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| **MODIFICATION PROPOSAL FORM** | | | | | |
| **Proposer**  *(Company)* | **Date of receipt**  *(assigned by Secretariat)* | | **Type of Proposal**  *(delete as appropriate)* | | **Modification Proposal ID**  *(assigned by Secretariat)* |
| **EirGrid plc and SONI Ltd** | **28 November 2017** | | **Standard / Urgent/Provisional** | | **Mod\_16\_17 version 3.0** |
| **Contact Details for Modification Proposal Originator** | | | | | |
| **Name** | | **Telephone number** | | **Email address** | |
| **Michael Kelly** | | **01 2370242** | | [**michael.kelly@eirgrid.com**](mailto:michael.kelly@eirgrid.com) | |
| **Modification Proposal Title** | | | | | |
| **Funding in relation to EirGrid/SONI payment obligations** | | | | | |
| **Documents affected**  *(delete as appropriate)* | | **Section(s) Affected** | | **Version number of T&SC or AP used in Drafting** | |
| **T&SC Part A/Part B/Part C**  **Appendices Part A/Part B**  **Glossary Part A/Part B/Part C**  **Agreed Procedures Part A/Part B** | | ***B.21.1.8:* B.13.1: F.22:** | |  | |
| **Explanation of Proposed Change**  *(mandatory by originator)* | | | | | |
| The Trading and Settlement Code for I-SEM places obligations on EirGrid and SONI to make payments in relation to such items as dispatch balancing and capacity market in accordance with specified settlement timelines and to cover the costs of the residual error and foreign exchange rate movements as they arise.  Payments are typically made to generators and these are in large part funded by charges placed on suppliers. While the market has been designed such that payments are recovered by charges in the long term, a funding gap can occur for a number of reasons, some examples are as follows:   1. **Forecasting Risk**: Charges (in the form of annual tariffs) are set on forecast expenditure for such items as Dispatch Balancing Costs and Residual Error. If the forecast used to set the annual tariff turns out to be lower than the actual spend there will be an under- recovery, payments to generators will exceed revenue from suppliers and a funding imbalance will occur until the under-recovered amount can be reclaimed in the next tariff year(s). 2. **Overestimation of system demand**: An annual tariff typically takes the form of a fixed charge per MWh of demand. If the calculation of such a tariff is based on a demand forecast (denominator in the equation) which turns out to be higher than actual demand this will result in less than expected revenue being collected. However payments to generators do not necessarily reduce at times of low system demand, which can result in an under-recovery. 3. **Misalignment of payment and recovery mechanisms**: Suppler charges are largely recovered on a per MWh of demand basis, while payments to generators are not necessarily correlated with demand (as in the Capacity Payment are a fixed monthly payment). Another example would be that payments to generators for dispatch balancing costs can be high in periods of low demand, while revenue from suppliers to support such payments naturally reduces during low demand months. In a number of areas, such as residual error and exchange rate fluctuations, the I-SEM market design is no longer revenue neutral to the same extent that SEM would have been (in that the cost of these items was passed through to suppliers as they occurred in SEM). This ‘pass-through’ arrangement resulted in volatility in supplier charges, which has been replaced in I-SEM by fixed tariffs and more stable charges for suppliers but with a consequentially higher working capital requirement for the Market Operator.   It is proposed that SEMO should put in place an appropriate amount of contingent capital to meet this funding gap, thus allowing payments to be managed in an orderly manner. Notwithstanding that with an appropriate level of contingent capital in place the market should be able to manage these imbalances under normal conditions; it is still possible that circumstances will arise where the revenue from charges plus the available contingent capital will be insufficient to make all payments as they fall due. However under the current TSC Part B EirGrid and SONI are still liable to make payments over and above the funding available. Paragraph B.21.1.8 provides that “Nothing in the Code or the Framework Agreement relating to limitation on liability shall prevent or restrict any Party from enforcing any obligation owed to it under or pursuant to the Code in accordance with the provisions of the Code subject to any applicable limitation of liability”. While this may be a low probability event, an inability to make payments as they fall due would represent a payment default and could be subject to a dispute under the TSC and subsequent legal action.  One remedy might be to put such a large amount of contingent capital in place that there is no risk of a funding shortfall. However this would be a prohibitively expensive and impractical solution as lending institutions will link costs and limits to the ability to pay.  Another potential mitigation measure would be to increase TSC charges at short notice and outside of the normal tariff setting timelines. While this may be part of the solution it is considered that making sufficiently large changes in short periods of time may not always be a practical or full solution, and will be difficult for participants to manage.  Therefore it is proposed that should revenue from charges and contingent capital be insufficient to make payments as they fall due, that the TSC makes provision that such payments can be suspended and accrued until such time as revenue from tariff charges allows payments to recommence.  For the initial of I-SEM it has been estimated that the appropriate amount of contingent capital would be 150m€. This estimate has been made by examining each potential source of funding deficit and estimating the scale and risk of a funding gap.  This facility will play an important part in market stability by ensuring that market payments continue to be made in accordance with the timelines set out in the TSC to the extent possible, while any over or under recovery is eventually reconciled by adjusting tariffs in Tariff Years Y+1 or Y+2.  Therefore it is proposed that the TSC make reference to the Contingent Capital Requirement and set out what measures are in place in the event that the undrawn Contingent Capital plus any accumulated surplus of charges over payments is less that the payments due. | | | | | |
| **Legal Drafting Change**  *(Clearly show proposed code change using* ***tracked*** *changes, if proposer fails to identify changes, please indicate best estimate of potential changes)* | | | | | |
| **Market Working Capital Code Changes**  ***Add the following words at the end of paragraph B.21.1.8[[1]](#footnote-1):***  “and without limiting sections F.21, F.22 or G.2.7.”  ***Insert a new subheading at the beginning of section B.13 under the existing heading, as follows****:*  **B.13.1 General**  ***Insert a new clause B.13.2, as follows:***  B.13.2 **Market Working Capital Credit Facility**  B.13.2.1 The Market Operator shall use reasonable endeavours to:   1. establish and maintain a credit facility (“**Market Working Capital Credit Facility**”) with one or more banks or financial institutions to provide working capital funding for market settlements where payments due are not fully recovered by the combined charges; and   (b) ensure that the total amount available to be drawn down under the Market Working Capital Credit Facility in aggregate is at least equal to the Contingent Capital Requirement.  B.13.2.2 It is intended that:  (a) the Market Operator’s costs of establishing and maintaining the Market Working Capital Credit Facility (including establishment and commitment fees) will be recovered through Market Operator Charges in accordance with section G.7; and  (b) the Market Operator’s costs of any draw down on, and repayment of, the Market Working Capital Credit Facility (including draw down fees, repayment of principal and payment of interest) will be recovered through Imperfections Charges in accordance with section F.12.  B.13.2.3 The Market Operator may amend, vary, replace or substitute the Market Working Capital Credit Facility.  ***Insert a new section F.22 at the end of Chapter F, as follows:***  **F.22 MARKET WORKING CAPITAL SHORTFALL**  F.22.1 **Market Working Capital Concepts**  F.22.1.1 The Market Operator may, from time to time, propose to the Regulatory Authorities for approval a change to the Contingent Capital Requirement.  F.22.1.2 In a proposal under paragraph F.22.1.1, the Market Operator:   1. shall set out the justification for the change proposed by the Market Operator and any relevant research or analysis carried out by (or on behalf of) the Market Operator relating to such justification; and 2. may include alternative amounts in respect of the Contingent Capital Requirement from that proposed by the Market Operator and the arguments for and against any such alternatives.   F.22.1.3 Upon receiving a proposal under paragraph F.22.1.1, the Regulatory Authorities shall consider the proposal and confirm that they either approve or do not approve the proposed change to the Contingent Capital Requirement.  F.22.1.4 The Market Operator shall publish the revised Contingent Capital Requirement and the date and time on which it comes into effect, within 5 Working Days of receipt of the Regulatory Authorities' approval under this section F.22.1.  **F.22.2 Management of Market Working Capital**  F.22.2.1 The Market Operator shall maintain a record (“**Working Capital Account**”) in which it will monitor the amount of working capital, where for each Billing Period:   1. if the total amount of Settlement Charges calculated by the Market Operator as being payable by Participants exceeds the total amount of Settlement Payments calculated by the Market Operator as payable to Participants, an increase in working capital is recorded equal to the amount of the difference; and 2. if the total amount of Settlement Payments calculated by the Market Operator as payable to Participants exceeds the total amount of Settlement Charges calculated by the Market Operator as being payable by Participants, a decrease in working capital is recorded equal to the amount of the difference,   with such adjustments as the Market Operator (acting reasonably) considers appropriate.  F.22.2.2 The Market Operator shall calculate the Available Working Capital Amount for each Billing Period, as follows:   1. the total amount of Settlement Charges calculated by the Market Operator as being payable by Participants for that Billing Period; **minus** 2. the total amount of Settlement Payments calculated by the Market Operator as being payable to Participants for that Billing Period; **plus** 3. the amount of working capital which the Market Operator determines is available for use in respect of that Billing Period, by reference to the Working Capital Account as at the commencement of that Billing Period, which may be negative or zero; **plus** 4. the amount which the Market Operator determines is available to be drawn down under the Market Working Capital Credit Facility in respect of that Billing Period, which amount (i) shall not cause the total amount drawn down under the Market Working Capital Credit Facility in aggregate to exceed the Contingent Capital Requirement and (ii) may be zero.     F.22.2.3 For the purposes of this section F.22:     1. **Settlement Charges** mean the charges calculated under the following sections of the Code as being payable by Participants: sections F.5, F.7, F.8, F.9, F.10, F.11, F.12, F.13, F.14, F.15 and F.19; and 2. **Settlement Payments** mean the payments calculated under the following sections of the Code as being payable to Participants: sections F.5, F.6, F.7, F.8, F.11 and F.17.   F.22.2.4 As soon as practicable after receiving a request from the Regulatory Authorities to do so, the Market Operator shall notify Participants of the amount drawn-down under the Market Working Capital Credit Facility at the time that the notification is given by the Market Operator and if the Market Operator considers that there is likely to be a reduction in payments to Participants under paragraph F.22.3.1  F.22.2.5 If the Market Operator considers that either the current rate of draw-downs being made under the Market Working Capital Credit Facility or the amount drawn-down under the Market Working Capital Credit Facility specified in a notice to Participants under F.22.2.4 is such that there is likely to be a reduction in payments to Participants under paragraph F.22.3.1, then the Market Operator shall:   1. investigate an increase in the level of the Market Working Capital Credit Facility, and may make a proposal to the Regulatory Authorities under paragraph F.22.1.1; 2. identify any other measures available to it under this Code that, solely to the extent practicable in the circumstances, the Market Operator considers reasonable to lessen the likelihood of making a reduction of payments to Participants under paragraph F.22.3.1, including, but not limited to, making a Modification Proposal, proposing revisions to the Imperfections Charge Factor under paragraph F.12.1.4 (having regard to the need of Suppliers to provide adequate notice of tariff changes to their customers) or any combination of measures which the Market Operator considers appropriate in the circumstances; and 3. submit a report to the Regulatory Authorities outlining the outcome of its considerations under paragraphs F.22.2.5(a) and F.22.2.5(b).   **F.22.2.6** No later than 10 Working Days following submission of a report to the Regulatory Authorities under paragraph F.22.2.5, the Market Operator shall convene an Emergency Meeting of the Modifications Committee to present the outcome of its considerations under paragraphs F.22.2.5(a) and F.22.2.5(b).  **F.22.3 Payment Deferral**  F.22.3.1 Notwithstanding anything else in this Code:   1. the maximum aggregate amount that the Market Operator is required to pay Participants in respect of any Billing Period by way of Settlement Payments is equal to the Available Working Capital Amount for that Billing Period to the extent that amount is positive; 2. the Market Operator shall have no liability to pay Settlement Payments in respect of a Billing Period to the extent that doing so would result in the Available Working Capital Amount for that Billing Period being negative; 3. each Participant agrees that the Market Operator shall be entitled to reduce payments to Participants under this Code in order to give effect to paragraphs F.22.3.1(a) and (b), and in so doing, so far as practicable and *mutatis mutandis*, apply the provisions of section G.2.7.3, G.2.7.4, G.2.7.5, G.2.7.6 and G.2.7.7 as if the shortfall was an Unsecured Bad Debt (and ignoring references to the Defaulting Participant(s), a Default and Default Interest); and 4. all Participants agree that the payment of a reduced amount in place of the unadjusted amount in accordance with this paragraph F.22.3.1 does not constitute a breach or default of this Code on the part of the Market Operator.   F.22.3.2If:   1. because of the operation of paragraph F.22.3.1, a Participantdoes not receive the full amount that the Market Operator is otherwise required to pay the Participant in respect of any Billing Period by way of Settlement Payments (the amount not received by the Participant due to the operation of that paragraph being called a “**Reduction in Payment**”); and 2. the amount of any draw down under the Market Working Capital Credit Facility has been repaid in full, and any costs and fees under the Market Working Capital Credit Facility which have accrued due to the draw down have been paid in full; and 3. the Available Working Capital Amount (excluding any amount which is available to be drawn down under the Market Working Capital Credit Facility) for a subsequent Billing Period is positive (in this section called the “**distributable amount**”),   then, subject to paragraph F.22.3.3, that Participantis entitled to be reimbursed the amount of the Reduction in Payment it suffered.  F.22.3.3 If the distributable amount is not sufficient to pay all Participantsthe amounts to which they are entitled under paragraph F.22.3.2 in full, then the distributable amount is to be distributed amongst the relevant Participants pro rata according to the Reductions in Payment they suffered, with the process in that paragraph repeated until such time as each Participant has been reimbursed in aggregate the amount of the Reduction in Payment it suffered.  F.22.3.4 Settlement Documents issued under Chapter G shall include an additional payment line item reflecting any reimbursement under paragraph F.22.3.2.  F.22.3.5 Calculations are made in relation to Capacity Payments and Capacity Charges under this section F.22 on a Billing Period basis, even though they are aggregated and settled on a Capacity Period basis under Chapter G.  ***NEW DEFINITIONS (to be inserted in alphabetical order in the Glossary):***   |  |  | | --- | --- | | **Available Working Capital Amount** | for a Billing Period, means the amount calculated under paragraph F.22.2.2. | | **Contingent Capital Requirement** | means €150 million (one hundred and fifty million euro), or such other amount  as is approved by the Regulatory Authorities under section F.22.1. | | **Market Working Capital Credit Facility** | means the credit facility established by the Market Operator under section B.13.2. | | **Settlement Charges** | has the meaning given in paragraph F.22.2.3. | | **Settlement Payments** | has the meaning given in paragraph F.22.2.3. | | **Working Capital Account** | has the meaning given in paragraph F.22.2.1. | | | | | | |
| **Modification Proposal Justification**  *(Clearly state the reason for the Modification)* | | | | | |
| Putting contingent capital in place will be vital for market stability by ensuring that market payments continue to be made in accordance with the timelines set out in the TSC to the extent possible, while any over or under recovery is eventually reconciled by adjusting charges in Tariff Years Y+1 or Y+2.  The risk of payment default and resulting legal action will make it difficult to put a funding arrangement in place with the lending institutions at a reasonable cost. The market should not go live without a Contingent Capital facility being in place. | | | | | |
| **Code Objectives Furthered**  *(State the Code Objectives the Proposal furthers, see Section 1.3 of T&SC for Code Objectives)* | | | | | |
| 1. to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner; | | | | | |
| **Implication of not implementing the Modification Proposal**  *(State the possible outcomes should the Modification Proposal not be implemented)* | | | | | |
| The market will require a working capital facility to be place to allow payments to be made in line with the settlement timelines. Therefore the market will fail to operate correctly without Contingent Capital. | | | | | |
| **Working Group**  *(State if Working Group considered necessary to develop proposal)* | | | **Impacts**  *(Indicate the impacts on systems, resources, processes and/or procedures; also indicate impacts on any other Market Code such as Capacity Marker Code, Grid Code, Exchange Rules etc.)* | | |
|  | | | No impact on central or user systems.  Financial implication in that payments would be suspended until tariff revenue or additional funding can be put in place. | | |
| ***Please return this form to Secretariat by email to*** [***modifications@sem-o.com***](mailto:modifications@sem-o.com) | | | | | |

**Notes on completing Modification Proposal Form:**

1. **If a person submits a Modification Proposal on behalf of another person, that person who proposes the material of the change should be identified on the Modification Proposal Form as the Modification Proposal Originator.**
2. **Any person raising a Modification Proposal shall ensure that their proposal is clear and substantiated with the appropriate detail including the way in which it furthers the Code Objectives to enable it to be fully considered by the Modifications Committee.**
3. **Each Modification Proposal will include a draft text of the proposed Modification to the Code unless, if raising a Provisional Modification Proposal whereby legal drafting text is not imperative.**
4. **For the purposes of this Modification Proposal Form, the following terms shall have the following meanings:**

**Agreed Procedure(s): means the detailed procedures to be followed by Parties in performing their obligations and functions under the Code as listed in either Part A or Part B Appendix D “List of Agreed Procedures”. The Proposer will need to specify whether the Agreed Procedure to modify refers to Part A, Part B or both.**

**T&SC / Code: means the Trading and Settlement Code for the Single Electricity Market. The Proposer will also need to specify whether all Part A, Part B, Part C of the Code or a subset of these, are affected by the proposed Modification;**

**Modification Proposal: means the proposal to modify the Code as set out in the attached form**

**Derivative Work: means any text or work which incorporates or contains all or part of the Modification Proposal or any adaptation, abridgement, expansion or other modification of the Modification Proposal**

**The terms “Market Operator”, “Modifications Committee” and “Regulatory Authorities” shall have the meanings assigned to those terms in the Code.**

**In consideration for the right to submit, and have the Modification Proposal assessed in accordance with the terms of Section 2 of Part A or Chapter B of Part B of the Code (and Part A Agreed Procedure 12 or Part B Agreed Procedure 12) , which I have read and understand, I agree as follows:**

**1. I hereby grant a worldwide, perpetual, royalty-free, non-exclusive licence:**

* 1. **to the Market Operator and the Regulatory Authorities to publish and/or distribute the Modification Proposal for free and unrestricted access;**
  2. **to the Regulatory Authorities, the Modifications Committee and each member of the Modifications Committee to amend, adapt, combine, abridge, expand or otherwise modify the Modification Proposal at their sole discretion for the purpose of developing the Modification Proposal in accordance with the Code;**
  3. **to the Market Operator and the Regulatory Authorities to incorporate the Modification Proposal into the Code;**

**1.4 to all Parties to the Code and the Regulatory Authorities to use, reproduce and distribute the Modification Proposal, whether as part of the Code or otherwise, for any purpose arising out of or in connection with the Code.**

**2. The licences set out in clause 1 shall equally apply to any Derivative Works.**

**3. I hereby waive in favour of the Parties to the Code and the Regulatory Authorities any and all moral rights I may have arising out of or in connection with the Modification Proposal or any Derivative Works.**

**4. I hereby warrant that, except where expressly indicated otherwise, I am the owner of the copyright and any other intellectual property and proprietary rights in the Modification Proposal and, where not the owner, I have the requisite permissions to grant the rights set out in this form.**

**5. I hereby acknowledge that the Modification Proposal may be rejected by the Modifications Committee and/or the Regulatory Authorities and that there is no guarantee that my Modification Proposal will be incorporated into the Code.**

1. If the Invalid Contracted Quantities Modification has taken effect before this Modification, then instead insert “F.21, F.22,” before the reference to G.2.7 in paragraph B.21.1.8. [↑](#footnote-ref-1)