ELECTRICITY GENERATION LICENCE

for

Heron Storage Limited

DRAFT

CONTENTS

GRANT OF THE LICENCE 1

THE CONDITONS 3

Condition 1: Interpretation and construction 3

Condition 2: Separate accounts for Separate Businesses 16

Condition 3: Prohibition of cross-subsidies and of discrimination 21

Condition 4: Compliance with Grid Code and, where applicable, Distribution Code 25

Condition 5: Security Arrangements 26

Condition 6: Central despatch and merit order 27

Condition 7: System Support Services 28

Condition 8: Compulsory Acquisition of Land 29

Condition 9: Powers to Carry out Road Works etc 32

Condition 10: Health and Safety of Employees 34

Condition 11: Provision of Information to the Authority 35

Condition 12: Payment of Fees 36

Condition 13: Not Used 38

Condition 14: Single Electricity Market Trading and Settlement Code 39

Condition 15: Modification of Single Electricity Market Trading and Settlement Code and Cancellation of Contracts 40

Condition 16: Provision of Information 48

Condition 17: Cost-Reflective Bidding in the Single Electricity Market 49

Condition 17a: Balancing Market Principles Code of Practice 53

Condition 18: Not Used 536

Condition 19: Capacity Market Code 57

Schedule 1: Terms As To Revocation 58

DRAFT

GRANT OF THE LICENCE

Terms of the Licence

1 The Northern Ireland Authority for Utility Regulation (the **'Authority'**), in accordance with Article 10(1) of the Electricity (Northern Ireland) Order 1992 (as amended) (the **'Order'**) and in exercise of the power conferred by Article 10(1)(a) of the Order hereby grants to **Heron Storage Limited** (registered in **Northern Ireland** under number **NI682405**) (the **'Licensee'**) a licence (the **'Licence'**) authorising it to generate electricity at **Lands 170m West of 42 Ballydown Road, Banbridge, Co.Down, BT32 3RP** for the purpose of giving a supply to any premises or enabling a supply to be so given, during the period specified in paragraph 2 below.

2 The Licence shall come into force on the date of the grant and shall continue in force until:

(a) determined by not less than 25 years' notice in writing given by the Authority to the Licensee, such notice not to be served earlier than the tenth anniversary of the date on which the Licence comes into force; or

(b) 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.

Conditions of the Licence

3 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 their terms and in accordance with Articles 14, 17, 17A and 18 of the Order or such other lawful power of modification as may exist from time to time).

Definitions

4 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 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.

DRAFT

Date……..……

Signed……..

Name……..……

For and on behalf of The Northern Ireland Authority for Utility Regulation

DRAFT

THE CONDITONS

Condition 1: Interpretation and construction

1. Unless the contrary intention appears:

   (a) words and expressions used in the Conditions or in Schedule 1 shall be construed as if they were in an enactment and the Interpretation Act (Northern Ireland) 1954 applied to them; and

   (b) references to an enactment shall include subordinate legislation and in both cases any statutory modification or re-enactment thereof after the date when this licence comes into force.

2. Any word or expression defined for the purposes of any provision of Part II of the Order, of the Energy Order or the SEM Order shall, unless the contrary intention appears, have the same meaning when used in the Conditions or in the Schedules.

3. In the Conditions and in the Schedules, unless otherwise specified or the context otherwise requires:

Affiliate	in relation to any person means any holding company of that person, any subsidiary of that person, or any subsidiary of a holding company of that person, in each case within the meaning of section 1159 of the Companies Act 2006.
Auditors	means the Licensee's auditors for the time being holding office in accordance with the requirements of Chapter 2 of Part 16 of the Companies Act 2006.
Authorised	in relation to any business or activity means authorised by licence granted under Article 10 or exemption granted under Article 9 of the Order.
authorised electricity	means any person (other than the Licensee in its

DRAFT

operator	capacity as the holder of this 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 an interconnector or who has made an application for use of an interconnector which has not been refused;
Authority	means the Northern Ireland Authority for Utility Regulation.
Cancel	in relation to the Authority, means the exercise of its cancellation powers.
cancellable generating unit agreement	means a generating unit agreement which may be the subject of a cancellation direction, being the generating unit agreements specified in Annex 4 (as it may be modified from time to time) of the NIE Energy Supply Licence.
cancellation direction	means a direction issued by the Authority to cancel a cancellable generating unit agreement.
cancellation powers	means the powers of the Authority to direct any party to a cancellable generating unit agreement to terminate that agreement upon such date or the happening of such event as shall be specified in the notice containing the direction.
Competition and Markets Authority (CMA)	means the body of that name established by section 25 of the Enterprise and Regulatory Reform Act 2013.
Department	means the Department of Enterprise, Trade and Investment.

DRAFT

Designated	in relation to any agreement, arrangement, code, notice, proposal therefore or other document, means designated by the Department or the Authority (as the case may be) or on its behalf by means of initialling or descriptive reference whether for the purposes of any Condition of this licence or otherwise, but so that an agreement, arrangement, code, notice, proposal therefore or other document so designated may at the discretion of the Department of the Authority (as the case may be) cease to be designated if amended or modified in any material respect.
Directive Regulations	means the Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 2005 and/or the Electricity Regulations (Northern Ireland) 2007;
Distribution Code	means, where the relevant distributor is authorised to distribute electricity by a licence granted under Article 10(1)(bb) of the Order, the code of that title required to be prepared by the relevant distributor
distribution system	means a system comprising wholly or mainly of low voltage electric lines owned and operated by an authorised electricity operator (excepting 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 distribution system of the authorised electricity operator, and includes any electrical plant and meters of the authorised electricity operator which are used in connection with distribution by the authorised electricity

DRAFT

	operator;
Distribution System Operator	means the person authorised, from time to time, to distribute electricity under the successor distribution licence.
electricity sale contract	shall include (without limitation) any contract or arrangement under which provision is made for the making or receipt of payments by reference to the difference between: (a) an amount specified or ascertainable under the terms of such contract or arrangement; and (b) the price at which electricity is sold or purchased under, pursuant to or as required or permitted by the Single Electricity Market Trading and Settlement Code or any component of either of such prices.
emissions	means the discharge of substances into the air.
Energy Order	means the Energy (Northern Ireland) Order 2003.
enforcement matter	means any matter in respect of which any functions of the Authority under Article 42 and Article 45 of the Energy Order are or may be exercisable;
financial year	has the meaning given in paragraph 1 of Condition 2.

DRAFT

General Consumer Council	means the General Consumer Council for Northern Ireland.
generating unit agreement	means a power purchase agreement between a generator and the Power Procurement Business in respect of a generation set or combination of generation sets.
Generation Business	means the authorised business of the Licensee or any affiliate or related undertaking of the Licensee in the generation of electricity or the provision of System Support Services.
generation set	means any plant or apparatus for the production of electricity.
generator	means a person authorised by a licence granted under Article 10(1)(a) of the Order.
Grid Code	means the code of that title required to be prepared by the Transmission System Operator, in its capacity as the operator of the transmission system, in accordance with the Transmission System Operator Licence.
holding company	means a holding company within the meaning of section 1159 of the Companies Act 2006.
interconnector	means electric lines and electrical plant and meters used for conveying electricity only directly to or from a substation or converter station on the Island of Ireland into or out of the Island of Ireland, and (for the avoidance of doubt) does not include the North/South Circuits.

DRAFT

Island of Ireland	means Northern Ireland and the Republic of Ireland.
licensed electricity supplier	means a person authorised to supply electricity by a licence granted under Article 10(1)(c) of the Order.
Licensee	means the person identified as such in the Grant and Terms of this Licence, and (where the context so requires) shall include any business in respect of which the Licensee is a successor company.
modification	includes addition, omission, amendment and substitution; and cognate expressions shall be construed accordingly.
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 and transferred to NIE Energy Limited (a body corporate registered in Northern Ireland under company number NI27394) on 1 November 2007 pursuant to a statutory transfer scheme.
North/South Circuits	means the electric lines and electrical plant and meters used for conveying electricity 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.
Northern Ireland Fuel Security Code	means the document of that title designated as such by the Department as from time to time amended in accordance with its provisions, dealing with the co-operation of licence holders in strategic contingency planning in respect of fuel stocks, the

DRAFT

	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 other 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.
notice	means (unless otherwise specified) notice given either in writing or by electronic data transfer.
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.
Order	means the Electricity (Northern Ireland) Order 1992;
Power Procurement Business	has the meaning given to it in the NIE Energy Supply Licence.
power purchase agreement	means a contract for the provision to the Licensee or any other authorised electricity operator of the whole or any part of the available capacity and/or the sale or other disposal to the Licensee or any other authorised electricity operator of the whole or any part of the output of a generation set or combination of generation sets.
power station agreement	means:

DRAFT

	(a) in relation to the Licensee, an agreement made with effect from 1 April 1992 between the Licensee and the Power Procurement Business in relation to matters concerning a generating station and designated for the purposes of this licence, as amended from time to time; and (b) in relation to any other generator, an agreement made with effect from 1 April 1992 between that generator and the Power Procurement Business in relation to matters concerning a generating station and designated for the purposes of this licence, as amended from time to time.
related undertaking	in relation to any person means any undertaking in which that person has a participating interest within the meaning of section 421A of the Financial Services and Markets Act 2000.
relevant distributor	means the owner and operator of the distribution system to which any generation set of the Licensee is, or is to be, connected.
relevant exempt self-supplier	means a relevant exempt self supplier within the meaning of the Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 2013.
relevant supplier	means a licensed electricity supplier or a relevant exempt self supplier.

DRAFT

representation	includes any objection or any other proposal made in writing.
SEM Go-Live	means the time and date designated as such by the Authority (with the consent of the Department) for the purpose of licences granted under the Order, being the commencement date for a number of matters including the Single Electricity Market.
SEM Order	means the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.
Separate Business	means each of the Generation Business and the Supply Business (if any) each taken separately from one another and 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 any other such business of the Licensee (and of any other affiliate or related undertaking of the Licensee) so as to form a single Separate Business.
Single Electricity Market	means the single wholesale electricity market for the Island of Ireland, implemented in Northern Ireland pursuant to Section 23 of the Northern Ireland (Miscellaneous Provisions) Act 2006;
Single Electricity Market Trading and Settlement Code	has the meaning given to that term in the Northern Ireland Market Operator Licence.

DRAFT

subsidiary	means a subsidiary within the meaning of section 1159 of the Companies Act 2006.
successor company	bears the meaning ascribed to it for the purposes of Part III of the Order.
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 Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 [SR2011/155].
successor transmission licence	means the licence which has effect as a licence under Article 10(1)(b) of the Order pursuant to Regulation 90(1)(b) of the Internal Markets Regulations and is held by Northern Ireland Electricity Limited (a body corporate registered in Northern Ireland under company number NI026041).
Supply Business	means the authorised business (if any) of the Licensee or any affiliate or related undertaking of the Licensee as a licensed electricity supplier.
System Support Services	means: (a) spinning reserve, fast start, black start, reactive power, frequency control and such other services as the Licensee may be required to have available as system support services in association with any generation set pursuant to the Grid Code or the Distribution Code, including

DRAFT

	outage planning incentive arrangements; (b) any services relating to a reduction of demand or other demand side measures that can be taken by a final consumer (or any person acting on behalf and with the authority of a final consumer); (c) any services that the Licensee may have agreed to have available as being system support services in association with any generation set pursuant to an agreement made with the Transmission System Operator or the Distribution System Operator, and which may be required by or offered (whether by way of sale or otherwise) to the Transmission System Operator or, as the case may be, the Distribution System Operator for the purpose of securing stability of operation on the transmission system or the distribution system and/or on any other system linked to the transmission system or a distribution system by an interconnector.
total system	means the transmission system, and the distribution system owned and operated by the holder of the successor distribution licence, taken together.
Transmission Owner	means the person authorised, from time to time, under the successor transmission licence in its capacity as the holder of that licence.

DRAFT

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 a 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	means the person authorised, from time to time, to participate in the transmission of electricity under the Transmission System Operator Licence, in its capacity as the holder of that licence.
Transmission System Operator Licence	means the licence granted under Article 10(1)(b) of the Order, to SONI Limited (a body corporate registered in Northern Ireland under company number NI038715) on 3 July 2007.
undertaking	bears the meaning ascribed to it by section 1161 of the Companies Act 2006.

4. Unless otherwise specified:

(a) any reference to a numbered Condition or to a numbered Schedule is respectively a reference to the Condition or the Schedule bearing that number in this licence;

(b) any reference to a numbered paragraph is a reference to the paragraph bearing

that number in the Condition or Schedule in which the reference occurs; and

(c) (without prejudice to any provision which restricts such variation, supplement or replacement) any reference to any agreement, licence (other than this licence), code or other instrument shall include a reference to such agreement, licence, code or other instrument as varied, supplemented or replaced from time to time.

5. The heading or title of any Part, Condition, Schedule or paragraph shall not affect the construction thereof.

6. 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).

7. The provisions of section 24 of the Interpretation Act (Northern Ireland) 1954 shall apply for the purposes of the delivery or service of any document, direction or notice to be delivered or served pursuant to this licence and directions issued by the Authority pursuant to any Condition shall be delivered or served as aforesaid.

DRAFT

Condition 2: Separate accounts for Separate Businesses

1. The first financial year of the Licensee shall run from the date of grant to 30 September 2023 and thereafter each financial year of the Licensee shall run from 01 October to the following 30 September.

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 each Separate Business and showing the financial affairs of each such Separate Business.

3. The Licensee shall in respect of each Separate Business:

   (a) keep or cause to be kept for the period referred to in section 388 of the Companies Act 2006 and in the manner referred to in that section such accounting records in respect of each Separate Business as would by section 386 of the Companies Act 2006 be required to be kept in respect of each 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, each 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; and

   (b) prepare on a consistent basis from such accounting records in respect of:

      (i) each 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 each Separate Business and in appropriate detail the amounts of any revenue, cost, asset, liability, reserve or provision, which has been either:

         (A) charged from or to any other business (whether or not a Separate Business) together with a description of the basis of that charge; or

         (B) determined by apportionment or allocation between any

Separate Business and any other business (whether or not a Separate Business) together with a description of the basis of the apportionment or allocation; and

(ii) the first six months of each financial year, an interim profit and loss account; and

(iii) each financial year, sufficient accounting information in respect of each separate business to allow the preparation of consolidated accounting statements for each separate business of the Licensee or, where applicable, the ultimate holding company of the Licensee. Such information shall include a profit and loss account, a statement of total recognised gains and losses, a balance sheet, and a cash flow statement together with notes thereto;

(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 to which the statements relate; and

(d) deliver to the Authority a copy of the account referred to in sub-paragraph (b)(ii), the Auditors' report referred to in sub-paragraph (c) and the accounting statements referred to in sub-paragraph (b)(i) as soon as reasonably practicable, and in any event not later than three months after the end of the period to which it relates in the case of the account referred to in sub-paragraph (b)(ii) and six months after the end of the financial year to which they relate in the case of the accounting statements and Auditors' report referred to in sub-paragraphs (b)(i) and (c).

4. (a) 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)(i) 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.

(b) Where, in relation to the accounting statements in respect of a financial year, the Licensee has changed such bases of charge, apportionment or allocation 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 adopted, prepare such accounting statements on the bases which applied in respect of the immediately preceding financial year.

5. Accounting statements in respect of a financial year prepared under sub-paragraph 3(b)(i) 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 each Separate Business) as the annual accounts of the Licensee (and any affiliate or related undertaking of the Licensee) prepared under Part 15 of the Companies Act 2006 and conform to the best commercial accounting practices including Statements of Accounting Practice issued or adopted by the Accounting Standards Board currently in force; and

(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.

6. Unless the accounting statements prepared under sub-paragraph 3(b)(i) are prepared on the current cost basis as provided by the alternative accounting rules, the Licensee shall, unless otherwise agreed by the Authority, in addition to preparing those accounting

DRAFT

statements under that paragraph, prepare accounting statements for each Separate Business covering the same period, which shall comprise and show separately:

(a) a profit and loss account, a balance sheet and a cash flow statement, together with notes thereto, which shall:

(i) include in respect of current cost assets amounts determined on the current cost basis as provided by the alternative accounting rules; and

(ii) show or disclose the information and other matters required by the alternative accounting rules to be shown or disclosed in accounts where the amounts included in respect of assets covered by any items shown in those accounts have been determined on any basis mentioned in paragraph 32 of Section C of Part 2 of Schedule 1 to the Accounting Regulations applicable to the Licensee ;

(b) in respect of each Separate Business the adjusted amount of any such provision for depreciation as is referred to in paragraph 33(2) of Section C of Part 2 of Schedule 1 to the Accounting Regulations applicable to the Licensee and the items shown in the profit and loss account of the Separate Business for the relevant period which are affected by the determination of amounts on the current cost basis as provided by the alternative accounting rules, including the profit (or loss) before taxation; and

(c) such other current cost information as is referred to in the Handbook as the Authority may reasonably require;

and shall deliver the same, together with an Auditors' report prepared in relation to the current cost basis accounting statements in the form referred to in sub-paragraph 3(c), to the Authority within the time limits referred to in sub-paragraph 3(d) and shall (with the exception of the part of such statements which shows separately the amounts charged, apportioned or allocated and describes the basis of charge or apportionment or allocation respectively) publish the same with the annual accounts of the Licensee.

7. References in this Condition to costs or liabilities of, or reasonably attributable to, any Separate Business shall be construed as excluding taxation, capital liabilities which do

not relate principally to a particular Separate Business and interest thereon; and references to any accounting statement shall be construed accordingly.

8. Without prejudice to any other provision of this Condition, the Licensee shall, on request, give the Authority and/or the Department (as the case may be) access to the Licensee's accounting records, policies and statements referred to in this Condition

9 For the purposes of paragraph 6:

Accounting Regulations	means the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 or the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008.
alternative accounting rules	means the rules set out in Section C of Part II of Schedule 1 to the Accounting Regulations .
current cost assets	means assets of any description mentioned in paragraph 32 of Section C of Part 2 of Schedule 1 to the Accounting Regulations.
the Handbook	means the handbook issued or adopted by the Accounting Standards Board or any successor body entitled **Accounting for the effects of changing prices: a Handbook** in its current edition for the time being or in the event that no such handbook shall be in issue such guidance or publication as may be issued in replacement or substitution therefore.

DRAFT

Condition 3: Prohibition of cross-subsidies and of discrimination

1. The Licensee shall procure that no Separate Business gives any cross-subsidy to, or receives any cross-subsidy from, any other business of the Licensee or of an affiliate or related undertaking of the Licensee (whether or not a Separate Business).

2. The Licensee shall not and shall procure that its affiliates and related undertakings shall not provide or offer to provide electricity to any person (including, without limitation, any Supply Business of the Licensee or any affiliate or related undertaking of the Licensee) or class of persons on terms as to price or on other terms affecting the financial value of the supply which are materially more or less favourable than those on which the Licensee or any such affiliate or related undertaking shall provide or offer to provide electricity to comparable purchasers within the Island of Ireland. For these purposes, due regard shall be had to the circumstances of such provision including (without limitation):

   (i) in the case of supply as part of any Supply Business of the Licensee or any affiliate or related undertaking of the Licensee, volumes, load factors, conditions of interruptibility, location and number of the premises being supplied and date and duration of the relevant agreement; and

   (ii) in the case of any electricity sale contract as referred to in sub-paragraph 3(a)(ii), the date and duration of such contract and the circumstances by reference to which the rights of the person to whom such electricity is provided are exercisable.

3. For the purpose of paragraph 2:

   (a) the provision of electricity shall (without limitation) include:

      (i) supply to customers of any Supply Business of the Licensee or any affiliate or related undertaking of the Licensee; and

      (ii) the provision of electricity by means of the entry by the Licensee or any affiliate or related undertaking of the Licensee into an electricity sale contract;

DRAFT

(b) in determining the price at which the Licensee or any affiliate or related undertaking of the Licensee shall provide electricity in the manner referred to in sub-paragraph (a)(ii), there shall be taken into account both any price received by the Licensee or such affiliate or related undertaking in relation to sales of electricity pursuant to the arrangements established, permitted or required by the Single Electricity Market Trading and Settlement Code and any payments received or made by the Licensee or such affiliate or related undertaking for the grant of or pursuant to any such contract.

4. Paragraphs 2 and 3 shall apply so long as this licence continues in force but shall cease to have effect (in whole or in part, as the case may be) if the Licensee delivers to the Authority a request (a "Disapplication Request") made in accordance with this Condition and:

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

(b) their application (in whole or in part) is terminated by a notice (a "Disapplication Notice") given by the Licensee in accordance with paragraph 7 and not withdrawn.

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

(a) the date being not less than 18 months after delivery of the disapplication request; and

(b) the fifth anniversary of the date of grant of this licence.

6. A Disapplication Request pursuant to this Condition shall:

(a) be in writing addressed to the Authority;

(b) specify paragraphs 2 and 3, or such parts of them to which the request relates; and

DRAFT

(c) state the date from which the Licensee wishes the Authority to agree that paragraphs 2 and 3 (or the specified part of them) shall cease to have effect.

7. A Disapplication Notice pursuant to this Condition:

(a) may be given in the circumstances described in either paragraph 8 or 9;

(b) may be withdrawn by the Licensee at any time prior to the Disapplication Date: and

(c) where it is given shall:

(i) be in writing addressed to the Authority;

(ii) specify paragraphs 2 and 3 (or any part of them, which shall comprise only such part as was specified in the Disapplication Request) to which the notice relates; and

(iii) state the date from which the Licensee wishes the notice to take effect, which shall not be earlier than the Disapplication Date.

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

(a) paragraphs 2 and 3, or any part of them to which the request relates; or

(b) paragraphs 4 to 7, so as to remove the right of the Licensee to give to the Authority a Disapplication Notice in respect of the relevant Disapplication Request.

9. The circumstances described in this paragraph are that:

(a) by no later than the beginning of the period of six months which will end with the Disapplication Date, the Authority has in response to the Disapplication Request published a decision of a type referred to in paragraph 8;

DRAFT

(b) the Licensee has exercised its right to appeal to the CMA against that decision in accordance with Article 14B of the Order;

(c) the CMA has, in respect of the provisions to which the Disapplication Request relates:

(i) quashed the decision of the Authority under Article 14E(2)(a) of the Order; and

(ii) neither remitted the matter back to the Authority under Article 14E(2)(b) of the Order nor substituted its own decision for that of the Authority under Article 14E(2)(c) of the Order; and

(d) no more than 30 days has elapsed since the date on which the CMA quashed the decision of the Authority.

10. For the purposes of this Condition, a purchaser shall be treated as a single purchaser notwithstanding that the premises at which a supply of electricity is given to him may be located in more than one place.

11. In this Condition, references to the provision of electricity to any person shall include the provision of available capacity of any generation set.

12. Paragraph 1 of this Condition shall not apply for so long as:

(a) the installed generation capacity of the Licensee and any affiliate or related undertaking of the Licensee shall not exceed 20 per cent of the aggregate total installed capacity of generators in the Island of Ireland; or

(b) the Licensee and any affiliate or related undertaking of the Licensee shall not hold a licence under Article 10(1)(c) of the Order.

DRAFT

Condition 4: Compliance with Grid Code and, where applicable, Distribution Code

1. The Licensee shall comply with the provisions of the Grid Code and the Distribution Code insofar as applicable to it.

2. The Authority may:

   (a) following consultation with the Transmission System Operator and the Transmission Owner, issue directions relieving the Licensee of its obligation under paragraph 1 above in respect of such parts of the Grid Code and to such extent as may be specified in those directions; and

   (b) following consultation with the relevant distributor issue directions relieving the Licensee of its obligation under paragraph 1 above in respect of such parts of the Distribution Code and to such extent as may be specified in those directions.

3. The Authority shall be entitled, in order to implement the requisite arrangements referred to in Condition 15, to issue directions to the Transmission System Operator requiring it to revise the Grid Code in such manner and with effect from such date as may be specified in the directions, provided that such revisions shall not affect the rights and obligations of any party to:

   (a) a power purchase agreement which is not a cancellable generating unit agreement; or

   (b) a cancellable generating unit agreement which 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 person.

DRAFT

Condition 5: Security Arrangements

1. The Licensee shall comply with the provisions of the Northern Ireland Fuel Security Code and such provisions shall have effect as if they were set out in this licence.

2. The Northern Ireland Fuel Security Code may be amended in accordance with its provisions.

DRAFT

Condition 6: Central despatch and merit order

1. The Licensee shall submit all available generation sets in Northern Ireland and all interconnector transfers from or into Northern Ireland to central despatch by the Transmission System Operator.

2. The Licensee shall at such times and in such manner as may be provided under the Grid Code provide the Transmission System Operator with all information reasonably required by it to enable it, in conformity with the conditions of the Transmission System Operator licence:

   (a) to operate the system of central despatch; and

   (b) to operate the merit order system.

3. In this Condition:

available	has the meaning given to it from time to time in the Grid Code.
central despatch	has the meaning given to it from time to time in the Grid Code.
interconnector transfer	has the meaning given to it from time to time in the Grid Code.
merit order system	has the meaning given to it from time to time in the Grid Code.

DRAFT

Condition 7: System Support Services

1. The Licensee shall from time to time upon request by the Transmission System Operator or the Distribution System Operator offer terms for the provision by the Licensee of System Support Services from any generation set of the Licensee which is capable of operating.

2. The Licensee shall from time to time upon request of the Authority provide to the Authority a report containing details of:

   (a) prices offered pursuant to paragraph 1 for the provision of System Support Services from each generation set of the Licensee; and

   (b) an explanation of the factors justifying the prices offered including (without limitation) details of the Licensee's costs associated with making available such System Support Services in conformity with the Grid Code and/or the Distribution Code and of providing the same to the Transmission System Operator or the Distribution System Operator.

3. Paragraphs 1 and 2 shall only have effect from such date as the Authority shall specify in directions issued to the Licensee for the purpose of this Condition and in relation to the provision by the Licensee of System Support Services other than those for which, at the date so specified, it shall already have contracted.

4. Upon the application of the Transmission System Operator or the Distribution System Operator wishing to question the terms offered pursuant to paragraph 1, the Authority may pursuant to Article 11(3)(c) of the Order, settle any terms of the agreement in dispute between the Transmission System Operator or the Distribution System Operator (as the case may be) and the Licensee in such manner as appears to the Authority to be reasonable.

5. Insofar as the Transmission System Operator or the Distribution System Operator (as the case may be) wishes to proceed on the basis of the terms as settled by the Authority, the Licensee shall forthwith enter into and implement such agreement in accordance with its terms.

DRAFT

Condition 8: Compulsory Acquisition of Land

1 Subject to paragraphs 5, the powers and rights conferred by or under the provisions of Schedule 3 of the Order (compulsory acquisition of land) shall have effect for the purposes set out in paragraph 2.

2. The purposes referred to in paragraph 1 are:

(a) the construction or extension of a generating station;

(b) activities connected with the construction or extension of a generating station or connected with the operation of a generating station; and

(c) the installation, maintenance, removal or replacement of electric lines, and electrical plant associated with them, connecting a generating station with:

(i) the transmission system; or

(ii) the system for the distribution of electricity of any other authorised electricity operator.

3. In paragraph 2:

(a) the references to **generating station** are to an electricity generating station which:

(i) has, or will have when its construction or extension is completed, a capacity of not less than two megawatts or such other capacity as may be specified in relation thereto by order of the Department under Article 39(3) of the Order; and

(ii) is, or will be when its construction or extension is completed, operated by or for the Licensee; and

(b) **extension** in relation to a generating station includes the use by the person operating the station of any land (wherever situated) for a purpose directly related to the generation of electricity by that station.

4. If the Authority shall be satisfied that it shall be desirable, having regard to the proximity of the land in question to any other land occupied by the Licensee under a relevant lease, that any land acquired by the Licensee, whether or not using the powers referred to in paragraph 1, should be held by the Licensee under a relevant lease, it may issue directions to the Licensee requiring the Licensee to transfer to the holder of the successor distribution licence the freehold interest in the land in question upon condition that there shall be immediately granted to the Licensee out of such freehold interest a leasehold interest upon the same terms as the relevant lease to which the Licensee is already a party of the land which shall be closest to the land acquired by the Licensee using the powers referred to in paragraph 1.

5. The powers referred to in paragraph 1 shall not apply to land forming part of the land bank.

6. Paragraphs 1 to 5 inclusive may be brought into effect on such date as the Authority shall specify in directions issued to the Licensee for the purposes of this Condition and shall cease to have effect on such date as the Authority shall specify in directions issued to the licensee for the purpose of this condition.

7. In this Condition:

Land	includes any right, easement or other interest in land and any wayleave.
land bank	means the land more fully described in Schedule 3 of the successor distribution licence, together with such additional land as shall be acquired by the holder of the successor distribution licence, by virtue of any requirement that a generator shall transfer to it a freehold interest in any land.
Lease	includes an underlease and a sub-underlease.

relevant lease	means a lease of any land or building granted pursuant to the transfer scheme under Article 69(1) of the Order or granted or assigned pursuant to directions issued by the Authority pursuant to Condition 23 of the successor distribution licence.

DRAFT

Condition 9: Powers to Carry out Road Works etc

1. Subject to paragraph 5 and for the purpose of enabling the Licensee to carry on its authorised activities, the powers and rights conferred by or under the provisions of Schedule 4 of the Order (other powers, etc., of licence holders) shall, subject to paragraph 3, have effect and may be exercised by carrying out works:

   (a) in relation to, or in pursuance of, the installation, inspection, maintenance, adjustment, repair, alteration, replacement and removal of:

      (i) electric lines specified in paragraph 2;

      (ii) electrical plant associated with such lines; and

      (iii) any structures for housing or covering such lines or plant;

   (b) in relation to the installation of electrical plant to be used in connection with a generating station or the operation of such station;

   (c) in relation to electric lines or electrical plant as if the references to them in Schedule 4 of the Order includes pipes used or intended to be used for conveying heat produced in association with electricity and steam produced from air and water heated by such heat and associated works in relation to such pipes and as if "**associated works**" had the meaning given in Article 13(3) of the Order.

2. Electric lines are specified for the purposes of sub-paragraph (a) of paragraph 1:

   (a) if they connect, or will connect when installed, a generating station with:

      (i) the transmission system; or

      (ii) the distribution system of any authorised electricity operator; and

   (b) where "**electric lines**" has the extended meaning given by paragraph 1(c), if they connect a generating station with any premises.

3. Paragraph 15 of Schedule 4 of the Order shall apply to the Licensee if:

DRAFT

(a) it wishes to exercise its rights of entry on land for the purpose of establishing whether or not the land is suitable for the construction or extension of a generating station, and

(b) it obtains the consent of the Authority before exercising those rights.

4. In this Condition:

"**authorised activities**" means the activities which the Licensee is authorised by this licence to carry on, and shall include any purpose connected with the supply to any premises of heat produced in association with electricity and steam produced from air and water heated by such heat; and

"**generating station**"

and "**extension**" have the meanings given in paragraph 3 of Condition 8.

5 Paragraphs 1 to 4 inclusive may be brought into effect on such date as the Authority shall specify in directions issued to the Licensee for the purposes of this Condition and cease to have effect on such date as the Authority shall specify in directions issued to the Licensee for the purposes of this condition.

DRAFT

Condition 10: 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.

DRAFT

Condition 11: Provision of Information to the Authority

1. Subject to paragraph 3, the Licensee shall furnish to the Authority, in such manner and at such times as the Authority may require, such information and shall procure and furnish to it such reports, as the Authority may consider necessary in the light of the Conditions or as it may require for the purpose of performing the functions assigned or transferred to it by or under 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 Licensee may not be required by the Authority to furnish it under this Condition with any information required 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.

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

5. The Licensee shall, in accordance with any direction that may from time to time be given by the Authority, retain information described or specified, for such minimum period as may be specified, in the direction.

6. In paragraphs 1 to 5 **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.

DRAFT

Condition 12: Payment of Fees

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

2 Within 30 days after the grant of this Licence but in any event before 31 March 2023, the Licensee shall pay to the Authority an initial fee of £1,500.

3 In respect of the year beginning on 1 April in the year following the grant of the licence and in each subsequent year, the Licensee shall pay to the Authority a fee which is the aggregate of the following amounts:

(a) an amount which is a proportion, as determined by the Authority, 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 functions in relation to electricity as conferred on it, or assigned or transferred to it, by or under any legislation; and

(b) the difference (being a positive or a 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 4; and

(ii) the amount which that fee would have been in respect of that year had the amount comprised therein under sub-paragraph (a) been calculated by reference to the total costs of the Authority in connection with the functions referred to in sub-paragraph (a) and the proportion thereof actually attributable to the Licensee,

(such total costs being apportioned as determined by the Authority according to a method previously disclosed in writing to the Licensee),

and the fee shall be paid by the Licensee to the Authority within one month of the Authority giving notice to the Licensee of its amount, provided that notice is given within six months of the beginning of the year in respect of which the fee is payable.

DRAFT

4 In respect of the year beginning on 1 April of the year subsequent to the grant of the licence and for each subsequent year, the Authority may pay the Licensee an amount (**the refund**) calculated in accordance with the method previously disclosed in writing to the Licensee and by reference to the difference between:

(a) the proportion of the licence fee for that year paid by the Licensee which is attributable to the Authority's estimate of its costs in accordance with paragraph 3(a); and

(b) the Authority's reasonable revised estimate of those costs provided that any such refund shall be paid to the Licensee on or before 31 March in the year to which the fee relates.

DRAFT

Condition 13: Not Used

DRAFT

Condition 14: Single Electricity Market Trading and Settlement Code

1 The Licensee shall, in respect of any generation set which is owned or operated by it, either:

(a) be a party to and, in so far as applicable to it in its capacity as the holder of a licence under Article 10(1)(a) of the Order, comply with the Single Electricity Market Trading and Settlement Code; or

(b) with the prior consent of the Authority, enter into an agreement to appoint an appropriate person to act as an Intermediary under the Single Electricity Market Trading and Settlement Code in respect of any generation set (as owned or operated by the Licensee) specified in the agreement.

2 The Licensee shall ensure that the person appointed as an Intermediary under an agreement entered into in accordance with paragraph 1(b):

(a) becomes a party to the Single Electricity Market Trading and Settlement Code; and

(b) complies with its obligations, in relation to any generation set which is specified in the agreement, in the capacity of Intermediary under the Single Electricity Market Trading and Settlement Code.

3. In this Condition

Intermediary	Has the meaning given in the Single Electricity Market Trading and Settlement Code

DRAFT

Condition 15: Modification of Single Electricity Market Trading and Settlement Code and Cancellation of Contracts

1 When the Authority shall have determined that the requisite arrangements have been developed and that they satisfy the requirements of paragraph 3, it shall be entitled to exercise the powers specified in paragraph 4, provided that the procedural requirements of paragraph 6 have been followed.

2 The requisite arrangements are arrangements which, if implemented by means of the making of modifications of the Single Electricity Market Trading and Settlement Code, the Grid Code and the Northern Ireland Fuel Security Code, or otherwise implemented (in whole or in part) under or by virtue of the powers contained in the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007, would facilitate an increase in competition in the generation of electricity available for supply in Northern Ireland or the supply of electricity in Northern Ireland for the benefit of consumers of electricity in Northern Ireland in respect of the prices charged and the other terms of supply, the continuity of supply and the quality of the electricity supply services provided.

3. The requirements of this paragraph are:

(A) that there is available for immediate establishment an electricity trading system by which (except as provided in paragraph 7) all licence holders will be bound and which, in the opinion of the Authority, will:

(i) constitute proper and adequate arrangements for the trading of electricity and the calculation and settlement of payments due for the provision of available generating capacity and the delivery or supply of electricity;

(ii) ensure that adequate arrangements are in place for the provision by one or more relevant generators of all necessary System Support Services and the proper remuneration of those services;

(iii) be based upon a system of despatch of generation sets which is technically viable and will not prejudice the security and stability of the total system or any part of it;

DRAFT

(iv) ensure that there are adequate incentives for relevant generators to make available such generation capacity as will in aggregate be at least sufficient to ensure that all reasonable demands for electricity in Northern Ireland are satisfied;

(v) ensure that all generators and licensed electricity suppliers are contractually bound to comply with the provisions of the Northern Ireland Fuel Security Code or, to the extent superseded by any other code or arrangement, such other code or arrangement;

(vi) ensure that either:

(a) licensed electricity suppliers shall contract for or acquire, in aggregate, amounts of generation capacity and quantities of electricity from the Power Procurement Business which are not less than the amounts of generation capacity and quantities of electricity for which the Power Procurement Business is committed to pay under:

A. the power purchase agreements to which the Power Procurement Business is a party and which are cancellable generating unit agreements which at all relevant times have not been cancelled; and

B. the power purchase agreements to which the Power Procurement Business is a party and which are not liable to be cancelled;

or:

(b) arrangements are in place pursuant to which the Power Procurement Business is entitled to recover monies equal to the shortfall (if any) between the sums it pays for amounts of generation capacity and quantities of electricity under:

DRAFT

A. the power purchase agreements to which the Power Procurement Business is a party and which are cancellable generating unit agreements which at all relevant times have not been cancelled; and

B. any power purchase agreements to which the Power Procurement Business is a party and which are not liable to be cancelled;

and the amounts it recovers for the provision of such generation capacity and the sale of such quantities of electricity;

(vii) not in its operation require any generator to breach any obligation incumbent upon it under the Large Combustion Plants (Control of Emissions) Regulations (Northern Ireland) 1991 in relation to emissions;

(viii) contain arrangements which will ensure that each generator which shall be a party to a cancellable generating unit agreement, for so long as such agreement shall not have been cancelled, shall be in no worse a financial position in respect of its rights under that cancellable generating unit agreement by reason of the operation of Clause 7.3.2 of each power station agreement;

(ix) ensure that an appropriate share of the costs of the Land Bank Business shall be borne by each licensed electricity supplier;

(x) not, in its operation, cause the Licensee to be unable to finance the carrying on of the activities which it is authorised by this Licence to carry on; and

(B) that each generator which shall have applied for a licence under Article 10(1)(a) of the Order to have effect from the date upon which any cancellable generating unit agreement to which it is a party is to be cancelled, shall have been granted such a licence, provided -

(a) the Authority shall at the relevant time have power under Article 10 of the

DRAFT

Order to grant such a licence;

(b) the criteria for the grant of such a licence shall otherwise have been satisfied at the date of the application and the date upon which it is first to have effect; and

(c) there shall have been no material change in the circumstances of the applicant in any relevant respect between the date of the application and the date upon which the licence is to have effect.

4. The powers referred to in paragraph 1 are powers to serve upon the Power Procurement Business and the generator under a cancellable generating unit agreement a notice directing them to terminate the cancellable generating unit agreement pursuant to Clause 9.3 thereof upon such date or the happening of such event as shall be specified in the notice. The Licensee shall comply with such a direction addressed to him.

5. The powers specified in paragraph 4 may not be exercised in relation to any cancellable generating unit agreement in the table appearing in Annex 4 of the NIE Energy Supply Licence earlier than the date appearing opposite that cancellable generating unit agreement in that table. The Authority may, in relation to any cancellable generating unit agreement and upon the application of either party to that cancellable generating unit agreement, modify the table appearing in Annex 4 of the NIE Energy Supply Licence by substituting a later date for the date appearing opposite that agreement in that table.

6. The procedural requirements which require to have been followed for the purposes of paragraph 1 are:

(a) in its preparations for the making of the determination referred to in paragraph 1, the Authority shall have consulted with the Department, all licence holders, the General Consumer Council and such other persons as the Authority shall consider likely to be materially affected in relation to the steps that it believes require to be taken and the documentation and other obligations which it believes require to be entered into, imposed or assumed in order to satisfy the requirements of paragraph 3 and to create and implement the requisite arrangements;

(b) in the consultations referred to in sub-paragraph (a) above, the Authority shall have made available to each person so consulted such drafts of the documentation in question and of the instruments or other means by which the obligations in question are to be imposed or assumed, as it shall consider are necessary so as properly to inform such persons of the detail of its proposals;

(c) the Authority shall have given each person so consulted the opportunity to make representations in relation to the relevant steps and the relevant documentation and shall have taken into consideration all such representations (other than those which are frivolous or trivial) in making the determination;

(d) the Authority shall have published its conclusions as to the relevant steps and the relevant documentation (including drafts of the relevant documentation) and its reasons for those conclusions;

(e) the Authority shall, before exercising any power under paragraph 4, have given not less than 180 days' notice to the Department, the Power Procurement Business, every person who at the time it gives the notice is a licence holder, and the General Consumer Council that it intends to do so; and

(f) the Authority shall, in publishing any statement of proposals or the reasons for them, have treated as confidential any representation (including any submission of any written material) which (and to the extent that) the person making the representation shall, by notice in writing to the Authority or by endorsement on the representation of words indicating the confidential nature of such representation, have specified as confidential information.

7. The rules of the electricity trading system referred to in paragraph 3(A) contained in the Single Electricity Market Trading and Settlement Code or in any instrument code, agreement or other document having effect (in whole or in part) under or by virtue of the powers contained in the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007, may provide that they are to apply to all licence holders except if and to the extent that:

(a) they permit the Authority to relieve the licence holder in question from compliance

DRAFT

with them or any of them; or

(b) they make provision that they are to apply to particular licence holders or classes of licence holder differently from the way or ways in which they apply to other licence holders.

8. Notwithstanding paragraph 6, the Authority shall be entitled, after having carried out the consultations referred to in paragraph 6 and published its conclusions, both before and after it shall have given any notice of the kind referred to in sub-paragraph (e) of paragraph 6, to make any modification of the relevant documentation which either:

(a) is, in its opinion, necessary or desirable in order to refine the requisite arrangements;

(b) involves only a change of a technical nature in the requisite arrangements; and

(c) will not increase the liability or decrease the rights of any person bound or to be bound by the Single Electricity Market Trading and Settlement Code beyond what may be regarded as reasonable in relation to that person;

provided it gives due notice of such amendment or variation to such persons as appear to it to be likely to be affected thereby,

or

is made in accordance with the provisions of the relevant documentation being modified.

9. The implementation of the requisite arrangements may be secured (in whole or in part) either

(a) by the exercise by the Authority of its powers:

(i) to make or approve modifications of the Single Electricity Market Trading and Settlement Code);

(ii) under paragraph 5 of Condition 16 of the Transmission System Operator Licence (to direct the Transmission System Operator to revise the Grid Code);

(iii) under paragraph 9 of Condition 46 of the NIE Energy Supply Licence (to

direct that the economic purchasing obligation of NIE Energy Ltd shall come into force); and

(iv) under Clause 2.01(F) of Part 2 of the Northern Ireland Fuel Security Code (to make amendments to that Code);

or

(b) by the exercise of powers under or by virtue of the Electricity (Single Market) Northern Ireland Order 2007.

10. The Licensee shall afford the Authority such co-operation as it shall in directions issued to the Licensee for the purposes of this Condition request in developing and testing its proposals for the establishment of the requisite arrangements and the electricity trading system referred to in paragraph 3(A).

11. The Licensee's reasonable direct costs of complying with a request made under paragraph 10 (incurred prior to the date upon which the Authority shall have first exercised its cancellation powers and for which an invoice shall have been submitted by the Licensee to the Market Operator or the Transmission System Operator not later than 2 months prior to the date upon which the first cancellation direction shall take effect) shall be audited in such manner as the Authority shall from time to time require and shall be recoverable from the Market Operator or the Transmission System Operator.

12. In this Condition:

Land Bank Business	has the meaning given to that expression in the successor distribution licence ;
relevant documentation	means the documentation and other obligations referred to in sub paragraph (a) of paragraph 6;
relevant generator	means a generator and/or a person granted a licence pursuant to section 14(1)(a) of the

	Electricity Regulation Act 1999 to engage in the generation of electricity;
relevant steps	means the steps referred to in sub paragraph (a) of paragraph 6; and
requisite arrangements	means the arrangements referred to as such in paragraph 2.

DRAFT

Condition 16: Provision of Information

1. The Licensee shall furnish to the Transmission System Operator in such manner and at such times as may be required, such information as may reasonably be required, and which the Authority deems necessary, by the Transmission System Operator in order to comply with its obligations in relation to any authorised business or activity.

2. The information provided under paragraph 1 shall be furnished in accordance with directions issued by the Authority from time to time.

DRAFT

Condition 17: Cost-Reflective Bidding in the Single Electricity Market

1. The Licensee shall ensure that the price components of all Commercial Offer Data submitted to the Single Market Operation Business under the Single Electricity Market Trading and Settlement Code, whether by the Licensee itself or by any person acting on its behalf in relation to a generation set for which the Licensee is the licensed generator, are cost-reflective.

2. For the purposes of this Condition, the price component of any Commercial Offer Data shall be treated as cost-reflective only if, in relation to each relevant generation set, the Schedule Production Cost related to that generation set in respect of the Trading Day to which the Commercial Offer Data submitted by or on behalf of the Licensee apply is equal to the Short Run Marginal Cost related to that generation set in respect of that Trading Day.

3. For the purposes of paragraph 2, the Short Run Marginal Cost related to a generation set in respect of a Trading Day is to be calculated as:

   (a) the total costs that would be attributable to the ownership, operation and maintenance of that generation set during that Trading Day if the generation set were operating to generate electricity during that day;

   minus

   (b) the total costs that would be attributable to the ownership, operation and maintenance of that generation set during that Trading Day if the generation set was not operating to generate electricity during that day,

   the result of which calculation may be either a negative or a positive number.

4. For the purposes of paragraph 3, the costs attributable to the ownership, operation or maintenance of a generation set shall be deemed, in respect of each relevant cost-item, to be the Opportunity Cost of that cost-item in relation to the relevant Trading Day.

5. The Authority may publish and, following consultation with generators and such other persons as it considers appropriate, from time to time by direction amend, a document to be known as the Bidding Code of Practice, which shall have the purposes of:

DRAFT

(a) defining the term Opportunity Cost;

(b) making provision, in respect of the calculation by the Licensee and other generators of the Opportunity Cost of specified cost-items, for the treatment of:

(i) the costs of fuel used by generators in the generation of electricity;

(ii) the value to be attributed to credits issued under the Emissions Trading Scheme established by the European Commission;

(iii) variable operational and maintenance costs;

(iv) start-up and no load costs; and

(v) any other costs attributable to the generation of electricity; and

(c) setting out such other principles of good market behaviour as, in the opinion of the Authority, should be observed by the Licensee and other generators in carrying out the activity to which paragraph 1 refers.

6. The Licensee shall, in carrying out the activity to which paragraph 1 refers, act so as to ensure its compliance with the requirements of the Bidding Code of Practice.

7. The Authority may issue directions to the Licensee for the purpose of securing that the Licensee, in carrying out the activity to which paragraph 1 refers, complies with the requirements of this Condition and of the Bidding Code of Practice, and the Licensee shall comply with any such directions.

8. The Licensee shall retain each set of Commercial Offer Data, and all of its supporting data relevant to the calculation of the price component of that Commercial Offer Data, for a period of at least four years commencing on the date on which the Commercial Offer Data is submitted to the Single Market Operation Business.

9. The Licensee shall, if requested to do so by the Authority, provide the Authority with:

(a) a reasoned explanation of its calculations in relation to any Commercial Offer Data; and

(b) supporting evidence sufficient to establish the consistency of that data with the obligations of the Licensee under this Condition.

10. In any case in which Commercial Offer Data are submitted to the Single Market Operation Business which are not consistent with the Licensee's obligation under paragraph 1 of this Condition, the Licensee shall immediately inform the Authority and provide to the Authority a statement of its reasons for the Commercial Offer Data submitted.

11. The Licensee shall by 1 June in each year submit to the Authority a certificate, signed by at least one director on behalf of the board of directors of the Licensee, to confirm that during the period of twelve months ending on the preceding 31 March:

(a) it has acted independently in relation to all submissions of Commercial Offer Data that have been made, by it or on its behalf, under the Single Electricity Market Trading and Settlement Code; and

(b) no such submissions made by it or on its behalf have been co-ordinated with any other submissions made by or on behalf of any other party to the Code.

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

13. In this Condition:

Bidding Code of Practice	means the document of that title published by the Authority in accordance with paragraph 5, as it may be amended from time to time.
Commercial Offer Data	has the meaning given to it in the Single Electricity Market Trading and Settlement Code, as it may be amended from time to time.

DRAFT

Opportunity Cost	shall have the meaning set out in, and the value calculated in accordance with, the terms of the Bidding Code of Practice.
Schedule Production Cost	has the meaning given to it in the Single Electricity Market Trading and Settlement Code, as it may be amended from time to time.
Short Run Marginal Cost	means certain costs attributable to the ownership, operation and maintenance of a generation set, as calculated in accordance with paragraph 3 of this Condition.
Single Market Operation Business	has the meaning given to it in the market operator licence for Northern Ireland.
Trading Day	has the meaning given to it in the Single Electricity Market Trading and Settlement Code, as it may be amended from time to time.]

DRAFT

Condition 17a: Balancing Market Principles Code of Practice

1. The Licensee shall ensure that, in formulating and submitting Commercial Offer Data to the Single Market Operation Business in the Balancing Market under the Single Electricity Market Trading and Settlement Code (whether by the Licensee itself or by any person acting on its behalf in relation to a generation set for which the Licensee is the licensed generator), it acts so as to secure its compliance with the Balancing Market Principles Code of Practice.

2. The Authority shall publish and subject to paragraph 3 below, from time to time by direction amend, a document to be known as the Balancing Market Principles Code of Practice, which:

   (a) shall apply to such categories of Commercial Offer Data submitted into the Balancing Market as may be specified in the Code of Practice from time to time;

   (b) shall make such provision as appears requisite to the Authority for the purpose of securing that such Commercial Offer Data reasonably reflect the short run marginal cost of operating the generating set to which they relate (and thereby facilitating, by contributing to the mitigation of market power in the Single Electricity Market, the efficient operation of the Balancing Market)

   and the Authority may elect to perform the functions conferred by this paragraph jointly with the Commission for Energy Regulation.

3. The Authority shall, without prejudice to any additional requirements specified in the Code of Practice, consult with all licensees required to comply with the Code of Practice and such other persons as the Authority considers appropriate before making any direction to amend the Code of Practice.

4. The Authority may issue directions to the Licensee for the purposes of securing that the Licensee, in carrying out the activity to which paragraph 1 refers, complies with this

DRAFT

Condition and with the Code of Practice, and the Licensee shall comply with such directions.

5. The Licensee shall retain records of each set of Relevant Commercial Offer Data, and all of its supporting data relevant to the calculation of the components of such Relevant Commercial Offer Data, for a period of at least four years commencing on the date on which the relevant Commercial Offer Data are submitted to the Single Market Operation Business.

6. The Licensee shall, if requested to do so by the Authority, provide the Authority with:

   (a) a reasoned explanation of its calculations in relation to any Relevant Commercial Offer Data; and

   (b) supporting evidence sufficient to establish the consistency of those Relevant Commercial Offer Data with the obligations of the Licensee under this Condition and the Code of Practice.

7. In any case in which Relevant Commercial Offer Data are submitted to the Single Market Operation Business which are not consistent with the Licensee's obligation under paragraph 1 of this Condition, the Licensee shall immediately inform the Authority and provide to the Authority a statement of its reasons for the Relevant Commercial Offer Data submitted.

8. The Licensee shall by 1 June in each year submit to the Authority a certificate, signed by at least one director on behalf of the board of directors of the Licensee, to confirm that during the period of twelve months ending on preceding 31 March:

   (a) it has acted independently in relation to all submissions of Relevant Commercial Offer Data that have been submitted, by it or on its behalf, under the Single Electricity Market Trading and Settlement Code; and

   (b) no such submissions made by it or on its behalf have been co-ordinated with any other submissions made by it or on its behalf of another party to the Single

Electricity Market Trading and Settlement Code.

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

10. In this Condition:

Balancing Market	has the meaning given to it in the Single Electricity Market Trading and Settlement Code, Part B;
Balancing Market Principles Code of Practice or Code of Practice	means the document of that title published by the Authority in accordance with paragraph 2, as it may be amended from time to time in accordance with the provisions of that paragraph;
Commercial Offer Data	has the meaning given to it in the Single Electricity Market Trading and Settlement Code as it may be amended from time to time;
Relevant Commercial Offer Data	means Commercial Offer Data falling within the category specified in the Code of Practice; and
Single Market Operation Business	has the meaning given to it in Northern Ireland Market Operator Licence.

DRAFT

Condition 18: Not Used

DRAFT

Condition 19: Capacity Market Code

1. The Licensee shall, in respect of any generation set which is owned or operated by it; either:

   (a) be a party to and comply with the Capacity Market Code insofar as applicable to it in its capacity as the holder of a licence under Article 10(1)(a) of the Order, or

   (b) with the prior consent of the Authority, enter into an agreement to appoint an appropriate person to act as an Intermediary under the Capacity Market Code in respect of any generation set (as owned or operated by the Licensee) specified in the agreement.

2. The Licensee shall ensure that the person appointed as an Intermediary under an agreement entered into in accordance with paragraph 1(b) insofar as applicable to it:

   (a) becomes a party to the Capacity Market Code: and

   (b) complies with its obligations, in relation to any generation set which is specified in the agreement, in the capacity of Intermediary under the Capacity Market Code.

3. The provisions of this Condition (other than those of this paragraph and paragraph 4 below which shall come into immediate effect) shall come into effect on such day, and subject to such transitional arrangements, as the Authority may by direction appoint. Different days may be so appointed for different provisions and for different purposes.

4. In this Condition:

Capacity Market Code	has the meaning given to that term in the Transmission System Operator Licence; and
Intermediary	has the meaning given to that term in the Capacity Market Code.

DRAFT

Schedule 1: Terms As To 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 License 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 any of the Conditions of the Licence or of any 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 any partner, director, member, secretary or manager of the Licensee is found guilty of an offence under section 188 or 201 of the Enterprise Act 2002

(e) if the Licensee fails to carry on the Generation Business;

(f) if the Licensee:

(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 paragraph 3 of this Schedule) 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); or

(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; or

(iii) has an administration order under paragraph 14 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989 made in relation to it; or

(iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or

(v) becomes subject to an order for winding up by a court of competent jurisdiction; or

(vi) shall suffer any event analogous to any of the foregoing in any jurisdiction in which it is incorporated or resident; or

(g) if:

(i) there is a change in the control of the Licensee;

(ii) the Authority serves notice on the Licensee stating that the Authority proposes to revoke the Licence in pursuance of this paragraph unless such further change in control of the Licensee as is specified in the notice takes

place within the period of three months beginning with the date of service of the notice; and

(iii) that further change does not take place within that period; or

(h) if the Licensee shall have intentionally or recklessly failed to notify the Authority as soon as practicable thereafter that a change in the control of the Licensee shall have occurred; or

(i) if the Licensee fails to use its best endeavours to comply with any direction given to it by the Authority under Article 58 of the Order, and there shall as a result of such failure be a disruption or a material risk of a disruption in electricity supplies to consumers in Northern Ireland; or

(j) 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; or

(k) 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 to which the Licence is subject 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.

2 For the purposes of paragraph 1(f)(i) of this Schedule, 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.

3 The Licensee shall not be deemed to be unable to pay its debts for the purposes of paragraph 1(f)(i) of this Schedule 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 of this Schedule.

4 There is a change in the control of the Licensee for the purposes of paragraphs 1(g) and (h) of this Schedule whenever a person has control of the Licensee who did not have control of the Licensee when the Licence was granted.

5 Section 450 (as read in conjunction with section 451) of the Corporation Tax Act 2010 shall apply for the purpose of determining whether for the purposes of paragraph 4 above a person has or had control of the Licensee, with the modifications specified in paragraph 6 below.

6 The modifications referred to in paragraph 5 above are:

(i) for the words "the greater part" wherever they occur in the said section 450 there shall be substituted the word "one-third or more";

(ii) in sections 451(4) and 451(5), for the word "may" there shall be substituted the word "shall", section 451(6) shall be omitted and in any provisions of section 451 any reference to an associate of a person shall be construed as including only a relative of his (as defined by section 448(2) of that Act), a partner of his and a trustee of a settlement (as defined by section 620(1) of the Income Tax (Trading and Other Income) Act 2005) of which he is a beneficiary.

DRAFT