

**ELECTRICITY GENERATION LICENCE**

**For**

**SLIEVE DIVENA WIND FARM LTD**

NOTE

The licence holder is subject to the environmental obligations set out in Schedule 9 (Preservation of Amenity and Fisheries) of the Electricity (Northern Ireland) Order 1992 (as amended by the Energy (Northern Ireland) Order 2003).

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**PART I: TERMS AND GRANT OF THE LICENCE**

- 1 The Northern Ireland Authority for Utility Regulation (the ‘**Authority**’), in accordance with the general authority given by the Department under Article 10(1) of the Electricity (Northern Ireland) Order 1992 (the ‘**Order**’) and in exercise of the power conferred by Article 10(1)(a) of the Order hereby grants to **SLIEVE DIVENA WIND FARM Ltd** (registered in Northern Ireland under number (NI 60982) (the ‘**Licensee**’) a licence (the ‘**Licence**’) authorising it to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given, during the period specified in paragraph 3 below, subject to the conditions set out in Part II below (hereinafter referred to as the "**Conditions**").
- 2 The Conditions are subject to modification or amendment in accordance with their terms or with Articles 14, 17, 17A or 18 of the Order. The Licence hereby granted is further subject to the terms as to revocation specified in Schedule 1.
- 3 The Licence shall come into force from the date of the Grant and, unless revoked in accordance with the provisions of Schedule 1, shall continue in force until determined by not less than twenty-five (25) years' notice in writing given by the Authority to the Licensee, such notice not to be served earlier than the tenth (10<sup>th</sup>) anniversary of the date on which the Licence comes into force.

Date.....17 August 2007.....

Signed.....*Iain Osborne*.....

Name IAIN OSBORNE

For and on behalf of The Northern Ireland Authority for Utility Regulation **PART II: THE CONDITIONS**

**Chapter One**

**Condition A: Application of Other Licence Conditions and Further Modification**

- 1 Notwithstanding any other provision of the Licence, the following Conditions shall have

effect as follows:

- (a) Conditions B and C shall cease to have effect on the date 3 months after SEM Go-Live (or such later date as the Authority may direct);
- (b) Condition D shall cease to have effect on the date 18 months after SEM Go-Live (or such later date as the Authority may direct); and
- (c) save for Conditions 14 and 17 of Chapter 3, which shall be effective from the date this Condition becomes effective, the Conditions contained in Chapter 3 shall (subject to paragraph 8) be of no effect.

#### Further Modification of Conditions

- 2 At SEM Go-Live, the Conditions contained in Chapter 2 shall automatically be modified insofar as is necessary to ensure that they are identical in form and content to the Conditions contained in Chapter 3.
- 3 Immediately following SEM Go-Live, the Conditions shall automatically be modified by the deletion of Chapter 3 (and the Conditions contained in it).
- 4 Where a Condition ceases to have effect in accordance with paragraph 1(a) or 1(b), the Conditions shall automatically be modified by the deletion of that Condition.
- 5 Once all of the Conditions referred to in paragraphs 1(a) and 1(b) have been deleted in accordance with paragraph 4, the Conditions shall automatically be modified by the deletion of this Chapter 1 (and the Conditions contained in it), and by the deletion of the heading “Chapter 2” (but without prejudice to the continuation of the Conditions then contained in Chapter 2).

#### Interpretation

- 6 In Conditions A, B, C and D, references to “Chapter 1”, “Chapter 2” and “Chapter 3” are to the sections of the Licence as existing at the date of the Grant of the Licence.
- 7 Except in the Conditions contained in Chapter 3, references to a numbered condition are (unless expressly stated otherwise) to the relevant numbered condition contained in Chapter 2.

In the Conditions contained in Chapter 3 references to a numbered condition are (unless expressly stated otherwise) to the relevant numbered condition contained in Chapter 3.

8 Notwithstanding paragraph 1(c), in the period prior to SEM Go-Live, the Conditions contained in Chapter 1 and Chapter 3 shall be interpreted in accordance with Condition 1 of Chapter 3, as if the provisions of Condition 1 of Chapter 3 were set out in (and applicable only to) those Conditions.

9 In Conditions A, B, C and D, unless the context otherwise requires:

**“Republic of Ireland electricity operator”** means any person engaged in the generation, transmission, distribution or supply of electricity in the Republic of Ireland, including any holder of a licence or authorisation to do so, or a person who has been granted a permit under Section 37 of the Electricity (Supply) Act 1927.

## **Condition B: Transition Steps (General)**

### General Requirement

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

### Requirement to Co-operate

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

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

### Requirements to Comply with Directions

- 3 Without prejudice to paragraphs 1 and 2, the Licensee shall take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to comply with any direction made from time to time by the Authority in accordance with paragraph 4 (and shall by so doing be taken to have complied with such direction).
- 4 The Authority may issue directions to the Licensee setting out the steps (including without limitation those referred to in paragraph 5) to be taken (or procured) by the Licensee which are, in the Authority's reasonable opinion, appropriate in order to give full and timely effect to the SEM and Directive Arrangements by which the Licensee is bound (or intended to be bound), so that the Licensee is able to comply with the SEM and Directive Arrangements by which it is bound (or intended to be bound) from the time at which they are effective (or intended to be effective).
- 5 The directions made by the Authority under paragraph 4 (with which the Licensee is, in accordance with paragraph 3, required to take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to comply) may include requirements regarding the following steps:
  - (a) to secure or facilitate the amendment or establishment of any of the core industry documents;
  - (b) to effect the novation of (or other transfer of rights and obligations under) any of the core industry documents from the Licensee or an authorised electricity operator to the Licensee or an authorised electricity operator; and
  - (c) for securing the co-ordinated and effective commencement and implementation of, and operations under the Single Electricity Market Trading and Settlement Code (including the testing, trialling and start-up of the systems, processes and procedures employed in such implementation and employed by authorised electricity operators and others in connection with such operations).
- 6 The Authority may, at any time, by a further direction in accordance with paragraph 4 (in order to give (or continue to give) full and timely effect to the SEM and Directive



Arrangements by which the Licensee is bound (or intended to be bound)) amend or cancel any direction (or part thereof) previously made under paragraph 4.

- 7 The Authority may not make a direction under paragraph 4 until it has undertaken such period of prior consultation with the Licensee (and such other persons as the Authority deems appropriate) as is reasonable in the circumstances. No direction made under paragraph 4 shall be effective until a copy is served on the Licensee.

#### Requirement not to Frustrate

- 8 Without prejudice to any public or administrative law right, or statutory right, that the Licensee may have to bring any claim against any public body or person, the Licensee shall not take any step, or exercise any right, which is intended to hinder or frustrate the giving of full and timely effect to the SEM and Directive Arrangements.

#### Potential Conflict

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

#### Information

- 11 The Licensee shall provide to the Authority, in such manner and at such times as the Authority may reasonably require, such information and shall procure and furnish to it such reports as the Authority may reasonably require or deem necessary or appropriate to enable the Authority to monitor the Licensee's compliance with the requirements of this Condition, including (without limitation):
- (a) information as to the Licensee's readiness concerning the SEM and Directive Arrangements by which it is bound (or intended to be bound); and

(b) status reports concerning those matters referred to in sub-paragraph (d) of the definition of SEM and Directive Arrangements by which the Licensee is bound (or intended to be bound), and drafts of any legal documents by which such matters are to be achieved.

12 If the Licensee is aware (or should reasonably be aware) of any matter or circumstance which it considers will (or which the Licensee should reasonably consider likely to) hinder or frustrate the giving of full and timely effect to the SEM and Directive Arrangements, the Licensee shall promptly inform the Authority of such matter or circumstance.

### Definitions

13 In this Condition, unless the context otherwise requires:

**“core industry documents”** means those documents which:

(a) are (or are to be) established or required to be entered into pursuant to or in accordance with a licence granted under the Order; or

(b) are in the Authority’s opinion central industry documents associated with the authorised activities of the Licensee or authorised electricity operators and which have been designated as such by the Authority.

**“SEM and Directive Arrangements”** means:

(a) any modifications made (or which the Licensee knows are to be made) to the Licence, or to the licences of any authorised electricity operator, pursuant (in each case) to the SEM Order or the Electricity (Northern Ireland) Regulations 2007;

(b) the conditions of the Northern Ireland Market

Operator Licence and the Transmission System Operator Licence;

(c) the terms imposed in any exemption granted pursuant to Article 9 of the Order that reflect a modification referred to in sub-paragraph (a);

(d) the matters that the Licensee knows (or should reasonably know) are envisaged by the modifications and conditions referred to in sub-paragraphs (a) and (b) (including, without limitation, the establishment, amendment or termination of, or the transfer of rights and obligations under, core industry documents); and

(e) the proposed transfer to NIE Energy Limited (pursuant to the Electricity (Northern Ireland) Regulations 2007) of the public electricity supply licence previously held by Northern Ireland Electricity plc.

### **Condition C Transition Steps (Specific)**

#### **Transmission Use of System Agreement**

- 1 Subject to paragraph 2, the Licensee shall enter into an agreement with SONI for use of the transmission system in such form as the Authority may designate (having regard to any responses received in connection with any consultation concerning the same, and such other matters as the Authority considers appropriate), and the Licensee shall enter into the agreement so designated within 7 days of such designation.
- 2 Paragraph 1 shall not apply if the Licensee's generation sets are not connected (or to be connected) to the total system, or if the Licensee's only generation sets that are connected to the total system are subject to cancellable generating unit agreements. It is acknowledged that different forms of agreement may be appropriate depending upon whether the generation set

in question is connected to the transmission system or to a distribution system.

### Transmission Connection Agreements

- 3 In respect of each relevant connection agreement (if any), the Licensee shall, by 1 September 2007 (or such later date as the Authority may direct), submit to the Authority either:
  - (a) a draft agreement to amend the relevant connection agreement with which both proposed parties thereto are content; or
  - (b) a draft agreement to amend the relevant connection agreement including those provisions with which both proposed parties thereto are content, and which highlights those matters in the draft agreement that remain in dispute between those parties.
- 4 In respect of each relevant connection agreement (if any), the Licensee shall enter into an agreement that amends the relevant connection agreement in such form as the Authority may designate (having regard to the provisions of the existing agreement, the draft agreement submitted to the Authority, any responses received in connection with any consultation concerning the same, and such other matters as the Authority considers appropriate), and the Licensee shall enter into the agreement so designated within 7 days of such designation.
- 5 In respect of each relevant connection agreement (if any), the Licensee shall, by 1 September 2007 (or such later date as the Authority may direct), submit to the Authority either:
  - (a) a draft agreement to novate the relevant connection agreement (as amended, or to be amended, pursuant to the agreement referred to in paragraph 5) from NIE to SONI with which all three proposed parties thereto are content; or
  - (b) a draft agreement to novate the relevant connection agreement from NIE to SONI including those provisions with which all three proposed parties thereto are content, and which highlights those matters in the draft agreement that remain in dispute between those parties.
- 6 In respect of each relevant connection agreement (if any), the Licensee shall enter into an agreement that novates the relevant connection agreement (as amended, or to be amended, pursuant to the agreement referred to in paragraph 5) from NIE to SONI in such form as the

Authority may designate (having regard to the provisions of the draft agreement submitted to the Authority, any responses received in connection with any consultation concerning the same, and such other matters as the Authority considers appropriate), and the Licensee shall enter into the agreement so designated within 7 days of such designation.

- 7 In paragraphs 3, 4, 5, and 6, “**relevant connection agreement**” means each of the existing connection agreements between the Licensee and NIE that relate to the connection of a generation set or generation sets to the transmission system.

#### Distribution Connection Agreements (Licensed Generators)

- 8 In respect of each relevant connection agreement (if any), the Licensee shall enter into an agreement that amends the relevant connection agreement in such form as the Authority may designate (having regard to the provisions of the relevant connection agreement, the proposals put forward by NIE under its licence, any responses received in connection with any consultation concerning the same, and such other matters as the Authority considers appropriate), and the Licensee shall enter into the agreement so designated within 7 days of such designation.
- 9 In paragraph 8, “**relevant connection agreement**” means each of the existing connection agreements between the Licensee and NIE that relate to the connection of a generation set or generation sets to NIE’s distribution system.

#### Power Purchase Agreements

- 10 In respect of each relevant power purchase agreement (if any), the Licensee shall, by 1 September 2007 (or such later date as the Authority may direct), submit to the Authority either:
- (a) a draft agreement to amend the relevant power purchase agreement with which both proposed parties thereto are content; or
  - (b) a draft agreement to amend the relevant power purchase agreement including those provisions with which both proposed parties thereto are content, and which highlights those matters in the draft agreement that remain in dispute between those parties.

- 11 In respect of each relevant power purchase agreement (if any), the Licensee shall enter into an agreement that amends the relevant power purchase agreement in such form as the Authority may designate (having regard to the provisions of the existing agreement, the draft agreement submitted to the Authority, any responses received in connection with any consultation concerning the same, and such other matters as the Authority considers appropriate), and the Licensee shall enter into the agreement so designated within 7 days of such designation.
- 12 In respect of each relevant power purchase agreement (if any), the Licensee shall, by 1 September 2007 (or such later date as the Authority may direct), submit to the Authority either:
- (a) a draft agreement to novate the relevant power purchase agreement (as amended, or to be amended, pursuant to the agreement referred to in paragraph 12) from NIE to NIE Energy with which all three proposed parties thereto are content; or
  - (b) a draft agreement to novate the relevant power purchase agreement from NIE to NIE Energy including those provisions with which all three proposed parties thereto are content, and which highlights those matters in the draft agreement that remain in dispute between those parties.
- 13 In respect of each relevant power purchase agreement (if any), the Licensee shall enter into an agreement that novates the relevant power purchase agreement (as amended, or to be amended, pursuant to the agreement referred to in paragraph 12) from NIE to NIE Energy in such form as the Authority may designate (having regard to the provisions of the draft agreement submitted to the Authority, any responses received in connection with any consultation concerning the same, and such other matters as the Authority considers appropriate), and the Licensee shall enter into the agreement so designated within 7 days of such designation.
- 14 In paragraphs 10, 11, 12, and 13, “**relevant power purchase agreement**” means each of the existing power purchase agreements between the Licensee and NIE, including any cancellable generating unit agreements, but (subject thereto) excluding any agreements for the provision of System Support Services (as defined in Condition 1 of Chapter 2).

System Support Services Agreements (non-PPB)

- 15 In respect of each system support services agreement (if any), the Licensee shall, by 1 September 2007 (or such later date as the Authority may direct), submit to the Authority either:
- (a) a draft agreement to amend the system support services agreement with which both proposed parties thereto are content; or
  - (b) a draft agreement to amend the system support services agreement including those provisions with which both proposed parties thereto are content, and which highlights those matters in the draft agreement that remain in dispute between those parties.
- 16 In respect of each system support services agreement (if any), the Licensee shall enter into an agreement that amends the system support services agreement in such form as the Authority may designate (having regard to the provisions of the existing agreement, the draft agreement submitted to the Authority, any responses received in connection with any consultation concerning the same, and such other matters as the Authority considers appropriate), and the Licensee shall enter into the agreement so designated within 7 days of such designation.
- 17 In respect of each system support services agreement (if any), the Licensee shall, by 1 September 2007 (or such later date as the Authority may direct), submit to the Authority either:
- (a) a draft agreement to novate the system support services agreement (as amended, or to be amended, pursuant to the agreement referred to in paragraph 17) from NIE to SONI with which all three proposed parties thereto are content; or
  - (b) a draft agreement to novate the system support services agreement from NIE to SONI including those provisions with which all three proposed parties thereto are content, and which highlights those matters in the draft agreement that remain in dispute between those parties.
- 18 In respect of each system support services agreement (if any), the Licensee shall enter into an agreement that novates the system support services agreement (as amended, or to be amended,

pursuant to the agreement referred to in paragraph 17) from NIE to SONI in such form as the Authority may designate (having regard to the provisions of the draft agreement submitted to the Authority, any responses received in connection with any consultation concerning the same, and such other matters as the Authority considers appropriate), and the Licensee shall enter into the agreement so designated within 7 days of such designation.

- 19 In paragraphs 15, 16, 17, and 18, “**system support services agreement**” means each of the existing agreements concerning the provision of System Support Services (as defined in Condition 1 of Chapter 2) between the Licensee and NIE, but excluding any cancellable generating unit agreements.

### Intermediary Agreements

- 20 Where Chapter 3 contains a Condition 18, the Licensee shall, by 1 September 2007 (or such later date as the Authority may direct), submit to the Authority (for consideration by the Authority under paragraph 2 of Condition 18 of Chapter 3) either:

- (a) a draft Intermediary Agreement (as referred to in Condition 18 of Chapter 3) with which both of the proposed parties thereto are content; or
- (b) a draft of such agreement which includes those provisions with which both proposed parties thereto are content, and which highlights those matters in the draft agreement that remain in dispute between those parties.

### Definitions

- 21 In this Condition:

“**NIE**” means Northern Ireland Electricity plc (a body corporate registered in Northern Ireland under company number NI026041).

“**NIE Energy**” means NIE Energy Limited (a body corporate registered in Northern Ireland under company number NI27394).



**“SONI”**

means SONI Limited (a body corporate registered in Northern Ireland under company number NI038715).

## **Condition D Run-Off Steps (General)**

### General Requirement

- 1 The Licensee shall take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to fully and effectively run-off, from SEM Go-Live, the Pre-SEM Arrangements for which it is Responsible.

### Requirement to Co-operate

- 2 Without prejudice to paragraphs 1 and 3, the Licensee shall cooperate with authorised electricity operators and Republic of Ireland electricity operators (and with the Department, the Authority and such other persons as the Authority may direct) and shall take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to enable:

- (a) authorised electricity operators to comply with their statutory or licence obligations to fully and effectively run-off, from SEM Go-Live, the Pre-SEM Arrangements for which they are Responsible;
- (b) authorised electricity operators to comply with any directions by the Authority under a provision of their licence equivalent to paragraph 4; and
- (c) Republic of Ireland electricity operators to comply with their statutory or licence obligations (if any) to fully and effectively run-off, from SEM Go-Live, the Pre-SEM Arrangements for which they are Responsible,

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

### Requirements to Comply with Directions

- 3 Without prejudice to paragraphs 1 and 2, the Licensee shall take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to comply with any direction made from time to time by the Authority in accordance

with paragraph 4 (and shall by so doing be taken to have complied with such direction).

- 4 The Authority may issue directions to the Licensee setting out the steps to be taken (or procured) by the Licensee which are, in the Authority's reasonable opinion, appropriate in order to fully and effectively run-off, from SEM Go-Live, the Pre-SEM Arrangements for which it is Responsible.
- 5 The Authority may, at any time, by a further direction in accordance with paragraph 4 (in order to fully and effectively run-off, from SEM Go-Live, the Pre-SEM Arrangements for which the Licensee is Responsible) amend or cancel any direction (or part thereof) previously made under paragraph 4.
- 6 The Authority may not make a direction under paragraph 4 until it has undertaken such period of prior consultation with the Licensee (and such other persons as the Authority deems appropriate) as is reasonable in the circumstances. No direction made under paragraph 4 shall be effective until a copy is served on the Licensee.

#### Requirement not to Frustrate

- 7 Without prejudice to any public or administrative law right, or statutory right, that the Licensee may have to bring any claim against any public body or person, the Licensee shall not take any step, or exercise any right, which is intended to hinder or frustrate the full and effective run-off, from SEM Go-Live, of the Pre-SEM Arrangements.

#### Potential Conflict

- 8 If the Licensee is aware of any conflict between its compliance with the provisions of this Condition or any direction under paragraph 4 and its compliance with any other Condition of the Licence, the Licensee shall promptly inform the Authority of such conflict.
- 9 Provided the Licensee complies with paragraph 8, the other Conditions of the Licence shall prevail over this Condition in the event of conflict. If there is any conflict between a direction made under paragraph 4 and another requirement of the Licence, the provisions of the direction shall prevail.

#### Information

- 10 The Licensee shall provide to the Authority, in such manner and at such times as the Authority may reasonably require, such information and shall procure and furnish to it such reports as the Authority may reasonably require or deem necessary or appropriate to enable the Authority to monitor the Licensee’s compliance with the requirements of this Condition.
- 11 If the Licensee is aware (or should reasonably be aware) of any matter or circumstance which it considers will (or which the Licensee should reasonably consider likely to) hinder or frustrate the full and effective run-off, from SEM Go-Live, of the Pre-SEM Arrangements, the Licensee shall promptly inform the Authority of such matter or circumstance.

### Definitions

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

**“core industry documents”** means those documents which

- (a) are established or required to be entered into pursuant to or in accordance with a licence granted under the Order; or
- (b) are in the Authority’s opinion central industry documents associated with the authorised activities of the Licensee or authorised electricity operators and which have been designated as such by the Authority.

**“Pre-SEM Arrangements”**

means:

- (a) the Supply Competition Code;
- (b) the Interim Settlement Code and Interim Settlement Agreements;
- (c) the renewable output factor arrangements;
- (d) the small renewable spill arrangements;
- (e) the top-up and standby arrangements (if any);
- (f) the arrangements for payment of the bulk supply tariff;
- (f) the arrangements for wheeling; and
- (g) any other core industry document as the Authority may direct for the purposes of this paragraph.

**“Responsible”**

means, in respect of:

- (a) the Supply Competition Code, the Power Procurement Business (or such other person as the Authority may direct following consultation with the Power Procurement Business and such other person);
- (b) the Interim Settlement Code and the Interim Settlement Agreements, the Power Procurement Business (or such other person as the Authority may direct following consultation with the Power Procurement Business and such

other person);

(c) the renewable output factor arrangements, the Power Procurement Business (or such other person as the Authority may direct following consultation with the Power Procurement Business and such other person);

(d) the small renewable spill arrangements, the Power Procurement Business (or such other person as the Authority may direct following consultation with the Power Procurement Business and such other person);

(e) the top-up and standby arrangements, the Transmission Owner (or such other person as the Authority may direct following consultation with the Transmission Owner and such other person); and

(f) the arrangements for payment of the bulk supply tariff, the Power Procurement Business (or such other person as the Authority may direct following consultation with the Power Procurement Business and such other person);

(f) the arrangements for wheeling, the Transmission Owner (or such other person as the Authority may direct following consultation with the Transmission Owner and such other person); and

(g) any other core industry document specified by the Authority for the purposes of this

paragraph, such person or persons as the Authority considers to be responsible for such document (as specified in the relevant direction).

**“run-off”**

means, in relation to any arrangements, the bringing to an end of those arrangements, which shall include the determination and settlement (including by way of reconciliation) of electricity and payments in connection with periods up to and including the point at which such arrangements are brought to an end.

- 13 References to documents and arrangements in the definitions of “**Pre-SEM Arrangements**” and “**Responsible**” set out in paragraph 12 shall (if such documents or arrangements are not otherwise defined in the Licence) be to such documents and arrangements as defined (or, if not defined, referred to) in the conditions of the Transmission Owner Licence, as they existed immediately prior to SEM Go-Live.

## **Chapter Two**

### **Condition 1: Interpretation and construction**

1. Unless the contrary intention appears:
  - (a) words and expressions used in the Conditions or in the Schedules 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 the 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 the Licensee or any subsidiary of a holding company of the Licensee, means any holding company of the Licensee or any subsidiary of the Licensee or any subsidiary of a holding company of the Licensee, in each case within the meaning of [Article 4 of the Companies (Northern Ireland) Order 1986].

**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** in relation to any business or activity means authorised by licence granted under Article 10 or exemption granted under Article 9 of the Order.



<b>authorised electricity operator</b>	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 an interconnector or who has made an application for use of an interconnector which has not been refused;
<b>Authority</b>	means the Northern Ireland Authority for Utility Regulation.
<b>cancel</b>	in relation to the Authority, means the exercise of its cancellation powers.
<b>cancellable generating unit agreement</b>	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.
<b>cancellation direction</b>	means a direction issued by the Authority to cancel a cancellable generating unit agreement.
<b>cancellation powers</b>	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.
<b>Department</b>	means the Department of Enterprise, Trade and Investment.
<b>designated</b>	in relation to any agreement, arrangement, code, notice, proposal therefor 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 the Licence or otherwise, but so that an agreement, arrangement, code, notice, proposal therefor or other document so designated may at the discretion of the Department or 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 the code of that title required to be prepared by the Transmission Owner, in its capacity as the owner or operator of the distribution system, in accordance with the Transmission Owner Licence.

**distribution system**

in relation to the Transmission Owner means all electric lines of the Transmission Owner within its authorised area (excepting lines forming part of any transmission system or any interconnector) and any other electric lines which the Authority may specify as forming part of the Transmission Owner's distribution system, and includes any electrical plant and meters of the Transmission Owner which are used in connection with electricity distribution by it.

**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 of the Energy Order are or may be exercisable;

**financial year**

has the meaning given in paragraph 1 of Condition 2.

**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.

<b>generation set</b>	means any plant or apparatus for the production of electricity.
<b>generator</b>	means a person authorised by a licence granted under Article 10(1)(a) of the Order.
<b>Grid Code</b>	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.
<b>holding company</b>	means a holding company within the meaning of [Article 4 of the Companies (Northern Ireland) Order 1986].
<b>interconnector</b>	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.
<b>Intermediary</b>	has the meaning given in the Single Electricity Market Trading and Settlement Code.
<b>Island of Ireland</b>	means Northern Ireland and the Republic of Ireland.
<b>licensed electricity supplier</b>	means a person authorised to supply electricity by a licence granted under Article 10(1)(c) of the Order.
<b>Licensee</b>	means the person identified as such in Part I or any person to whom the Licence is subsequently

assigned in accordance with the Order, the Energy Order or the 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, which is to be transferred to NIE Energy Limited (a body corporate registered in Northern Ireland under company number NI27394) pursuant to a statutory scheme on or around SEM Go-Live;

**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 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.
<b>notice</b>	means (unless otherwise specified) notice given either in writing or by electronic data transfer.
<b>Northern Ireland Market Operator Licence</b>	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.
<b>Order</b>	means the Electricity (Northern Ireland) Order 1992;
<b>Power Procurement Business</b>	has the meaning given to it in the NIE Energy Supply Licence.
<b>power purchase agreement</b>	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.
<b>power station agreement</b>	means, in relation in relation to a 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 the Licence, as amended from time to time.
<b>related undertaking</b>	in relation to any person means any undertaking in which that person has a participating interest as

defined by [Article 268 of the Companies (Northern Ireland) Order 1986].

**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) 1992.

**relevant supplier**

means a licensed electricity supplier or a relevant exempt self supplier.

**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.

**subsidiary** means a subsidiary within the meaning of [Article 4 of the Companies (Northern Ireland) Order 1986].

**successor company** bears the meaning ascribed to it for the purposes of Part III of the Order.

**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, including outage planning incentive arrangements; and
- (b) such services as 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

and which may be offered for sale to the Transmission System Operator for the purpose of securing stability of operation on the transmission system, the distribution system and the distribution system of any authorised electricity operator or any system linked to the transmission system or the distribution system by an interconnector.

**total system** means the transmission system and the Transmission Owner's distribution system taken together.

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

**Transmission Owner Licence** means the licence granted, under Article 10(1)(b) of the Order, to Northern Ireland Electricity plc (a body corporate registered in Northern Ireland under company number NI026041) on 31 March 1992.

**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**

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 [Article 267 of the Companies (Northern Ireland) Order 1986].

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 the 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 the 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 the Licence and directions issued by the Authority pursuant to any Condition shall be delivered or served as aforesaid.
8.
  - (a) Each relevant legal instrument shall, if the condition under which it was issued is modified at SEM Go-Live in accordance with Condition A, continue to have effect under any corresponding provision of Chapter 2 as modified, as if it had been made under that corresponding provision.
  - (b) For the purposes of paragraphs 8(a) and 8(c) a “**relevant legal instrument**” means any direction, consent, approval, determination, designation or other instrument issued by the Authority or the Department, prior to SEM Go-Live, in accordance with a condition in Chapter 2.
  - (c) For the purposes of paragraph 8(a), a “**corresponding provision**” of Chapter 2 shall be any provision which, following its modification at SEM Go-Live in accordance with Condition A, has (notwithstanding that it has been renumbered, moved, deleted and replaced, or otherwise amended in any way) substantially the same purpose and effect as the provision under which a relevant legal instrument was issued.

**Condition 2: Separate accounts for Separate Businesses**

1. The first financial year of the Licensee shall run from the date of Grant to ***31 October 2007***, and thereafter each financial year of the Licensee shall run from ***1 November*** to the following ***31 October***.
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 [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 each Separate Business as would by [Article 229 of the Companies (Northern Ireland) Order 1986] 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) the financial year commencing on its date of incorporation 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 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 period between its date of incorporation and 30 June 1992 in the case of the first financial year of the Licensee and the first six months of each subsequent financial year, an interim profit and loss account; and
  - (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 [Article 234 and, where appropriate, Article 235 of the Companies (Northern Ireland) Order 1986] 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 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 31 of Section C of Part II of Schedule 4 to the Companies (Northern Ireland) Order 1986];
- (b) in respect of each Separate Business the adjusted amount of any such provision for depreciation as is referred to in [paragraph 32(2) of Section C of Part II of Schedule 4 to the Companies (Northern Ireland) Order 1986] 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. For the purposes of paragraph 6:

**alternative accounting rules** means the rules set out in [Section C of Part II of Schedule 4 to the Companies (Northern Ireland) Order 1986].

<b>current cost assets</b>	means assets of any description mentioned in [paragraph 31 of Section C of Part II of Schedule 4 to the Companies (Northern Ireland) Order 1986].
<b>the Handbook</b>	means the handbook issued or adopted by the Accounting Standards Board or any successor body entitled <b>Accounting for the effects of changing prices: a Handbook</b> 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 therefor.



**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;

- (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 the 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 and:
  - (a) the Authority agrees in writing to the disapplication request; or
  - (b) their application (in whole or in part) is terminated by notice given by the Licensee in accordance with either paragraph 7 or paragraph 8.
- 5. A disapplication request shall be in writing addressed to the Authority, shall specify the paragraphs (or any part or parts thereof) to which the request relates and shall state the date from which the Licensee wishes the Authority to agree that the specified paragraphs (or, as the case may be, part or parts thereof) shall cease to have effect.
- 6. 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 the Licence.
- 7. If the Authority has not made a reference to the Competition Commission under Article 15 of the Order relating to the modification of the paragraphs (or any part or parts thereof) specified in the disapplication request before the beginning of the period of 12 months which will end with the disapplication date, the Licensee may deliver written notice to the Authority terminating the application of such of paragraphs 2 and 3 (or, as the case may be, any part or

parts thereof) as are specified in the disapplication request with effect from the disapplication date or a later date.

8. If the Competition Commission makes a report on a reference made by the Authority relating to the modification of the paragraphs (or any part or parts thereof) specified in the disapplication request and such report does not include a conclusion that the cessation of such paragraphs, 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 such paragraphs (or, as the case may be, any part or parts thereof) with effect from the disapplication date or a later date.
9. 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.
10. In this Condition, references to the provision of electricity to any person shall include the provision of available capacity of any generation set.
11. 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.

**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 Transmission Owner, 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:
  - (a) affect the rights and obligations of any party to:
    - (i) a power purchase agreement which is not a cancellable generating unit agreement; or
    - (ii) 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.

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

**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:

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

**Condition 7: System Support Services**

1. The Licensee shall from time to time upon request by the Transmission 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 of providing the same to the Transmission 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 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 and the Licensee in such manner as appears to the Authority to be reasonable.
5. Insofar as the Transmission System Operator 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.

**Condition 8: Compulsory acquisition of land**

- 1 Subject to paragraph 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 distribution system or 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 Transmission Owner 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:
  - (a) shall cease to have effect on such date as the Authority shall specify in directions issued to the Licensee for the purposes of this Condition; and
  - (b) may be brought into effect after they shall have ceased to have effect on such date as the Authority shall specify in directions issued to the Licensee for the purposes 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 4 of the Transmission Owner Licence, together with such additional land as shall be acquired by the Transmission Owner as the holder of that 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 Transmission Owner Licence.

**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 the system for the distribution of electricity 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:

- (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 the 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.

**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.

**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:
  - (a) the functions assigned to it by or under the Order, the Energy Order, the SEM Order or the Directive Regulations; and
  - (b) any functions transferred to it under the Order, the Energy Order, the SEM Order or the Directive Regulations.
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.

**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 the Licence the Licensee shall pay to the Authority a fee of **£1000.00..**
3. In respect of the year beginning on 1 April in the year immediately following the date the Licence comes into force 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 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 but excluding its costs and expenses incurred or to be incurred in developing the requisite arrangements provided for in Condition 15;
  - (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 or any other licence issued under Article 10(1)(a) of the Order; and
  - (c) 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) above 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 to electricity under the Energy Order 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 if that notice is given within six months of the beginning of the year in respect of which the fee is payable.

4. In respect of each year beginning on 1 April, 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 estimates 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 licence fee relates.



**Condition 13: Not Used**

**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.

**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;

- (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:
    - 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)(c) 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 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 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 transmission licence granted to Northern Ireland Electricity plc on 31 March 1992;

**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.

**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.

**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:

- (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. 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.

**Intermediary Agreement** means the agreement entered into by the Licensee pursuant to Condition 18.

**Opportunity Cost** shall have the meaning set out in, and the value calculated in accordance with, the terms of the

Bidding Code of Practice.

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

**Condition 18: Not Used**



**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 amount payable under Condition 16 s 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 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 any order made by the Secretary of State under Sections 56, 73, 74 or 89 of the Fair Trading Act 1973 or under Section 10(2)(a) of the Competition Act 1980
  - (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 2 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 Article 21 of 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;

- (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;
- (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.

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- (a) 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.
- (b) 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.

3 (a) 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.

4 Subsections (2) and (4) to (6) of section 416 of the Income and Corporation Taxes Act 1988 shall apply for the purpose of determining whether for the purposes of this paragraph a person has or had control of the Licensee, with the modifications specified in sub-paragraph (c).

5 The modifications referred to in sub-paragraph (b) are:

(i) for the words "the greater part" wherever they occur in the said subsection (2) there shall be substituted the word "one-third or more";

(ii) in the said subsection (6), for the word "may" there shall be substituted the word "shall", the words from "and such attributions" onwards shall be omitted and in the other provisions of that subsection any reference to an associate of a person shall be construed as including only a relative of his (as defined by section 417(4) of that Act), a partner of his and a trustee of a settlement (as defined by section 681(4) of that Act) of which he is a beneficiary.