.5.26;
<b>"Outbid Block"</b>	means a Block which has been Outbid;
<b>"Parent Company"</b>	in relation to an Open Season User or an Open Season Unit Holder means a "parent undertaking" of that Open Season User or an Open Season Unit Holder, as such term is defined in section 1162 of the Companies Act 2006 of the United Kingdom;
<b>"Parent Company Guarantee"</b>	means a performance guarantee in such form as ElecLink may approve from time to time and issued in favour of ElecLink by a Parent Company of an Open Season User;
<b>"Participating Member States"</b>	means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union;
<b>"Parties"</b>	means ElecLink and the Open Season Users and <b>"Party"</b> means either one of them as the context requires;
<b>"Payment Incident"</b>	has the meaning given in Rule C2.7.1;
<b>"Planned Outage"</b>	means an Outage which is planned in advance by ElecLink;
<b>"Planned Outage Period"</b>	means a period of time during a Product Period where the Interconnector Capability is less than the Interconnector Capability at other times during the Product Period as a consequence of a Planned Outage;
<b>"Price Increment Formula"</b>	means, in relation to a product of Open Season Units, the formula, as designated by ElecLink in accordance with Rule D1.2.12, used by the Auction Manager in determining the Increment for the relevant product in each Round of the Auction;
<b>"Product Period"</b>	means the period of time for which Units are made available in an auction (including any Auction, Long-Term Auction, Daily Auction and/or Intraday Auction, as the case may be), beginning on the first Contract Day of that period and ending at the end of the last Contract Day of that period;
<b>"Range of Total Excess Demand"</b>	means, for a given Section in a given Round, unless specified otherwise by the Auction Manager in the relevant Auction Specification: <ul style="list-style-type: none"> <li>(i) 0 – 40, if Total Excess Demand for the Section is between zero (0) and forty (40) Blocks;</li> </ul>

- (ii) 41 – 60, if Total Excess Demand for the Section is between forty one (41) and sixty (60) Blocks;
- (iii) 61 – 80, if Total Excess Demand for the Section is between sixty one (61) and eighty (80) Blocks;
- (iv) 81 – 100, if Total Excess Demand for the Section is between eighty one (81) and one hundred (100) Blocks;
- (v) 101 – 110, if Total Excess Demand for the Section is between one hundred and one (101) and one hundred and ten (110) Blocks;
- (vi) 111 – 120, if Total Excess Demand for the Section is between one hundred and eleven (111) and one hundred and twenty (120) Blocks;
- (vii) 121 – 125, if Total Excess Demand for the Section is between one hundred and twenty one (121) and one hundred and twenty five (125) Blocks;
- (viii) and so forth in incremental ranges of five (5) Blocks each thereafter;

**"Recipient"** means, in relation to an item of Confidential Information, the person to whom it is disclosed;

**"Règles d'Accès au Réseau Public de Transport Français pour des Importations et des Exportations"** means the *Règles d'Accès au Réseau Public de Transport Français pour des Importations et des Exportations* established by RTE in the version published on RTE's web site from time to time defining the conditions to access the RTE Transmission System for exports and imports;

**"Regulated Units"** means Units that exist on regulated interconnectors on the border between Great Britain and France;

**"Reinstatement Notice"** has the meaning given to it in Rule B2.5;

**"Related Undertaking"** has the meaning given in paragraph 22 of Article 2 of the Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC;

**"Relevant Open Season Unit Holder"** has the meaning given to it in Rule E4.3.13;

**"Resale"** means the offering of Open Season Units in a Long-Term Auction by ElecLink on behalf of an Open Season Unit Holder, and the resulting reallocation of those Open Season Units to another entity in accordance with Rule E4.3, and "Resell" and "Resold" shall have corresponding meanings;

**"Resale Period"** means the period of time specified as such by an Open Season User in a Resale Request;



<b>"Resale Request"</b>	means a written notice from an Open Season Unit Holder to ElecLink requesting ElecLink to Resell the Open Season Unit Holder's Open Season Units during the Resale Period;
<b>"Resale Unit"</b>	has the meaning given to it in Rule E4.3.9;
<b>"Resold Unit Quantity"</b>	means (in megawatt-hours) the product of the (a) number of Open Season Units Resold by the Open Season User at a specific Long-Term Auction (in megawatts) and (b) the aggregate hours of the Unit Validity Times within the Product Period of such Long-Term Auction;
<b>"Revised Open Season Revenues"</b>	means, in relation to an Auction of Open Season Units, the sum of: <ul style="list-style-type: none"> <li>(a) realized and Total Contracted Revenues from the sale of Open Season Units prior to the relevant Auction, and</li> <li>(b) Total Contracted Revenues from the Auction of Open Season Units as revised after the application of the procedure described in Rule D1.9.3;</li> </ul>
<b>"Rights Document"</b>	has the meaning given to it in Rule E2.3.1;
<b>"Round"</b>	means a round of the simultaneous ascending clock Auction for Open Season Units;
<b>"RTE"</b>	means RTE Réseau de transport d'électricité;
<b>"RTE Grid Code"</b>	means the rules, including technical rules, establishing the minimum technical design and operation requirements for connection to the RTE Transmission System established or to be established under Article 18 of the French Electricity Law;
<b>"RTE Settlement Arrangements"</b>	means the arrangements established or to be established under or in accordance with Article 15 of the French Electricity Law including operational planning, system services and payments to and from users of the RTE Transmission System. As at the date of this agreement, the RTE Settlement Arrangements include <i>Accords de participation en qualité de Responsable d'Equilibre</i> ;
<b>"RTE Transmission System"</b>	means the system of electric lines operated by RTE under concession for the transmission of electricity, as defined in the French Electricity Law, the Cahier des Charges de Concession as defined in the amendment dated 10 April 1995 of the concession rules dated 27 November 1958 or as subsequently amended by law;
<b>"Rules"</b>	means these ElecLink Open Season Rules, including the Schedules, as amended from time to time;
<b>"Second Qualification Period"</b>	means, in relation to an Auction, the period of five (5) Business Days, starting on the sixth (6 <sup>th</sup> ) Business Day (or such other time as ElecLink may specify prior to the relevant Auction) after the end of the First Qualification Period, within which a person wishing to participate in the

	relevant Auction must provide to ElecLink any additional or outstanding information reasonably required by ElecLink in connection with that person's eligibility in accordance with these Rules and otherwise in connection with that person's participation in the relevant Auction;
<b>"Secondary Market"</b>	means Resale and Capacity Transfer of Interconnector Capacity, as described in Rule E4;
<b>"Section"</b>	has the meaning given to it in Rule D1.2.14;
<b>"Settlement Period"</b>	means each half-hour period coinciding with Settlement Periods as defined in the Balancing and Settlement Code;
<b>"Standard Training"</b>	means a set of on-line exercises designed by ElecLink to enable Open Season Users to become sufficiently familiar with the CMS and to be undertaken on the test platform of the CMS with remote support from ElecLink and in conjunction with a user guide and other relevant documentation;
<b>"Standing Data"</b>	means, in relation to an Open Season User, the data and other information to be given by the Open Season User to ElecLink described in Schedule 3;
<b>"Starting Price"</b>	means, in relation to a product of Open Season Units, the price (in €/MWh) in the first Round of the Auction. The Starting Price will be designated by ElecLink in accordance with Rule D1.2.13 and: <ul style="list-style-type: none"> <li>(a) shall not be greater than the Maximum Starting Price; and</li> <li>(b) shall not be less than the Minimum Starting Price;</li> </ul>
<b>"Step-in Date"</b>	means the date specified as such in a Step-in Notice;
<b>"Step-in Notice"</b>	means a notice given in accordance with Rules F9.7 and F9.8;
<b>"Step-in Operator"</b>	means a person specified as such in a Step-In Notice and satisfying the criteria set out in Rule F9.8(b);
<b>"Step-in Period"</b>	means the period commencing at 00.00 hours on the Step-In Date and ending at 23.59 hours on the Step-Out Date;
<b>"Step-out Date"</b>	means the earlier of (a) the date specified as such in a Step-out Notice or (b) the Novation Date;
<b>"Substitute Operator"</b>	means a person specified as such in a Novation Notice and satisfying the criteria set out in Rule F9.13(b);
<b>"Suspension Event of Default"</b>	has the meaning given to it in Rule F6.3.2;
<b>"Switch"</b>	means, in relation to an Open Season User in any given Round, to request to reduce the Bid for one product by one or more Blocks and increase the Bid for the other product in the same Section by an equivalent number of Blocks so that the total number of Blocks bid across all products in the Section remains unchanged;

<b>“Switched Block”</b>	means a Block which is the subject of a request to Switch;
<b>"Tangible Net Worth"</b>	in relation to an Open Season User or its Parent Company means that Open Season User's, or its Parent Company's, total Assets minus its Liabilities minus its Intangible Assets;
<b>“Target”</b>	means, in relation to a product of Open Season Units, the quantity (in MW) auctioned for this product measured in Blocks;
<b>"Taxes"</b>	means all forms of taxation and statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and of any jurisdiction and any penalty, fine, surcharge, interest, charges or costs payable in connection with any Taxes;
<b>"Termination Event of Default"</b>	has the meaning given to it in Rule F6.4.2;
<b>“Time-Out”</b>	means, in relation to a Round in an Auction of Open Season Units, extending the duration of the Round at the imposition of the Auction Manager;
<b>“Total Contracted Revenues”</b>	means, in relation to an Auction of Open Season Units, the sum of Contracted Revenues across all products in both Sections;
<b>“Total Excess Demand”</b>	means, for a given Section in a given Round, the sum over all products in that Section of: <ul style="list-style-type: none"> <li>(a) Free Eligibilities; and</li> <li>(b) the sum of the Excess Demands;</li> </ul>
<b>"Transmission System Operator"</b>	means each of NGESO in its capacity as operator of the NGESO Transmission System and RTE in its capacity as operator of the RTE Transmission System;
<b>"Trip"</b>	means any unforeseen event which results in an Outage;
<b>"Unit"</b>	means the right to a Rights Document of 1MW (subject to curtailment) in a particular direction and during the Product Period of the Unit, subject to and on the terms and conditions of these Rules and/or the Allocation Rules;
<b>"Unit Price"</b>	means, for an Open Season Unit, the Auction Price (in euros per megawatt hour) resulting from the Auction at which the Open Season Unit was allocated to the Open Season User;
<b>"Unit Quantity"</b>	means, in megawatt-hours, the product of (a) the number of Open Season Units allocated to the Open Season User at a specific Auction (in megawatts) and (b) the aggregate hours of the Unit Validity Times within the Product Period of such Open Season Units;
<b>"Unit Resale Price"</b>	means, for an Open Season Unit, the auction price (in euros per megawatt hour) resulting from the Long-Term Auction at which the Open Season Unit was Resold by the Open Season User, as set out in Rule E4.3.10;

<b>"Unit Validity Times"</b>	means the specific hours within the Product Period for which the Open Season Units have been offered in the applicable Auction excluding any Planned Outage Period;
<b>"Unused Units"</b>	has the meaning given to it respectively in Rule E5.2.1, and is referred to, in the CMS, as "Not-Nominated capacity";
<b>"Use-It-or-Sell-It" ("UIOSI")</b>	has the meaning given to it in Rule E5;
<b>"Use of System Interconnector Agreement"</b>	means an agreement (including a Framework Agreement as defined in CUSC) between NGENSO and an Open Season User in the form agreed by NGENSO setting out the terms on which the Open Season User may use the NGENSO Transmission System in relation to Energy Transmission;
<b>"Validity Period"</b>	in relation to a Letter of Credit, means the period from the first date for presentation of payment until the last date for presentation of payment as specified in the Letter of Credit;
<b>"Winning Bidder(s)"</b>	means, in relation to a product of Open Season Units, the Open Season User(s) determined in accordance with Rule D1.7;
<b>"Withdraw"</b>	means to request a reduction in the number of Blocks bid on a given product in a given Section and "Withdrawn" and "Withdrawal" have corresponding meanings; and
<b>"Withdrawn Block"</b>	means a Block which is the subject of a request to Withdraw.

## Part II: Interpretation

In these Rules (including its Schedules) unless the context requires otherwise:

- (a) the singular indicates the plural and vice versa;
- (b) references to one gender include all other genders;
- (c) the table of contents, headings and examples are inserted for convenience only and do not affect the interpretation of the Rules;
- (d) the word "including" and its variations are to be construed without limitation;
- (e) any reference to legislation, regulations, directive, order, instrument, code or any other enactment shall include any modification, extension or re-enactment of it then in force;
- (f) any reference to a "Rule" is a reference to a rule contained in the relevant Section, any reference in a Schedule to a "paragraph" is a reference to a paragraph contained in that Schedule and any reference to a "Schedule" is a reference to a Schedule to the Rules. Rules are identified by reference to the relevant Section and Rule number. For example Rule D4 refers to Rule 4 in Section D;
- (g) any reference to another agreement or document, or any deed or other instrument is to be construed as a reference to that other agreement, or document, deed or other instrument as amended, varied, supplemented, substituted or novated from time to time;
- (h) any reference to a day, month or year is to be construed as a reference to a calendar day, month or year as the case may be;
- (i) a reference to time is a reference to CET time unless (otherwise specified);
- (j) the symbol \* requires multiplication to be effected;
- (k) where ElecLink is required to publish any information under these Rules, it may do so by making the information or data available on its website or via the CMS;
- (l) an obligation to use reasonable endeavours shall be construed as an *obligation de moyens*; and
- (m) in the English version of these Rules, words in French in italics are to be interpreted in accordance with their meaning in French and in the French version of these Rules, words in English in italics are to be interpreted in accordance with their meaning in English.

## SCHEDULE 2: FORM OF ELECLINK OPEN SEASON USER AGREEMENT

THIS **ELECLINK OPEN SEASON USER AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

### BETWEEN:

- (1) **ELECLINK LIMITED** a company registered in England and Wales with company number 07595420 whose registered office is at 4 Kingdom Street, W2 6BD, United Kingdom ("**ElecLink**"); and
- (2) **THE OPEN SEASON USER** named in Item 1 of the Schedule to this Agreement whose registration number and registered office are set out in Item 1 of the Schedule ("**Open Season User**").

### RECITALS:

- (A) ElecLink intends to construct (or has constructed) the Interconnector and wishes to make available multi-year capacity in the Interconnector through one or more Auctions of Open Season Units in advance of, or after, the commencement of operation of the Interconnector.
- (B) ElecLink is or will be the operator of the Interconnector and has established the ElecLink Open Season Rules governing the relationship between ElecLink and the Open Season Users and more particularly setting out the arrangements for selling rights to use the Interconnector (including Open Season Units) and the terms of use.
- (C) The Open Season User wishes to be party to this Agreement to enable it to bid for, acquire and use rights to Open Season Units in the Interconnector under the terms of the ElecLink Open Season Rules.
- (D) The Parties are entering into this Agreement for the purposes of giving effect to and binding themselves to the ElecLink Open Season Rules in relation to the Open Season User's acquisition and use of rights to use Open Season Units in the Interconnector.

**NOW IT IS HEREBY AGREED** as follows:

### 1. Definitions and interpretation

- 1.1 In this Agreement including the recitals, capitalised words and phrases have the meanings given to them below except where the context requires otherwise:

**"Agreement"** means this ElecLink Open Season User Agreement;

**"Commercial Delivery Date"** means the date on which ElecLink declares the Interconnector to be operational, following completion of the design, construction, testing and commissioning of the Interconnector (including a period at ElecLink's discretion during which units may be made available on a daily or intra-day basis prior to being made available to the Open Season User under this Agreement) and all Rights and Agreements having been obtained and being in full force and effect, and available for use by the Open Season User in accordance with the Open Season User's entitlement to Open Season Units;

**"ElecLink Open Season Rules"** means the rules of that name established by ElecLink providing for the sale and use of rights to use the Interconnector as amended from time to time, the current version of which is as published on ElecLink's website at the date of this Agreement and has been made available to the Open Season Users;

**"Financial Close"** means the occurrence of both of the following:

- (i) the receipt by ElecLink from the Funders of confirmation of the satisfaction or unconditional waiver of all of the conditions precedent to the Funding Arrangements; and
- (ii) the passing of a resolution of the board of directors of ElecLink approving a final investment decision for the construction of the Interconnector;

**"Financial Close Period"** has the meaning given in Clause 2.1(a);

**"Final Forecast Commercial Delivery Date"** has the meaning given in Clause 3.5;

**"Force Majeure"** has the meaning given in the ElecLink Open Season Rules;

**"Funders"** has the meaning given to that term in Part I of Schedule 1 to the ElecLink Open Season Rules;

**"Funders' Agent"** has the meaning given to that term in Part I of Schedule 1 to the ElecLink Open Season Rules;

**"Funding Arrangements"** has the meaning given to that term in Part I of Schedule 1 to the ElecLink Open Season Rules;

**"Grace Period"** means the period commencing at 24.00 hours on the Final Forecast Commercial Delivery Date and ending at 00.00 hours on the date falling twelve (12) months after the Final Forecast Commercial Delivery Date;

**"Initial Forecast Commercial Delivery Date"** has the meaning given to that term in Part I of Schedule 1 to the ElecLink Open Season Rules;

**"Interconnector"** means the 1,000MW DC interconnector running or to run through the Channel Tunnel between Sellindge in England and Peuplingues in France (and includes any switching bays, cables, converter stations and other plant and apparatus owned by ElecLink connecting the NGESO Transmission System to the RTE Transmission System as such switching bays, cables, converter stations and other plant, apparatus and meters are replaced, modified, developed or added to from time to time);

**"NGESO Transmission System"** has the meaning given to that term in Part I of Schedule 1 to the ElecLink Open Season Rules;

**"Parties"** means ElecLink and the Open Season User and **"Party"** means either one of them as the context requires;

**"Permitted Delay"** means any period or periods of delay in obtaining or entering into the Rights and Agreements and/or in the design, construction, testing, commissioning or connection of the Interconnector, or in commencing the commercial operation of the Interconnector, which is due to Force Majeure;

**"Product Period"** has the meaning given to that term in Part I of Schedule 1 to the ElecLink Open Season Rules;

**"Rights and Agreements"** means all those rights, licences, permissions, permits, consents, approvals, certificates and agreements which may be necessary for the construction and lawful operation and use of the Interconnector;

"**RTE Transmission System**" has the meaning given to that term in Part I of Schedule 1 to the ElecLink Open Season Rules;

"**Unit Price**" has the meaning given in the ElecLink Open Season Rules; and

"**Open Season Users**" has the meaning given in the ElecLink Open Season Rules.

1.2 The rules of interpretation in Part II of Schedule 1 to the ElecLink Open Season Rules apply to this Agreement.

## **2. Condition precedent**

2.1 Where this Agreement is made prior to Financial Close:

- (a) the rights and obligations of the Parties under this Agreement and the ElecLink Open Season Rules, including any rights or obligations arising from any Auction conducted prior to Financial Close, are in all respects conditional upon and subject to Financial Close occurring within 21 days after the conclusion of such Open Season Auction (provided that ElecLink may at its discretion, by notice in writing to the Open Season User prior to expiry of such 21 day period, extend such 21 day period by a further period of up to seven (7) days) (or such longer period as the Parties may agree in writing) (the "**Financial Close Period**"); and
- (b) if for any reason whatsoever Financial Close does not occur within the Financial Close Period, this Agreement shall automatically terminate without any obligation or liability of either Party to the other; and
- (c) ElecLink shall promptly give to the Open Season User notice in writing of the occurrence (or non-occurrence within the Financial Close Period) of Financial Close.

## **3. Provisions applicable prior to the Commercial Delivery Date**

3.1 During the period from Financial Close and continuing through to the Commercial Delivery Date, ElecLink shall use reasonable endeavours, and subject to any Permitted Delay, to:

- (a) obtain and enter into the Rights and Agreements (to the extent not already obtained or entered into);
- (b) lawfully design, construct, test, commission, and commence commercial operation of the Interconnector, or cause the same to occur; and
- (c) provide to the Open Season User from time to time non-binding good faith updates on relevant milestones achieved by ElecLink during the design-build phase as credible and relevant information becomes available (but not less frequently than one update every six months).

3.2 The Product Period for all Open Season Units allocated to the Open Season User in any Auction which is concluded prior to the Commercial Delivery Date shall commence on the Commercial Delivery Date.

3.3 As at the date of this Agreement, and subject to Financial Close and any Permitted Delay, the Commercial Delivery Date is forecast to occur on a day falling within a period of six (6) months which will commence on the Initial Forecast Commercial Delivery Date (the "**Six Month Window Period**"). For the avoidance of doubt, the Commercial Delivery Date shall not occur prior to the



Initial Forecast Commercial Delivery Date, irrespective of whether ElecLink has commissioned the Interconnector or caused the same to occur.

- 3.4 By no later than six (6) months prior to the commencement of the Six Month Window Period, ElecLink shall use its reasonable endeavours to identify, and notify to the Open Season User, a three month period falling within the Six Month Window Period (the "**Three Month Window Period**") during which the Commercial Delivery Date is, at the time of such notice, and taking account of any Permitted Delay arising prior to such notice, forecast to occur; provided that if for any reason ElecLink does not give such notice, the Three Month Window Period shall be deemed to be the final 90 days of the Six Month Window Period (as extended by any period of Permitted Delay).
- 3.5 By no later than three (3) months prior to the commencement of the Three Month Window Period, ElecLink shall use its reasonable endeavours to identify, and notify to the Open Season User, a day falling within the Three Month Window Period (the "**Final Forecast Commercial Delivery Date**") during which the Commercial Delivery Date is, at the time of such notice, and taking account of any Permitted Delay arising prior to such notice, forecast to occur; provided that if for any reason ElecLink does not give such notice, the Final Forecast Commercial Delivery Date shall be deemed to be the last day of the Three Month Window Period (as extended by any period of Permitted Delay).
- 3.6 The commencement of the Six Month Window Period and/or the commencement of the Three Month Window Period and/or (as the case may be) the Final Forecast Commercial Delivery Date shall be extended by a period equal to any period of Permitted Delay.
- 3.7 If the Commercial Delivery Date is later than the Final Forecast Commercial Delivery Date (as extended in accordance with clause 3.6, if applicable), and provided no Suspension Event of Default or Termination Event of Default (as defined in the ElecLink Open Season Rules) has occurred and is continuing as at the Commercial Delivery Date, then the Unit Price of each Open Season Unit allocated to the Open Season User in any Auction concluded prior to the Commercial Delivery Date (a "**Relevant Open Season Unit**") shall be reduced for each hour of the full Product Period of that Relevant Open Season Unit as follows:

$$UP_D = UP - \frac{\sum_{i=1}^N RP_i}{H_{PP}}$$

where:

- (a)  $UP_D$  is the discounted Unit Price payable by the Open Season User for that Relevant Open Season Unit pursuant to this Clause 3.7;
- (b)  $UP$  is the Unit Price payable by the Open Season User for that Relevant Open Season Unit pursuant to the applicable Auction;
- (c)  $i$  denotes the hour(s) included in the period from 24:00 hours on the Final Forecast Commercial Delivery Date until 00.00 hours on the Commercial Delivery Date;
- (d)  $N$  is the last hour included in the period from 24:00 hours on the Final Forecast Commercial Delivery Date until 00.00 hours on the Commercial Delivery Date;
- (e)  $RP_i$  is:
- (i) for a Relevant Open Season Unit in the direction from France to Great Britain, the greater of:

- (1) zero (0); or
- (2) the lesser of:
  - (A) the value (expressed in EUR/MWh) of, (aa) the Mid-Interconnector Day-Ahead Market Spread in the direction France to Great Britain in hour  $i$ , minus (bb)  $UP$ ; and
  - (B) 10 EUR/MWh; and
- (ii) for a Relevant Open Season Unit in the direction from Great Britain to France, zero (0); and
- (f)  $H_{PP}$  is the number of hours in the Product Period of that Relevant Open Season Unit.

For the avoidance of doubt, if  $UP - \frac{\sum_{i=1}^N RP_i}{H_{PP}}$  results in a negative number, then  $UP_D$  will equal zero.

If this Clause 3.7 applies, then all references in the ElecLink Open Season Rules to the Unit Price shall, in relation to the Relevant Open Season Units, be deemed to refer to the Unit Price as so discounted ( $UP_D$ ).

- 3.8 If the Commercial Delivery Date has not occurred within six (6) months after the Final Forecast Commercial Delivery Date, the Open Season User may at any time thereafter give not less than six (6) months' notice in writing to ElecLink and to the Funders' Agent of its intention to terminate this Agreement at the end of such notice period (the "**Notice of Intention Period**").
- 3.9 If the Open Season User has given notice as provided in Clause 3.8 and if the Commercial Delivery Date has not occurred by the end of the Grace Period, the Open Season User may, after expiry of the Notice of Intention Period, then terminate this Agreement with immediate effect by further notice in writing to ElecLink and to the Funders' Agent; provided that, if the Commercial Delivery Date occurs after the end of the Grace Period but before the Open Season User gives notice of termination under this Clause 3.9, the Open Season User's right of termination under this Clause 3.9 shall cease and no longer apply.
- 3.10 For the avoidance of doubt, but subject to the express provisions of this Clause 3, the provisions of Rules F5 (*Force Majeure*) and F7 (*Liability*) of the ElecLink Open Season Rules apply to this Agreement and to the obligations and liabilities of the Parties under this Agreement, and in addition:
  - (a) the Parties acknowledge (and waive any right to claim or assert otherwise) that it would be impracticable to determine the extent of any loss, damage and/or expenditure that either Party would suffer in the event of any delay in the occurrence of the Commercial Delivery Date, or in the event of the non-occurrence of the Commercial Delivery Date, and that the provisions of this Clause 3 provide a fair and reasonable allocation of risk between the Parties and fair and reasonable rights and remedies for the Open Season User and represent a genuine pre-estimate by the Parties of such loss, damage and/or expenditure;
  - (b) the Open Season User agrees that:
    - (i) the rights and remedies expressly provided for in this Clause 3 shall be the only rights and remedies of the Open Season User arising from or in connection with a delay in the occurrence of the Commercial Delivery Date, or from or in connection with the non-occurrence of the Commercial Delivery Date, however

such delay or non-occurrence may occur or arise, including as a result of any wilful default, recklessness or negligence of ElecLink or of any contractor, agent, officer or Affiliate of ElecLink (as defined in the ElecLink Open Season Rules); and

- (ii) all (if any) other rights and remedies (whether arising under statute or in law, equity, contract or tort or otherwise) are hereby excluded; and
- (iii) the Open Season User waives and releases all (if any) other rights and remedies (whether arising under statute or in law, equity, contract or tort or otherwise).

3.11 Clause 3.10 does not (and shall not operate so as to) limit or exclude any liability for fraud (including fraudulent misrepresentation) or for personal injury or death caused by negligence.

#### **4. ElecLink Open Season Rules**

4.1 Subject to Clauses 2 and 3 of this Agreement, with effect from the date of execution of this Agreement by both Parties:

- (a) the ElecLink Open Season Rules are hereby given effect between and made binding upon each Party; and
- (b) each Party undertakes to the other Party to comply with and perform its obligations in accordance with and subject to the ElecLink Open Season Rules.

#### **5. Warranties**

5.1 The Open Season User warrants to ElecLink at the time of entering into this Agreement that:

- (a) the information and data provided by the Open Season User to ElecLink in its Application Form (as defined in the ElecLink Open Season Rules) is true, accurate and complete in all respects;
- (b) the Open Season User will not by entering into this Agreement or acquiring rights under the ElecLink Open Season Rules infringe any anti-trust or competition legislation or any undertaking or other obligation arising under any antitrust or competition legislation;
- (c) in the case of an Open Season User that is not a natural person, it is duly incorporated and validly existing under the laws of its country of incorporation;
- (d) the Open Season User has full power and authority to enter into and perform this Agreement and to acquire and exercise rights and perform its obligations under the ElecLink Open Season Rules and all necessary action has been taken on its part to authorise entry into and performance of this Agreement and its obligations under the ElecLink Open Season Rules;
- (e) this Agreement and the Open Season User's obligations under the ElecLink Open Season Rules constitute its legal, valid and binding obligations, enforceable against it in accordance with the terms of this Agreement and the ElecLink Open Season Rules;
- (f) the Open Season User has taken the steps necessary to ensure that it has access to all the relevant documentation issued by ElecLink including but not limited to the ElecLink Open Season Rules; and

(g) the Open Season User is not insolvent and it has no knowledge of any possible insolvency proceedings that may be brought against it in the immediate future.

5.2 If any of the above ceases to be true with regard to the Open Season User at any time prior to termination of this Agreement, the Open Season User shall promptly notify ElecLink of that fact and shall provide full details.

## **6. Notices**

6.1 All notices and other communications between the Parties under or in connection with this Agreement and the ElecLink Open Season Rules must be given in accordance with the ElecLink Open Season Rules.

6.2 The address and contact details for ElecLink are set out in Item 3 of the Schedule to this Agreement. The address and contact details for the Open Season User are set out in Item 2 of the Schedule to this Agreement.

6.3 The address and contact details of a Party can be amended from time to time by notice from that Party to the other Party.

## **7. Termination**

This Agreement may be terminated only:

(a) in accordance with Clauses 2.1(b) or 3.9 of this Agreement; or

(b) as provided for in the ElecLink Open Season Rules.

## **8. General**

8.1 This Agreement and the ElecLink Open Season Rules are governed by and construed in accordance with English law.

8.2 This Agreement and the ElecLink Open Season Rules must be read and construed as one document. References in the ElecLink Open Season Rules to the ElecLink Open Season User Agreement must be read and construed as references to the ElecLink Open Season Rules and this Agreement.

8.3 If any provision of this Agreement or the ElecLink Open Season Rules is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject or pursuant to arbitration under the ElecLink Open Season Rules or by order of any Competent Authority (as defined in the ElecLink Open Season Rules), such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of the ElecLink Open Season Rules and this Agreement which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.

**SIGNED** by the Parties as an Agreement.

**SIGNED** by and on behalf of *[insert Open Season User entity name]* by its duly authorised representative in the presence of:

.....  
Signature of authorised representative

.....  
Signature of witness

.....  
Full name of authorised representative

.....  
Full name of witness

.....  
Title of authorised representative

**SIGNED** by and on behalf of *ElecLink Limited* by its duly authorised representative in the presence of:

.....  
Signature of authorised representative

.....  
Signature of witness

.....  
Full name of authorised representative

.....  
Full name of witness

.....  
Title of authorised representative

## The Schedule

### Item 1: The Open Season User

Name:	<i>[Insert]</i>
Registered number	<i>[Insert]</i>
Registered address:	<i>[Insert]</i>

### Item 2: Notices to the Open Season User

Address for notices:	<i>[Insert]</i>
Fax	<i>[Insert]</i>
Telephone:	<i>[Insert]</i>
Attention:	<i>[Insert]</i>

### Item 3: Notices to ElecLink

Address for notices:	<i>[Insert]</i>
Fax	<i>[Insert]</i>
Telephone:	<i>[Insert]</i>
Attention:	<i>[Insert]</i>

### **SCHEDULE 3: STANDING DATA**

This Schedule 3 lists the Standing Data to be provided by each Open Season User. Rule B3 requires Open Season Users to keep their Standing Data up to date.

1. Name.
2. Company registration number.
3. Registered address.
4. Address for correspondence.
5. Telephone number.
6. Facsimile number.
7. Commercial contact person and their contact details.
8. Operational contact person and their contact details. (CMS Main Contact).
9. Invoicing contact person and their contact details.
10. Identification of the Open Season User's Production Interconnector BM Unit and Consumption Interconnector BM Unit under the Balancing and Settlement Code.
11. Identification of the *Accord de Participation* of the Open Season User with RTE.
12. Energy Identification Code (EIC).
13. E-mail address for operational communications.
14. Value Added Tax (VAT) registration number.

## **SCHEDULE 4: BUSINESS RULES FOR USE OF OPEN SEASON INTERCONNECTOR CAPACITY**

### **1. Introduction**

- 1.1 This Schedule 4 describes the business process and timings of the following activities:
  - (a) calculation and notification by ElecLink of the Settlement Period values of the Rights Documents for each Open Season User in each direction for each Contract Day;
  - (b) notification by each Open Season User of Resales and Capacity Transfers; and
  - (c) submission by each Open Season User of Mid-Interconnector Nominations in each direction for each Contract Day.
- 1.2 Notwithstanding Rule A4.7, timings given in this Schedule 4 are nominal timings, which may be subject to change from time to time and under exceptional circumstances. In this case, Open Season Users would be informed of new timings to follow in due time.
- 1.3 Times are given in CET.
- 1.4 Open Season Users should note that in addition to these Business Rules, in using the Interconnector they must comply with the GB Grid Code, the Open Season User's Accord de Participation with RTE and any other applicable legislation or rules in Great Britain or France.

### **2. Energy Accounts**

- 2.1 Each Open Season User must identify its Production and Consumption Interconnector BM Units under the BSC and the Accord de Participation under the RTE Settlement Arrangements in its Standing Data.
- 2.2 Each Open Season User may notify an Energy Transmission against one of each of the types of Energy Account referred to above in any one Settlement Period.

### **3. Open Season business process**

- 3.1 Dates of Auctions are published in advance by ElecLink.
- 3.2 An Auction opens and closes at the times specified by ElecLink. During this period of time, Open Season Users can submit Bids to ElecLink, in accordance with Rule D1.
- 3.3 Once the Auction is closed, at the time specified by ElecLink, Open Season Units are allocated, pursuant to Rule D1.7 and the terms of the ElecLink Open Season User Agreement.
- 3.4 Capacity Transfer Notices and Resale Requests of Open Season Units initially allocated in any previous Auction can be submitted to ElecLink, in accordance with Rule E4, up to 30 minutes before the final specification of a Long-Term Auction. Any Capacity Transfer of Open Season Units must be confirmed by the Open Season User to whom the Capacity Transfer was made and by ElecLink within 3 hours of the Capacity Transfer Notice being received by ElecLink, and no later than 30 minutes before the final specification of the relevant Long-Term Auction.
- 3.5 Any Open Season Unit for the Contract Day D can be subject to a Capacity Transfer Notice until 15:30 on the day D-2.



- 3.6 ElecLink will notify each Open Season Unit Holder of its Open Season Rights Document for Contract Day D in each direction, pursuant to Rule E2, at 16:15 on the day D-2.
- 3.7 Open Season Unit Holders can submit Mid-Interconnector Nominations of Open Season Units for the Contract Day D, from opening of the gate for Open Season Mid-Interconnector Nominations at 16:30 on the day D-2 until Open Season Mid-Interconnector Nominations gate-closure at 09:30 on day D-1, in accordance with Rule E3 (or at any other time specified in advance by ElecLink).

## **SCHEDULE 5: LIST OF OPEN SEASON PRODUCTS**

### **1. List of Open Season products**

- 1.1 On, or (subject to paragraph 1.3 below) at any time after, the date of entry into force of these Rules, the following products may be offered under Auctions:
- (a) 3-year products;
  - (b) 5-year products; and
  - (c) 10-year products.
- 1.2 Subject to Rule A4, ElecLink may offer other Open Season products if in its reasonable opinion the current Open Season products are not sufficient. ElecLink will give Open Season Users reasonable notice of such other Open Season products and the timings of when such products may be offered.
- 1.3 Paragraphs 1.1 and 1.2 are subject to the proviso that no Open Season product shall be offered with a Product Period extending beyond the 20th anniversary of the commencement of operation of the Interconnector.

## SCHEDULE 6: CREDIT RATINGS AND TANGIBLE NET WORTH REQUIREMENTS

**Table 1 – Open Season Auction Credit Requirement**

Volume per direction (MW)	Credit metric	Product Period	
		1 to 5 years	6 to 10 years
1 to 20	<i>Credit Rating</i> <i>(Standard &amp; Poor's/Moody's)</i>	BBB- / Baa3	BBB / Baa2
	<i>Tangible Net Worth</i>	€30 million	€100 million
21 to 50	<i>Credit Rating</i> <i>(Standard &amp; Poor's/Moody's)</i>	BBB- / Baa3	BBB / Baa2
	<i>Tangible Net Worth</i>	€50 million	€250 million
51 to 150	<i>Credit Rating</i> <i>(Standard &amp; Poor's/Moody's)</i>	BBB / Baa2	BBB+ / Baa1
	<i>Tangible Net Worth</i>	€250 million	€500 million
151 to 300	<i>Credit Rating</i> <i>(Standard &amp; Poor's/Moody's)</i>	BBB+ / Baa1	A- / A3
	<i>Tangible Net Worth</i>	€500 million	€1,000 million
301 to 400	<i>Credit Rating</i> <i>(Standard &amp; Poor's/Moody's)</i>	A- / A3	A / A2
	<i>Tangible Net Worth</i>	€1,000 million	€2,000 million

**Table 2 – Open Season Continuing Credit Requirement**

Volume (MW)	Credit metric	Original Product Period	
		1 to 5 years	6 to 10 years
1 to 20	<i>Credit Rating</i> <i>(Standard &amp; Poor's/Moody's)</i>	BB/Ba2	BB+/Ba1
	<i>Tangible Net Worth</i>	€15 million	€75 million
21 to 50	<i>Credit Rating</i> <i>(Standard &amp; Poor's/Moody's)</i>	BB/Ba2	BB+/Ba1
	<i>Tangible Net Worth</i>	€30 million	€125 million
51 to 150	<i>Credit Rating</i> <i>(Standard &amp; Poor's/Moody's)</i>	BB+/Ba1	BBB-/Baa3
	<i>Tangible Net Worth</i>	€125 million	€250 million
151 to 300	<i>Credit Rating</i> <i>(Standard &amp; Poor's/Moody's)</i>	BBB-/Baa3	BBB/Baa2
	<i>Tangible Net Worth</i>	€250 million	€750 million
301 to 400	<i>Credit Rating</i> <i>(Standard &amp; Poor's/Moody's)</i>	BBB/Baa2	BBB+/Baa1
	<i>Tangible Net Worth</i>	€750 million	€1,500 million

## SCHEDULE 7: EXAMPLE OF THE OPEN SEASON AUCTION CREDIT REQUIREMENT

Note – the worked examples in this Schedule are by way of illustration only and are not to be used for the purposes of construction of these Rules.

### 1. Worked example of Open Season Auction Credit Requirement

Assuming a Discount Rate of 5% and an Adjustment Coefficient of 1, the Maximum Potential Credit Exposure associated with a Bid for (a) 10 MW, (b) a Product Period of 5 years starting on 1 January 2018 and ending on 31 December 2022, and (c) a Bid Price of 1 EUR/MWh, is equal to EUR 398,443 as shown in the tables below.

Assumptions	
Bid Capacity <sub>t</sub> (MW)	10
Bid Price <sub>t</sub> (€/MWh)	1
Discount Rate (%)	5%
Adjustment Coefficient	1
Base Year	2018

Maximum Potential Credit Exposure					
Year <sub>t</sub>	2018	2019	2020	2021	2022
Bid Capacity <sub>t</sub> (MW)	10	10	10	10	10
Hours <sub>t</sub>	8,760	8,760	8,784	8,760	8,760
Bid Price <sub>t</sub> (€/MWh)	1.0	1.0	1.0	1.0	1.0
$\frac{(Bid\ Capacity_t * Hours_t * Bid\ Price_t)}{(1 + DR)^{(t - Base\ Year)}}$	87,600	83,429	79,673	75,672	72,069
$\sum_{t=1}^N \frac{(Bid\ Capacity_t * Hours_t * Bid\ Price_t)}{(1 + DR)^{(t - Base\ Year)}}$	398,443				
Adjustment Coefficient	1				
Maximum Potential Credit Exposure (€)	398,443				

## 2. Worked example of Open Season Continuing Credit Requirement

Assuming a Discount Rate of 5% and an Adjustment Coefficient of 1, the Maximum Potential Credit Exposure on 1 January 2020 of an Open Season Unit Holder who has been allocated 10 MW for a Product Period of 5 years starting on 1 January 2018 and ending on 31 December 2022 at a Unit Price of 1 EUR/MWh, is equal to EUR 250,724 as shown in the tables below.

<b>Assumptions</b>	
Number of Units <sub>t</sub> (MW)	10
Unit Price <sub>t</sub> (€/MWh)	1
Discount Rate (%)	5%
Adjustment Coefficient	1
Reference Year	2020

<b>Maximum Potential Credit Exposure</b>					
Year <sub>t</sub>	2018	2019	2020	2021	2022
Number of Units <sub>t</sub> (MW)	10	10	10	10	10
Hours <sub>t</sub>	0	0	8,784	8,760	8,760
Unit Price <sub>t</sub> (€/MWh)	1.0	1.0	1.0	1.0	1.0
$\frac{(\text{Number of Units}_t * \text{Hours}_t * \text{Unit Price}_t)}{(1 + DR)^{(t - \text{Reference Year})}}$	0	0	87,840	83,429	79,456
$\sum_{t=1}^N \frac{(\text{Number of Units}_t * \text{Hours}_t * \text{Unit Price}_t)}{(1 + DR)^{(t - \text{Reference Year})}}$	250,724				
Adjustment Coefficient	1				
Maximum Potential Credit Exposure (€)	250,724				

## **SCHEDULE 8: LETTER OF ACKNOWLEDGEMENT AND UNDERTAKING IN RELATION TO ASSIGNMENT OF THE ELECLINK OPEN SEASON USER AGREEMENT**

To: (1) [Name and address of Funders' Agent]

(2) ElecLink Limited  
[address]

[date]

Dear Sirs

**ElecLink Open Season User Agreement dated [ • ] between ElecLink Limited and [name of Open Season User]**

We acknowledge receipt from ElecLink Limited ("**ElecLink**") of the notice of assignment dated [date] ("**Notice of Assignment**") of the ElecLink Open Season User Agreement dated [date] and made between ElecLink and ourselves (the "**Open Season User Agreement**").

We note that ElecLink has assigned to you by way of security its right, title and interest in the Open Season User Agreement and in all amounts of any kind payable by us to ElecLink under the Open Season User Agreement as security for certain liabilities and obligations of ElecLink to you.

In accordance with the Notice of Assignment and the instructions given to us by ElecLink, which (as we confirm and agree with you) cannot be revoked or varied without your consent, and in consideration of valuable consideration, receipt of which we acknowledge:

- (a) we note and acknowledge that until such time as you give us notice to the contrary we may continue to deal with ElecLink for all purposes in relation to the Open Season User Agreement, and in particular (but without limitation): (i) we may continue to make payment to ElecLink of all sums due from us to ElecLink and (ii) we may continue to serve notices and send other communications under the Open Season User Agreement to ElecLink at the address and contact details specified in the Open Season User Agreement; however, we acknowledge that, upon and from the receipt by us of such notice from you, you may exercise all rights and powers of ElecLink under the Open Season User Agreement, including the right to receive payment of sums due from us under the Open Season User Agreement and the right to receive notices and other communications under the Open Season User Agreement;
- (b) we undertake with you to comply with our obligations under Rule F9.2 of the ElecLink Open Season Rules (which are incorporated into the Open Season User Agreement); and
- (c) we undertake with you not to agree to any termination of the Open Season User Agreement pursuant to Rule F6 of the ElecLink Open Season Rules without your prior written consent.

This acknowledgement and undertaking is governed by English law and we irrevocably submit to the jurisdiction of the courts of England in relation to any claim by you against us arising out of or in connection with this letter of acknowledgement and undertaking, but without prejudice to our right to require any claim or dispute under the Open Season User Agreement to be determined in accordance with Rule F8 of the ElecLink Open Season Rules which are incorporated into the Open Season User Agreement.

Yours faithfully

.....  
**[Open Season User]**  
(Authorised signatory)

[PRINT ON COMPANY LETTERHEAD]

**SCHEDULE 9: MARKET SHARE DECLARATION TEMPLATE**

To: ElecLink Limited  
[Address]

From: [Name of Open Season User] (the "Open Season User")

Date: [Date]

The Open Season User named herein above wishes to participate in the Open Season Auction(s) and/or the Secondary Market for Open Season Interconnector Capacity conducted by ElecLink under the ElecLink Open Season Rules.

I, in the capacity of [position of the person signing the declaration] of the Open Season User HEREBY CERTIFY as at the date of this declaration that, having made due and careful enquiry and to the best of my knowledge, information and belief:

- i. the Market Share of the Open Season User and all of its Related Undertakings in France [exceeds/does not exceed] (delete as applicable) 40%;
- ii. the Market Share of the Open Season User and all of its Related Undertakings in Great Britain [exceeds/does not exceed] (delete as applicable) 40%; and
- iii. the Open Season User's Bid(s) in the Open Season Auction(s) will comply with Rule B2.2.2 in the ElecLink Open Season Rules.

I am duly authorised to submit this declaration for and on behalf of the Open Season User and enclose evidence of my authority to do so for and on behalf of the Open Season User.

Capitalised terms in this declaration have the meanings given to them in Part 1 of Schedule 1 of the ElecLink Open Season Rules.

Yours sincerely,

.....  
Signature of authorised representative

.....  
Full name of authorised representative

.....  
Title of authorised representative