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| Proposer | Date | Phone and Email address | Reference Number  (to be filled out by Secretariat) |
| Michael Kelly | 26th March 2018 | Michael.kelly@eirgrid.com | MCF\_06\_18 Liability Terms |
| Document section to change | Changes explained | | |
| G.3.2.5 and definitions | Consideration was given to placing liability terms in the membership agreement or SEMOpx rules. Such clauses were not included in the first set of rules. It has been decided to include these terms in the SEMOpx rules.  The terms and supporting rationale were discussed at the Interim SEMOpx Consultative Committee on 13th February. A 10 day consultation was held. Five participants provided feedback on the proposed changes to the Rules. There feedback and SEMOpx responses are attached. Member feedback and resulting changes to the proposal was discussed at the Interim Consultative Committee on 14th March | | |
| Text changes (tracked) | | | |
| **Updated paragraph G.3.2.5**   * ***G.3.2.5             Subject to paragraph 3.1, paragraphs 3.2.1 to 3.2.4 and paragraph 3.2.7, under no circumstances shall the total aggregate liability of SEMOpx to each Exchange Member (however arising) under or in connection with these SEMOpx Rules, the Procedures or the Exchange Membership Agreement, including (but not limited to) liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence), breach of statutory duty or otherwise, exceed the following financial caps:*** * ***(a)        in respect of SEMOpx's liability to each Exchange Member in respect of each Operational Incident, a sum equal to the greater of: (i) €2,000; and (ii) the charges Relevant Charges paid or payable by the applicable Exchange Member to SEMOpx in respect of the 40 days preceding the occurrence of the root cause or first event in respect of such Operational Incident and subject always to the yearly cap set out in paragraph G.3.2.5(b)); and*** * ***(b)        in respect of SEMOpx's liability to each Exchange Member arising in any calendar year, a sum equal to the greater of: (i) €6,500; and (ii)] one third (1/3rd) of the charges Relevant Charges paid by the applicable Exchange Member to SEMOpx in such year***   ***“Operational Incident” means any event or series of related events in respect of which SEMOpx's liability to any Exchange Member arises (whether under or in connection with these SEMOpx Rules, the Procedures or the Exchange Membership Agreement). By way of example, such an event or series of related events may affect multiple Market Segments and/or Trading Periods. For the purposes of this definition, a series of related events includes: (i) an event that gives rise to one or more different events; and (ii) a root cause that gives rise to two or more different events.***  ***“Relevant Charges” means all fees, charges and tariffs payable under the SEMOpx Statement of Charges, excluding any Accession Fee(s).*** | | | |
| Exchange Committee views | SEMOpx Views | | Final Decision  (Rules only RAs, Operating Procedures only SEMOpx) |
| All responses received are include in document [MCF\_06\_18 Comments and Responses](http://www.sem-o.com/ISEM/General/MCF_06_18%20Comments%20and%20Responses.xlsx) | * Linking the liability caps to charges is reasonable in a service arrangement * Charges to include all fees and charges payable under the SEMOpx Statement of Charges, except Accession Fee(s) * Liability cap to operate on a per incident basis and with an annual limit * Liability cap to be increased from “20 days” to “40 days” of charges per Operational Incident * “Operational Incident” to be defined * Level of cap is reasonable given:   + Size of the SEM   + Level and regulatory framework for fees   + Industry practice | |  |