

# Annex 3

Licence to participate in the Transmission of Electricity granted to SONI Limited

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**LICENCE TO PARTICIPATE IN THE TRANSMISSION  
OF ELECTRICITY**

**granted to**

**SONI LIMITED**

**The Department of Enterprise, Trade and Investment**

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## LICENCE TO PARTICIPATE IN THE TRANSMISSION OF ELECTRICITY

### GRANT OF THE LICENCE

#### 1. Terms of the Licence

The Department of Enterprise, Trade and Investment (the “**Department**”), in exercise of the powers conferred by Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 (the “**Order**”), hereby grants to SONI Limited (a body corporate registered in Northern Ireland under company number NI038715) (the “**Licensee**”) a licence (the “**Licence**”) authorising it to participate in the transmission of electricity for the purpose of giving a supply to any premises or enabling a supply to be so given:

- (a) in Northern Ireland; and
- (b) from the date of this grant, on which date the Licence shall be deemed to come into force, until:
  - (i) the Licence is determined by not less than 25 years’ notice in writing given by the Northern Ireland Authority for Utility Regulation to the Licensee, which notice shall not be served earlier than the date which is ten years after the date of this grant; or
  - (ii) the date, if earlier, on which the Licence is revoked in accordance with the provisions specified as a term of the Licence in Schedule 1 hereto.

#### 2. Conditions of the Licence

The Licence shall, in accordance with Article 11(1) of the Order, include the conditions attached hereto at the time of this grant (as such conditions may subsequently be modified in accordance with Article 14, Article 17, Article 17A or Article 18 of the Order, or such other lawful power of modification as may exist from time to time).

#### 3. Definitions

Unless the contrary intention appears, words and expressions used in the terms of the Licence shall have the same meaning as was given to them, and shall be construed in

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SONI TSO Licence – IME3 Modifications (Certification and Others) – Final Draft for Consultation (Mark-Up) – 11,  
September 2013

accordance with the rules of construction and interpretation set out, in the conditions of  
the Licence at the date on which the Licence was granted.

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Jenny Pyper

for and on behalf of the Department of Enterprise, Trade and Investment,

3 July 2007

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## Condition 1. Interpretation and Construction

### Construction

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1 Unless the contrary intention appears, in the conditions of the Licence:

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(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

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(b) words and expressions defined in the Order, the Energy Order or the SEM Order shall have the same meaning.

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2 Unless otherwise specified, any reference in the conditions of the Licence to:

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(a) a numbered Condition or Schedule is a reference to the condition of, or the schedule to, the Licence that bears that number;

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(b) a numbered paragraph is a reference to the paragraph of the Condition in which such reference is made that bears that number;

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(c) "this Condition" is a reference to all of the paragraphs of the Condition in which the reference occurs; and

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(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.

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3 The heading or title of any Condition or paragraph thereof shall not affect its construction.

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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).

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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.

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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.

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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:

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(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;

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(b) to the extent the Licensee is not reasonably capable of fulfilling that obligation without the assistance of the Republic of Ireland System Operator:

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(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

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(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.

**“Auditors”** means the Licensee’s auditors for the time being holding office in accordance with the requirements of the Companies (Northern Ireland) Order 1986.

**“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

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

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“Authority”

means the Northern Ireland Authority for Utility Regulation.

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“Commission for Energy Regulation” means the body established as such under the Republic of Ireland Electricity Act.

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“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.

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“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.

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“Department”

means the Department of Enterprise, Trade and Investment.

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“Directive”

means Directive ~~2003/2009/5472~~/EC of the European Parliament and of the Council of ~~26 June 2003~~ 13 July 2009 concerning common rules for the internal market in electricity (or any superseding directive thereto).

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“Directive Regulations”

means the Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 2005 and the Electricity Regulations (Northern Ireland) 2007.

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“Distribution Business”

has the meaning given to that term in the ~~Transmission Owner Licence~~ successor distribution

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licence.

**“Distribution Code”** means the distribution code of that name required to be prepared by the Transmission System 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 Transmission-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 the-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.

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“Energy Order”	means the Energy (Northern Ireland) Order 2003.	Formatted
“final customers”	means customers who purchase electricity for their own consumption.	Formatted
“generation set”	means any plant or apparatus for the production of electricity.	Formatted
“Grid Code”	means the code of that name to be prepared and approved in accordance with Condition 16.	Formatted
“holding company”	<del>has</del> means a holding company within the meaning attributed to it at Article 4 of section 1159 of the Companies (Northern Ireland) Order 1986 Act 2006.	Formatted Formatted: Font: 11 pt, Not Bold, No underline Formatted: No bullets or numbering Formatted: Font: 11 pt
“Interconnector”	means a Northern Ireland Interconnector and/or a Republic of Ireland Interconnector.	Formatted
“Island of Ireland”	means Northern Ireland and the Republic of Ireland.	Formatted
“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.	Formatted
“Licensee”	means SONI Limited (a body corporate registered in Northern Ireland under company number NI038715).	Formatted
“Market Operation Activity”	has the meaning given to that term in the Northern Ireland Market Operator Licence.	Formatted
“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	Formatted Formatted: Font: 11 pt, Not Bold, No underline

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”** 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”** 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”** 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.

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“operating security standard” means the standard of that name referred to in Condition 21.

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“Order” means the Electricity (Northern Ireland) Order 1992.

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“payment security policy” means the policy of that name referred to in Condition 31.

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“Permitted Purpose” means the purpose of all or any of the following:

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the Transmission System Operator Business;

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the Market Operation Activity;

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the Single Market Operation Business;

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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

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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.

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

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“related undertaking” means, in respect of any person, any undertaking in which that person has a participating interest (and “participating interest” shall have within the meaning given to that term in of section 421A of the Companies (Northern Ireland) Order 1986). Financial Services and Markets Act 2000.

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Ireland into or out of the Republic of Ireland, but excluding the North/South Circuits.

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**“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).

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**“Republic of Ireland Market Operator Licensee”** means the person holding, from time to time, the Republic of Ireland Market Operator Licence in its capacity as the holder of that licence.

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**“Republic of Ireland Operating Security Standards”** means the document entitled “Operating Security Standards” prepared pursuant to the Republic of Ireland System Operator Licence.

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**“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.

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**“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).

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**“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

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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.

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“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.

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“SEM Order” means the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.

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“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.

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“Single Electricity Market” means the single wholesale electricity market for the Island of Ireland, implemented in Northern Ireland pursuant to Section 23 of the Northern Ireland

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(Miscellaneous Provisions) Act 2006.

**“Single Market Operator 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.

**“successor distribution licence”** 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 Article 4 section 1150 of the Companies (Northern Ireland) Order 1986 Act 2006.

**“System Operator Agreement”** means the system operator agreement provided for in Condition 24.

**“System Support Services”** means:  
 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 as system support services in association with any generation set pursuant to the Grid Code, including outage planning incentive arrangements either directly with a generator or which the Power Procurement Business makes available to the Licensee; and  
 such services as any electricity undertaking may have agreed to have available as being system support services in association with any generation

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~~Northern Ireland under company number NI026041)~~  
~~on 31 March 1992 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 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 undertaking of its obligations under the Licence in respect of Northern

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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:

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- (a) any business of the Licensee (or any affiliate or related undertaking) in undertaking Market Operator 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.

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“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

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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.

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## **Condition 2. Preparation of Accounts**

### Financial Years

- 1 In respect of the Transmission System Operator Business, the first financial year of the Licensee shall run from SEM Go-Live to 30 September 2008 and thereafter each financial year of the Licensee shall run from 1 October to the following 30 September.

### Accounting and Reporting

- 2 The remaining paragraphs of this Condition apply for the purpose of ensuring that the Licensee (and any affiliate or related undertaking of the Licensee) maintains accounting and reporting arrangements which enable separate accounts to be prepared for the Separate Business and showing the financial affairs of the Separate Business.
- 3 The Licensee shall, in respect of the Separate Business:
  - (a) keep or cause to be kept for the period referred to in Article 230(5)(b) of the Companies (Northern Ireland) Order 1986 and in the manner referred to in that Article, such accounting records in respect of the Separate Business as would by Article 229 of the Companies (Northern Ireland) Order 1986 be required to be kept in respect of such business if it were carried on by a separate company, so that the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to, the Separate Business are separately identifiable in the books of the Licensee (and any affiliate or related undertaking of the Licensee) from those of any other business;
  - (b) prepare on a consistent basis from such accounting records in respect of the first and each subsequent financial year, accounting statements comprising a profit and loss account, a balance sheet and a cash flow statement, together with notes thereto, and showing separately in respect of the Separate Business and in appropriate detail the amounts of any revenue, cost, asset, liability, reserve or provision which has been either:
    - (i) charged from or to any other business together with a description of the basis of that charge; or

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- (ii) determined by apportionment or allocation between the Separate Business and any other business together with a description of the basis of the apportionment or allocation;
- (c) procure, in respect of the accounting statements prepared in accordance with this Condition in respect of a financial year, a report by the Auditors and addressed to the Authority stating whether in their opinion those statements have been properly prepared in accordance with this Condition and give a true and fair view of the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to, the Separate Business;
- (d) take all appropriate steps within its power to procure a report by the Auditors and addressed to the Authority verifying whether the obligation to avoid discrimination and cross-subsidies specified in paragraph 3 of Article 19-31 of the Directive has been respected; and
- (e) deliver to the Authority a copy of the Auditors' reports referred to in sub-paragraphs (c) and (d) and the accounting statements referred to in sub-paragraph (b) as soon as reasonably practicable, and in any event not later than six months after the end of the financial year to which they relate.

#### Accounting Policy and Practice

- 4 The Licensee shall not, in relation to the accounting statements in respect of a financial year, change the bases of charge, apportionment or allocation referred to in sub-paragraph 3(b) from those applied in respect of the previous financial year, unless the Authority shall previously have issued directions for the purposes of this Condition directing the Licensee to change such bases in a manner set out in the directions or the Authority gives its prior written approval to the change in such bases. The Licensee shall comply with any directions issued for the purposes of this Condition.
- 5 Where, in relation to the accounting statements in respect of a financial year, the Licensee has changed the bases of charge, apportionment or allocation referred to in sub-paragraph 3(b) from those adopted for the immediately preceding financial year, the Licensee shall, if so directed in directions issued by the Authority for the purposes of this Condition, in addition to preparing accounting statements on those bases which it has



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adopted, prepare such accounting statements on the bases which applied in respect of the immediately preceding financial year.

6 Accounting statements in respect of a financial year prepared under sub-paragraph 3(b) shall, so far as reasonably practicable and unless otherwise approved by the Authority having regard to the purposes of this Condition:

- (a) have the same content and format (in relation to the Separate Business) as the annual accounts of the Licensee (and any affiliate or related undertaking of the Licensee) prepared under Article 234 and, where appropriate, Article 235 of the Companies (Northern Ireland) Order 1986 and conform to the best commercial accounting practices including International Accounting Standards and International Financial Reporting Standards issued by the International Accounting Standards Board and adopted for use in the European Union;
- (b) state the accounting policies adopted; and
- (c) (with the exception of the part of such statements which shows separately the amounts charged, apportioned or allocated and describes the bases of charge or apportionment or allocation respectively), be published with the annual accounts of the Licensee.

#### Provision of Accounts to the Department

7 The Licensee shall, where requested to do so by the Department, provide to the Department a copy of its accounting records for the period specified in the request.

#### Interpretation and Construction

8 References in this Condition to costs or liabilities of, or reasonably attributable to, the Separate Business shall be construed as excluding taxation, capital liabilities which do not relate principally to the Separate Business, and interest thereon, and references to any accounting statement shall be construed accordingly.

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**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 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."

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(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."

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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.

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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.

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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:

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(a) that certificate and the statement submitted with it; and

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(b) any information which they obtained during their audit work.

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Undertaking from Ultimate Controller

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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:

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(a) in a form approved by the Authority;

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(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

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(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

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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.

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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.

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8 The Licensee shall:

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(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);

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(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

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(c) comply with any direction from the Authority to enforce any such undertaking.

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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:

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(a) an undertaking complying with paragraph 6 is not in place in relation to that ultimate controller;

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(b) there is an unremedied breach of such undertaking; or

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(c) the Licensee is in breach of the terms of any direction issued by the Authority under paragraph 8 in respect of such undertaking.

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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.

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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;

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- (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.

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**Condition 3A. Parent Company Undertaking from EirGrid plc.**

1 Whilst 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; and

(b) that will remain in force for as long as the Licensee remains the holder of the Licence and EirGrid plc are the legal and beneficial owners of the entire share capital of the Licensee; and

(c) to the effect that EirGrid plc shall ensure that at all times (i) the Licensee shall have adequate financial and non-financial resources in order that it may perform its obligations and discharge any liabilities arising under the Licence and (ii) it guarantees in full as and when they fall due the performance of such obligations and the discharge of such liabilities.

2 Nothing in this Condition 3A shall prevent or inhibit the Licensee from satisfying its obligation under paragraph 1 by reference and extension to the legally enforceable undertakings required under Conditions 3 and 7 of this Licence.

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**Condition 4. Restriction on Dividends**

1 The directors of the Licensee shall not declare or recommend a dividend, and the Licensee shall not make any other form of distribution within the meaning of Article 271 of the Companies (Northern Ireland) Order 1986, or redeem or repurchase any share capital of the Licensee, unless prior to the declaration, recommendation or making of the distribution (as the case may be) the Licensee has issued to the Authority a certificate in the following form:

“After making enquiries, the directors of the Licensee are satisfied:

- (a) that the Licensee is in compliance in all material respects with all the obligations imposed on it by conditions 3, 5, 7, 9, 10 and 13 of the Licence; and
- (b) that the making of a distribution of [ ] on [ ] will not, either alone or when taken together with other circumstances reasonably foreseeable at the date of this certificate, cause the Licensee to be in breach to a material extent of any of those obligations in the future.”

2 The certificate given under paragraph 1 must be signed by a director of the Licensee and must have been approved by a resolution of the board of directors of the Licensee passed not more than 14 days before the date on which the declaration, recommendation or payment in question will be made.

3 Where the certificate given under paragraph 1 has been issued in respect of the declaration or recommendation of a dividend, the Licensee shall be under no obligation to issue a further certificate prior to payment of that dividend, provided that such payment is made within six months of the issuing of that certificate.

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**Condition 5. Prohibition of Cross-Subsidies**

1 The Licensee shall procure that the Transmission System Operator Business gives no cross-subsidy to, and receives no cross-subsidy from, any other business of the Licensee or of any affiliate or related undertaking of the Licensee.

2 Nothing:

(a) which the Licensee is obliged to do or not to do pursuant to the Licence or any other licence held by the Licensee under the Order; or

(b) which an affiliate or related undertaking is obliged to do or not to do pursuant to a licence held by it under the Order.

shall be regarded as a cross-subsidy for the purposes of this Condition.

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**Condition 6. Health and Safety of Employees**

1 The Licensee shall:

- (a) acting jointly and in co-operation with the holders of other licences granted under the Order, consider and discuss matters of mutual concern in respect of the health and safety of persons employed by them; and
- (b) establish and maintain appropriate processes for consultation with representatives of the Licensee's employees in respect of the health and safety of those employees.

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**Condition 7. Provision of Information to the Authority**

General Duty

1 Subject to paragraphs 4 and 5, the Licensee shall furnish to the Authority, in such manner and at such times as the Authority may require, such information as the Authority may consider necessary in the light of the Conditions or Schedules or as it may require for the purpose of performing any functions assigned or transferred to it by or ~~under the Order, the Energy Order, the SEM Order or the Directive Regulations.~~ any legislation.

2 Without prejudice to the generality of paragraph 1, the Authority may call for the furnishing of accounting information which is more extensive than or differs from that required to be prepared and supplied to the Authority under Condition 2.

3 The power of the Authority to require information under paragraph 1 is in addition to the power of the Authority to call for information under or pursuant to any other Condition or Schedule.

Exceptions

4 The Licensee may not be required by the Authority to furnish it under this Condition with information for the purpose of the exercise of its functions under Article 7 of the Energy Order.

5 The Licensee may not be required by the Authority to furnish it under this Condition with any information in relation to an enforcement matter which the Licensee could not be compelled to produce or give in evidence in civil proceedings in the High Court.

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

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Licence and the person giving the undertaking remains an ultimate controller; and

- (c) to the effect that the ultimate controller will give to the Licensee, and will procure that every subsidiary of, or person controlled by, the ultimate controller (other than the Licensee and its subsidiaries) will give to the Licensee, all such information as may be necessary to enable the Licensee to comply fully with paragraph 1 of this Condition.

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 the 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.

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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

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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:

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- (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 give to the Licensee, and will procure that every subsidiary of, or person controlled by, EirGrid plc (other than the Licensee and its subsidiaries) will give to the Licensee, all such information as may be necessary to enable the Licensee to comply fully with paragraph 1 of this Condition .

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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.

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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 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.

Definition

14 In this Condition, unless the context otherwise requires:

“**information**” shall include any documents, accounts, estimates, returns or reports (whether or not prepared specifically at the request of the Authority) of any description specified by the Authority.

“**enforcement matter**” means any matter in respect of which any functions of the Authority under Article 42 of the Energy Order are, or may be, exercisable.

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## Condition 8. Payment of Fees

### General Duty

- 1 The Licensee shall, at the times stated in this Condition, pay to the Department fees of the amount specified in or determined under the following paragraphs of this Condition.

### Calculation of Fees

- 2 In respect of the year beginning on 1 April 2008, and in each subsequent year, the Licensee shall pay to the Department a fee which is the aggregate of the following amounts:

- (a) an amount equal to the proportion which the Authority shall determine of the amount estimated by the Authority, according to a method which has previously been disclosed in writing to the Licensee, as likely to be its costs during the year in question in the exercise of ~~its general functions under the Order, the Energy Order, the SEM Order and the Directive Regulations in relation to the holders of licences granted under Article 10 of the Order~~ the functions relating to electricity assigned or transferred to it under any legislation;

- (b) an amount which is a proportion as determined by the Authority of the amount estimated by the Authority (in consultation with the Competition Commission) as having been incurred in the calendar year immediately preceding the 1 April in question by the Competition Commission in connection with references made to it under Article 15 of the Order with respect to the Licence; and

- (c) the difference (being a positive or negative amount), if any, between:
  - (i) the amount of the fee paid by the Licensee in respect of the year immediately preceding the 1 April in question less any refund paid to the Licensee in respect of that year under paragraph 3; and

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~~(b)~~ (ii) the amount which that fee would have been in respect of that year had the amount comprised in that fee in accordance with sub-paragraph (a) been calculated by reference to the total costs of the Authority in connection with its functions ~~under the Order, the SEM Order and the Directive Regulations and its functions in relation relating~~ to electricity ~~under the Energy Order~~ and the proportion of those costs actually attributable to the Licence (such total costs being apportioned as determined by the Authority according to a method previously disclosed in writing to the Licensee).

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Payment of Refund

3 In respect of the year beginning on 1 April 2009 and for each subsequent year, the Department may pay to the Licensee an amount (“~~the refund~~”) calculated in accordance with a method previously disclosed in writing to the Licensee and by reference to the difference between:

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(a) the proportion of the fee for that year paid by the Licensee which is attributable to the Authority’s estimates in accordance with paragraphs 2(a) and 2(b); and

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(b) the Authority’s reasonable revised estimate of those costs.

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provided that any such refund shall be paid to the Licensee on or before 31 March in the year to which the fee relates.

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**Condition 9. Disposal of Relevant Assets**

General Duty

1 The Licensee shall not dispose of or relinquish operational control over any relevant asset otherwise than in accordance with the following paragraphs of this Condition.

Duty to Give Notice

2 Save as provided in paragraph 3, the Licensee shall give to the Authority not less than two months' prior written notice of its intention to dispose of or relinquish operational control over any relevant asset, together with such further information as the Authority may request relating to such asset or the circumstances of the intended disposal or relinquishment of control or to the intentions in regard to the asset of the person proposing to acquire it or operational control over it.

Permitted Disposals

3 Notwithstanding paragraphs 1 and 2, the Licensee may dispose of or relinquish operational control over any relevant asset:

(a) where:

(i) the Authority has issued directions for the purposes of this Condition containing a general consent (whether or not subject to conditions) to:

(A) transactions of a specified description; and/or

(B) the disposal of or relinquishment of operational control over relevant assets of a specified description; and

(ii) the disposal or relinquishment of operational control in question is effected pursuant to a transaction of a description specified in the directions, or the relevant asset in question is of a description so specified, and the disposal or relinquishment of operational control is in accordance with any conditions to which the consent is subject; or

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(b) where the disposal or relinquishment of operational control in question is required by or under any enactment.

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4 Notwithstanding paragraph 1, the Licensee may dispose of or relinquish operational control over any relevant asset specified in any notice given under paragraph 2 in circumstances where:

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(a) subject to paragraph 5, the Authority confirms in writing that it consents to such disposal or relinquishment (which consent may be made subject to the acceptance by the Licensee or any third party in favour of whom the relevant asset is proposed to be disposed or operational control is proposed to be relinquished of such conditions as the Authority may specify); or

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(b) the Authority does not inform the Licensee in writing of any objection to such disposal or relinquishment of control within the notice period referred to in paragraph 2.

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#### Procedure of the Authority

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5 In relation to a material disposal, any consent of the Authority pursuant to paragraph 4 shall be given after the Authority shall have consulted and taken into consideration any representations timeously made by any electricity undertaking or the Republic of Ireland System Operator to the extent such persons may be materially affected by the disposal in question.

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#### Disposal of Castlereagh House

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6 In the event of the disposal of the control centre for use in connection with the transmission system and/or any lands or grounds employed or held for employment by the Licensee in connection with such asset (for the purposes of this paragraph 6 referred to as “**Castlereagh House**”), an amendment will be made to the B<sub>TSO</sub> term as set out in Annex 1 of the Licence, to provide for a return to final customers of a reasonable and appropriate proportion of the remaining Regulatory Asset Base value of any investment final customers have made in respect of Castlereagh House.

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Such reasonable and appropriate proportion of the remaining Regulatory Asset Base value of any investment final customers have made in respect of Castlereagh House shall be determined by the Authority (acting reasonably) provided always that such proportion shall not exceed one hundred per cent (100%) of the remaining Regulatory Asset Base value of any investment final customers have made in respect of Castlereagh House pertaining at the date of such disposal.

This adjustment would not otherwise affect the Regulatory Asset Base of the Licensee.

#### Definitions

7 In this Condition, unless the context otherwise requires:

**“disposal”** includes any sale, assignment, gift, lease or licence; the grant of any right of possession, loan, security, mortgage or charge; the grant of any other encumbrance; the permitting of any encumbrance to subsist; or any other disposition to a third party. And **“dispose”** shall be construed accordingly.

**“relevant asset”** means:

- (a) any asset for the time being forming part of the transmission system or any control centre for use in connection with that system;
- (b) any other asset for the time being employed or held for employment by the Licensee in the performance of its obligations under the Order, the Energy Order, the SEM Order or the Licence in (in each case) its capacity as the holder of a licence granted under Article 10(1)(b) of the Order;
- (c) any interest in any Interconnector;
- (d) any asset of which the disposal or

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relinquishment of operational control by the Licensee would adversely affect the ability of:

- (i) the Transmission Owner;
- (ii) the Republic of Ireland System Operator;
- (iii) the Northern Ireland Market Operator Licensee; and/or
- (iv) the Republic of Ireland Market Operator Licensee.

to comply with their respective obligations in those capacities under any applicable licence, law or regulation; and

(e) any legal or beneficial right, title or interest in land upon which any of the assets referred to in sub paragraphs (a), (b), (c) and (d) are situated.

**“relinquishment of operational control”** includes entering into any agreement or arrangement whereby operational control of a relevant asset (or relevant assets) is not, or ceases to be, under the sole management of the Licensee.

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**Condition 10. Restriction on Dealings with Assets**

1 Without prejudice to Condition 9, the Licensee shall not, without the written consent of the Authority (after disclosure of all material facts by the Licensee to the Authority):

(a) create, or permit to remain in effect, any mortgage, charge, pledge, lien or other form of security or encumbrance whatsoever, undertake any indebtedness to any other person or enter into any guarantee of any obligation otherwise than:

- (a) on an arm's length basis;
- (b) on normal commercial terms;
- (c) for a Permitted Purpose; and
- (d) (if the transaction is within the ambit of paragraph 1 of Condition 9) in accordance with paragraphs 3 and 4 of Condition 9.

(b) transfer, lease, license or lend any sum or sums, asset, right or benefit to any affiliate or related undertaking of the Licensee otherwise than by way of:

- (a) a dividend or other distribution out of distributable reserves;
- (b) repayment of capital;
- (c) payment properly due for any goods, services or assets provided on an arm's length basis and on normal commercial terms;
- (d) a transfer, lease, licence or loan of any asset, right or benefit on an arm's length basis and on normal commercial terms and made in compliance with the payment requirement referred to in paragraph 2;
- (e) repayment of any loan or payment of any interest on a loan not prohibited by sub paragraph (a);
- (f) payments for group corporation tax relief or under any group payment

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arrangement pursuant to section 36 of the Finance Act 1998 calculated on a basis not exceeding the value of the benefit received; or

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(g) a loan to any affiliate or related undertaking of the Licensee which is made for a Permitted Purpose;

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(c) enter into an agreement, or incur a commitment, incorporating a cross-default obligation; or

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(d) continue, or permit to remain in effect, any agreement or commitment incorporating a cross-default obligation subsisting at the date on which the Licence was granted, save that the Licensee may permit any cross-default obligation in existence at that date to remain in effect for a period not exceeding twelve months from that date, provided that the cross-default obligation is solely referable to an instrument relating to the provision of a loan or other financial facilities granted prior to that date and the terms on which those facilities have been made available as subsisting on that date are not varied or otherwise made more onerous;

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provided, however, that the provisions of sub-paragraphs (c) and (d) shall not prevent the Licensee from giving any guarantee permitted by and compliant with the requirements of sub-paragraph (a).

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2 The payment requirement referred to in paragraph 1(b)(iv) is that the consideration due in respect of the transfer, lease, licence or loan of the asset, good, right or benefit in question is paid in full prior to such transfer, lease, licence or loan unless;

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(a) the counter-party to the transaction has, and maintains until payment is made in full, an investment grade credit rating; or

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(b) the obligations of the counter-party to the transaction are fully and unconditionally guaranteed throughout the period during which any part of the consideration remains outstanding by a guarantor which has and maintains an investment grade credit rating.

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3 Notwithstanding paragraph 1, the Licensee shall be entitled, while the Transmission Owner is an affiliate of the Licensee, to enter into such loan arrangements with the Transmission Owner as the Authority may approve from time to time.

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Definitions

4 In this Condition, unless the context otherwise requires:

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**“cross-default obligation”** means a term of any agreement or arrangement whereby the Licensee’s liability to pay or repay any debt or other sum arises or is increased or accelerated or could reasonably be expected to be capable of arising, increasing or of being accelerated by reason of a default (howsoever such default may be described or defined) by any person other than the Licensee, unless:

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(a) that liability can arise only as a result of a default by a subsidiary of the Licensee;

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(b) the Licensee holds a majority of the voting rights in that subsidiary and has the right to appoint or remove a majority of its board of directors; and

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(c) that subsidiary carries on business solely for the purposes of a Permitted Purpose (but not a purpose identified in sub-paragraph (d) or (e) of the definition of Permitted Purpose).

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**“indebtedness”** means all liabilities which are, now or later, due, owing or incurred, whether actual or contingent, whether solely or jointly with any other person and whether as principal or surety,

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together with any interest accruing on such liabilities and all costs, charges, penalties and expenses incurred in connection with them.

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“investment grade credit rating” means:

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(a) unless sub-paragraph (b) below applies:

- (i) an issuer rating of not less than BBB- by Standard & Poor’s Ratings Group or any of its subsidiaries;
- (ii) an issuer rating of not less than Baa3 by Moody’s Investors Service Inc. or any of its subsidiaries;
- (iii) an issuer senior unsecured debt rating of not less than BBB- by Fitch Ratings Ltd or any of its subsidiaries; or
- (iv) an equivalent rating from any other reputable credit rating agency which, in the opinion of the Authority, notified in writing to the Licensee, has comparable standing in both the United Kingdom and the United States of America; or

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(b) such higher rating as may be specified by those agencies from time to time as the lowest investment grade credit rating.

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**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 (including any affiliate or related undertaking of the Licensee) 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.

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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:
  - (a) licence granted under the Order (including the Licence);
  - (b) applicable law (including the Order, the Energy Order, the SEM Order and the Directive Regulations);
  - (c) requirement of a competent authority;
  - (d) judicial or arbitral process of a competent jurisdiction; or
  - (e) 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; or
- (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)).

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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.

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Evidence

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.

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Definitions

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

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Licensee), engaged and acting in that capacity, as require access to any protected information.

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**“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.

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**“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.

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**“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.

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**“control”**

has the meaning attributed to it by section 446-450 (as read in conjunction with section 451) of the ~~Income and~~ Corporation ~~Taxes~~ Tax Act 1998~~2010~~.

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**“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

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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).

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**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:
    - (a) 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 Activity being carried on in such premises).

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- (b) 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;
- (c) equipment, facilities or property employed for the management or operation of the Transmission System Operator Business;
- (d) 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:
  - (a) 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
  - (b) 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 (~~being a period of at least 3 months~~) 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

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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

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(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.

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13 The Licensee shall, at such frequency as is determined in writing by the Authority, submit a report to the Authority:

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(a) detailing the activities of the Compliance Manager during the period covered by the report;

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(b) providing a progress update on the Licensee's implementation of the Compliance Plan;

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(c) setting out the details of any investigations conducted by the Compliance Manager, including:

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(a) the number, type and source of the complaint or representation on which such investigations were based;

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(b) the outcome of such investigations; and

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(c) any remedial action taken by the Licensee following such investigations.

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#### Definitions

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14 In this Condition, unless the context otherwise requires:

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**“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.

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

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“**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).

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**Condition 13. Prohibited Activities**

**General Prohibitions**

- 1 Except with the prior written consent of the Authority and in accordance with any conditions of that consent, the Licensee shall not purchase or otherwise acquire electricity for the purpose of sale or other disposition to third parties on the Island of Ireland, save to the extent it is necessary to do so in undertaking the Transmission System Operator Business.
- 2 In paragraph 1, the reference to purchase or other acquisition of electricity shall include entering into or acquiring the benefit of a contract conferring rights or obligations (including rights or obligations by way of option) in relation to or by reference to the sale, purchase or delivery of electricity at any time or the price at which electricity is sold or purchased at any time.
- 3 Except with the prior written consent of the Authority and in accordance with any conditions of that consent, the Licensee shall not own any transmission lines, or associated electrical plant, in Northern Ireland.

**Prohibitions Following Divestment**

- 4 Paragraph 5 shall apply only from the point in time at which the Licensee first ceases, following the date on which the Licence is granted, to be an affiliate of Northern Ireland Electricity plc (a company registered in Northern Ireland under company number NI026041).
- 5 Where this paragraph applies in accordance with paragraph 4, the Licensee shall at all times ensure that:
  - (a) neither the Licensee nor any affiliate or related undertaking of the Licensee undertakes an activity which requires authorisation by virtue of Articles 8(1)(a) or (c) of the Order, or which is licensable under Section 14(1)(a), (b), (c), or (d) of the Republic of Ireland Electricity Act;
  - (b) the Licensee is not controlled by a person who undertakes an activity which requires authorisation by virtue of Articles 8(1)(a) or (c) of the Order, or which

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is licensable under Section 14(1)(a), (b), (c), or (d) of the Republic of Ireland Electricity Act or by a person who also controls a person that undertakes any such activity.

6 For the purposes of paragraph 5, “control” shall have the meaning attributed to it in section ~~416-450~~ (as read in conjunction with section 451) of the ~~Income and Corporation Taxes Tax Act 1988~~2010, and “controlled” shall be construed accordingly.

7 Condition 13 paragraph 5 (b) 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.

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**Condition 14. Security Arrangements**

- 1 The Licensee shall comply with the provisions of the Northern Ireland Fuel Security Code in so far as relevant to it and such provisions shall have effect as if they were set out in the Licence.
- 2 The Northern Ireland Fuel Security Code may be amended in accordance with its provisions.

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**Condition 15. Non-Discrimination**

- 1 In undertaking the Transmission System Operator Business, the Licensee shall not unduly discriminate as between any persons or class or classes of persons (including itself in undertaking any activity other than the Transmission System Operator Business).

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**Condition 16. Grid Code**

Establishment of the Grid Code

1 The Licensee shall prepare and at all times have in force, and shall (subject to paragraph 12) implement and comply with, a Grid Code:

(a) covering all material technical aspects relating to connections to and the operation and use of the total system or (insofar as relevant to the operation and use of the total system) the operation of electric lines and electrical plant within Northern Ireland connected to the total system or any other system in Northern Ireland for the transmission or distribution of electricity and (without prejudice to the foregoing) making express provision as to the matters referred to in paragraph 6; and

(b) which is, in respect of the transmission system, designed so as to:

(a) permit the development, maintenance and operation of an efficient, co-ordinated and economical system for the transmission of electricity in Northern Ireland as part of efficient, co-ordinated and economical systems for the transmission of electricity on the Island of Ireland;

(b) facilitate the transmission system being made available to persons authorised to supply or generate electricity in Northern Ireland, on terms which neither prevent nor restrict competition in the supply or generation of electricity on the Island of Ireland; and

(c) subject to sub-paragraphs (i) and (ii), promote the security and efficiency of the electricity generation, transmission and distribution system in Northern Ireland as a whole.

(c) which is, in respect of the distribution system, designed so as to:

(a) permit the development, maintenance and operation of an efficient, co-ordinated and economical system for the distribution of electricity; and

(b) neither prevent nor restrict competition in the generation and supply of

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electricity in Northern Ireland, or, to the extent that the Grid Code, in respect of the distribution system, may have such effect, on the Island of Ireland.

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#### Reviews of the Code

2 The Grid Code in force at the date on which this Condition becomes effective shall be the document approved as such by the Authority. Subsequently, the Licensee shall (in consultation with electricity undertakings and the Republic of Ireland System Operator, to the extent such persons are liable to be materially affected thereby) periodically review (including upon the request of the Authority) the Grid Code and its implementation. Following any such review, the Licensee, shall send to the Authority:

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- (a) a report on the outcome of such review;
- (b) any proposed revisions to the Grid Code from time to time as the Licensee (having regard to the outcome of such review) reasonably thinks fit for the achievement of the objectives referred to in paragraphs 1(b) and (c); and
- (c) any written representations or objections from any electricity undertakings or the Republic of Ireland System Operator (including any proposals by such persons for revisions to the Grid Code not accepted by the Licensee in the course of the review) arising during the consultation process and subsequently maintained.

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#### Revision of the Code

3 Revisions to the Grid Code proposed by the Licensee and sent to the Authority pursuant to paragraph 2 shall require the Authority's approval before they may be made.

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4 Having regard to any written representations or objections referred to in subparagraph 2(c), and following such further consultation (if any) as the Authority may consider appropriate, the Authority may issue directions requiring the

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Licensee to revise the Grid Code in such manner as may be specified in the directions, and the Licensee shall forthwith comply with any such directions.

5 The Authority shall be entitled, in order to implement the requisite arrangements referred to in condition 60 of the NIE Energy Supply Licence, to issue directions to the Licensee requiring the Licensee to revise the Grid Code in such manner and with effect from such date as may be specified in the directions, and the Licensee shall comply with any such directions, provided that such revisions shall not affect the rights or obligations of any party to:

- (a) a power purchase agreement that is not a cancellable generating unit agreement; or
- (b) a cancellable generating unit agreement that has not, at the relevant time, been the subject of a cancellation direction, under that agreement, beyond what may reasonably be regarded as de minimis in relation to that party.

Content of the Code

6 The Grid Code shall include:

- (a) connection conditions specifying the technical, design and operational criteria to be complied with in respect of any connection or proposed connection at an entry or exit point on the ~~total transmission~~ system;
- (b) a set of operating codes specifying conditions and procedures under or in accordance with which the Licensee shall operate the ~~total transmission~~ system, and under or in accordance with which other persons shall operate their plant and/or systems for the distribution of electricity in relation to the ~~total transmission~~ system (including procedures and conditions relating to outages of generation sets and associated power station equipment), insofar as is necessary to protect the security and quality of supply and to ensure the proper and safe operation of the ~~total transmission~~ system under both normal and abnormal operating conditions or in order to give effect to paragraph 2 of Condition 22;
- (c) a planning code specifying the requirements for the supply of information by

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persons connected (or seeking connection) at an entry point or an exit point on the ~~total transmission~~ system, or in respect of the applications envisaged by Condition 27, (in each case) in order for the planning and development of the ~~total transmission~~ system to be undertaken, and specifying the technical and design criteria and procedures to be applied in the planning and development of the ~~total transmission~~ system and to be complied with by other persons connected or seeking connection at an entry point or an exit point on the ~~total transmission~~ system in the planning and development of their own plant and systems;

- (d) a set of scheduling and dispatch codes specifying conditions and procedures for the scheduling and dispatch of generation sets connected at an entry point or exit point on the ~~total transmission~~ system which are either:
  - (a) required to be subject to central dispatch instructions under the terms of any exemption granted under Article 9 of the Order or any licence granted under Article 10 of the Order; or
  - (b) are agreed by the operator of that generation set to be subject to central dispatch;

and which may include provisions relating to the management of emissions; and

- (e) a metering code setting out requirements and procedures for metering.

Copies of the Code

- 7 The Licensee shall ensure that a copy of the Grid Code is given or sent to the Authority and the Department and is published on the Licensee's website.
- 8 The Licensee shall (subject to paragraph 9) ensure that a copy of the Grid Code is given or sent to any person requesting it.
- 9 The Licensee may make a charge for any copy of the Grid Code given or sent pursuant to paragraph 8 of an amount which will not exceed any amount specified for the time being for the purposes of this Condition in directions issued from time to time by the Authority.

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Non-Discrimination

10 In preparing, implementing and complying with the Grid Code the Licensee shall not:

(a) unduly discriminate against or unduly prefer any person or class or classes of persons in favour of or as against any other person or class or classes of persons; or

(b) restrict or prevent competition in generation or supply on the Island of Ireland.

11 The Licensee shall keep and maintain such records concerning its implementation of and compliance with the Grid Code as are in accordance with such guidelines as the Authority shall from time to time have given to the Licensee and are, in the opinion of the Authority, sufficient to enable the Authority to assess whether the Licensee is performing the obligation imposed upon it under paragraph 10 concerning these matters and the Licensee shall furnish to the Authority such records (or such of these as the Authority may require) in such manner and at such times as the Authority may require.

Derogations

12 The Authority may from time to time (following consultation with the Licensee) issue directions relieving the Licensee of its obligations to implement or comply with, or to enforce against any other person any provision of, the Grid Code in respect of such parts of the transmission system and/or the distribution system to such extent as may be specified in the directions.

Long Form Distribution Code

~~13 Until such time as the Authority has approved, and the Transmission Owner has implemented, a Distribution Code designed so as to achieve the objectives referred to in paragraph 1(c) without substantial cross reference to the provisions of the Grid Code, the Licensee shall, to the extent that any provision of the Grid Code is designed so as to achieve the objectives referred to in paragraph 1(c):~~

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~~(a) only propose revisions to the relevant parts of such provisions with the agreement of the Transmission Owner; and~~

~~(b) undertake any consultations undertaken in accordance with paragraph 2 that relate to the relevant parts of such provisions in cooperation with the Transmission Owner.~~

~~14 Once a Distribution Code, as described in paragraph 13, is approved and implemented, as described in paragraph 13, this Condition shall automatically be modified by the deletion of paragraph 1(c) and (subject to any contrary direction by the Authority) by the replacement of all references to "total system" with "transmission system. The Licensee shall, as soon as reasonably practicable following any such modification, undertake a review of the Grid Code in accordance with paragraph 2.~~

Definitions

~~1513~~ In this Condition, unless the context otherwise requires:

~~“cancellable generating unit agreement” shall have the meaning given to that term in the NIE Energy Supply Licence.~~

~~“power purchase agreement” o shall have the meaning given to that term in the NIE Energy Supply Licence.~~

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**Condition 17. Distribution Code**

- 1 The Licensee shall comply with the provisions of the Distribution Code in so far as applicable to it.
- 2 The Authority may, following consultation with the Transmission System Owner and any other electricity undertakings directly affected thereby, issue directions relieving the Licensee of its obligation under paragraph 1 in respect of such parts of such Distribution Code and to such extent and subject to such conditions as may be specified in those directions.

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**Condition 18. Transmission Interface Arrangements**

**General Duty**

1 The Licensee shall, in common with the Transmission Owner, prepare, obtain the Authority's approval of, and at all times have in force, implement and comply with, arrangements (the "Transmission Interface Arrangements") which:

- (a) set out the terms and arrangements, as between the Licensee and the Transmission Owner, referred to in paragraph 3;
- (b) are designed to facilitate the achievement of the aims set out in paragraph 4, in so far as they relate to the transmission system; and
- (c) set out the matters referred to in paragraph 5.

2 The Licensee shall be taken to have complied with paragraph 1 by:

- (a) adopting as the Transmission Interface Arrangements, the document designated as such by the Authority, within 3 days of the Authority so designating such a document (such designation not to occur prior to 17 October 2007); and
- (b) ~~reviewing such~~ keeping the document under review and proposing and making modifications to it in accordance with paragraphs 8, 9 and 10.

3 For the purposes of this Condition, the terms and arrangements referred to in paragraph 1(a) are those which:

- (a) are requisite for the enjoyment and discharge of the rights and obligations of:
  - (i) the Licensee in relation to the Transmission System Operator Business arising under the Order, the Energy Order, the SEM Order, the Licence, the Grid Code, the System Operator Agreement, the Single Electricity Market Trading and Settlement Code, any Connection Agreement, any Use of System Agreement and such other code or document as may be specified from time to time by the Authority; and

(ii) the Transmission Owner arising under the Order, the Energy Order, the

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SEM Order, the Transmission Owner Licence, the Grid Code, the Single Electricity Market Trading and Settlement Code and such other code or document as may be specified from time to time by the Authority; and

(b) provide for matters which include:

~~(e)~~(i) the provision of transmission services by the Transmission Owner;

~~(d)~~(ii) the technical levels to be complied with by the Licensee in relation to the transmission services;

~~(e)~~(iii) the operation, including the configuration, of the transmission system;

~~(f)~~(iv) matters to enable responses to (and to progress any works necessitated by) applications received for use of the All-Island Transmission Networks and/or new connections (or modifications of existing connections) to the All-Island Transmission Networks (at an entry or exit point on the transmission system or the Republic of Ireland transmission system);

~~(v)~~ the arrangements whereby:

~~(g)~~(A) the transmission system is to be ~~planned~~, developed and maintained (by the Transmission Owner) and planned and operated (by the Licensee); and

(B) the retrospective responsibilities of and activities undertaken by the Licensee and the Transmission Owner are to be co-ordinated;

~~(h)~~(vi) the arrangements, as between the Licensee and the Transmission Owner, for the planning and development of the transmission system in co-ordination with the other parts of the All-Island Transmission Networks;

~~(i)~~(vii) planning for outages, including (where appropriate) co-ordination of outages on the transmission system with outages on the Republic of Ireland transmission system;

~~(j)~~(viii) the exchange of information between the Licensee and the Transmission Owner;

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~~(k)~~(ix) procedures to enable the Licensee or the Transmission Owner (as the case may be) to produce information about the transmission system in accordance with its respective obligations under the Order, the Energy Order, the SEM Order, the Licence, the Transmission Owner Licence and the System Operator Agreement; ~~and~~

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~~(l)~~(x) the service levels and performance standards to be achieved by the Licensee and the Transmission Owner (as the case may be) in respect of the services and other matters referred to above; and

~~(m)~~(xi) the payment of monies to or from the Licensee in respect of the services and other matters referred to above.

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4 The relevant aims referred to ~~at in~~ paragraph 1(b) are:

- (a) the efficient discharge of the obligations imposed on the Licensee and the Transmission Owner (in their capacities as such) under the Order, the Energy Order, the SEM Order and their respective licences;
- (b) the development, maintenance and operation of the transmission system as part of efficient, economical, co-ordinated, safe, secure and reliable All-Island Transmission Networks;
- (c) effective competition in the generation and supply of electricity on the Island of Ireland; and
- (d) the promotion of good industry practice and efficiency in the implementation and administration of the matters covered by the Transmission Interface Arrangements.

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5 The ~~matters referred to in paragraph 1(c) are that the Transmission Interface Arrangements:~~

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- (a) shall provide for any disputes between the parties thereto over revisions to the Transmission Interface Arrangements to be referred to the Authority for determination; and

~~(b) Transmission Interface Arrangements shall provide for any disputes between the parties thereto over revisions to the Transmission Interface Arrangements to be referred to the Authority for determination. In addition, the Transmission Interface Arrangements~~ may provide for there to be referred to the Authority for determination such additional matters arising under the Transmission Interface Arrangements as may be specified in the Transmission Interface Arrangements.

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6 The Licensee shall comply with the Transmission Interface Arrangements.

Review of the Arrangements

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7 The Licensee shall, in common with the Transmission Owner:

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(a) following any modification of this Condition 18;

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(b) on receipt of a request from the Authority;

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(c) periodically;

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review the Transmission Interface Arrangements and their implementation to

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(d) ensure that they meet the requirements of paragraphs 1, 3, 4 and 5; and

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(e) consider whether any alternative arrangements would better achieve those requirements.

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8 Following any such review, and where the review is undertaken pursuant to paragraph 7(a) or 7(b) within 3 months of the date of the modification or the date of the Authority's request, the Licensee shall, in common with the Transmission Owner, send to the Authority:

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(a) a report on the outcome of the review;

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(b) any revisions which the Licensee and the Transmission Owner agree should be made to the Transmission Interface Arrangements (having regard to the outcome of the review); and

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(c) any revisions on which the Licensee and the Transmission Owner disagree and

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which dispute is thereby referred to the Authority for determination in accordance with the provisions included in the Transmission Interface Arrangements in accordance with paragraph 5(a).

#### Revision of the Arrangements

9 The Licensee shall procure that no modifications, amendments or variations are made to the Transmission Interface Arrangements without the prior approval of the Authority.

10 The Authority may at any time, following consultation with the Licensee and the Transmission Owner, direct the Licensee to make, in conjunction with the Transmission Owner, such revisions to the Transmission Interface Arrangement as specified in the directions. The Licensee shall comply with any directions issued for the purposes of this Condition.

#### Publication of the Arrangements

511 Where, and to the extent, required to do so by the Authority, the Licensee shall publish the Transmission Interface Arrangements on its website.

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### **Condition 18A. Distribution Interface Arrangements**

#### **General Duty**

1 The Licensee shall, in common with the Distribution System Owner, prepare, obtain the Authority's approval of, and at all times have in force, implement and comply with, arrangements (the "**Distribution Interface Arrangements**") which:

(a) set out (to the extent not catered for in the Grid Code or the Distribution Code) the terms and arrangements for connection of the transmission system to the Distribution System, and the terms and arrangements between the Licensee and the Distribution System Owner that are requisite for the enjoyment and discharge of the rights and obligations of:

(i) the Distribution System Owner in relation to the Distribution Business arising under the Order, the Energy Order, the SEM Order, this Licence and such other code or document as may be specified from time to time by the Authority; and

(ii) the Licensee arising under the Order, the Energy Order, the SEM Order, its licence, and such other code or document as may be specified from time to time by the Authority; and

(iii) set out the matters referred to in paragraph 3.

2 The Licensee shall be taken to have complied with paragraph 1 by:

(a) adopting as the Distribution Interface Arrangements

(i) the document of that name designated by the Authority, within 3 days of the Authority so designating; or

(ii) until such time as the Authority designates such a document, such parts of the document designated by the Authority and entitled Transmission Interface Arrangements as set out the matters referred to in paragraph 1; and

(b) reviewing the document which sets out the arrangements and proposing

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modifications to it in accordance with paragraphs 5, 6 and 7.

3 The Distribution Interface Arrangements shall provide for any disputes between the parties thereto over revisions to the Distribution Interface Arrangements to be referred to the Authority for determination. In addition, the Distribution Interface Arrangements may provide for there to be referred to the Authority for determination such additional matters arising under the Distribution Interface Arrangements as may be specified in the Distribution Interface Arrangements.

4 The Licensee shall procure that no modifications, amendments or variations are made to the Distribution Interface Arrangements without the prior approval of the Authority.

#### Review of the Arrangements

5 Without prejudice to paragraph 4, the Licensee shall, in common with the Distribution System Owner, periodically, or at any time on the receipt of a request from the Authority to do so, review the Distribution Interface Arrangements and their implementation to:

- (a) ensure that they meet the requirements of paragraphs 1 and 3; and
- (b) to consider whether any alternative arrangements would better achieve those requirements.

6 Following any such review, the Licensee shall, in common with the Distribution System Owner, send to the Authority:

- (a) a report on the outcome of the review;
- (b) any revisions which the Licensee and the Distribution System Owner agree should be made to the Distribution Interface Arrangements (having regard to the outcome of the review); and
- (c) any matters on which the Licensee and the Distribution System Owner disagree (which matters will be referred to the Authority for determination in accordance with paragraph 3).

September 2013

Revision of the Arrangements

7 Revisions to the Distribution Interface Arrangements proposed by the Licensee and sent to the Authority pursuant to sub-paragraph 6(b) shall require the Authority's approval before they may be made.

Publication of the Arrangements

8 Where, and to the extent, required to do so by the Authority, the Licensee shall publish the Distribution Interface Arrangements on its website.

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**Condition 19. PPB / TSO Interface Agreement**

**General Duty**

21 The Licensee shall, in common with the Power Procurement Business, prepare, obtain the Authority's approval of, and at all times have in force, implement and comply with, an agreement (the "PSIA") which:

- (a) sets out the terms and arrangements referred to in paragraph 3;
- (b) in so far as consistent with the terms and arrangements referred to in paragraph 3, is designed to maintain the confidentiality of protected information (as defined in Condition 11); and
- (c) sets out the matters referred to in paragraph 4.

32 The Licensee shall be taken to have complied with paragraph 1 by:

- (a) adopting as the PSIA, the document designated as such by the Authority, within 3 days of the Authority so designating such a document (such designation not to occur prior to 17 October 2007); and
- (b) reviewing such document and proposing modifications to it in accordance with paragraphs 6, 7 and 8.

43 The terms and arrangements referred to in paragraph 1(a) are those terms and arrangements between the Licensee and the Power Procurement Business that are requisite for the enjoyment and discharge of the rights and obligations of the Licensee or the Power Procurement Business under the Licence or the NIE Energy Supply Licence (respectively) and such other code or document as may be specified from time to time by the Authority. The Licensee shall not enter into any terms or arrangements with the Power Procurement Business otherwise than pursuant to the PSIA or another document or code referred to in the Licence.

54 The PSIA shall provide for any disputes between the parties thereto over revisions to the PSIA to be referred to the Authority for determination. In addition, the PSIA may provide for there to be referred to the Authority for determination such additional matters arising under the PSIA as may be specified in the PSIA.

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65 The Licensee shall procure that no modifications, amendments or variations are made to the PSIA without the prior approval of the Authority.

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Review of the Arrangements

76 Without prejudice to paragraph 5, the Licensee shall, in common with the Power Procurement Business, periodically, or at any time on the receipt of a request from the Authority to do so, review the PSIA and their implementation to:

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- (a) ensure that they meet the requirements of paragraphs 1, 3 and 4; and
- (b) to consider whether any alternative arrangements would better achieve those requirements.

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87 Following any such review, the Licensee shall, in common with the Power Procurement Business, send to the Authority:

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- (a) a report on the outcome of the review;
- (b) any revisions which the Licensee and the Power Procurement Business agree should be made to the PSIA (having regard to the outcome of the review); and
- (c) any matters on which the Licensee and the Power Procurement Business disagree (which matters will be referred to the Authority for determination in accordance with paragraph 4).

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Revision of the Arrangements

98 Revisions to the PSIA proposed by the Licensee and sent to the Authority pursuant to sub-paragraph 7(b) shall require the Authority's approval before they may be made.

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Publication of the Arrangements

409 Where, and to the extent, required to do so by the Authority, the Licensee shall publish the PSIA on its website.

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SONI TSO Licence – IME3 Modifications (Certification and Others) – Final Draft for Consultation (Mark-Up) – 11,  
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**Condition 20. Operation of the Transmission System and the System Security and Planning Standards**

1 The Licensee shall plan, operate, and shall co-ordinate and direct the flow of electricity onto and over, the transmission system.

2 In complying with its obligation under paragraph 1, the Licensee shall at all times do so in accordance with in each the Transmission System Security and Planning Standards, the Distribution System Security and Planning Standards, the Grid Code and the Transmission Interface Arrangements, as appropriate to the purpose under consideration, and in accordance with its role under the Transmission Interface Arrangements, and taking into account the Transmission Owner's obligations in relation to planning and developing and maintaining the transmission system in accordance with the Transmission Owner Licence.

(a) ~~the Transmission and Distribution System Security and Planning Standards and the Grid Code; and~~

(b) ~~such other standard of planning and operation as is adopted, from time to time, by the Licensee (with the approval of the Authority and following consultation with those electricity undertakings liable to be materially affected thereby).~~

**Revision of Arrangements**

3 The Licensee shall, ~~in common consultation with the Transmission Owner, in consultation with and, to the extent that they are liable to be materially affect thereby, other~~ electricity undertakings and the Republic of Ireland System Operator ~~to the extent such persons are liable to be materially affected thereby,~~ periodically (and at any time when requested to do so by the Authority) review the Transmission ~~and Distribution~~ System Security and Planning Standards and their implementation in so far as relevant to the transmission system. Following any such review, the Licensee shall, ~~in common with the Transmission Owner,~~ send to the Authority:

(a) a report on the outcome of that review;

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(b) any revision which the Licensee proposes to make to the Transmission ~~and Distribution~~ System Security and Planning Standards from time to time (having regard to the outcome of that review); and

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(c) any written representations or objections from the Transmission Owner, the Republic of Ireland System Operator or electricity undertakings (including any proposals by such persons for revisions to the documents that were not accepted by the Licensee in the course of the review) arising during the consultation process and subsequently maintained.

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4 Revisions to the Transmission ~~and Distribution~~ System Security and Planning Standards proposed by the Licensee and sent to the Authority pursuant to paragraph 3 shall require the Authority's approval before they may be made.

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5 Having regard to any written representations or objections referred to in subparagraph 3(c), and following such further consultation (if any) as the Authority may consider appropriate, the Authority may issue directions requiring the Licensee to revise the Transmission ~~and Distribution~~ System Security and Planning Standards in such manner as may be specified in the directions, and the Licensee shall comply with any such directions forthwith.

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#### Derogation

6 The Authority may from time to time (following consultation with the Licensee, the Transmission Owner, (to the extent liable to be materially affected thereby) any electricity undertaking and the Republic of Ireland System Operator, and such (if any) other licence holders as the Authority shall consider appropriate) issue directions relieving the Licensee of its obligations under paragraph 2 in respect of such parts of the transmission system and to such extent as may be specified in the directions.

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#### Publication

7 The Licensee shall give or send a copy of the Transmission ~~and Distribution~~ System Security and Planning Standards, and of any revision thereto, to the

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~~Transmission Owner, the~~ Authority and ~~to~~ the Republic of Ireland System Operator. The Licensee shall also publish a copy of the document on its website.

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8 The Licensee shall, subject to paragraph 9, give or send a copy of any of the Transmission ~~and Distribution~~ System Security and Planning Standards to any person requesting it.

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9 The Licensee may make a charge for any copy given or sent pursuant to paragraph 8 of an amount reflecting the Licensee's reasonable costs of the document which will not exceed any amount specified for the time being for the purposes of this Condition in directions issued from time to time by the Authority.

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#### Performance Standards

10 The Licensee shall, whenever requested to do so by the Authority, draw up and submit to the Authority for its approval a statement setting out criteria by which performance of the Licensee in maintaining transmission system security, availability and quality of service may be measured.

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11 The Licensee shall within 2 months after the end of each financial year submit to the Authority a report providing details of the performance of the Licensee during the previous financial year against the criteria referred to in paragraph 10.

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#### Transmission System ~~Planning~~ Development and Maintenance

12 The Licensee shall cooperate with, and assist, the Transmission ~~System~~ Owner in complying with its obligations under the Transmission Owner Licence regarding the ~~planning and~~ development ~~and maintenance~~ of the transmission system.

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**Condition 20A. TSO Certification**

Certification

1 Where the Licensee is certified, in accordance with Article 10E of the Order, it shall:

(a) as soon as practicable after it becomes aware of it, give notice (in writing) to the Authority of:

(i) any proposed or actual change in control of the Licensee;

(ii) any event, change in circumstance, or transaction undertaken (or proposed to be undertaken) by the Licensee or any affiliate or related undertaking of the Licensee, which:

(A) affects, or is likely to affect, the Licensee continuing to be certified on the certification ground on which it is certified; or

(B) requires, or is likely to require, a review by the Authority of whether the grounds for certification continue to apply.

(b) use its reasonable endeavours to ensure that:

(i) the certification ground on which it is certified continues to apply; or

(ii) where there is an actual change of control of the Licensee:

(A) the certification ground on which it is certified continues to apply;  
or

(B) it meets the requirements of another certification ground.

2 Where the Transmission Owner is certified, in accordance with Article 10E of the Order, the Licensee shall:

(a) as soon as practicable after it becomes aware of it, give notice (in writing) to the Authority of any event, change in circumstance, or transaction undertaken (or proposed to be undertaken) by the Licensee or any affiliate or related undertaking of the Licensee, which:

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(i) affects, or is likely to affect, the Transmission Owner continuing to be certified on the certification ground on which it is certified; or

(ii) requires, or is likely to require, a reassessment by the Authority of whether the grounds for certification continue to apply in respect of the Transmission Owner.

Definitions and Interpretation

3 In this Condition, the terms “certified” and “certification ground” have the meaning given to them in Article 10L of the Order.

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**Condition 21. Operating Security Standards**

1 The Licensee shall make arrangements sufficient to meet the operating security standard at all times.

Operating Security Standard

2 The operating security standard is such level of operational security which, in relation to a single contingency incident, will result in limited (quantity and time) low frequency load shedding. In the event of a long term material reduction in the commissioned capacity of any Northern Ireland Interconnector and/or the North/South Circuits, the operating security standard may be reduced to allow for planned low frequency load shedding in relation to a single contingency incident. In either case, the operating security standard shall be achieved by ensuring that:

(a) under normal operating conditions, sufficient generating capacity and demand reduction schemes are available to meet:

(i) the forecast demand; and

(ii) such level of reserve capability as the Licensee determines to be necessary,

taking into account the impact factor and the availability of the Northern Ireland Interconnectors and the North/South Circuits, and assuming that available capacity will be scheduled and dispatched in accordance with the Grid Code; and/or

(b) such other or further measures as the Authority may (upon the application of the Licensee) approve as sufficient to ensure the same level of operational security.

3 Notwithstanding paragraph 1, the Licensee may interrupt or reduce a supply of electricity in circumstances where:

(a) it is necessary to do so by reason of planned maintenance undertaken in respect of any part of the total system, or by reason of a fault on or affecting any part of the total system, or by reason of the quantities of electricity

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delivered onto the total system, or by reason of the failure of, damage to, or destruction of, a gas pipeline; or

(b) electricity is available for purchase under the terms of the arrangements for trading electricity established by or referred to in the Single Electricity Market Trading and Settlement Code, but the Licensee is prevented from dispatching such electricity by reason of relevant constraints; or

(c) it is necessary to do so to maintain the security and stability of the total system by reason of a sudden unplanned loss of part of the total system until the time at which all demand on the total system can again be met in a stable and secure manner.

Compliance

4 The Licensee shall, upon request by the Authority, provide to the Authority such information as the Authority may require for the purpose of monitoring compliance with this Condition and to enable the Authority (having regard to its statutory duties) to review the operation of the operating security standard.

Definitions

5 In this Condition, unless the context otherwise requires:

“forecast demand” means, for any point in time, the Licensee’s forecast (made in accordance with the Grid Code) of the demand on the total system at that point in time.

“impact factor” means the percentage of the aggregate infeeds to the transmission system which could be lost under a single contingency incident.

“relevant constraints” means constraints produced directly by the transmission system or derived from neighbouring systems.

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“single contingency incident” means the loss of:

- (a) in relation to generation sets, a single generation set (or more than one generation set connected to the transmission system through a single transformer); and
- (b) in relation to a Northern Ireland Interconnector or the North/South Circuits, such part of that Interconnector or the North/South Circuits;

that is liable to sudden interruption in the event of a single fault other than failure of, damage to, or destruction of, a gas pipeline.

“reserve capability” means the Licensee’s reasonable expectation of the ability (in MW) of a generation set, a demand reduction scheme, a Northern Ireland Interconnector or the North/South Circuits to increase the net generation/demand balance on the total system.

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**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 ~~and 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:
    - (a) unavailability of generation sets and/or Interconnector transfers;
    - (b) constraints from time to time imposed by technical limitations on the All-Island Networks or any part thereof; and
    - (c) 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.

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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

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- (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).

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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.

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Definitions

- 7 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.

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**"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.

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

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- o **"merit order system"** means a system establishing economic precedence of electricity from available generation sets or Interconnector

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

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o **“NI SEM Generation”**

o means the available generation sets of each relevant generator which:

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

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

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o **“relevant generator”**

o means:

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

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(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.

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o **“relevant price”**

o 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.

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o **“Republic of Ireland Generator”**

o means a person licensed to generate electricity under Section 14(1)(a) of the

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Republic of Ireland Electricity Act, or the Republic of Ireland Board acting in its capacity as the owner or operator of generation sets.

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

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- (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.

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

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**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; and
  - (b) 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.

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## Condition 24. System Operator Agreement

### Content of the System Operator Agreement

- 1 The Licensee shall, by 1 October 2007 (or such later date as the Authority may direct), enter into, and thereafter comply with, and, in conjunction with the Republic of Ireland System Operator, at all times maintain in force, an agreement (the “**System Operator Agreement**”) which:
  - (a) insofar as any matter is within the control of the Republic of Ireland System Operator and affects the ability of the Licensee to carry on the Transmission System Operator Business, ensures that such matter is carried out in a manner such that the Licensee is capable, on a continuing basis, of carrying on the Transmission System Operator Business;
  - (b) insofar as any matter is within the control of the Licensee in its capacity as the holder of the Licence and affects the ability of the Republic of Ireland System Operator to carry on the Republic of Ireland System Operator Business, ensures that such matter is carried out in a manner such that the Republic of Ireland System Operator is capable, on a continuing basis, of carrying on the Republic of Ireland System Operator Business;
  - (c) insofar as a matter is within the control of the Licensee in its capacity as the holder of the Licence and/or of the Republic of Ireland System Operator and affects the ability of the Northern Ireland Market Operator Licensee and/or the Republic of Ireland Market Operator Licensee to carry on the Single Market Operation Business, ensures that such matter is carried out in a manner such that the Northern Ireland Market Operator Licensee and/or the Republic of Ireland Market Operator Licensee (as applicable) is capable, on a continuing basis, of carrying on the Single Market Operation Business;
  - (d) insofar as a matter is within the control of the Northern Ireland Market Operator Licensee and/or of the Republic of Ireland Market Operator Licensee and affects the ability of the Licensee in its capacity as the holder of the Licence and/or of the Republic of Ireland System Operator to carry on the Transmission System Operator Business and/or to the Republic of



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Ireland System Operator Business, ensures that such matter is carried out in a manner such that the Licensee in and/or the Republic of Ireland System Operator (as applicable) is capable, on a continuing basis, of carrying on the Transmission System Operator Business and/or the Republic of Ireland System Operator Business (as applicable); and

- (e) is designed so as to:
  - (a) at all times protect the interests of consumers of electricity in Northern Ireland and Ireland;
  - (b) promote the efficient discharge of the obligations imposed on the Licensee in its capacity as the holder of a licence granted under Article 10(1)(b) of the Order, and on the Republic of Ireland System Operator, under licences, laws and regulations;
  - (c) facilitate the planning, development, maintenance and operation of the transmission system as part of efficient, economical, co-ordinated, safe, secure and reliable All-Island Transmission Networks;
  - (d) neither prevent nor restrict effective competition in the generation and supply of electricity on the Island of Ireland; and
  - (e) promote good industry practice and efficiency in the implementation and administration of the matters covered by the System Operator Agreement.

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2 Without prejudice to the generality of paragraph 1, the System Operator Agreement shall:

- (a) set out the arrangements regarding the rights and obligations of the Licensee as against the Republic of Ireland System Operator, in relation to contracts (and applications) for connection to, and use of, the All-Island Transmission Networks (including as envisaged by Conditions 27 and 28); and
- (b) provide for the sharing of costs and the making of payments between the Licensee and the Republic of Ireland System operator, including any sharing

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of costs and the making of any payments in respect of action taken or expenditure incurred by the Licensee or the Republic of Ireland System Operator for the purposes of complying with the provisions of the System Operator Agreement.

#### Review and Amendment of the System Operator Agreement

- 3 The Licensee shall, in conjunction with the Republic of Ireland System Operator, periodically review (including at the request of the Authority) the System Operator Agreement and its implementation.
- 4 Save as provided for in paragraphs 5 and 6 below, the Licensee shall procure that the System Operator Agreement is not amended otherwise than by mutual consent of all the persons who are, at the relevant time, a party thereto. Where a proposed amendment may have a material impact on the business of any electricity undertaking or on the operation of the Single Electricity Market, the Licensee shall consult with electricity undertakings and give due consideration to any representations received.
- 5 The Licensee shall ensure that the System Operator Agreement allows any party to the System Operator Agreement to (without restriction) refer to the Authority any proposed amendment to the System Operator Agreement that any other party thereto disputes where the dispute remains outstanding for more than 30 days after a party serves a notice on the others that refers to this paragraph. Where a proposed amendment is referred to the Authority in accordance with the provision of the System Operator Agreement included in order to meet the requirements of this paragraph, the Licensee shall comply with (and, in conjunction with the Republic of Ireland System Operator, amend the System Operator Agreement to conform to) that amendment to the extent it is approved by the Authority.
- 6 In addition to the matters specified in paragraph 5, the System Operator Agreement may provide for there to be referred to the Authority for determination (subject to the Authority accepting such referral) such additional matters arising under the System Operator Agreement as may be specified in the System Operator Agreement.

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- 7 The Licensee shall, in conjunction with Republic of Ireland System Operator, report annually to the Authority on the operation of the System Operator Agreement to the extent relevant to the functions, rights and obligations of the Licensee.

Publication of the System Operator Agreement

- 8 Where, and to the extent, required to do so by the Authority, the Licensee shall publish the System Operator Agreement on its website.

Definitions

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

**“Republic of Ireland System Operator Business”** has the meaning attributed to the expression “Transmission System Operation Business” in the Republic of Ireland System Operator Licence.

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## Condition 25. Requirement to Offer Terms – Users and Connectees

### Offer of terms for use of the All-Island Transmission Networks

- 1 On application by any eligible person, the Licensee shall (subject to paragraph 6) offer to enter into a Use of System Agreement:
  - (a) to accept into the All-Island Transmission Networks at such entry point or points on the transmission system, and in such quantities, as may be specified in the application, electricity to be provided by or on behalf of such person; and
  - (b) to deliver such quantities of electricity as are referred to in sub-paragraph (a) above (less any transmission losses on the All-Island Transmission Networks) to such exit point or points on the transmission system and to such person or persons as may be specified in the application; and
  - (c) specifying the use of system charges to be paid by the person seeking use of the All-Island Transmission Networks, in respect of generation or supply in Northern Ireland, such charges (unless manifestly inappropriate) to be referable to the statement prepared in accordance with paragraph 1 (or, as the case may be, paragraph 7) of Condition 30 or any revision of such statement; and
  - (d) containing such further terms as are or may be appropriate for the purposes of the agreement.

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In this paragraph references to "eligible person" shall be construed as references to persons licensed under Article 10 of the Order (or exempt from the requirement to be so licensed under Article 9 of the Order) or who have applied for a licence under Article 10 and whose application has not been withdrawn or rejected (including, for the avoidance of doubt, the Power Procurement Business in its capacity as such).

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### Offer of terms for connection to the All-Island Transmission Networks

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- 2 On application by any person, the Licensee shall (subject to paragraph 6) offer to enter into a Connection Agreement (or amend an existing Connection Agreement)

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for connection (or modification of an existing connection) to the All Island Transmission Networks at entry or exit points on the transmission system, and such offer shall make detailed provision regarding:

- (a) the carrying out of works (if any) required to connect the transmission system to any other system for the transmission of electricity and for the obtaining of any consents necessary for such purposes;
- (b) the carrying out of works (if any) in connection with the extension or reinforcement of the All-Island Networks rendered necessary or appropriate by reason of making the connection or modification to an existing connection and for the obtaining of any consents necessary for such purposes;
- (c) the installation of appropriate meters (if any) required to enable the Licensee to measure electricity being accepted into the All-Island Transmission Networks at the specified entry point or points or leaving such system at the specified exit point or points;
- (d) the carrying out of works (if any) in relation to the installation of such switchgear or other apparatus (if any) as may be required for the interruption of supply;
- (e) the date by which any works required so as to permit access to the All-Island Transmission Networks (including for this purpose any works to reinforce or extend any of the All-Island Networks) shall be completed and so that, unless otherwise agreed by the person making the application, a failure to complete such works by such date shall be a material breach of the agreement entitling the person to rescind the agreement;
- (f) the installation of special metering, telemetry or data processing equipment (if any) for the purpose of enabling any person who is bound to comply with the Grid Code to comply with its obligations in respect to metering thereunder or the performance by the Licensee of any service in relation to such metering thereunder;
- (g) the connection charges to be paid to the Licensee, such charges:

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- (a) to be presented in such a way as to be referable to the statements prepared in accordance with paragraph 1 (or, as the case may be, paragraph 7) of Condition 30 or any revision of such statements; and
- (b) to be set in conformity with the requirements of paragraph 5 of Condition 30 and (where relevant) of paragraph 3; and
- (h) such further matters as are or may be appropriate for the purposes of the agreement.

3 For the purpose of determining an appropriate proportion of the costs directly or indirectly incurred in carrying out works (or in relation to any of the other matters referred to in paragraph 5 of Condition 30) under an agreement for making a connection or modification to an existing connection the Licensee shall have regard to:

- (a) the benefit (if any) to be obtained or likely in the future to be obtained by the Licensee or any other person as a result of the carrying out of such works (or of such other matters) whether by reason of the reinforcement or extension of any part of the All-Island Networks or the provision of additional entry or exit points on such networks or otherwise; and
- (b) the ability or likely future ability of the Licensee to recoup a proportion of such costs from third parties.

Offer of terms - general

4 The Licensee shall, as soon as practicable after it receives an application in accordance with paragraph 1 or 2, request (to the extent necessary) an offer from the Transmission Owner and/or the Republic of Ireland System Operator (in accordance with the Transmission Interface Arrangements and/or the System Operator Agreement as appropriate) in respect of that application and the works (if any) necessitated by that application.

5 The Licensee shall offer terms for agreements in accordance with paragraphs 1 and 2 as soon as practicable and (save where the Authority consents to a longer period) in any event not more than the period specified in paragraph 7 after receipt

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by the Licensee of an application containing all such information as the Licensee may reasonably require for the purpose of formulating the terms of the offer. A form of standard terms for agreements in paragraphs 1 and 2 shall be published on the Licensee's website, together with any subsequent revisions thereof.

6 The Licensee shall not be obliged pursuant to this Condition to offer to enter or to enter into any Connection Agreement or any Use of System Agreement:

(a) if to do so would involve the Licensee:

(a) in breach of its duties under Article 12 of the Order; or

(b) in breach of any regulations made under Article 32 of the Order or of any other enactment relating to safety or standards applicable in respect of the transmission system; or

(c) in breach of the Conditions of the Licence;

(d) in breach of the Grid Code; or

(b) if the person making the application does not undertake to be bound by such parts of the Grid Code and to such extent as the Authority shall from time to time specify in directions issued to the Licensee for the purposes of this Condition; or

(c) if, when requested to do so by the Licensee, the Transmission Owner and/or the Republic of Ireland System Operator does not offer to enter into an agreement for connection/extension works in respect of the Connection Agreement or Use of System Agreement in question.

7 For the purpose of paragraph 5, the period specified shall be:

(a) in the case of persons seeking use of system, 28 days; and

(b) in the case of persons seeking connection (or modification to an existing connection) or seeking use of system in conjunction with connection, 3 months.

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8 The Licensee shall, within 28 days following receipt of a request from any person, give or send to such person such information in the possession of the Licensee as may be reasonably required by such person for the purpose of completing the information required by that person in relation to its application for a licence under Article 10 of the Order.

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**Condition 26. Functions of the Authority – Disputes with Users and Connectees**

1 If, after a period which appears to the Authority to be reasonable for the purpose, the Licensee has failed to enter into a Connection Agreement or Use of System Agreement with any person entitled or claiming to be entitled thereto pursuant to a request under Condition 25, the Authority may, pursuant to Article 11(3)(c) of the Order and on the application of that person or the Licensee, settle any terms of the Connection Agreement or Use of System Agreement in dispute between the Licensee and that person in such manner as appears to the Authority to be reasonable having (insofar as relevant) regard in particular to the following considerations:

(a) that such person should pay to the Licensee:

(a) in the case of provision of use of the All-Island Transmission Networks in respect of generation or supply in Northern Ireland, the use of system charges determined in accordance with paragraph 1 or 7 of Condition 30; and

(b) in the case of provision of a connection (or a modification to an existing connection) to the All Island Transmission Networks at an entry or exit point on the transmission system, the whole or an appropriate proportion (as determined in accordance with paragraph 3 of Condition 25) of the costs referred to in paragraph 5 of Condition 30 together with a reasonable rate of return on the capital represented by such costs;

(b) that no such person should pay any charges such as are referred to in subparagraph (b) of paragraph 4 of Condition 30 in respect of any connection (or any modification of an existing connection) to the All-Island Transmission Networks at an entry or exit point on the transmission system made prior to such date as shall be specified in a direction issued by the Authority for the purposes of this Condition and that no such charges should be paid in respect of any such connection or modification made after such date unless the Authority is satisfied that the extension or reinforcement in respect of which the charges are to be paid was rendered necessary or appropriate by

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virtue of providing connection to or use of system to the person or making such a modification;

- (c) that the performance by the Licensee of its obligations under the Connection Agreement or Use of System Agreement should not involve the Licensee in a breach such as is referred to in paragraph 6 of Condition 25;
  - (d) that the performance by the Transmission Owner of its obligations under any agreement necessitated in relation to the Connection Agreement or Use of System Agreement pursuant to paragraph 4 of Condition 25 should not involve the Transmission Owner in a breach such as is referred to in condition 20 of the Transmission Owner Licence;
  - (e) that the performance by the Republic of Ireland System Operator of its obligations under any agreement necessitated in relation to the Connection Agreement or Use of System Agreement pursuant to paragraph 4 of Condition 25 should not involve the Republic of Ireland System Operator in a breach of the Republic of Ireland System Operator Licence;
  - (f) that any methods by which the transmission system is connected to any other system for the transmission or distribution of electricity accord (insofar as applicable to the Licensee) with the Grid Code and with the Distribution Code; and
  - (g) that the terms and conditions of the Connection Agreement or Use of System Agreement so settled by the Authority and of any other such agreements entered into by the Licensee pursuant to an application under Condition 25 should be, so far as circumstances allow, in as similar a form as is practicable.
- 2 If the person wishes to proceed on the basis of the Connection Agreement or Use of System Agreement as settled by the Authority, the Licensee shall forthwith:
- (a) notify the Transmission Owner and the Republic of Ireland System Operator in order that the Licensee can obtain the necessary agreement envisaged by paragraph 4 of Condition 25;

(b) forthwith on obtaining those agreements, enter into and implement a Connection Agreement or Use of System Agreement as so settled.

3 If either party to a Connection Agreement or Use of System Agreement entered into pursuant to Condition 25 or this Condition proposes to vary the contractual terms of such agreement in any manner provided for under such agreement, the Authority may, at the request of the Licensee or other party to such agreement, settle any dispute relating to such variation in such manner as appears to the Authority to be reasonable.

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**Condition 27. Requirement to Offer Terms – Republic of Ireland System Operator**

1 At the request of the Republic of Ireland System Operator in respect of an application to the Republic of Ireland System Operator for use of the All-Island Transmission Networks in respect of generation or supply in the Republic of Ireland or connection to (or modification of an existing connection to) the All-Island Transmission Networks at an entry or exit point on the Republic of Ireland transmission system, the Licensee shall (subject to paragraph 7) provide the Republic of Ireland System Operator with an offer that makes detailed provisions regarding:

- (a) the carrying out of the works to the transmission system (if any) necessary to enable such use, connection or modification; and the obtaining of the consents (if any) necessary for such purposes; and
- (b) the carrying out of the works to the transmission system (if any) necessary in connection with the extension or reinforcement of the All-Island Networks rendered necessary or appropriate by reason of such use, connection or modification; and the obtaining of the consents (if any) necessary for such purposes,

by a stated date.

**System Operator Agreement**

2 The Licensee shall ensure that the System Operator Agreement provides for the manner in which the requests for use of system and connection or modification, such as are envisaged by paragraph 1, are to be made, and also for:

- (a) any payments between the Licensee and the Republic of Ireland System Operator in respect of such use of system; and
- (b) the payments between the Licensee and the Republic of Ireland System Operator in respect of such connection or modification, the amount of such payments:
  - (a) to be presented in such a way as to be referable to the statements

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prepared in accordance with paragraph 1 (or, as the case may be, paragraph 7) of Condition 30 or any revision of such statements; and

- (b) to be set in conformity with the requirements of paragraph 5 of Condition 30 and (where relevant) of paragraph 2.

3 For the purpose of determining an appropriate proportion of the costs directly or indirectly incurred in carrying out works (or in relation to any of the other matters referred to in sub-paragraph (a) of paragraph 5 of Condition 30) in respect of a request such as is envisaged by paragraph 1, the Licensee shall have regard to:

- (a) the benefit (if any) to be obtained or likely in the future to be obtained by the Licensee or any other person as a result of the carrying out of such works (or of such other matters) whether by reason of the reinforcement or extension of any part of the All-Island Networks or the provision of additional entry or exit points on such networks or otherwise; and
- (b) the ability or likely future ability of the Licensee to recoup a proportion of such costs from third parties.

4 The Licensee shall, and shall ensure that the System Operator Agreement requires the Licensee to, respond to requests such as are envisaged by paragraph 1 as soon as practicable and (save where the Authority consents to a longer period) in any event not more than the period specified in paragraph 5 after receipt by the Licensee of a request that complies with the relevant requirements of the System Operator Agreement.

5 For the purpose of paragraph 4, the period specified shall be:

- (a) in the case of persons seeking use of system, 28 days; and
- (b) in the case of persons seeking connection (or modification to an existing connection) or seeking use of system in conjunction with connection, 3 months.

Transmission Interface Arrangements

- 6 The Licensee shall, as soon as practicable after it receives a request such as is envisaged by paragraph 1, request an offer from the Transmission Owner (in accordance with the Transmission Interface Arrangements) in respect of that request and the works (if any) necessitated by that request.

Circumstances where no obligation exists

- 7 The Licensee shall not be obliged (and the System Operator Agreement will provide that the Licensee shall not be obliged) to make an offer such as is envisaged by paragraph 1:
- (a) if to do so would involve the Licensee:
    - (a) in breach of its duties under Article 12 of the Order; or
    - (b) in breach of any regulations made under Article 32 of the Order or of any other enactment relating to safety or standards applicable in respect of the transmission system; or
    - (c) in breach of the Conditions of the Licence;
    - (d) in breach of the Grid Code; or
  - (b) if the person making the application to which the request envisaged by paragraph 1 relates does not undertake to be bound by such parts of the Grid Code, and to such extent, as the Authority shall from time to time specify in directions issued to the Licensee for the purposes of this Condition; or
  - (c) if, when requested to do so by the Licensee, the Transmission Owner does not offer to enter into an agreement for connection/extension works in respect of the request in question.

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**Condition 28. Functions of the Authority – Disputes with the Republic of Ireland System Operator**

- 1 The Licensee shall ensure that the System Operator Agreement provides that, if after a period which appears to the Authority to be reasonable for the purpose, the Licensee and the Republic of Ireland System Operator have not entered into a binding commitment pursuant to such a request as is envisaged under paragraph 1 of Condition 27, the Authority may, on the application of the Licensee or the Republic of Ireland System Operator, settle the terms of the offer envisaged pursuant to paragraph 1 of Condition 27 in such manner as appears to the Authority to be reasonable having (insofar as relevant) regard in particular to the following considerations:
- (a) that the Licensee should be able to recover the whole or an appropriate proportion (as determined in accordance with paragraph 3 of Condition 27) of the costs referred to in paragraph 5 of Condition 30 together with a reasonable rate of return on the capital represented by such costs;
  - (b) that the performance by the Licensee of its obligations under the agreement in question should not involve the Licensee in a breach such as is referred to in paragraph 7 of Condition 27;
  - (c) that the performance by the Transmission Owner of its obligations under any agreement necessitated in relation to the agreement in question pursuant to paragraph 6 of Condition 27 should not involve the Transmission Owner in a breach such as is referred to in condition 20 of the Transmission Owner Licence;
  - (d) that any methods by which the transmission system is connected to any other system for the transmission or distribution of electricity accord (insofar as applicable to the Licensee) with the Grid Code and with the Distribution Code; and
  - (e) that the terms and conditions of the agreement so settled by the Authority and of any other such agreements entered into by the Licensee pursuant to an application under Condition 27 should be, so far as circumstances allow,

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in as similar a form as is practicable.

- 2 If the Republic of Ireland System Operator wishes to proceed on the basis of the offer so settled by the Authority, the Licensee shall forthwith:
  - (a) notify the Transmission Owner in order that the Licensee can obtain the necessary agreement envisaged by paragraph 6 of Condition 27;
  - (b) forthwith on obtaining that agreement, enter into and implement the agreement so settled as so settled.
  
- 3 If the Licensee or the Republic of Ireland System Operator wishes to vary the terms of the arrangements entered into pursuant to such an offer as is envisaged by paragraph 1 of Condition 27 or such an offer as is settled in accordance with this Condition 28, the Authority may, at the request of the Licensee or the Republic of Ireland System Operator, settle any dispute relating to such variation in such manner as appears to the Authority to be reasonable.

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**Condition 29. Economic Purchasing of System Support Services**

- 1 The Licensee shall contract for the provision of such quantities and types of System Support Services at any time available as may be appropriate to enable it to discharge its obligations under the Order, the Energy Order, the SEM Order and the Licence (including Conditions 20 and 21). Where appropriate, taking into account the quantity, nature and cost of the System Support Services in question, the Licensee shall make arrangements for such contracting in co-operation with the Republic of Ireland System Operator.
- 2 In contracting for the provision of System Support Services pursuant to paragraph 1, the Licensee shall purchase or otherwise acquire System Support Services:
  - (a) from the most economical sources available to it, or available to the Republic of Ireland System Operator, having regard to:
    - (a) the quantity and nature of the System Support Services required to enable discharge of its obligations under the Order, the Energy Order, the SEM Order and the Licence (including Conditions 20 and 21); and
    - (b) the diversity, number and reliability of such System Support Services at that time available for purchase or other acquisition; and
  - (b) in accordance with a procedure which shall, to the extent and in such manner as may, from time to time, be specified in directions issued by the Authority for the purpose of this paragraph, be published by the Licensee.
- 3 This Condition shall not extend to prescribing the manner or circumstances in which the Licensee shall at any time call for the delivery of System Support Services under any contract entered into pursuant to paragraph 1.

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**Condition 30. Charging Statements**

Statements of Charges

1 The Licensee shall, in co-operation with the Republic of Ireland System Operator, as soon as practicable after the date on which this Condition becomes effective (and, in any event, not later than such date as the Authority may direct) prepare (and obtain the Authority's approval to) statements setting out:

(a) the basis upon which persons licensed under Article 10 of the Order (or exempt from the requirement to be so licensed under Article 9 of the Order) will be charged for use of the All-Island Transmission Networks in respect of generation or supply in Northern Ireland;

(b) the basis upon which charges will be made for connection to the All-Island Transmission Networks at entry or exit points on the transmission system;

(c) any charges for System Support Services;

(d) any Other System Charges or the basis upon which such charges will be made; and

(e) payments and charges for Ancillary Services.

2 The statements prepared under paragraph 1 shall be in such form and contain such detail as shall be necessary to enable any person to make a reasonable estimate of the charges to which it would become liable (or payments to which it would become entitled, as the context requires) for the provision of such services, including such of the information set out in paragraphs 3, 4, 5 and 6 as is required by such paragraphs to be included in the relevant statement.

Use of System

3 Except to the extent that the Authority may otherwise direct, the statement referred to in paragraph 1(a) shall include:

(a) a schedule of charges for transport of electricity under use of the All-Island

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Transmission Networks in respect of generation or supply in Northern Ireland;

- (b) the methods by which and the principles on which charges (if any) for availability of transmission capacity on the All-Island Transmission Networks will be made;
- (c) a schedule of the charges (if any) which may be made for the provision and installation of any meters or electrical plant at entry or exit points on the transmission system, the provision and installation of which is ancillary to the grant of use of the All-Island Transmission Networks in respect of generation or supply in Northern Ireland, and for the maintenance of meters or electrical plant;
- (d) the methods by which and the principles on which entry and exit charges for connections in operation before the date on which this Condition became effective will be calculated; and
- (e) such other matters as shall be specified in directions issued by the Authority from time to time for the purposes of this Condition.

Connection

- 4 Except to the extent that the Authority may otherwise direct, the statement referred to in paragraph 1(b) shall include:
- (a) a schedule listing those items (including the carrying out of works and the provision and installation of electric lines or electrical plant or meters) of significant cost liable to be required for the purpose of connection (at entry or exit points on the transmission system) to the All-Island Transmission Networks for which connection charges may be made or levied and including (where practicable) indicative charges for each such item and (in other cases) an explanation of the methods by which and the principles on which such charges will be calculated;
  - (b) the methods by which and the principles on which any charges will be made in respect of extension or reinforcement of the All-Island Transmission

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Networks rendered necessary or appropriate by virtue of providing such connection to the All-Island Transmission Networks (at entry or exit points on the transmission system) or associated use of the All-Island Transmission Networks in respect of supply or generation in Northern Ireland;

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(c) the methods by which and the principles on which connection charges will be made in circumstances where the electric lines or electrical plant to be installed are of greater size or capacity than that required for use of system by the person seeking connection;

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(d) the methods by which and the principles on which any charges (including any capitalised charge) will be made for maintenance and repair required of electric lines, electrical plant or meters provided and installed for making a connection to the All Island Transmission Networks at entry or exit points on the transmission system;

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(e) the methods by which and the principles on which any charges will be made for the provision of special metering or telemetry or data processing equipment by the Licensee for the purposes of enabling any person which is bound to comply with the Grid Code to comply with its obligations in respect of metering thereunder, or for the performance by the Licensee of any service in relation thereto;

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(f) the methods by which and principles on which any charges will be made for disconnection from the transmission system and the removal of electrical plant, electric lines and ancillary matters following disconnection; and

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(g) such other matters as shall be specified in directions issued by the Authority from time to time for the purposes of this Condition.

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5 Connection charges for those items referred to in paragraph 4 shall be set at a level which will enable the recovery of:

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(a) the appropriate proportion of the costs directly or indirectly incurred (or to be incurred) in carrying out the works, extension or reinforcement in question and in providing, installing, maintaining and repairing (and, following

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disconnection, removing) the electrical lines, electrical plant, meters, special metering, telemetry, data processing equipment or other items in question; and

- (b) a reasonable rate of return on the capital represented by such costs.

#### System Support Service Charges

- 6 The statement referred to in paragraph 1(c) shall identify any charges levied in respect of System Support Services.

#### **Other System Charges**

- (a) The statement referred to in paragraph 1(d) shall identify any Other System Charges and the rates and parameters to be used for the calculation of such charges. The statement shall either contain or refer to a separate statement (which separate statement shall be treated as forming part of the statement referred to in paragraph 1(d)) to be published on the Licensee's website setting out the basis for the calculation of such charges.

- (b) The Licensee shall at least once in every year that this Licence is in force revise the statement referred to in paragraph 1(d) but any such revision shall only take effect provided that:

- (a) the Licensee has (in consultation with authorised electricity undertakings and the Republic of Ireland System Operator, to the extent that such persons are liable to be materially affected thereby), reviewed the Other System Charges and their effect;
- (b) following any such review, the Licensee has sent to the Authority:
- (i) a report on the outcome of such consultation;
  - (ii) any proposed revisions (having regard to the outcome of the consultation) as the Licensee reasonably thinks fit; and

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- (iii) any written representations or objections from any electricity undertaking (including any suggested changes to the proposed revisions not accepted by the Licensee in the course of the consultation) arising during the consultation and subsequently maintained; and
- (c) the Authority has approved the revision to the statement, subject to (where there were written representations or objections and the Authority considers it appropriate) any direction by the Authority requiring a change as set out in that direction.
- (c) The Licensee shall publish (prior to its entry into force) a copy of the statement prepared in accordance with paragraph 1(d) (and of each revision of such statement in accordance with paragraph 6B) on its website and shall send a copy to the Authority and the Republic of Ireland System Operator.

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Alternative Statement

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- 7 In addition to, and without prejudice to, the Licensee's obligations under paragraph 1, the Licensee shall, upon being required to do so in directions issued by the Authority (and within such period as the Authority may specify), prepare a statement or statements approved by the Authority providing that charges for use of (in respect of generation or supply in Northern Ireland), and/or connection to (at entry or exit points on the transmission system), the All-Island Transmission Networks will be made on such basis as shall be specified in the directions. Such statement or statements shall be in such form and contain such detail as shall be necessary to enable any person to make a reasonable estimate of the charges to which it would become liable for the provision of such services and (without prejudice to the foregoing) including such information as shall be specified in the directions. Each statement prepared in accordance with this paragraph shall, with effect from the date on which it is approved by the Authority or such later date as the Authority shall specify, replace the corresponding statement prepared by the Licensee in accordance with paragraph 1 or, as the case may be, this paragraph (as from time to time revised in accordance with paragraph 7) which is in force at

such date and the Licensee shall, with effect from such date make charges in accordance with the statement (as from time to time revised in accordance with paragraph 7) which has replaced such corresponding statement.

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#### Revision and Publication of Statements

8 The Licensee may, in co-operation with the Republic of Ireland System Operator, periodically revise the information set out in and, with the approval of the Authority, alter the form of the statements prepared in accordance with paragraph 1(a), 1(b), 1(c) or 7 and shall, at least once in every year the Licence is in force, revise such statements, in co-operation with the Republic of Ireland System Operator, in order that the information set out in the statements shall continue to be accurate in all material respects.

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9 The Licensee shall publish (prior to its entry into force) a copy of the statements prepared in accordance with paragraph 1(a), 1(b), 1(c) or 7 (and of each revision of such statements in accordance with paragraph 8) on its website and shall send a copy to the Authority and the Republic of Ireland System Operator. Each such revision shall require to be approved by the Authority and shall not become effective until approved by the Authority.

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10 The Licensee shall give or send a copy of the statements prepared in accordance with paragraphs 1(a), 1(b), 1(c) or 7, or (as the case may be) of the latest version of such statements in accordance with paragraph 8 approved by the Authority pursuant to such paragraph to any persons who requests a copy of such statement or statements.

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11 The Licensee may make a charge for any statement given or sent pursuant to paragraph 10 of an amount reflecting the Licensee's reasonable costs of providing such a statement which shall not exceed the maximum amount specified in directions issued by the Authority from time to time for the purposes of this Condition.

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Definitions

12 In this Condition, unless the context otherwise requires:

**“Ancillary Services”** has the meaning given to that term in the Grid Code

**“Generator Performance Incentive Charges”** means charges levied by the Licensee on the operators of generation sets for certain redeclarations of the technical capabilities of such generation sets under the Grid Code.

**“Other System Charges”** means any charges, other than as referred to in paragraphs 1(a), (b) and (c), levied from time to time (with the approval of the Authority) by the Licensee in carrying on the Transmission System Operator Business, for the avoidance of doubt including Generator Performance Incentive Charges, Trip Charges and SND Charges.

**“SND Charges”** means charges levied by the Licensee on the operators of generation sets for certain redeclarations of available capacity of such generation sets under the Grid Code.

**“Trip Charges”** means charges levied by the Licensee on the operators of generation sets for unplanned outages of such generation sets.

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**Condition 31. Payment Security Policy**

- 1 The Licensee shall develop, and may from time to time amend, a payment security policy describing its security cover and debt recovery procedures in respect of regulated transmission revenue (including details of what is to be considered reasonable recovery costs and reasonable interest for the purposes of calculating uncollected revenue).
- 2 The Licensee shall submit the payment security policy, and any amendments thereto, to the Authority for its approval. No policy or amendment shall be effective until approved by the Authority.
- 3 In this Condition:  
“regulated transmission revenue” has the meaning given to that expression in Condition 32.

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**Condition 32. Charge Restrictions**

The Licensee shall comply with the conditions set out in Annex 1.

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**Condition 33. Transmission System Capacity Statement**

Duty to Prepare a Statement

1 The Licensee shall, in consultation with the Republic of Ireland System Operator, once every year (and not later than such date as the Authority shall specify), prepare a statement (in a form and based on methodologies approved by the Authority) showing, in respect of each of the ~~seven-ten~~ succeeding financial years, circuit capacity, forecast electrical flows and loading on each part of the transmission system and fault levels for each transmission node, together with:

(a) such further information as shall be reasonably necessary to enable any person seeking use of the transmission system, as part of the All-Island Transmission Networks, to identify and evaluate the opportunities available when connecting to and making use of such system including information on the status of transmission capacity and the anticipated future requirements of transmission capacity;

(b) a commentary prepared by the Licensee indicating its views as to those parts of the transmission system most suited to new connections and the transport of further quantities of electricity;

~~(c)~~ a commentary prepared by the Licensee indicating those measures ~~of and investment decisions~~, which ~~it is aware that are being have been~~ taken (or are planned to be taken) to meet forecast peak demand on the transmission system; ~~and~~

~~(d)~~ a commentary prepared by the Licensee indicating those investments that are to be executed in the next three years, together with a timetable for the execution of all other investment decisions included in the commentary provided in accordance with paragraph (c) above; ~~and~~

~~(e)~~(e) such other matters as shall be specified in directions issued by the Authority from time to time for the purposes of this Condition,

provided that the Authority may, upon the application of the Licensee, relieve the Licensee of the obligation to prepare any such statement in respect of any period and

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any part of the transmission system specified in directions issued to the Licensee by the Authority from time to time for the purposes of this Condition.

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2 The Licensee may, with the prior consent of the Authority, omit from the published version of any statement prepared in accordance with paragraph 1 any details as to circuit capacity, electrical flows, loading or other information, the disclosure of which would, in the view of the Authority, seriously and prejudicially affect the commercial interests of the Licensee, the Republic of Ireland System Operator or any other person.

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3 The preparation of any statement in accordance with paragraph 1 shall, so far as possible, be co-ordinated with the preparation of the statements required to be produced by the Republic of Ireland System Operator under conditions 7 (Forecast Statement) and 8 (Development Plan) of the Republic of Ireland System Operator Licence, and such statements shall, so far as possible and save to the extent the Authority consents otherwise, be prepared on a consistent basis.

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Revisions to the Statement

4 The Licensee may, (and shall where directed to do so by the Authority), in consultation with the Republic of Ireland System Operator, periodically revise the information set out in and, with the approval of the Authority, alter the form of the statement prepared in accordance with paragraph 1 and shall, at least once in every year the Licence is in force, revise that statement in order that the information set out in it shall continue to be accurate in all material respects.

5 The Licensee shall send a copy of the statement prepared in accordance with paragraph 1, and of each revision of that statement in accordance with paragraph 4, to the Department, the Authority and the Republic of Ireland System Operator. Each revision of the statement shall require to be approved by the Authority and shall not become effective until approved by the Authority.

Copies of the Statement

6 The Licensee shall make a copy of the statement prepared in accordance with paragraph 1, or (as the case may be) of the latest revision of such statement in

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accordance with paragraph 4 approved by the Authority pursuant to paragraph 5, available on the Licensee's website, and shall send a copy to any person who requests a copy of the same.

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7 The Licensee may make a charge for any statement sent pursuant to paragraph 6 of an amount reflecting the Licensee's reasonable costs of providing that statement, which costs shall not exceed the maximum amount specified in directions issued by the Authority from time to time for the purposes of this Condition.

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Definitions

8 In this Condition, unless the context otherwise requires:

**"consistent basis"** means, in respect of two or more documents, that the assumptions and input data which are common to those documents, and methodologies by which results in relation to equivalent subjects in those documents are derived, are (to the extent material to those documents and/or their subject matter) materially the same, and that the conclusions or outcomes in relation to equivalent subjects in those documents are presented in a manner which is designed so as to facilitate ease of comparison between the documents.

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**Condition 34. Interconnector Capacity Statement**

Duty to Prepare a Statement

1 The Licensee shall, as soon as practicable after the commissioning of each Northern Ireland Interconnector (and in any event not later than such date as the Authority shall specify), prepare a statement (in a form and based on methodologies approved by the Authority) showing:

- (a) the amount of the capacity of that Northern Ireland Interconnector which the Licensee anticipates will be available for the transfer of electricity during each remaining week of the period to 31 March (or such other date as the Authority may direct) next following such commissioning; and
- (b) such matters (if any) as the Authority shall specify prior to its approval of the statement.

2 The Licensee shall, as soon as practicable in respect of each Northern Ireland Interconnector (and in any event within such period as the Authority shall specify), prepare a statement approved by the Authority showing the matters referred to in sub-paragraphs 1(a) and (b) in respect of each period of 12 months commencing on the date of 1 April (or such other date as the Authority may direct) next following commissioning of the Interconnector in question.

3 The preparation of any statement in accordance with paragraph 1 shall, so far as possible, be co-ordinated with the preparation of the statement required to be produced by the Republic of Ireland System Operator under condition 9 (Interconnectors) of the Republic of Ireland System Operator Licence, and such statements shall, so far as possible and save to the extent the Authority consents otherwise, be prepared on a consistent basis.

Copies of the Statement

4 The Licensee shall send a copy of every statement prepared in accordance with this Condition to the Department, the Authority and the Republic of Ireland System Operator.

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5 The Licensee shall publish a copy of any statement prepared in accordance with this Condition on its website and shall send a copy of such statement to any person who requests a copy of the same.

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6 The Licensee may make a charge for any statement sent pursuant to paragraph 5 of an amount reflecting the Licensee's reasonable costs of providing such a statement which shall not exceed the maximum amount specified in directions issued from time to time by the Authority for the purposes of this Condition.

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Definitions

7 In this Condition, unless the context otherwise requires:

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**"consistent basis"** means, in respect of two or more documents, that the assumptions and input data which are common to those documents, and methodologies by which results in relation to equivalent subjects in those documents are derived, are (to the extent material to those documents and/or their subject matter) materially the same, and that the conclusions or outcomes in relation to equivalent subjects in those documents are presented in a manner which is designed so as to facilitate ease of comparison between the documents.

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**Condition 35. Generation Capacity Statement**

Duty to Prepare a Statement

1 The Licensee shall, in consultation with the Republic of Ireland System Operator, once every year (and not later than such date as the Authority shall specify), prepare a statement (in a form and based on methodologies approved by the Authority) showing, in respect of each of the seven succeeding financial years:

- (a) the total generation capacity (broken down by generating station name and by generating station type);
- (b) the total capacity of the Northern Ireland Interconnectors and the North/South Circuits to import electricity to, and export electricity from, the total system;
- (c) the forecast peak demand in Northern Ireland and the ability of the generation capacity (subject to adjustment to reflect the amount of electricity referred to in paragraph 1(b)) to meet that demand and the operating security standard;
- (d) any periods, of which the Licensee is aware, in which the owner or operator of a generation set in Northern Ireland intends to cease or reduce generation or in which the owner or operator of a Northern Ireland Interconnector or of the North/South Circuits intends to reduce capacity (otherwise than, in each case, for routine maintenance);
- (e) any plans, which the Licensee is aware are in the public domain, for the development of new generation sets to be connected to the total system, or for the development of new Northern Ireland Interconnectors or of new North/South Circuits; and
- (g) such other matters as shall be specified in directions issued by the Authority from time to time for the purposes of this Condition,

provided that the Authority may, upon the application of the Licensee, relieve the Licensee of the obligation to prepare any such statement in respect of any period specified in directions issued to the Licensee by the Authority from time to time for the purposes of this Condition.

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2 The Licensee may, with the prior consent of the Authority, omit from the published version of any statement prepared in accordance with paragraph 1 any details the disclosure of which would, in the view of the Authority, seriously and prejudicially affect the commercial interests of the Licensee, the Republic of Ireland System Operator or any other person.

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3 The preparation of any statement in accordance with paragraph 1 shall, so far as practicable, be co-ordinated with the preparation of the statements required to be produced by the Republic of Ireland System Operator under Section 38 of the Republic of Ireland Electricity Act and Part 10 of the Republic of Ireland legislation known as the European Communities (Internal Market in Electricity) Regulations 2005, and such statements shall, so far as possible and save to the extent the Authority consents otherwise, be prepared on a consistent basis.

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#### Revisions to the Statement

4 The Licensee may (and shall where directed to do so by the Authority), in consultation with the Republic of Ireland System Operator, periodically revise the information set out in and, with the approval of the Authority, alter the form of the statement prepared in accordance with paragraph 1 and shall, at least once in every year the Licence is in force, revise that statement in order that the information set out in it shall continue to be accurate in all material respects.

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5 The Licensee shall send a copy of the statement prepared in accordance with paragraph 1, and of each revision of that statement in accordance with paragraph 4, to the Department, the Authority and the Republic of Ireland System Operator. Each revision of the statement shall require to be approved by the Authority and shall not become effective until approved by the Authority.

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#### Copies of the Statement

6 The Licensee shall publish a copy of the statement prepared in accordance with paragraph 1, or (as the case may be) of the latest revision of such statement in accordance with paragraph 4 approved by the Authority pursuant to paragraph 5, on the Licensee's website, and shall send a copy of such statement to any person who requests a copy of the same.

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7 The Licensee may make a charge for any statement given or sent pursuant to paragraph 6 of an amount reflecting the Licensee's reasonable costs of providing that statement, which costs shall not exceed the maximum amount specified in directions issued by the Authority from time to time for the purposes of this Condition.

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Definition

8 In this Condition, unless the context otherwise requires:

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**"consistent basis"**

means, in respect of two or more documents, that the assumptions and input data which are common to those documents, and methodologies by which results in relation to equivalent subjects in those documents are derived, are (to the extent material to those documents and/or their subject matter) materially the same, and that the conclusions or outcomes in relation to equivalent subjects in those documents are presented in a manner which is designed so as to facilitate ease of comparison between the documents.

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**"generation capacity"**

o means the commissioned and operational capacity of the generation sets connected to the total system.

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**Condition 36. Provision of Information to Other System Operators**

- 1 Subject to the provisions of Condition 11, and without prejudice to any other Condition of this Licence, the Licensee shall provide (in such manner and at such times as may reasonably be requested by the relevant operator or as may be directed by the Authority) to any other transmission system operator or distribution system operator (where such phrases have the meanings given to them in the Directive) with whose system the transmission system is connected, sufficient information to ensure the secure and efficient operation, co-ordinated development and interoperability of, the transmission system and such other system.

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**Condition 37. Arrangements in Respect of the Moyle Interconnector**

Moyle Interconnector Collection Agency Agreement

- 1 Paragraphs 2 and 3 shall only apply in respect of the period to the time at which the Moyle Interconnector Collection Agency Agreement terminates or expires in accordance with its terms.
- 2 The Licensee shall at all times be a party to, and comply with its obligations under, the Moyle Interconnector Collection Agency Agreement. The Licensee shall, in accordance with its obligations under such agreement, recover through the charges it levies, and account to Moyle for, an amount equal to the Collection Agency Income Requirement.
- 3 The Licensee shall not terminate, or make or agree any amendment to, the Moyle Interconnector Collection Agency Agreement, without the prior consent of the Authority.

Moyle Interconnector Operation and Agency Agreement

- 4 Paragraphs 5 to 10 (inclusive) shall only apply in respect of the period to the time at which the Moyle Interconnector Operation and Agency Agreement terminates or expires in accordance with its terms.
- 5 The Licensee shall at all times be a party to, and comply with its obligations under, the Moyle Interconnector Operation and Agency Agreement.
- 6 The Licensee shall not terminate, or make or agree any amendment to, the Moyle Interconnector Operation and Agency Agreement, without the prior consent of the Authority.
- 7 The Licensee shall at all times remain a party to the GB Balancing and Settlement Code framework agreement.
- 8 The Licensee shall, at all times, act as and perform the functions of the “Interconnector Administrator” and the “Interconnector Error Administrator” (as such expressions are defined in the GB Balancing and Settlement Code) in

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respect of the Moyle Interconnector under and in accordance with the GB Balancing and Settlement Code.

9 The Licensee shall, at all times, act as and perform the functions of the “Interconnector Administrator” (as such expression is defined in the Single Electricity Market Trading and Settlement Code) in respect of the Moyle Interconnector under and in accordance with the Single Electricity Market Trading and Settlement Code.

10 The Licensee shall, to the extent there is an obligation on any person to do so under the Single Electricity Market Trading and Settlement Code, register the “Interconnector Error Unit” (as such expression is defined in the Single Electricity Market Trading and Settlement Code) relating to the Moyle Interconnector in accordance with the Single Electricity Market Trading and Settlement Code.

Definitions

11 In this Condition, unless the context otherwise requires:

“Collection Agency Income Requirement” means, in respect of any period, the amount defined as such, in respect of that period, in the Moyle Collection Agency Agreement.

“GB Balancing and Settlement Code” means the balancing and settlement code established by the transmission system operator for Great Britain.

“Moyle” means Moyle Interconnector Limited, an incorporated company registered in Northern Ireland under number NI036562.

“Moyle Interconnector Collection Agency Agreement” means the agreement of that name between Moyle and the Licensee, which was originally entered into between Moyle and Northern Ireland Electricity plc on 14 April 2003, which, amongst other things, makes provision for collection of the Collection

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Agency Income Requirement.

**“Moyle Interconnector”** means the Northern Ireland Interconnector between Scotland and Northern Ireland which is owned by Moyle and which comprises the converter stations at Ballycronan More, Co. Antrim, Northern Ireland and Auchencrosh, Ayrshire, Scotland and the undersea and underground electric lines which interconnect such converter stations, together with its connections to the transmission system and to the transmission system in the south west of Scotland.

**“Moyle Interconnector Operation and Agency Agreement”** means the agreement of that name between Moyle and the Licensee, as amended and restated on 28 June 2006, which, amongst other things, makes provision for the Moyle Interconnector to be operated by the Licensee.

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**Condition 38. Limits on the level to which transmission services are provided**

- 1 In co-ordinating and directing the flow of electricity onto and over the transmission system, the Licensee shall ensure that any of the technical levels that apply to the provision to the Licensee of any transmission services are not exceeded.
- 2 The technical levels referred to in paragraph 1 above are those set out in the Transmission Interface Arrangements.

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**Schedule 1. Revocation**

1. The Authority may at any time revoke the Licence by not less than 30 days' notice in writing to the Licensee:

(a) if the Licensee agrees in writing with the Authority that the Licence should be revoked;

(b) if any licence fee required to be paid under the Licence is unpaid 30 days after it has become due, and remains unpaid for a period of 14 days after the Authority has given the Licensee notice that the payment is overdue, provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;

(c) if the Licensee fails to comply with a final order (within the meaning of Article 42 of the Energy Order) or with a provisional order (within the meaning of Article 42 of the Energy Order) which has been confirmed under Article 42 of the Energy Order and which (in either case) has been made in respect of a contravention or apprehended contravention of a Condition of the Licence or of a relevant requirement as defined in Article 41(2)(a) of the Energy Order imposed on the Licensee in its capacity as holder of the Licence and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 44 of the Energy Order could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined;

(d) if the Licensee fails to comply with an order made by a court under section 34 of the Competition Act 1998; or fails to comply with an order made under section 72, 75, 76, 81, 83, 84, 158, 160 or 161 of, or under paragraph 2, 5, 6, 10 or 11 of schedule 7 to, the Enterprise Act 2002; or is found guilty of an offence under section 188, 193 or 194 of the Enterprise Act 2002;

(e) if the Licensee:

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- (i) is unable to pay its debts (within the meaning of Article 103(1) or (2) of the Insolvency (Northern Ireland) Order 1989, but subject to paragraphs 2 and 3 below) or if any voluntary arrangement is proposed in relation to it under Article 14 of that Order, or if it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
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- (ii) has a receiver (which expression shall include an administrative receiver within the meaning of Article 5(1) of the Insolvency (Northern Ireland) Order 1989) of the whole or any material part of its assets or undertaking appointed;
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- (iii) has an administration order under Article 21 of the Insolvency (Northern Ireland) Order 1989 made in relation to it;
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- (iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or
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- (v) becomes subject to an order for winding-up by a court of competent jurisdiction;
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- (f) if the Licensee is convicted of having committed an offence under Article 63 of the Order or under Article 46 of the Gas (Northern Ireland) Order 1996;
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- (g) if the Licensee fails to pay any financial penalty (within the meaning of Article 45 of the Energy Order) imposed in respect of a contravention or apprehended contravention of a Condition of the Licence or of a “relevant requirement” as defined in Article 41(2)(a) of the Energy Order by the due date for such payment and such payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 49 of the Energy Order could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined; or
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(h) if the Licensee ceases to carry on the Transmission System Operator Business other than with the consent of the Authority.

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2. For the purposes of paragraph 1(e)(i) above, Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 shall have effect as if for “£750” there was substituted “£250,000” or such higher figure as the Authority may from time to time determine by notice in writing to the Licensee.

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3. The Licensee shall not be deemed to be unable to pay its debts for the purposes of paragraph 1(e)(i) above if any such demand as is mentioned in Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 is being contested in good faith by the Licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1 above.

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## 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<sub>t</sub> in accordance with paragraph 2(B) (such revenue being zero where CAIR<sub>t</sub> 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;

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▲▲ **“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;▲

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▲▲ **“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);▲

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▲▲ **“unit”** means a kilowatt hour;▲

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▲▲ **“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.▲

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5	October 2013 - September 2014
6	October 2014 - September 2015

where:

RPI<sub>t</sub> 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<sub>TSOI</sub> 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

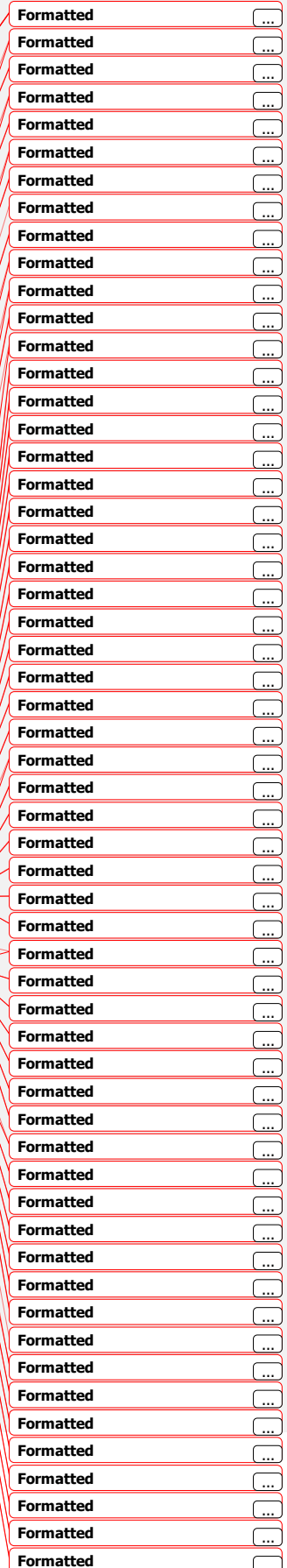
r<sub>e</sub> = cost of equity

r<sub>d</sub> = cost of debt

t = taxation

g = gearing

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







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

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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.

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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:

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(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

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(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  $t$ .

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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.

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4.7 The statement referred to in the preceding paragraph shall be:

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(a) accompanied by a report from the Auditors that in their opinion:

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(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

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(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

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(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:

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(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; and

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(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.

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

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(a) the regulated SSS/TUoS revenue;

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(b) the maximum regulated SSS/TUoS revenue;

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(c) the cost of  $A_{TSO,t}$ , calculated as provided under paragraph 2 (showing separately each component thereof);

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(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 disapplication request made in accordance with paragraph 5.2 and:

(a) the Authority agrees in writing to the disapplication request; or

(b) the application (in whole or in part) of this Annex (other than this paragraph 5) is terminated by notice given by the Licensee in accordance with either paragraph 5.4 or paragraph 5.5.

5.2 A disapplication request pursuant to this paragraph 5 shall (a) be in writing addressed to the Authority, (b) specify this Annex (or any part or parts thereof) to which the request relates and (c) state the date from which the Licensee wishes the Authority to agree that the specified paragraphs of this Annex shall cease to have effect.

5.3 Save where the Authority agrees otherwise, 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.

5.4 If the Authority has not made a reference to the Competition Commission under Article 15 of the Order relating to the modification of the relevant paragraphs of this Annex before the beginning of 12 months which will end with the Disapplication Date, the Licensee may deliver written notice to the Authority terminating the application of this Annex (or any part or parts thereof other than this paragraph 5) as are specified in the disapplication request with effect from the Disapplication Date or a later date.

5.5 If the Competition Commission makes a report on a reference made by the Authority relating to the modification of this Annex (or any part or parts thereof) specified in the disapplication request and such report does not include a conclusion that the cessation of this Annex, in whole or in part, operates or may be expected to operate against the public interest, the Licensee may within 30 days after the publication of the report by the Authority in accordance with Article 16 of the Order deliver to it written notice terminating the application of this Annex (or any part or parts thereof other than this paragraph 5) with effect from the Disapplication Date or a later date.

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5.6 A disapplication request or notice served under this paragraph 5 may be served in respect of a specified geographic area.

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## 6. **Change of Law**

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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 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  $D_{TSO}$  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:

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(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;

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(b) the period over which the Licensee shall incur costs by reason of the relevant change of law;

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(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

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(d) the other circumstances of the case.

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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.

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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.

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6.4 In this paragraph:

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"legal requirement" means, in relation to the Licensee, any of the following:

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(a) any enactment to the extent that it applies to the Licensee;

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(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

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decision taken by the said Commission which is binding on the Licensee to the extent that it is so binding;

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(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;

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(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;

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"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);

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(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).

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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.

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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 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<sub>t</sub> used in the preparation and approval of the tariffs prior to the relevant year t and the CAIR<sub>t</sub> 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  $A_{TSO_t}$  or  $B_{TSO_t}$ ;

(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,

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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.

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