

Condition 1. Interpretation and Construction

Construction

- 1 Unless the contrary intention appears, in the conditions of the Licence:
 - (a) words and expressions, and references to legislation, shall be construed as if they were in an enactment and the Interpretation Act (Northern Ireland) 1954 applied to them; and
 - (b) words and expressions defined in the Order, the Energy Order or the SEM Order shall have the same meaning.
- 2 Unless otherwise specified, any reference in the conditions of the Licence to:
 - (a) a numbered Condition or Schedule is a reference to the condition of, or the schedule to, the Licence that bears that number;
 - (b) a numbered paragraph is a reference to the paragraph of the Condition in which such reference is made that bears that number;
 - (c) “this Condition” is a reference to all of the paragraphs of the Condition in which the reference occurs; and
 - (d) any agreement, licence, code or other instrument shall be a reference to such agreement, licence, code or other instrument as varied, supplemented or replaced from time to time.
- 3 The heading or title of any Condition or paragraph thereof shall not affect its construction.
- 4 Where any obligation of the Licensee is expressed to require performance within a specified time limit that obligation shall continue to be binding and enforceable after that time limit if the Licensee fails to perform that obligation within that time limit (but without prejudice to all rights and remedies available against the Licensee by reason of the Licensee’s failure to perform within the time limit).
- 5 Unless otherwise specified, when used in this or any other Part, the words “other”, “including” and “in particular” shall not limit the generality of any preceding words or be

construed as being limited to the same class as the preceding words where a wider construction is possible.

Service of Documents

- 6 The provisions of section 24 of the Interpretation Act (Northern Ireland) 1954 shall be deemed to apply for the purposes of the delivery or service of any document, direction or notice to be delivered or served pursuant to the Licence, whether by the Authority or by the Licensee.

Acting in Conjunction

- 7 Where any Condition of the Licence requires the Licensee to act “*in conjunction with the Republic of Ireland System Operator*” in the fulfilment of an obligation, the Licensee shall:
- (a) to the extent the Licensee is reasonably capable of fulfilling that obligation without the assistance of the Republic of Ireland System Operator, be obliged to fulfil that obligation and shall use all reasonable endeavours to work together with the Republic of Ireland System Operator in so doing;
 - (b) to the extent the Licensee is not reasonably capable of fulfilling that obligation without the assistance of the Republic of Ireland System Operator:
 - (i) ensure that the System Operator Agreement requires the Republic of Ireland System Operator to provide the assistance in question, and, where it does not, seek to amend the System Operator Agreement so that it does;
 - (ii) exercise all rights available to the Licensee (including under the System Operator Agreement) in order to obtain the assistance in question; and
 - (iii) on obtaining the assistance in question, be obliged to fulfil that obligation and shall use all reasonable endeavours to work together with the Republic of Ireland System Operator in so doing; and
 - (c) to the extent the Republic of Ireland System Operator is obliged (by the laws or licence obligations applicable to it) to act in conjunction with the Licensee in the fulfilment of an equivalent obligation, be obliged to provide such assistance as the Republic of Ireland System Operator reasonably requests in order to enable it to

fulfil that obligation.

Definitions

- 8 Except where expressly stated to the contrary and unless the context otherwise requires, the following terms shall have the meanings ascribed to them below.

“affiliate” means, in relation to any person, any company which is a subsidiary of such person or a company of which such person is a subsidiary or a company which is another subsidiary of a company of which such person is a subsidiary.

“All-Island Networks” means the total system, the Republic of Ireland transmission system and the Republic of Ireland distribution system taken together.

“All-Island Transmission Networks” means the transmission system and the Republic of Ireland transmission system taken together.

“Associated Business” means any business of the Licensee (or of any affiliate or related undertaking of the Licensee) other than a relevant holding company.

“Auditors” means the Licensee’s auditors for the time being holding office in accordance with the requirements of the Companies Act 2006.

“Authorised Area” means Northern Ireland.

“authorised electricity operator” means any person (other than the Licensee in its capacity as the holder of the Licence) who holds a licence granted pursuant to Article 10 of the Order or whose activities are exempt pursuant to Article 9 of the Order, and any person transferring electricity

across a Northern Ireland Interconnector or who has made application for use of a Northern Ireland Interconnector which has not been refused.

“Authority”

means the Northern Ireland Authority for Utility Regulation.

“Balancing Market”

has the meaning set out in the Single Electricity Market Trading and Settlement Code, Part B.

“CACM Regulation”

means Commission Regulation (EU) 2015/1222 of 24 July 2015, establishing a Guideline on Capacity Allocation and Congestion Management.

“Capacity Market”

means the arrangements for securing generation adequacy and capacity described in Condition 23A and set out in the Capacity Market Code.

“Capacity Market Code”

means the code of that name referred to in Condition 23A.

“Commission for Energy Regulation”

means the body established as such under the Republic of Ireland Electricity Act.

“competent authority”

means the Department, the Authority and any local or 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 or the European Community.

“Connection Agreement”

means an agreement between the Licensee and any person in respect of connection to the All-Island Transmission Networks at entry or exit points on the transmission system.

“Competition and Markets

means the body of that name established by section

"Authority" or "CMA"	25 of the Enterprise and Regulatory Reform Act 2013.
"Department"	means the Department of Enterprise, Trade and Investment.
"Directive"	means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity).
"Directive Regulations"	means the Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 2005 and the Electricity Regulations (Northern Ireland) 2007.
"Distribution Business"	has the meaning given to that term in the successor distribution licence .
"Distribution Code"	means the code of that name required to be prepared and approved in accordance with Condition 27 of the successor distribution licence.
"distribution system"	means the electric lines within the Authorised Area owned by the Distribution System Owner (but not, for the avoidance of doubt, any lines forming part of the transmission system or any Interconnector), and any other electric lines which the Authority may specify as forming part of that distribution system, including (in each case) any electrical plant and/or meters used in connection with distribution.
"Distribution System Owner"	means the person authorised, from time to time, under the successor distribution licence in its capacity

as the holder of that licence.

“Distribution System Security and Planning Standards”

means either the document designated as such by the Authority or, until the Authority designates such a document, that part (or parts) of the document which relates to distribution system security and planning standards in the document entitled Transmission and Distribution System Security and Planning Standards and designated by the Authority on or before SEM Go-Live, as modified from time to time in accordance with Condition 20 of the successor distribution licence.

“electricity undertaking”

means an authorised electricity operator and/or a Republic of Ireland electricity operator.

“Energy Order”

means the Energy (Northern Ireland) Order 2003.

“Ex-Ante Markets”

means the day-ahead and intraday markets for the trading of wholesale electricity in the Single Electricity Market prior to the relevant Gate Closure.

“final customers”

means customers who purchase electricity for their own consumption.

“generation set”

means any plant or apparatus for the production of electricity.

“Gate Closure”

has the meaning set out in the Single Electricity Market Trading and Settlement Code, Part B.

“Grid Code”

means the code of that name to be prepared and approved in accordance with Condition 16.

“holding company”

means a holding company within the meaning of section 1159 of the Companies Act 2006.

“Interconnector”	means a Northern Ireland Interconnector and/or a Republic of Ireland Interconnector.
“Island of Ireland”	means Northern Ireland and the Republic of Ireland.
“Licence”	means the licence comprised in the licence grant in which these Conditions are referred to, granted on the terms, and subject to the conditions, referred to therein.
“Licensee”	means SONI Limited (a body corporate registered in Northern Ireland under company number NI038715).
“Market Operation Activity”	has the meaning given to that term in the Northern Ireland Market Operator Licence.
<u>“NEMO Activity”</u>	<u>has the meaning given to that term in the Northern Ireland Market Operator Licence.</u>
“NIE Energy Supply Licence”	means the licence granted under Article 10(1)(c) of the Order to Northern Ireland Electricity plc on 31 March 1992, which is to be transferred to NIE Energy Limited (a body corporate registered in Northern Ireland under company number NI27394) pursuant to a statutory scheme on or around SEM Go-Live.
“Northern Ireland Fuel Security Code”	means the document of that title designated as such by the Department, dealing with the co-operation of licence holders in strategic contingency planning in respect of fuel stocks, the modification of the merit order and certain other systems and procedures under the Grid Code during periods when the Department has given (and there is in force) one or more directions under Article 37(4) of the Order, the entitlement of the Licensee and authorised electricity operators to and the collection of certain payments in

anticipation of, during and after the expiry of any such periods, and connected matters.

“Northern Ireland Interconnector”	Ireland	means electric lines and electrical plant and meters used for conveying electricity only directly to or from a substation or converter station in Northern Ireland into or out of Northern Ireland, but excluding the North/South Circuits.
“Northern Ireland Market Operator Licence”	Market	means the licence granted, under Article 10(1)(d) of the Order, to SONI Limited (a body corporate registered in Northern Ireland under company number NI038715) on 3 July 2007.
“Northern Ireland Market Operator Licensee”	Market	means the person authorised, from time to time, under the Northern Ireland Market Operator Licence in its capacity as the holder of that licence.
“North/South Circuits”		means the electric lines and electrical plant and meters used for conveying electricity only directly to or from a substation or converter station within Northern Ireland directly to or from a substation or converter station within the Republic of Ireland.
“operating security standard”		means the standard of that name referred to in Condition 21.
“Order”		means the Electricity (Northern Ireland) Order 1992.
“payment security policy”		means the policy of that name referred to in Condition 31.
“Permitted Purpose”		means the purpose of all or any of the following: (a) the Transmission System Operator Business; (b) the Market Operation Activity;

(c) the NEMO Activity:

(d) ~~the Single Market Operation Business~~ the SMO & NEMO Business;

(e) ~~(e)~~—without prejudice to the generality of sub paragraphs (a), (b) and (c), any payment or transaction lawfully made or undertaken by the Licensee in relation to the disposal of or relinquishment of operational control over any relevant asset in accordance with Condition 9; and

(f) ~~(e)~~—without prejudice to the generality of sub paragraphs (a), (b) and (c), any payment or transaction lawfully made or undertaken by the Licensee for a purpose within sub-paragraphs (i) to (vi) of paragraph 1(b) of Condition 10.

“Power Procurement Business” has the meaning given to that expression in the NIE Energy Supply Licence.

“related undertaking” means, in respect of any person, any undertaking in which that person has a participating interest within the meaning of section 421A of the Financial Services and Markets Act 2000.

“Republic of Ireland Electricity Act” means the Republic of Ireland legislation known as the Electricity Regulation Act 1999.

“Republic of Ireland Board” means the Electricity Supply Board in the Republic of Ireland.

“Republic of Ireland distribution system” means all electric lines of the Republic of Ireland Board in the Republic of Ireland which the Republic of Ireland Board may, with the approval of the Commission for Energy Regulation, specify as being

part of the Republic of Ireland Board's distribution system, and includes any electric plant, transformers and switchgear of the Republic of Ireland Board which is used for conveying electricity to final customers.

"Republic of Ireland electricity operator" means any person engaged in the generation, transmission distribution or supply of electricity in the Republic of Ireland, including any holder of a licence or authorisation to do so, or a person who has been granted a permit under Section 37 of the Republic of Ireland legislation known as the Electricity (Supply) Act 1927, and any person transferring electricity across a Republic of Ireland Interconnector or who has made an application for use of a Republic of Ireland Interconnector which has not been refused.

"Republic of Ireland Grid Code" means the Grid Code prepared by the Republic of Ireland System Operator pursuant to Section 33 of the Republic of Ireland Electricity Act and approved by the Commission for Electricity Regulation.

"Republic of Ireland Interconnector" means electric lines and electrical plant and meters used for conveying electricity only directly to or from a substation or converter station in the Republic of Ireland into or out of the Republic of Ireland, but excluding the North/South Circuits.

"Republic of Ireland Market Operator Licence" means the licence granted, under Section 14(1)(j) of the Republic of Ireland Electricity Act, to EirGrid plc (a company formed pursuant to regulation 34 of the Republic of Ireland legislation known as the European Communities (Internal Market in Electricity) Regulations 2000).

"Republic of Ireland Market" means the person holding, from time to time, the

Operator Licensee"	Republic of Ireland Market Operator Licence in its capacity as the holder of that licence.
"Republic of Ireland Operating Security Standards"	means the document entitled "Operating Security Standards" prepared pursuant to the Republic of Ireland System Operator Licence.
"Republic of Ireland System Operator"	means the person holding, from time to time, the Republic of Ireland System Operator Licence in its capacity as the holder of that licence.
"Republic of Ireland System Operator Licence"	means the licence granted, under Section 14(1)(e) of the Republic of Ireland Electricity Act, to EirGrid plc (a company formed pursuant to regulation 34 of the Republic of Ireland legislation known as the European Communities (Internal Market in Electricity) Regulations 2000).
"Republic of Ireland transmission system"	means the system of electric lines in the Republic of Ireland comprising wholly or mainly the Republic of Ireland Board's high voltage lines and electric plant and which is used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another or to or from any Republic of Ireland Interconnector or to final customers (including such part of the North/South Circuits as is owned by the Republic of Ireland Board) (but shall not include any such lines which the Republic of Ireland Board may, with the approval of the Commission for Electricity Regulation, specify as being part of the Republic of Ireland Board's distribution system), and shall include any Republic of Ireland Interconnector owned by the Republic of Ireland Board.

“SEM Go-Live”	means the time and date designated as such by the Authority (with the consent of the Department) for the purpose of licences granted under the Order, being the commencement date for a number of matters including the Single Electricity Market.
“SEM Order”	means the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.
“Separate Business”	means the Transmission System Operator Business taken separately from any other business of the Licensee or any affiliate or related undertaking of the Licensee, but so that where all or any part of such business is carried on by an affiliate or related undertaking of the Licensee such part of the business as is carried on by that affiliate or related undertaking shall be consolidated with such business of the Licensee (and of any other affiliate or related undertaking of the Licensee) so as to form a single Separate Business.
“Single Electricity Market”	means the single wholesale electricity market for the Island of Ireland, implemented in Northern Ireland pursuant to Section 23 <u>has the meaning ascribed to it by Article 2(2) of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (2007/913).</u>
“Single Market Operator Operation Business”	has the meaning given to that term in the Northern Ireland Market Operator Licence.
“Single Electricity Market Trading and Settlement Code”	has the meaning given to that term in the Northern Ireland Market Operator Licence.
<u>“SMO & NEMO Business”</u>	<u>has the meaning given to that term in the Northern</u>

[Ireland Market Operator Licence.](#)

“successor licence”	distribution	means the licence, held by Northern Ireland Electricity Limited, which has effect under Article 10(1)(bb) of the Order (to distribute electricity) pursuant to Regulation 90(1)(b) of the Internal Markets Regulations;
“subsidiary”		means a subsidiary within the meaning of section 1150 of the Companies Act 2006.
“System Operator Agreement”		means the system operator agreement provided for in Condition 24.
“System Support Services”		means: <ul style="list-style-type: none">(a) spinning reserve, fast start, black start, reactive power, frequency control and such other services as any authorised electricity operator may be required to have available in association with any generation set pursuant to the Grid Code, including without limitation fuel switching services and outage planning incentive arrangements either directly with a generator or which the Power Procurement Business makes available to the Licensee;(b) any services relating to a reduction of demand or to other demand side measures that can be taken by a final consumer (or any persons acting on behalf, and with the authority, of a final consumer); and(c) any services that an electricity undertaking may have agreed to have available as being system support services in its capacity as an electricity undertaking pursuant to an agreement made

with the Licensee,

and which may be required by or are available or offered (whether by way of sale or otherwise) to, the Licensee for the purpose of securing stability of operation on the transmission system and/or the systems linked to the transmission system.

“total system”

means the transmission system and the distribution system taken together.

“Transmission System Security and Planning Standards”

means either the document designated as such by the Authority or, until the Authority designates such a document, that part of the document which relates to transmission system security and planning standards in the document entitled Transmission and Distribution System Security and Planning Standards and designated by the Authority on or before SEM Go-Live, as modified from time to time in accordance with Condition 20.

“Transmission Interface Arrangements”

means the transmission interface arrangements provided for in Condition 18.

“Transmission Owner”

means the person authorised, from time to time, under the Transmission Owner Licence in its capacity as the holder of that licence.

“Transmission Business Owner”

has the meaning given to that term in the Transmission Owner Licence.

“Transmission Licence”

Owner means the licence held by Northern Ireland Electricity Limited which has effect under Article 10(1)(b) of the Order (to participate in the transmission of electricity) pursuant to Regulation 90(1)(a) of the Internal Markets Regulations;.

“transmission services”

means those services which are provided or are to be provided to the Licensee by the Transmission Owner pursuant to the Transmission Owner Licence, as defined in that licence.

“transmission system”

means the system of electric lines owned by the Transmission Owner and comprising high voltage lines and electrical plant and meters used for conveying electricity from a generating station to a substation, from one generating station to another, and from one substation to another within the Transmission Owner’s authorised transmission area (including such part of the North/South Circuits as is owned by the Transmission Owner) (except any such lines which the Authority may approve as being part of the distribution system) and any other electric lines which the Authority may specify as forming part of the transmission system, but shall not include any Interconnector.

“Transmission System Operator Business”

means the business of the Licensee (or any affiliate or related undertaking) in the planning and operation of the transmission system, [or in the operation of the Capacity Market](#), or in the procurement of System Support Services (whether or not pursuant to directions of the Department made under Article 37 or 38 of the Order), or in the co-ordination and direction of the flow of electricity onto and over the transmission system, [or in the operation of the Balancing Market](#) or in the undertaking of its obligations under the Licence in respect of Northern Ireland Interconnectors, or in the undertaking of electricity trades with the operators of systems other than the transmission system as approved by the Authority, including any business in

offering to enter into, and entering into, Connection Agreements and Use of System Agreements, but shall not include:

- (a) any business of the Licensee (or any affiliate or related undertaking) in undertaking Market ~~Operator~~Operation Activity or the NEMO Activity; or
- (b) any business of the Licensee (or any affiliate or related undertaking) in undertaking the Transmission Owner Business; or
- (c) any business of the Licensee (or any affiliate or related undertaking) in undertaking the Distribution Business; or
- (d) any other business of the Licensee (or any affiliate or related undertaking) in the provision of services to or on behalf of one or more persons.

“ultimate controller”

means:

- (a) any holding company of the Licensee which is not itself a subsidiary of another company; and/or
- (b) any person who (whether alone or with a person or persons connected with him) is in a position to control, or to exercise significant influence over, the policy of the Licensee, or any holding company of the Licensee, by virtue of:
 - (i) rights under contractual arrangements to which he is a party or of which he is a

beneficiary;

- (ii) rights of ownership (including rights attached to or deriving from securities or rights under a trust) which are held by him or of which he is a beneficiary,

but shall exclude any director or employee of a corporate body in his capacity as such and any minister, ministry, department, agency, authority, official or statutory person,

and a person shall be considered to be connected with another person if he is party to any arrangement regarding the exercise of any such rights as are described in sub-paragraph (b) above.

“Use of System Agreement”

means an agreement between the Licensee and an eligible person (as defined in paragraph 1 of Condition 25) for use of the All-Island Transmission Networks in respect of generation or supply of electricity in Northern Ireland.

~~TRANSITION NEW CONDITION~~

Condition 1A. Transition

General Requirement

1. The Licensee shall take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to give full and timely effect to the revised SEM arrangements, so that the Licensee is able to comply with them from the time at which they are effective (or intended to be effective).

Requirement to Co-operate

2. Without prejudice to paragraphs 1 and 3, the Licensee shall cooperate with authorised electricity operators and Republic of Ireland electricity operators (and with the Department, the Authority and such other persons as the Authority may direct) and shall take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to enable:
 - (a) authorised electricity operators to comply with their statutory or licence obligations to give full and timely effect to the revised SEM arrangements, so that such authorised electricity operators are able to comply with them from the time at which they are effective (or intended to be effective);
 - (b) authorised electricity operators to comply with any directions by the Authority under a provision of their licences equivalent to paragraph 4; and
 - (c) Republic of Ireland electricity operators to comply with their statutory or licence obligations to prepare for the coming into effect of the revised SEM arrangements,

and in the event of any dispute between the Licensee and such other person as to whether a particular step, or thing, is reasonable, the Licensee or such other person may refer the matter to the Authority for determination (which determination shall be final for the purposes of this paragraph).

Requirements to Comply with Directions

3. Without prejudice to paragraphs 1 and 2, the Licensee shall take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to comply with any direction made from time to time by the Authority in accordance with paragraph 4 (and shall by so doing be taken to have complied with such direction).
4. The Authority may issue directions to the Licensee setting out the steps (including without limitation those referred to in paragraph 5) to be taken (or procured) by the Licensee which are, in the Authority's reasonable opinion, appropriate in order to give full and timely effect to the revised SEM arrangements, so that the Licensee is able to comply with them from the time at which they are effective (or intended to be effective).
5. The directions made by the Authority under paragraph 4 (with which the Licensee is, in accordance with paragraph 3, required to take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to comply) may include requirements regarding the following steps:
 - (a) to secure or facilitate the amendment or establishment of any of the core industry documents; and
 - (b) to effect the novation of (or other transfer of rights and obligations under) any of the core industry documents from the Licensee or an authorised electricity operator to the Licensee or an authorised electricity operator.
6. The Authority may, at any time, by a further direction in accordance with paragraph 4 (in order to give (or continue to give) full and timely effect to the revised SEM arrangements amend or cancel any direction (or part thereof) previously made under paragraph 4.
7. The Authority may not make a direction under paragraph 4 until it has undertaken such period of prior consultation with the Licensee (and such other persons as the Authority deems appropriate) as is reasonable in the circumstances. No direction made under paragraph 4 shall be effective until a copy is served on the Licensee.

Requirement not to Frustrate

8. Without prejudice to any public or administrative law right, or statutory right, that the Licensee may have to bring any claim against any public body or person, the Licensee shall

not take any step, or exercise any right, which is intended to hinder or frustrate the giving of full and timely effect to the revised SEM arrangements.

Potential Conflict

9. If the Licensee is aware of any conflict between its compliance with the provisions of this Condition or any direction under paragraph 4 and its compliance with any other Condition of the Licence, the Licensee shall promptly inform the Authority of such conflict.
10. Provided the Licensee complies with paragraph 9, the other Conditions of the Licence shall prevail over this Condition in the event of conflict. If there is any conflict between a direction made under paragraph 4 and another requirement of the Licence, the provisions of the direction shall prevail.

Information

11. The Licensee shall provide to the Authority, in such manner and at such times as the Authority may reasonably require, such information and shall procure and furnish to it such reports as the Authority may reasonably require or deem necessary or appropriate to enable the Authority to monitor the Licensee's compliance with the requirements of this Condition, including (without limitation):
 - (a) information as to the Licensee's readiness concerning the revised SEM arrangements; and
 - (b) status reports concerning those matters referred to in sub-paragraph (d) of the definition of the revised SEM arrangements, and drafts of any legal documents by which such matters are to be achieved.
12. If the Licensee is aware (or should reasonably be aware) of any matter or circumstance which it considers will (or which the Licensee should reasonably consider likely to) hinder or frustrate the giving of full and timely effect to the revised SEM arrangements, the Licensee shall promptly inform the Authority of such matter or circumstance.

Further requirements

13. Without prejudice to the generality of the foregoing provisions, the Licensee shall:

- (a) take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to secure the co-ordinated and effective commencement and implementation of, and operations under the Single Electricity Market Trading and Settlement Code in light of its modification or amendment (or intended modification or amendment) under or by virtue of the revised SEM arrangements (including the development, testing, trialling and start-up of the systems, processes and procedures employed in such implementation and employed by authorised electricity operators and others in connection with such operations);
~~and~~
- (b) carry out a review of the regulatory documents in order to identify any changes which may in the Licensee's opinion be necessary or expedient in light of the revised SEM arrangements (the "identified changes") and provide a report (by such date as the Authority may direct) on the outcome of that review and on the action which the Licensee proposes to give effect to the identified changes ~~and~~ and
- (c) with the Republic of Ireland Transmission System Operator Licence holder develop the changes to the Grid Codes necessitated by the changes to the SEM trading arrangements and propose such changes to the Regulatory Authorities no later than three months before Go-Live.

Coming into Effect and Cessation of Effect

- 14. The provisions of this Condition (other than those of this paragraph and of paragraphs 15 and 16 which shall come into immediate effect) shall come into effect on such day, and subject to such transitional arrangements, as the Authority may by direction appoint. Different days may be so appointed for different provisions and for different purposes.
- 15. This Condition shall cease to have effect on ~~30-June~~31 December 2018, without prejudice to the continuing enforceability of any right or obligation (including any requirement to comply with a direction of the Authority issued prior to that date) which may have accrued or otherwise fallen due for performance prior to that date.

Definitions

- 16. In this Condition, unless the context otherwise requires:

- “core industry documents”** means those documents relating to the revised SEM arrangements which may from time to time be designated, by direction of the Authority, as such for the purposes of this Condition;
- “regulatory documents”** means those codes, agreements and other documents which the Licensee is required to prepare, be party to or have in effect (or with which the Licensee is required to comply) under or by virtue of this Licence or the Order, including without prejudice to the generality, the Grid Code and the System Operator Agreement; and
- “revised SEM arrangements”** means:
- (a) any modifications made (or which the Authority has formally indicated are likely to be made) to the Licence, or to the licences of any authorised electricity operator, for the purpose (in each case) of implementing the high level design set out in the document entitled, “Integrated Single Electricity Market (I-SEM): SEM Committee Decision on High Level Design”, with reference SEM-14-085a and published on 17 September 2014;
 - (b) the conditions of the Northern Ireland Market Operator Licence and the Licence;
 - (c) the terms imposed in any exemption granted pursuant to Article 9 of the Order that reflect a modification referred to in sub-paragraph (a); and
 - (d) the matters that the Licensee knows (or should reasonably know) are envisaged by the

modifications and conditions referred to in sub-paragraphs (a) and (b) (including, without limitation, the establishment, amendment or termination of, or the transfer of rights and obligations under, core industry documents);

including, without prejudice to the generality, any of the provisions or matters described above by which the Licensee is bound (or intended to be bound).

Condition 3. Availability of Resources and Undertaking of Ultimate Controller

General Duty

- 1 The Licensee shall at all times act in a manner calculated to secure that it has sufficient resources (including management resources, financial resources and financial facilities) to enable it to:
 - (a) carry on the Transmission System Operator Business;
 - (b) comply with its obligations under the Order, the Energy Order, the SEM Order, [the CACM Regulation](#) and the Licence.

Directors' Certificate

- 2 The Licensee shall submit a certificate addressed to the Authority, approved by a resolution of the board of the Licensee and signed by a director of the Licensee pursuant to that resolution. Such certificate shall be submitted on SEM Go-Live and thereafter annually, on the date which falls six months after the end of each financial year. Each certificate shall be in one of the following forms:
 - (a) "After making enquiries, the directors of the Licensee have a reasonable expectation that the Licensee will have available to it, after taking into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid, sufficient financial resources and financial facilities to enable the Licensee to carry on the Transmission System Operator Business for a period of 12 months from the date of this certificate."
 - (b) "After making enquiries, the directors of the Licensee have a reasonable expectation, subject to the terms of this certificate, that the Licensee will have available to it, after taking into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid, sufficient financial resources and financial facilities to enable the Licensee to carry on the Transmission System Operator Business for a period of 12 months from the date of this certificate. However, they would like to draw attention to the following factors which may cast doubt on the ability of the Licensee to carry on the Transmission System Operator Business."

- (c) “In the opinion of the directors of the Licensee, the Licensee will not have available to it sufficient financial resources and financial facilities to enable the Licensee to carry on the Transmission System Operator Business for a period of 12 months from the date of this certificate.”
- 3 The Licensee shall submit to the Authority, together with the certificate referred to in paragraph 2, a statement of the principal factors which the directors of the Licensee have taken into account in giving that certificate.
- 4 The Licensee shall inform the Authority in writing immediately if the directors of the Licensee become aware of any circumstances which cause them no longer to have the expectation expressed in the certificate most recently submitted to the Authority in accordance with paragraph 2.

Auditors' Report

- 5 The Licensee shall use its best endeavours to obtain and submit to the Authority with the certificate referred to in paragraph 2 a report prepared by its Auditors and addressed to the Authority stating whether or not the Auditors are aware of any inconsistencies between:
 - (a) that certificate and the statement submitted with it; and
 - (b) any information which they obtained during their audit work.

Undertaking from Ultimate Controller

- 6 The Licensee shall procure, from each person that the Licensee knows (or reasonably should know) is at any time an ultimate controller, a legally enforceable undertaking in favour of the Licensee:
 - (a) in a form approved by the Authority;
 - (b) that will remain in force for as long as the Licensee remains the holder of the Licence and the person giving the undertaking remains an ultimate controller; and
 - (c) to the effect that the ultimate controller will refrain from any action, and will procure that every subsidiary of the ultimate controller (other than the Licensee and its subsidiaries) will refrain from any action, which would be likely to cause the

Licensee to breach any of its obligations under the Order, the Energy Order, the SEM Order or the Licence.

- 7 The Licensee shall, in respect of each ultimate controller, comply with the Licensee's obligation under paragraph 6 within seven days after the later of the grant of the Licence, and the person in question becoming an ultimate controller.
- 8 The Licensee shall:
 - (a) deliver to the Authority evidence that the Licensee has complied with the obligation under paragraph 6 (including a copy of the undertaking to be procured under that paragraph);
 - (b) inform the Authority immediately in writing if the directors of the Licensee become aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached; and
 - (c) comply with any direction from the Authority to enforce any such undertaking.
- 9 The Licensee shall not, save with the consent in writing of the Authority, enter (directly or indirectly) into any contract or arrangement with an ultimate controller or any of the subsidiaries of that ultimate controller (other than the subsidiaries of the Licensee) at a time when:
 - (a) an undertaking complying with paragraph 6 is not in place in relation to that ultimate controller;
 - (b) there is an unremedied breach of such undertaking; or
 - (c) the Licensee is in breach of the terms of any direction issued by the Authority under paragraph 8 in respect of such undertaking.
- 10 Condition 3 paragraph 6 to paragraph 9 (inclusive) shall be suspended and have no effect for as long as the state owned constitutional status of EirGrid plc remains unchanged and EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee.

Undertaking from EirGrid plc

- 11 For as long as the state owned constitutional status of EirGrid plc remains unchanged and Eirgrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee the Licensee shall procure, from EirGrid plc a legally enforceable undertaking in favour of the Licensee:
- (a) in a form approved by the Authority;
 - (b) that will remain in force for as long as the Licensee remains the holder of the Licence and the state owned constitutional status of EirGrid plc remains unchanged and EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee; and
 - (c) To the effect that EirGrid plc will refrain from any action, and will procure that every subsidiary of EirGrid plc (other than the Licensee and its subsidiaries) will refrain from any action, which would be likely to cause the Licensee to breach any of its obligations under the Order, the Energy Order, the SEM Order or the Licence.
- 12 The Licensee shall:
- (a) deliver to the Authority evidence that the Licensee has complied with the obligation under paragraph 11 (including a copy of the undertaking to be procured under that paragraph);
 - (b) inform the Authority immediately in writing if the directors of the Licensee become aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached; and
 - (c) comply with any direction from the Authority to enforce any such undertaking.
- 13 The Licensee shall not, save with the consent in writing of the Authority, enter (directly or indirectly) into any contract or arrangement with EirGrid plc or any of the subsidiaries of EirGrid plc (other than the subsidiaries of the Licensee) at a time when:
- (a) an undertaking complying with paragraph 11 is not in place;
 - (b) there is an unremedied breach of such undertaking; or

- (c) the Licensee is in breach of the terms of any direction issued by the Authority under paragraph 12 in respect of such undertaking.

Condition 11. Restriction on Use of Certain Information

General Restriction

- 1 Where the Licensee, or any affiliate or related undertaking of the Licensee, is in possession of any protected information, the Licensee shall (and shall procure that such affiliate or related undertaking shall) procure:
 - (a) that neither the Licensee nor any other person shall use that protected information for the purpose of obtaining any unfair commercial advantage in relation to the Transmission System Operator Business or any other business;
 - (b) that the protected information is not disclosed to any other person except with the prior consent in writing of each person to whose affairs that information relates; and
 - (c) that the protected information in the possession of the Separate Business is not disclosed to any other business of the Licensee (or of any affiliate or related undertaking of the Licensee) except with the prior consent in writing of each person to whose affairs that information relates.
- 2 The Licensee's obligation under paragraph 1 to procure any action on the part of an affiliate or related undertaking shall be taken, in relation to any affiliate or related undertaking which has control of the Licensee, as an obligation to use all reasonable endeavours to procure the taking of that action by obtaining (and enforcing) an appropriate contractual undertaking from that affiliate or related undertaking in respect of the protected information.
- 3 The Licensee shall implement such measures and procedures and take all such other steps as may be specified in directions issued by the Authority from time to time for the purposes of this Condition and reasonably considered by the Authority to be necessary for the purpose of securing compliance by the Licensee with its obligations under paragraph 1.

Exceptions

4 Sub-paragraphs 1(b) and 1(c) shall not apply to any disclosure of information which is:

- (a) authorised by Article 63(3) or (4) of the Energy Order;
- (b) made in compliance with the duties of the Licensee, or of any affiliate or related undertaking of the Licensee, in accordance with any:
 - (i) licence granted under the Order (including the Licence);
 - (ii) applicable law (including the Order, the Energy Order, the SEM Order and the Directive Regulations);
 - (iii) requirement of a competent authority;
 - (iv) judicial or arbitral process of a competent jurisdiction; or
 - (v) requirement of a relevant stock exchange, or of the Panel on Takeovers and Mergers;
- (c) permitted by and made in compliance with any document referred to in the Licence (including the Grid Code, the System Operator Agreement, the Single Electricity Market Trading and Settlement Code, any Connection Agreement and any Use of System Agreement) with which the Licensee, or any affiliate or related undertaking of the Licensee, is required to comply;
- (d) necessary in order to enable the Licensee to enter into, or give effect to, arrangements for the purpose of carrying on the Transmission System Operator Business (save that disclosures to the Transmission Owner shall only be permitted to the extent that such disclosure is permitted in accordance with sub-paragraph (c)); or
- (e) made to any person that is, pursuant to the requirements of the Directive, certified as a transmission system operator by a regulatory authority designated as a national regulatory authority in accordance with the Directive, where:
 - (i) the disclosure is made for the purposes of furthering the interests of

electricity consumers in Northern Ireland; and

- (ii) the certified transmission system operator has provided written confirmation to the Licensee that it will not disclose any such information received by it from the Licensee to any other person (including any affiliate or related undertaking of the certified transmission system operator).

Restrictions Regarding Personnel and Advisers

- 5 The Licensee shall ensure that protected information received by the Licensee (or any affiliate or related undertaking of the Licensee) is:
- (a) (except where one of the exceptions under paragraph 4 applies) not divulged by any business person to any person, unless that person is an authorised recipient; and
 - (b) not used by any business person otherwise than for the purpose of pursuing an authorised purpose or advising in relation to the pursuit of an authorised purpose.

6 The Licensee shall ensure that when any member of staff is to be transferred from the Transmission System Operator Business to any Associated Business and an unfair commercial advantage could accrue to either or both businesses, the Licensee shall inform the Authority of the proposed transfer(s) and shall make the Authority aware of the steps being taken to ensure that no such unfair commercial advantage will accrue to either business. In particular (and as far as is legally possible) the transfer of any member of staff that has been involved in the establishment or operation of the Capacity Market to an affiliate to perform activities in relation to an Interconnector (where appropriate) shall be the subject to a cooling-off period of a duration to be agreed with the Authority unless the Authority determines that no cooling-off period is required.

Evidence

7 ~~6~~ The Licensee shall:

- (a) procure and furnish to the Authority, in such manner and at such times as the Authority may require, such information and reports as the Authority may consider

necessary concerning the performance by the Licensee of its obligations under paragraphs 1 and 5 and the effectiveness of the measures, procedures and steps specified in the directions referred to in paragraph 3;

- (b) procure that access to any premises of the Licensee shall be given at any time and from time to time to any nominated person(s) for the purpose of investigating whether the Licensee has performed its obligations under paragraphs 1, 3 and 5, and shall procure that the Licensee and its employees co-operate in any such investigation to the extent requested by the nominated person(s); and
- (c) procure that nominated person(s) shall be entitled to inspect and/or take copies of such records and data of the Licensee as they shall consider to be reasonably necessary for the purpose referred to in sub-paragraph (b) above.

Transition

8. The provisions of this Condition inserted (or, as the case may be, removed) by virtue of decision of the Authority dated [X] shall come into (or, as the case may be, continue to have) effect on (or, as the case may be, until) such day, and subject to such transitional arrangements, as the Authority may by direction appoint. Different days may be so appointed for different provisions and for different purposes.

Definitions

9 ~~7~~ In this Condition, unless the context otherwise requires:

"authorised adviser" means such professional advisers of the Licensee (or of any affiliate or related undertaking of the Licensee), engaged and acting in that capacity, as require access to any protected information.

"authorised purpose" means the management and operation of the Separate Business, or, where protected information is disclosed to another business of the Licensee (or of an affiliate or related undertaking of the Licensee) in accordance with paragraph 4, the purpose for which

such disclosure was made.

"authorised recipient"

means, in relation to any protected information, any business person who, before the protected information had been divulged to him by the Licensee (or any other business person), had been informed of the nature and effect of this Condition and who requires access to such protected information for the proper performance of his duties as a business person in relation to the pursuit of an authorised purpose.

"business person"

means any employee, subcontractor or agent of the Licensee (or of any affiliate or related undertaking of the Licensee) or any authorised adviser to such persons.

"control"

has the meaning attributed to it by section 450 (as read in conjunction with section 451) of the Corporation Tax Act 2010.

"cooling-off period"

means a period of time during which a member of staff is not actively engaged in any work of the Licensee which requires access to protected information.

"member of staff"

means an employee of the Licensee.

"protected information"

means any information which is held or obtained by the Licensee (or any affiliate or related undertaking of the Licensee) pursuant to or by virtue of its carrying on of the Transmission System Operator Business, but excluding information which is in, or comes into, the public domain other than as a result of any breach by the Licensee of the Licence (or any other legal obligation of the Licensee).

Condition 12. Independence of the Transmission System Operator Business

General Duty

- 1 The Licensee shall:
 - (a) unless it has already done so prior to this Condition coming into force, establish;
and
 - (b) at all times thereafter maintain,

the full operational independence of the Transmission System Operator Business.

Specific Duties

- 2 For the purpose of facilitating its compliance with paragraph 1, the Licensee shall ensure that:
 - (a) the Transmission System Operator Business is provided with the premises, systems, equipment, facilities, property, personnel, data and management resources that are necessary for its efficient and effective managerial and operational independence from any Associated Business;
 - (b) it does not hold or acquire shares in a holding company of the Licensee or in any electricity undertaking engaged in the generation or supply of electricity on the Island of Ireland;
 - (c) decisions relating to the transmission system (or any part of it) for which it is responsible are taken by those persons who are directors of the Licensee or who are employed by, and are engaged in the operation and management of, the Transmission System Operator Business (and no others);
 - (d) any Associated Business does not use or have access to:
 - (i) premises or parts of premises occupied by persons engaged in the management or operation of the Transmission System Operator Business (provided always that nothing in this paragraph shall prevent the Market ~~Operator~~[Operation](#) Activity [and / or the NEMO Activity](#) being carried on in

such premises)

- (ii) systems for the recording, processing or storage of data to which persons engaged in the management or operation of the Transmission System Operator Business also have access;
 - (iii) equipment, facilities or property employed for the management or operation of the Transmission System Operator Business;
 - (iv) the services of persons who are (whether or not as their principal occupation) engaged in the management or operation of the Transmission System Operator Business;
- (e) it can and does, in so far as is legally possible:
 - (i) ensure that any director of the Licensee is not at the same time also a director of a company which carries on an Associated Business engaged in the generation or supply of electricity; and
 - (ii) prevent any person who has ceased to be engaged in the management or operation of the Transmission System Operator Business from being engaged in the activities of any Associated Business that is engaged in the generation or supply of electricity until the expiry of an appropriate time from the date on which he ceased to be engaged by the Transmission System Operator Business; and
- (f) an up-to-date register of all persons engaged in the Transmission System Operator Business, confirming that the provisions of paragraph (e) have been complied with in respect of each person so engaged, is established.

Compliance Plan

- 3 The Licensee shall, by no later than SEM Go-Live, prepare and submit to the Authority for its approval a compliance plan setting out the practices, procedures, systems and rules of conduct which the Licensee has adopted, or intends to adopt, together with the timescales for adoption, to ensure its compliance with this Condition.

- 4 The Licensee shall use all reasonable endeavours to comply with its approved compliance plan (the “**Compliance Plan**”) and shall publish the up to date Compliance Plan on its website.
- 5 The Authority may:
- (a) within 30 days of the Licensee submitting an initial or revised Compliance Plan; and
 - (b) following any review of the Compliance Plan that the Authority may conduct from time to time,
- notify the Licensee that, in its opinion, the Compliance Plan is not, or is no longer, sufficient for the purposes of the Licensee’s compliance with this Condition, and require such revisions to be made to the Compliance Plan as are in the Authority’s opinion necessary or expedient in order for it to be sufficient for the purposes of ensuring the Licensee’s compliance or continued compliance with this Condition.
- 6 Where the Licensee receives a notification in accordance with paragraph 5, it shall within 30 days revise the Compliance Plan in such manner and to such extent as will reflect the Authority’s requirements.
- 7 The Licensee shall at least once every year during which this Condition is in force review the Compliance Plan so as to ensure:
- (a) its continued compliance with its obligations under this Condition; and
 - (b) that the information set out in the Compliance Plan continues to be accurate in all material respects.
- 8 Where the Licensee revises the Compliance Plan, either in accordance with paragraph 6 or following a review conducted by it in accordance with paragraph 7, it shall submit the revised Compliance Plan to the Authority for its approval.
- 9 The Licensee shall ensure that persons engaged in the management and operation of the Transmission System Operator Business:
- (a) are made aware of the practices, procedures, systems and rules of conduct set out

in the Compliance Plan;

- (b) have the necessary information and facilities to comply with their respective obligations as provided for in the Compliance Plan; and
- (c) are aware of the disciplinary procedures that may be activated should they fail to comply with their obligations under the Compliance Plan.

Compliance Manager

- 10 The Licensee shall, following consultation with the Authority, appoint a senior member of its personnel engaged in the management and operation of the Transmission System Operator Business as a manager (the “**Compliance Manager**”) for the purpose of facilitating compliance with its obligations under this Condition and with the Compliance Plan.
- 11 The Licensee shall ensure that the Compliance Manager has access to such staff, premises, systems, information, documentation, equipment, facilities and other resources as he might reasonably expect to require to fulfil the duties and tasks assigned to him.
- 12 The duties and tasks assigned to the Compliance Manager shall include:
 - (a) providing relevant advice and information to the Licensee for the purpose of ensuring its compliance with this Condition and with the Compliance Plan;
 - (b) monitoring the effectiveness of and the Licensee’s compliance with the Compliance Plan;
 - (c) investigating any complaint or representation received by the Licensee from any person in respect of any matter arising under or by virtue of this Condition or in relation to the Compliance Plan;
 - (d) recommending and advising upon the remedial action which any such investigation has demonstrated to be necessary or desirable, including where necessary revising the Compliance Plan to reflect such recommendation and advice; and
 - (e) reporting, at such frequency as is determined in writing by the Authority, to the

directors of the Licensee on his activities during the period covered by the report, the investigations he has conducted and on progress towards implementation of the Compliance Plan.

- 13 The Licensee shall, at such frequency as is determined in writing by the Authority, submit a report to the Authority:
- (a) detailing the activities of the Compliance Manager during the period covered by the report;
 - (b) providing a progress update on the Licensee's implementation of the Compliance Plan;
 - (c) setting out the details of any investigations conducted by the Compliance Manager, including:
 - (i) the number, type and source of the complaint or representation on which such investigations were based;
 - (ii) the outcome of such investigations; and
 - (iii) any remedial action taken by the Licensee following such investigations.

Definitions

- 14 In this Condition, unless the context otherwise requires:

"appropriate time"	means the period of 6 months or such other period as the Authority may specify in respect of any person or class of persons.
---------------------------	--

"Associated Business"	means any business of the Licensee (or of any affiliate or related undertaking of the Licensee) other than a relevant holding company.
---	---

"Compliance Manager"	shall have the meaning attributed to that expression in paragraph 10.
-----------------------------	---

“Compliance Plan”

shall have the meaning attributed to that expression in paragraph 4.

“relevant holding company”

means each holding company of the Licensee which does not itself generate or supply electricity on the Island of Ireland and which has no holding company that itself generates or supplies electricity on the Island of Ireland (regardless of whether any subsidiaries of such companies undertake such generation or supply).

Condition 22. Central Dispatch and Merit Order

- 1 The Licensee shall, in conjunction with the Republic of Ireland System Operator, schedule SEM Generation, and ensure that direct instructions for the dispatch of SEM Generation are issued, in accordance with paragraphs 2, 3, 4 and 5.
- 2 Having regard to information provided to it by the Republic of Ireland System Operator and authorised electricity operators (including as to forecast levels of electricity demand and availability of generation capacity), to forecast levels of electricity available to be transferred to or from the Island of Ireland across any Interconnector and to the requirements of the Transmission System Security and Planning Standards, the Distribution System Security and Planning Standards and the Republic of Ireland Operating Security Standards, the Licensee shall, in conjunction with the Republic of Ireland System Operator, undertake operational planning:
 - (a) for the matching of SEM Generation output (including a reserve of SEM Generation to provide a security margin of SEM Generation availability) with forecast demand on the Island of Ireland after taking into account, inter alia:
 - (i) unavailability of generation sets and/or Interconnector transfers;
 - (ii) constraints from time to time imposed by technical limitations on the All-Island Networks or any part thereof; and
 - (iii) electricity delivered to the All-Island Networks from generation sets not subject to central dispatch; and
 - (b) (consistently with sub-paragraph (a) above, in accordance with the Grid Code and subject to paragraph 10 of Condition 16), for the release of parts of the transmission system for maintenance, repair, extension or reinforcement.

Merit Order

- 3 The Licensee shall (pursuant to the Grid Code), in conjunction with the Republic of Ireland System Operator (pursuant to the Republic of Ireland Grid Code), establish and operate, a merit order system for SEM Generation.

4 Taking account of, inter alia, the factors set out in paragraph 5, the Licensee shall, in conjunction with the Republic of Ireland System Operator:

- (a) schedule SEM Generation; and
- (b) except to the extent not reasonably achievable given that the Licensee and the Republic of Ireland System Operator each have separate control centres from which dispatch instructions to generation sets in each of their respective jurisdictions are issued, ensure that direct instructions for the dispatch of SEM Generation are issued:

in each case:

- (c) in ascending order of relevant prices; and
- (d) as will in aggregate (and after taking account of electricity delivered to or from the All-Island Networks from or to other sources) be sufficient to match at all times (to the extent possible having regard to the availability of SEM Generation) demand forecast on the All-Island Networks taking account of information provided by electricity undertakings, together with an appropriate margin of reserve.

5 The factors referred to in paragraph 4 include:

- (a) forecast demand on the Island of Ireland;
- (b) technical constraints from time to time imposed on the All-Island Networks or any part or parts thereof;
- (c) the dynamic operating characteristics of the SEM Generation;
- (d) forecast exports of electricity across any Interconnector;
- (e) transmission and distribution losses;
- (f) (in respect of the transmission system) the operating security standard, and (in respect of the Republic of Ireland transmission system) the Republic of Ireland Operating Security Standards; and
- (g) other matters provided for in the Grid Code and the Republic of Ireland Grid Code

(including, in each case, any arrangements for the dispatch of renewable generators).

Provision of Information

- 6 The Licensee shall provide to the Authority such information as the Authority shall request concerning the merit order system or any aspect of its operation.

Cease to have effect

- 7 This Condition shall cease to have any effect from the date determined by the Authority subject to any transitional provisions which the Authority may direct and without prejudice to the continuing enforceability of any rights or obligations which may have accrued or otherwise fallen due for performance prior to that date (including any requirement to comply with the direction of the Authority issued prior to that date).

Definitions

- 8 In this Condition, unless the context otherwise requires:

"available" means, in relation to any generation set or Interconnector transfer, a generation set or Interconnector transfer which is available in accordance with the Grid Code or the Republic of Ireland Grid Code (as applicable), and **"availability"** shall be construed accordingly.

"central dispatch" means the process of scheduling and issuing direct instructions by the Licensee, in conjunction with the Republic of Ireland System Operator, as referred to in paragraph 1.

"Interconnector transfer" means the flow of electricity across an Interconnector into, or out of, the Island of Ireland.

"merit order system" means a system establishing economic precedence of electricity from available

generation sets or Interconnector transfers to be delivered or transferred to the All-Island Networks (subject to other system needs).

"NI SEM Generation"

means the available generation sets of each relevant generator which:

- (a) are required to be subject to central dispatch under the terms of that relevant generator's licence or exemption (as applicable); or
- (b) are otherwise agreed by that relevant generator to be subject to central dispatch.

"relevant generator"

means:

- (a) the holder of a licence under Article 10(1)(a) of the Order; or
- (b) a person who is exempt from the requirement to hold such a licence in accordance with Article 9 of the Order, and whose generation set is connected to the total system.

"relevant price"

means, in relation to each generation set and each Interconnector transfer, the price submitted in respect of that generation set or Interconnector transfer in accordance with the Single Electricity Market Trading and Settlement Code.

"Republic of Ireland Generator"

means a person licensed to generate electricity under Section 14(1)(a) of the Republic of Ireland Electricity Act, or the Republic of Ireland Board acting in its capacity as the owner or operator of

generation sets.

“Republic of Ireland SEM Generation” means the available generation sets of each Republic of Ireland Generator which:

- (a) are required to be subject to central dispatch under the terms of that Republic of Ireland Generator’s licence; or
- (b) are otherwise agreed by that Republic of Ireland Generator to be subject to central dispatch.

“SEM Generation” means NI SEM Generation, Republic of Ireland SEM Generation and available Interconnector transfers taken together.

Condition 22A. Central Dispatch and Merit Order

- 1 The Licensee shall, in conjunction with the Republic of Ireland System Operator, schedule SEM Generation and ensure that direct instructions for the dispatch of SEM Generation are issued in accordance with paragraphs 2, 3, 4 and 5.
- 2 Having regard to information provided to it by the Republic of Ireland System Operator and by authorised electricity operators (including as to forecast levels of electricity demand and availability of generation capacity), to forecast levels of electricity available to be transferred to or from the Island of Ireland across any Interconnector and to the requirements of the Transmission System Security and Planning Standards, the Distribution System Security and Planning Standards and the Republic of Ireland Operating Security Standards, the Licensee shall, in conjunction with the Republic of Ireland System Operator, undertake operational planning:

 - (a) for the matching of SEM Generation output (including a reserve of SEM Generation to provide a security margin of SEM Generation availability) with forecast demand on the Island of Ireland after taking into account, inter alia:

 - (i) physical notifications;
 - (ii) unavailability of generation sets and/or Interconnector transfers;
 - (iii) constraints from time to time imposed by technical limitations on the All-Island Networks or any part thereof; and
 - (iv) electricity delivered to the All-Island Networks from generation sets not subject to central dispatch; and
 - (b) consistently with sub-paragraph (a) above, and in accordance with the Grid Code, for the release of parts of the transmission system for maintenance and repair, extension or reinforcement.
- 3 The Licensee shall (pursuant to the Grid Code) in conjunction with the Republic of Ireland System Operator (pursuant to the Republic of Ireland Grid Code), establish and operate, a merit order system for the Balancing Market. The merit order so established shall take account of the following objectives:

- (a) minimising the cost of diverging from physical notifications;
- (b) as far as practical, enabling the Ex-Ante Market to resolve energy imbalances ahead of Gate Closure; and
- (c) as far as practical minimising the cost of non-energy actions by the Licensee in the impact upon the Ex-Ante Market.

4 Taking account of, *inter alia*, the factors set out in paragraph 5, the Licensee shall, in conjunction with the Republic of Ireland System Operator:

- (a) schedule SEM Generation; and
- (b) except to the extent not reasonably achievable given the fact that the Licensee and the Republic of Ireland System Operator each have separate control centres from which dispatch instructions to generation sets in each of their respective jurisdictions are issued, ensure that direct instructions to dispatch SEM Generation are issued;

in each case:

- (c) in ascending order of incremental offer prices and descending order of decremental bid prices; and
- (d) as will in aggregate (and after taking account of electricity delivered to or from the All-Island Transmission Networks from or to other sources and submitted physical notifications) be sufficient to match at all times (to the extent possible having regard to the availability of SEM Generation) demand forecast on the All-Island Networks taking account of information provided by electricity undertakings and by authorised electricity operators, together with an appropriate margin of reserve.

5 The factors referred to in paragraph 4 are:

- (a) forecast demand on the Island of Ireland;
- (b) physical notifications;

- (c) the values of the parameters which have been determined by the Authority as the scheduling and dispatch parameters;
- (d) technical constraints from time to time imposed on the All-Island Networks or any part or parts thereof;
- (e) the dynamic operating characteristics of SEM Generation;
- (f) forecast exports of electricity across any Interconnector;
- (g) transmission and distribution losses;
- (h) in respect of the transmission system, the operating security standard and (in respect of the Republic of Ireland transmission system) the Republic of Ireland Operating Security Standards; and
- (i) other matters provided for in the Grid Code and the Republic of Ireland Grid Code including in each case any arrangements for the dispatch of renewable generators.

6 The Licensee shall, when directed by the Authority to do so, prepare a report considering and proposing the initial values of the parameters to be used in its scheduling and dispatch parameters including the values of the Long Notice Adjustment Factor and the System Imbalance Flattening Factor. Following publication of the Licensee's report and consultation with such persons as the Authority believes appropriate, the Authority shall determine the values of the parameters to be used in the scheduling and dispatch parameters including the values of the Long Notice Adjustment Factor and the System Imbalance Flattening Factor and shall specify the period for which they shall apply. The Licensee shall use the specified values of the parameters in the scheduling and dispatch support systems until such times any revisions are to be applied following the procedures set out in paragraph 7.

7 The Licensee shall provide a report to the Authority on an annual basis, or whenever so required by the Authority, on the performance of its scheduling and dispatch resulting from the current values of the scheduling and dispatch parameters. The Licensee may propose changes to the values of those parameters, or their replacement with different parameters. After publication of the Licensee's report and following consultation with such persons as

the Authority believes appropriate, the Authority may determine that the values of the parameters shall change, or that different parameters shall be used. Such a determination shall specify the date from which any such changes shall take effect and may specify transitional arrangements to be applied by the Licensee.

8 The Licensee shall provide to the Authority such information as the Authority shall request concerning the merit order system or any aspect of its operation.

9 The Licensee shall arrange for the carrying out of a periodic audit of the scheduling and dispatch process, its operation and implementation in accordance with directions given to it from time to time by the Authority in respect of such matters as the Authority considers appropriate, including (without prejudice to the generality):

(a) the frequency, audit period, process and timetable for the audit;

(b) the selection, appointment and tenure of a person or firm to carry out the audit;

(c) the terms of reference for the audit;

(d) the publication of the audit report and of any other relevant materials;

and the Licensee shall provide, or arrange for the provision, in a timely manner of such information, reports or other assistance (whether to the Authority or to another person) as the Authority may request concerning the audit. The Licensee shall, where directed to do so by the Authority, implement the recommendations contained in any audit report.

Coming Into Effect

10 The provisions of this Condition (other than those of this paragraph and of paragraph 11 which shall come into immediate effect) shall come into effect on such day, and subject to such transitional arrangements, as the Authority may by direction appoint. Different days may be so appointed for different provisions and for different purposes.

11 In this Condition:

"available"

means, in relation to any generation set or Interconnector transfer, generation set or Interconnector transfer which is

available in accordance with the Grid Code or the Republic of Ireland Grid Code (as applicable) and "availability" shall be construed accordingly;

“central dispatch”

means the process of scheduling and issuing direct instructions by the Licensee, in conjunction with the Republic of Ireland System Operator, as referred to in paragraph 1;

“Interconnector transfer”

means the flow of electricity across an Interconnector into, or out of, the Island of Ireland;

“Long Notice Adjustment Factor”

means a multiplier applied to the start-up costs of generation sets which varies depending on the length of notice provided in any instruction from the Licensee to synchronise such generation set and which has greater values for greater lengths of notice;

“merit order system”

means a system establishing economic precedence of electricity from available generation sets or Interconnector transfers to be delivered or transferred to the All-Island Networks (subject to other system needs).

“NI SEM Generation”

means the available generation sets of each relevant generator which;

(a) are required to be subject to central dispatch instructions under the terms of that relevant generator's licence or exemption (as applicable); or

(b) are otherwise agreed by that relevant generator to be subject to central dispatch.

“non-energy actions”

means dispatch instructions issued with the intent of resolving constraints in the transmission system rather than balancing energy between demand and generation;

“physical notification”

has the meaning set out in the Single Electricity Market Trading and Settlement Code Part B;

“relevant generator”

means:

(a) the holder of a licence under Article 10(1)(a) of the Order; or

(b) a person who is exempt from the requirement to hold such a licence in accordance with Article 9 of the Order, and whose generation set is connected to the total system.

“Republic of Ireland Generator”

means a person licensed to generate electricity under Section 14(1)(a) of the Republic of Ireland Electricity Act, or the Republic of Ireland Board acting in its

“Republic of Ireland SEM Generation”

capacity as the owner or operator of generation sets.

means the available generation sets of each Republic of Ireland Generator which:

(a) are required to be subject to central dispatch under the terms of that Republic of Ireland Generator’s licence; or

(b) are otherwise agreed by that Republic of Ireland Generator to be subject to central dispatch.

“scheduling and dispatch parameters”

means the parameters to be used in the Licensee’s scheduling and dispatch support systems which shall be designed to defer central dispatch instructions to enable the maximum use by participants of the Ex-Ante Markets and shall include a Long Notice Adjustment Factor and a System Imbalance Flattening Factor;

“SEM Generation”

means NI SEM Generation, Republic of Ireland SEM Generation and available Interconnector transfers taken together.

“System Imbalance Flattening

means a multiplier applied to the

Factor”

start-up costs of generation sets which varies depending on the degree to which forecast generation including forecast imports and forecast exports on Interconnectors is short of forecast demand and which has greater values for greater shortages.

Condition 22B. Balancing Market Principles Statement

- 1 The Licensee shall, when directed by the Authority to do so, prepare in conjunction with the Republic of Ireland System Operator, a Balancing Market Principles Statement being a document which i) describes the Licensee's scheduling and dispatch process within the Balancing Market; and ii) sets out the Licensee's reporting regime for occasions when it has acted in exception to the processes and procedures set out in the statement.
- 2 The Balancing Market Principles Statement shall be in a form approved by the Authority and shall be based upon and fully comply with the BMPS Terms of Reference. The Balancing Market Principles Statement shall be published on the Licensee's website.
- 3 The Licensee shall ensure that, following updates in accordance with paragraphs 5 and 6 below, the Balancing Market Principles Statement is as accurate and up-to-date a description of the scheduling and dispatch process as is practicable.
- 4 The Licensee shall review the Balancing Market Principles Statement on an ongoing basis (and in any event, at least once a year) to determine if it continues to be an accurate and up-to-date description of the Licensee's scheduling and dispatch process within the Balancing Market. The Licensee shall propose such amendments to the Balancing Market Principles Statement as it considers necessary following such reviews, or upon being informed to do so by the Authority, in accordance with paragraphs 5 and 6.
- 5 Except where the Authority directs otherwise, before revising the Balancing Market Principles Statement the Licensee shall:
 - (a) send a copy of the proposed revisions to the Authority;
 - (b) consult market participants on the proposed revisions and allow them a period of not less than 28 days in which to make representations to the Licensee;
 - (c) submit to the Authority within 7 days from the close of the consultation a report setting out:
 - (i) the revisions originally proposed;
 - (ii) the representations (if any) made to the Licensee;

- (iii) any changes to the revisions subsequent to the consultation process, and
- (iv) where the Authority directs that sub-paragraphs i), ii), and iii) or any of them shall not apply, comply with such other requirements as are specified in the direction.

6 The Licensee shall not revise the Balancing Market Principles Statement and any revision thereof until the expiry of 28 days from the date on which the Authority receives the report referred to in sub-paragraph 5(c) unless prior to that date the Authority either i) directs the Licensee to make the revision on an earlier date; or ii) directs the Licensee not to make the revision.

Coming Into Effect

7 The provisions of this Condition (other than those of this paragraph and of paragraph 8 which shall come into immediate effect) shall come into effect on such day, and subject to such transitional arrangements, as the Authority may by direction appoint. Different days may be so appointed for different provisions and for different purposes.

8 In this condition:

“BMPS Terms of Reference” means Appendix A of the document named “Balancing Market Principles Statement Terms of Reference” published by the SEM Committee on 7th October 2016 (SEM-16-058) or such other document replacing the same and published by the Authority from time to time.

Condition 23. Single Electricity Market Trading and Settlement Code

- 1 The Licensee shall accede to the Single Electricity Market Trading and Settlement Code and comply with it in so far as applicable to it in its capacity as:
 - (a) the system operator in respect of the transmission system;
 - (b) the operator of the Capacity Market;
 - (c) the operator of the Balancing Market; and
 - ~~(b)~~ (d) the appointed Meter Data Provider (as defined in the Single Electricity Trading and Settlement Code) for metering systems that relate to entry or exit points on the transmission system.

~~1.~~ Condition 23A. Capacity Market

1. The Licensee shall enter into and, in conjunction with the Republic of Ireland System Operator, at all times administer and maintain in force, the Capacity Market Code, being a document which:

- (a) makes provision in respect of the capacity arrangements described in paragraph 3;
- (b) is designed to facilitate achievement of the objectives set out in paragraph 4; and
- (c) contains modification procedures which provide that any modifications to the Capacity Market Code (but not, necessarily, to the Agreed Procedures) must be subject to the prior approval of the Authority and which enable the Authority to propose modifications to the Capacity Market Code;

and the Licensee shall be taken to have complied with this paragraph to the extent that it:

- (d) adopts, on the date of such designation, as the Capacity Market Code the document designated as such by the Authority for the purposes of this Condition; and
 - (e) on an on-going basis reviews and proposes such modifications to that document (in accordance with the modification provisions therein) as would be necessary to ensure that that document meets the requirements of this paragraph 1.
2. The Licensee shall comply with the Capacity Market Code insofar as it is applicable to it as the holder of a licence granted under Article 10(1)(b) of the Order.
3. The capacity arrangements referred to in paragraph 1(a) are arrangements to secure generation adequacy and capacity to meet the demands of consumers including (without limitation) rules and procedures for the application for and allocation of agreements to remunerate the provision of electricity capacity (whether through the provision of generation, electricity supplied via interconnectors, reduction in demand or otherwise) across the ~~island~~Island of Ireland. Those arrangements taken together with the arrangements for calculation and settlement of such remuneration (which are dealt with under the provisions of the Single Electricity Market Trading and Settlement Code), are referred to in this Condition as the “Capacity ~~Remuneration Mechanism~~Market”.

4. The objectives referred to in paragraph 1(b) are:
- (a) to facilitate the efficient discharge by the Licensee of the obligations imposed on it by this licence, and to facilitate the efficient discharge by the Republic of Ireland System Operator of the obligations imposed on it by the Republic of Ireland System Operator Licence;
 - (b) to facilitate the efficient, economic and coordinated operation, administration and development of the Capacity Market and the provision of adequate future capacity in a financially secure manner;
 - (c) to facilitate the participation of undertakings including electricity undertakings engaged or seeking to be engaged in the provision of ~~Electricity Capacity~~electricity capacity in the Capacity Market;
 - (d) to promote competition in the provision of electricity capacity to the Single Electricity Market;
 - (e) to provide transparency in the operation of the Single Electricity Market;
 - (f) to ensure no undue discrimination between persons who are or may seek to become parties to the Capacity Market Code; and
 - (g) through the development of the Capacity Market, to promote the short-term and long-term interests of consumers of electricity with respect to price, quality, reliability, and security of supply of electricity across the ~~island~~Island of Ireland.
5. The Licensee shall, in conjunction with the Republic of Ireland System Operator, ensure that persons who are a party to the Capacity Market Code or who wish to become a party to the Capacity Market Code have, to the extent that is reasonably practicable, a single point of contact when participating in the Capacity Market and interfacing with the Transmission System ~~Operation~~Operator Business.
6. The Licensee shall provide to the Authority such information as the Authority may request concerning the Capacity Market Code or any aspect of its operation.

Coming into Effect

7. The provisions of this Condition (other than those of this paragraph [and paragraph 8 below](#) which shall come into immediate effect) shall come into effect on such day, and subject to such transitional arrangements, as the Authority may by ~~discretion~~[direction](#) appoint. Different days may be so appointed for different provisions and for different purposes.

Definitions

8. In this Condition:

“Agreed Procedures”

means the detailed procedures that form part of the Capacity Market Code, but which are subsidiary to the main provisions of the code, as (subject thereto) such expression is defined in the code;

Condition 23B. Compliance and Assurance Officer

- 1 In addition to and separate from the appointment of a Compliance Manager under Condition 12, the Licensee shall, in conjunction with the Republic of Ireland System Operator, and following consultation with the Authority, appoint a competent person who is a senior member of its personnel (the "Compliance and Assurance Officer") for the purpose of verifying the Licensee's compliance with its obligations under Conditions 5, 11 and 15, and to provide independent assurance of such verifications.
- 2 The Licensee shall ensure that the Compliance and Assurance Officer is independent and has access to such staff, premises, systems, information, documentation, equipment, facilities and other resources as he might reasonably expect to require to fulfil the duties and tasks assigned to him.
- 3 The Licensee shall provide a copy of any complaints received by it in respect of Condition 5, 11 and 15, to the Compliance and Assurance Officer as soon as reasonably practicable and in any event within one month of receiving any such complaint.
- 4 The duties and tasks assigned to the Compliance and Assurance Officer shall include:
 - (a) providing relevant advice and information to the Licensee for the purpose of ensuring its compliance with Conditions 5, 11 and 15;
 - (b) monitoring the Licensee's compliance with Conditions 5, 11 and 15 and providing assurances around this;
 - (c) reviewing the processes followed and ensuring that due process has been applied to the investigation of any complaint or representation received by him or the Licensee from any person in respect of any matter arising under or by virtue of Conditions 5, 11 and 15;
 - (d) recommending and advising on the remedial action which any such investigation has demonstrated to be necessary or desirable; and
 - (e) reporting annually to the directors of the Licensee on his activities during the period covered by the report and the investigations he has conducted. This report shall be prepared and submitted in a form approved by the Authority and shall

include the Compliance and Assurance Officer's assessment of the compliance of the Licensee with the requirements of Condition 5, 11 and 15, as well as an explanation of the practices, procedures and systems adopted to effect compliance with such conditions.

- 5 The Licensee shall, following consideration of the Compliance and Assurance Officer's report and within one calendar month, or such other period agreed by the Authority, provide a copy of the Compliance and Assurance Officer's report, together with its response to that report to the Authority.
- 6 Following approval of the Compliance and Assurance Officer's report by the Authority, the Licensee shall publish it and any part of its response to the report specified by the Authority on its website once directed to do so by the Authority.

Coming into Effect

- 7 The provisions of this Condition (other than those of this paragraph which shall come into immediate effect) shall come into effect on such day, and subject to such transitional arrangements, as the Authority may by direction appoint. Different days may be so appointed for different provisions and for different purposes.

ANNEX 1 Charge Restrictions

1. Definitions

1.1 In this Annex:

"average specified rate"	means the arithmetic mean of the daily base rates of Northern Bank Limited (or such other bank as the Authority shall specify from time to time) current from time to time during the period in respect of which the calculation falls to be made;
"maximum regulated SSS/TUoS revenue"	means the revenue calculated in accordance with the formula in paragraph 2;
"Moyle Interconnector Collection Agency Agreement"	has the meaning given to that expression in Condition 37.
"Moyle revenue"	means the revenue which the Licensee is allowed to recover in respect of CAIR _t in accordance with paragraph 2(B) (such revenue being zero where CAIR _t is zero);
"quantity entering the total system"	means the aggregate quantity of units metered on entry to the total system in relevant year t (minus any units consumed by generation sets and imported from the total system);
"regulated SSS/TUoS revenue"	means the revenue (measured on an accruals basis) derived from SSS/TUoS charges (including any revenue received from any Separate Business) in relevant year t after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived;
"relevant year"	means a financial year commencing on 1 October and concluding 30 September.

"relevant year t"	means that relevant year for the purposes of which any calculation falls to be made; "relevant year t - 1" means the relevant year preceding relevant year t and similar expressions shall be construed accordingly
"SSS/TUoS charge(s)"	means the charges for System Support Services and for use of the All-Island Transmission Networks as provided for under Condition 30;
"SSS/TUoS charge restriction condition"	means this Annex as from time to time modified or replaced in accordance therewith or pursuant to Article 14, 17, 17A or 18 of the Order, under the Energy Order, the SEM Order or the Directive Regulations;
"uncollected SSS/TUoS revenue"	means any amount owed to the Licensee in respect of regulated SSS/TUoS revenue, which amount remains unpaid six months after the date it first fell due for payment or which amount the Licensee deems (in accordance with the payment security policy) to be unrecoverable before the expiry of that six month period; plus the reasonable recovery costs incurred by the Licensee in respect of such amount and the reasonable interest attributable to such amount (calculated, in both cases, in accordance with the payment security policy);
"unit"	means a kilowatt hour;
"Wheeled Unit"	means a unit (whether generated inside or outside Northern Ireland) which enters the total system at any point and is delivered to a place outside Northern Ireland.

2. **Restriction of SSS/TUoS charges: basic formula**

The Licensee shall, in setting the SSS/TUoS charges, use its best endeavours to ensure that in any relevant year the regulated SSS/TUoS revenue shall not exceed the maximum regulated SSS/TUoS revenue which shall be the aggregate of:

(A) the maximum core SSS/TUoS revenue in relevant year t (M_{TSOt})

Plus

(B) the $CAIR_t$ amount.

The maximum core SSS/TUoS revenue shall be calculated as follows:

$$M_{TSOt} = A_{TSOt} + B_{TSOt} + D_{TSOt} + K_{TSOt} + INCENT_t$$

where:

A_{TSOt} means:

- (a) the cost of System Support Services in relevant year t including amounts payable by the Licensee to any person for the provision or use of any System Support Services provided over any interconnector in relevant year t ; plus
- (b) amounts payable to the Transmission Owner Business for the provision of transmission services in relevant year t ; plus
- (c) amounts levied in relevant year t on the Transmission System Operator Business by the Market Operation Activity in accordance with Annex 1 of the Northern Ireland Market Operator Licence;

B_{TSOt} means the allowed SSS/TUoS revenue in pounds millions in relevant year t which is calculated as follows:

In the tariff period/years 1 April 2010 to 30 September 2015 the B_{TSOt} term shall equal the amounts in the SONI Price Control 2010 – 2015 Decision Paper April 2011:

Opex consisting of payroll/HR, IT Comms, other opex; ongoing pension and pension deficit; depreciation on non-building and building assets; and return on non-building and building assets shall be indexed by RPI_t in the relevant period/year n with respect to RPI at April 2010 (222.8).

The values to be indexed in n period/years are:

n	1	2	3	4	5	6
	£m	£m	£m	£m	£m	£m
Payroll/HR	2.1	4.7	.1	5.1	5.1	5.2
IT Comms	0.7	1.9	.9	2	1.7	1.7
Other Opex	0.6	1.3	.4	1.4	1.4	1.4
Ongoing Pension	0.3	0.8	.8	0.7	0.7	0.8
Pension deficit	0.13	0.03	.03	0.03	0.03	0.03
Depreciation Non-Build	1.478	3.069	.198	3.288	3.39	3.499
Depreciation Building	0	0.025	.076	0.101	0.101	0.101
Total	5.308	11.824	2.504	12.619	12.421	12.73

Where the period/year n in question is that shown in the table below:

n	Period/Year
1	April 2010 - September 2010

2	October 2010 - September 2011
3	October 2011 - September 2012
4	October 2012 - September 2013
5	October 2013 - September 2014
6	October 2014 - September 2015

where:

RPI_t means the Retail Price Index (1987 = 100) published or determined with respect to April in relevant year t;

i.e RPI in the relevant year $n = 2$ means the value of RPI in April falling within the relevant year $n=2$ (i.e. the Retail Price Index as at April 2011 which is 234.4)

The B_{TSOt} term shall include a Weighted Average Return on Capital (WACC) which shall be calculated on the average Regulated Asset Base (RAB) for each period/year of the price control such that the rate of return is Average RAB x WACC. The values of the average RAB for each period/year on which the rate of return is calculated are contained in the following table:

n	1	2	3	4	5	6
	£m	£m	£m	£m	£m	£m
Average RAB (excl. building)	9.132	16.888	14.79	12.265	9.74	7.171
Average RAB (building)	0	0.621	1.836	2.381	2.28	2.178
Average RAB Total	9.132	17.509	16.626	14.646	12.02	9.349

The WACC for each period/year shall be calculated according to the following formula:

$$WACC = (r_e / (1 - t)) \times (1 - g) + (r_d \times g)$$

where

r_e = cost of equity

r_d = cost of debt

t = taxation

g = gearing

and for each period/year the values of these are given in the following table:

n	1	2	3	4	5	6
Cost of Equity	6.17%	6.17%	6.17%	6.17%	6.17%	6.17%
Cost of Debt	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%
Gearing	0.55	0.55	0.55	0.55	0.55	0.55

Except that for t taxation, the value shall be given by the main rate of corporation tax in existence at the commencement of the period n .

The Weighted Average Return on Capital calculated on the Average RAB values contained in the SONI Price Control 2010 – 2015 Decision Paper April 2011 shall be uplifted by RPI_t in the relevant period/year n with respect to RPI at April 2010.

D_{TSO_t} means the aggregate of the allowed charge in relevant year t for excluded SSS/TUoS costs as defined in paragraph 8.1 of this Annex and the allowed change of law revenues as determined by the Authority in accordance with paragraph 6.1

$CAIR_t$ has the same meaning as is given to that expression in the Moyle Interconnector Collection Agency Agreement in respect of relevant year t ;

K_{TSO_t} means the correction factor (whether a positive or negative number) to be applied to the maximum core SSS/TUoS revenue in relevant year t derived using the following formula:

$$K_{TSO_t} = (M_{TSO_{t-1}} - R_{TSO_{t-1}}) (1 + I_t / 100)$$

Where:

$M_{TSO_{t-1}}$ means the maximum core SSS/TUoS revenue in relevant year $t-1$

R_{TSOt-1} means the regulated SSS/TUoS revenue less the Moyle revenue which is attributable to the financing and other costs associated with the Moyle Interconnector (as referred to in the definition of the term $CAIR_t$)

I_t means the average specified rate.

In relevant year t ending 31 March 2010 K_{TSOt} shall be as submitted by the Licensee to the Authority and approved by the Authority (with such adjustments as the Authority reasonably considers appropriate in the circumstances.)

$INCENT_t$ means:

- (a) where the Achieved DBC for the relevant year is below the Ex-Post DBC Target for that year, the amount (converted into pounds sterling at the Applicable Exchange Rate) that is equal to 25% of the DBC Success Amount (being a positive figure);
- (b) where the Achieved DBC for the relevant year is above the Ex-Post DBC Target for that year, the amount (converted into pounds sterling at the Applicable Exchange Rate) that is equal to 25% of the DBC Failure Amount (being a negative figure),

where:

- (c) DBC Success Amount means the amount that is equal to 10% of every 2.5% by which the Achieved DBC is below the Ex-Post DBC Target provided that:
 - a. where the Achieved DBC is 7.5% or less below the Ex-Post DBC Target, the amount shall be calculated as zero;
 - b. where the Achieved DBC is 20% or more below the Ex-Post DBC Target, the amount shall be calculated on the basis that Achieved DBC is 20% below the Ex-Post DBC Target.
- (d) DBC Failure Amount means the amount that is equal to 5% of every 2.5% by which the Achieved DBC is above the Ex-Post DBC Target, provided that:
 - a. where the Achieved DBC is 7.5% or less above the Ex-Post DBC Target, the amount shall be calculated as zero;
 - b. where the Achieved DBC is 20% or more above the Ex-Post DBC Target, the amount shall be calculated on the basis that the Achieved DBC is 20% above the Ex-Post DBC Target.

In this paragraph 2:

Achieved DBC	means, in respect of any relevant year, the actual Dispatch Balancing Costs incurred on an all-island basis in that relevant year by the Licensee and the Republic of Ireland System Operator and included in the Annual Out-turn Report.
Annual Out-turn Report	has the meaning given to it in paragraph 1 of Condition 39.
Applicable Exchange Rate	means the annual average exchange rate for the conversion of euro into sterling as published by Thomson Reuters.
Decision Paper	means the decision paper issued jointly by the Authority and the Commission for Energy Regulation dated 5 June 2012 and entitled 'Incentivisation of All-Island Dispatch Balancing Costs'.
Dispatch Balancing Costs	<p>means costs relating to or incurred in respect of:</p> <ul style="list-style-type: none">(a) the constraining on or off (as the case may be) generation sets pursuant to the central dispatch and merit order systems and processes established by the Licensee in accordance with Condition 22 <u>or Condition 22A (whichever is in effect)</u> or for the purposes;(b) the management of Energy Imbalances;(c) any Uninstructed Imbalance;(d) Testing Charges;(e) Other System Charges; and

(f) any SO Interconnector Trade.

Energy Imbalances

means the imbalance between the (a) payments made by the Single Market ~~Operator~~Operation Business to generators for electricity sold from generation sets scheduled to operate in accordance with the Licensee's instructions pursuant to the processes and procedures for central dispatch and merit order, and (b) the payments received by the Single Market ~~Operator~~Operation Business from electricity suppliers in respect of the electricity purchased by such electricity suppliers.

Ex-Ante DBC Target

means, in respect of any relevant year, the Dispatch Balancing Costs approved by the Authority and the Commission for Energy Regulation for the purpose of their inclusion as a component in the Imperfection Charge proposed to be levied on suppliers by the Single Market ~~Operator~~Operation Business for that relevant year.

Ex-Post DBC Target

means, in respect of any relevant year, either the Ex-Ante DBC Target adjusted in accordance with an Ex-Post Adjustment provided that where no adjustment is to be made it shall be the Ex-Ante DBC Target for that relevant year.

Ex-Post Adjustment

means the adjustment (if any) to be made to the Ex-Ante DBC Target applicable in respect of any relevant year, as determined by the Authority and the Commission for Energy Regulation in accordance with, and taking account of the factors

set out in, the Decision Paper.

Imperfection Charge	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
Other System Charges	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
SO Interconnector Trade	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
Testing Charges	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
Uninstructed Imbalance	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.

The SSS/TUoS charge restriction conditions outlined in this paragraph 2 do not apply to tariff years from 1 October 2015 onwards. In the absence of modifications to those provisions, the licensee shall not be able to increase (in nominal terms) any of the tariffs or charges contributing to its SSS/TUoS revenue above the levels applicable on 1 October 2014, unless:

1. otherwise approved by the Authority except to such extent as has been approved in advance by the Authority;
2. such increase is to ensure that the Licensee is able to collect the Collection Agency Income Requirement required by SONI to discharge its duties under the Moyle Interconnector Collection Agency Agreement in accordance with Condition 37 of this licence; and
3. such increase is to enable the Licensee to collect the TUoS revenue that the Authority has determined is payable to the Transmission Owner Business for the provision of transmission services;
4. such increase is to enable the Licensee to collect System Support Services, Ancillary Services, Other System Charges and TUoS revenue in respect of generation as determined by the SEM Committee.

3. **Restriction of SSS/TUoS charges: adjustments**

3.1 If, in respect of any relevant year, the regulated SSS/TUoS revenue exceeds the maximum regulated SSS/TUoS revenue by more than the permitted one-year percentage, the Licensee shall furnish an explanation to the Authority and in the next following relevant year the Licensee shall not effect any increase in the SSS/TUoS charges unless it has demonstrated to the reasonable satisfaction of the Authority that the regulated SSS/TUoS revenue would not be likely to exceed the maximum regulated SSS/TUoS revenue in that next following relevant year.

3.2 If, in respect of any 3 (three) successive relevant years, the sum of the amounts by which the regulated SSS/TUoS revenue has exceeded the maximum regulated SSS/TUoS revenue is more than the permitted 3-year percentage, then in the next following relevant year the Licensee shall, if required by the Authority, adjust the SSS/TUoS charges such that the regulated SSS/TUoS revenue would not be likely, in the judgement of the Authority, to exceed the maximum regulated SSS/TUoS revenue in that next following relevant year.

3.3 In this paragraph:

"permitted one-year percentage"	means 4 per cent of the maximum regulated SSS/TUoS revenue; and
"permitted 3-year percentage"	means 5 per cent of the maximum regulated SSS/TUoS revenue in the second of the relevant years.

4. **Information to be provided to the Authority in connection with the SSS/TUoS charge restriction conditions**

4.1 Where any change is intended to be made in the SSS/TUoS charges regulated under paragraph 2, the Licensee shall not later than the time referred to in paragraph 4.2 provide the Authority with:

- (a) a written forecast of the maximum regulated SSS/TUoS revenue, together with its components, in respect of the relevant year t in which such change is to take effect and in respect of the next following relevant year $t + 1$;
- (b) a written estimate of the maximum regulated SSS/TUoS revenue, together with its components, in respect of the relevant year $t-1$ immediately preceding the relevant year in which the change is to take effect unless a statement complying with paragraph 4.6 in respect of relevant year $t-1$ has been furnished by the Licensee to the Authority before the time referred to in paragraph 4.2.

4.2 The relevant time referred to in paragraph 4.1 shall be 14 days prior to the date of publication of such charges.

- 4.3 If within 3 months of the commencement of any relevant year t the Licensee has not provided the aforementioned forecasts pursuant to paragraph 4.1 for the purpose of such changes in charges as are referred to in paragraph 4.1, the Licensee shall forthwith provide the Authority with a written forecast of the maximum regulated SSS/TUoS revenue (together with its components) in respect of relevant year t .
- 4.4 The Authority may issue directions providing that any forecast or estimate provided in accordance with paragraph 4.1 or 4.3 shall be accompanied by such information as regards the assumptions underlying the forecast or estimate as may be necessary to enable the Authority to be satisfied that the forecast or estimate has been properly prepared on a consistent basis and the Licensee shall comply with any such directions.
- 4.5 Not later than 6 weeks after the commencement of each relevant year t , the Licensee shall send to the Authority a statement as to:
- (a) whether or not the provisions of paragraph 3 are likely to be applicable in consequence of the regulated SSS/TUoS revenue in the preceding relevant year $t-1$ or the 3 preceding relevant years $t-1$, $t-2$ and $t-3$; and
 - (b) its best estimate as to the relevant correction factor $K_{TSO,t}$ calculated in accordance with the formula set out in paragraph 2 to be applied in calculating the maximum regulated SSS/TUoS revenue in respect of relevant year t .
- 4.6 Not later than 3 months after the end of each relevant year the Licensee shall send to the Authority a statement, in respect of that relevant year, showing the specified items referred to in paragraph 4.8.
- 4.7 The statement referred to in the preceding paragraph shall be:
- (a) accompanied by a report from the Auditors that in their opinion:
 - (i) such statement fairly presents each of the specified items referred to in paragraph 4.8 in accordance with the requirements of the SSS/TUoS charge restriction conditions; and
 - (ii) the amounts shown in respect of each of those specified items are in accordance with the Licensee's accounting records which have been maintained in respect of each of the relevant Separate Businesses in accordance with Condition 2; and
 - (b) certified by a director of the Licensee on behalf of the Licensee that to the best of his knowledge, information and belief having made all reasonable enquiries:

- (i) there is no amount included in its calculations under paragraph 2 which represents other than an amount permitted under the SSS/TUoS charge restriction conditions to be so included;
- (ii) all amounts which should properly be taken into account for the purposes of the SSS/TUoS charge restriction conditions have been taken into account.

4.8 The specified items to be contained in the statement referred to in paragraph 4.6 shall be the following:

- (a) the regulated SSS/TUoS revenue;
- (b) the maximum regulated SSS/TUoS revenue;
- (c) the cost of A_{TSO_t} , calculated as provided under paragraph 2 (showing separately each component thereof);
- (d) the allowed SSS/TUoS revenue, being B_{TSO_t} , calculated as provided under paragraph 2;
- (e) any other excluded SSS/TUoS costs and allowed change of law revenues, being D_{TSO_t} calculated as provided under paragraph 2 (showing separately each component thereof);
- (f) such other items as shall be specified in directions issued by the Authority from time to time for the purposes of this Annex.

5. **Duration of SSS/TUoS charge restriction conditions**

5.1 This Annex other than this paragraph 5 shall apply so long as this Licence continues in force but shall cease to have effect (in whole or in part, as the case may be) if the Licensee delivers to the Authority a request (a "Disapplication Request") made in accordance with paragraph 5.3 and:

- (a) the Authority agrees in writing to the request; or
- (b) the application of this Annex (or any part of it) is terminated by a notice (a "Disapplication Notice") given by the Licensee in accordance with paragraph 5.4 and not withdrawn.

5.2 Save where the Authority otherwise agrees, no disapplication following delivery of a Disapplication Request pursuant to this paragraph 5 shall have effect earlier than the date (the "Disapplication Date") which is the later of:

- (a) the date occurring 18 months after delivery of the Disapplication Request; and
- (b) 30 September 2015.

5.3 A Disapplication Request pursuant to this paragraph 5.3 shall:

- (a) be in writing addressed to the Authority;
- (b) specify this Annex or any part of it to which the request relates (excluding in either case this paragraph 5); and
- (c) state the date from which the Licencee wishes the Authority to agree that this Annex or the specified part of it shall cease to have effect.

5.4 A Disapplication Notice pursuant to this paragraph 5.4:

- (a) may be given in the circumstances described in either paragraph 5.5 or paragraph 5.6;
- (b) may be withdrawn by the Licensee at any time prior to the Disapplication Date; and
- (c) where it is given, shall:
 - (i) be in writing addressed to the Authority;
 - (ii) specify this Annex, or any part of it (which shall comprise only such part as was specified in the Disapplication Request) to which the notice relates; and
 - (iii) state the date from which the Licensee wishes the notice to take effect, which shall not be earlier than the Disapplication Date.

5.5 The circumstances described in this paragraph are that, by the beginning of the period of six months which will end with the Disapplication Date, the Authority has not in response to the Disapplication Request published a decision under Article 14(8) of the Order to modify:

- (a) this Annex, or any part of it to which the request relates; or
- (b) this paragraph 5, so as to remove the right of the Licensee to give to the Authority a Disapplication Notice in respect of the relevant Disapplication Request.

5.6 The circumstances described in this paragraph are that:

- (a) by no later than the beginning of the period of six months which will end with the Disapplication Date, the Authority has in response to the Disapplication Request published a decision of a type referred to in paragraph 5.5;

- (b) the Licensee has exercised its right to appeal to the CMA against that decision in accordance with Article 14B of the Order;
- (c) the CMA has, in respect of the provisions to which the Disapplication Request relates:
 - (i) quashed the decision of the Authority under Article 14E(2)(a) of the Order; and
 - (ii) neither remitted the matter back to the Authority under Article 14E(2)(b) of the Order nor substituted its own decision for that of the Authority under Article 14E(2)(c) of the Order; and
- (d) no more than 30 days has elapsed since the date on which the CMA quashed the decision of the Authority.

6. **Change of Law**

6.1 Where it appears to the Licensee that there has been, or is likely to be, a relevant change of law which has had or is likely to have a material effect on the financial position and performance of the Transmission System ~~Operation~~Operator Business, the Licensee may require the Authority to determine whether the relevant change of law has had or is likely to have such an effect, and if so what amounts, if any, should be treated as allowed change of law revenues in calculating D_{TSOt} for relevant year t and each succeeding relevant year in accordance with paragraph 2 to ensure that the financial position and performance of the Licensee is likely, so far as reasonably practicable, to be the same as if the relevant change of law had not taken place. In determining the matters provided for in the paragraph above, the Authority shall have regard, where relevant, to:

- (a) its intentions in relation to the development and implementation of the “requisite arrangements”, as provided for in condition 60 of the NIE Energy Supply Licence;
- (b) the period over which the Licensee shall incur costs by reason of the relevant change of law;
- (c) the incremental costs (including financing costs) which the Licensee has been or will be required to incur as a consequence of the relevant change of law; and
- (d) the other circumstances of the case.

6.2 A notice given to the Authority by the Licensee pursuant to paragraph 6.1 shall contain or be accompanied by all relevant details of the relevant change of law and such other information as the Authority shall require and, unless the Authority shall otherwise consent, shall be given not later than the first day of

April immediately preceding the first of the relevant years in respect of which the Licensee wishes any change in such elements to take effect.

6.3 This Annex shall be modified to give effect to any determination made by the Authority under this paragraph 6. Such modification shall have effect from the later of the date of the determination and the date upon which the relevant change of law comes into force.

6.4 In this paragraph:

"legal requirement"

means, in relation to the Licensee, any of the following:

- (a) any enactment to the extent that it applies to the Licensee;
- (b) any regulation made by the Council or the Commission of the European Communities to the extent that it applies to the Licensee or a decision taken by the said Commission which is binding on the Licensee to the extent that it is so binding;
- (c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within (a) or (b) above to have effect in a way different to that in which it previously had effect;
- (d) any direction of a competent authority other than, insofar as it applies to the Licensee, the Authority (except in the exercise of its powers under paragraph 4 of Condition 16) or the Department;

"relevant change of law"

means any of the following:

- (a) the application to the Licensee of any legal requirement which did not previously so apply or the change of any legal requirement relating to the Licensee (including any such legal requirement ceasing to apply, being withdrawn or not being renewed);
- (b) a change of the United Kingdom Plan, as it applies to Northern Ireland, for the reduction of emissions, made by the

Secretary of State on 20 December 1990 pursuant to section 3(5) of the Environmental Protection Act 1990 (as it shall have been amended, supplemented or replaced from time to time).

7. Unit Coverage

The component of maximum regulated SSS/TUoS revenue relating to System Support Services (or certain parts of that component) can potentially be recovered from the quantity entering the total system in the authorised transmission area and from Wheeled Units. The final decision regarding which units in particular the component of maximum regulated SSS/TUoS revenue relating to System Support Services (or certain parts of that component) will be recovered from in relevant year t ("unit coverage") rests with the Authority. In each relevant year t on the decision of the Authority regarding unit coverage of the System Support Services charge, the Licensee will then draw up for the relevant year t the schedule of System Support Services charges in accordance with Condition 30 in a manner which is consistent with the decision of the Authority regarding unit coverage. If the Licensee draws up for relevant year t the schedule of System Support Services charges in accordance with Condition 30 in a manner which is not consistent with the decision of the Authority regarding unit coverage then the Authority's approval under Condition 30 paragraph 6 for the form of this schedule will not be granted.

8. Excluded SSS/TUoS Costs

- 8.1 Subject to paragraphs 8.2 and 8.3 the following costs and revenues of the Licensee (whether a positive or negative amount) shall be treated as excluded TUoS/SSS costs in relevant year t:
- (a) any reasonable costs incurred by the Transmission System Operator Business (in relevant year t) in complying with the requirements imposed on the Licensee under legislation and other legal requirements through which Directive 2003/54/EC is implemented, whether before or after the coming into effect of this Annex, as approved by the Authority, and to the extent not recovered under another part of the Licence or under the Northern Ireland Market Operator Licence or under the Transmission Owner Licence;
 - (b) any reasonable costs incurred by the Transmission System Operator Business (in relevant year t) in complying with the requirements imposed on the Licensee under the arrangements for the Single Electricity Market (being the project described in the Memorandum of Understanding dated 23 August 2004 and made between the Authority and the Commission for Energy Regulation in Dublin), whether before or after the coming into effect of this Annex, as approved by the Authority, and to the extent not recovered under another part of the Licence or under the Northern Ireland Market Operator Licence or under the Transmission Owner Licence,

- (c) costs incurred in relevant year t associated with any future divestment of the Transmission System Operator Business;
- (d) the pension costs (in relevant year t) of the Transmission System Operator Business to the extent reasonably approved by the Authority;
- (e) amounts that become uncollected SSS/TUoS revenue in relevant year t less any amount or part of an amount treated as uncollected SSS/TUoS revenue in respect of a preceding relevant year that has been paid to the Licensee in relevant year t;
- (f) costs incurred in relevant year t to finance the difference in the estimated CAIR_t used in the preparation and approval of the tariffs prior to the relevant year t and the CAIR_t amount approved by NIAUR prior to the end of March during the relevant year t. The financing costs are to be charged at [base rate plus 2%].
- (g) costs incurred in relevant year t to finance the working capital requirements of SEMO. The financing costs are to be charged at [base rate plus 2%].
- (h) any other costs and revenues of the Transmission System Operator Business which:-
 - (i) were not taken into account in setting A_{TSOt} or B_{TSOt} ;
 - (ii) in the case of costs, those which cannot reasonably be controlled by the Transmission System Operator Business; and
 - (iii) the Authority determines, upon an application to it by the Licensee, shall be included for the purposes of this paragraph.

8.2 The Licensee shall, in a timely manner, give the Authority notice of any claim for costs pursuant to paragraph 8.1. Such notice shall contain or be accompanied by all relevant details of the costs claimed and such other information as the Authority shall require in order to determine whether such costs can be recovered by the Licensee. Any claim for recovery of costs by the Licensee pursuant to paragraph 8.1 shall require to be approved by the Authority and shall not become effective until approved by the Authority.

8.3 No costs incurred or revenues received by the Transmission System Operator Business shall be included in more than one of the categories in sub-paragraphs (a) to (h) of paragraph 8.1.