

Licence granted: 31 March 1992  
Last updated: 20 December 2016

## **Electricity Supply Licence**

**Power NI<sup>1</sup>**

**[Consolidated Working Copy – see Note at end]**

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<sup>1</sup> Licence granted to Northern Ireland Electricity Plc on 31 March 1992 and under licensing scheme made on 23 October 2007, as coming into force on 1 November amended as if it were a licence granted to NIE Energy Limited. On 25 July 2011, NIE Energy Limited changed its name to Power NI Energy Ltd t/a Power NI. The legal entity and registered company details were unaffected

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### Terms and Grant of Licence

- 1 The Department, in exercise of the powers conferred by Articles 10(1), 10(6), 11 and 13 of the Electricity (Northern Ireland) Order 1992 (hereinafter referred to as the "**Order**") hereby grants to Northern Ireland Electricity plc:
  - (a) a licence to transmit electricity for the purpose of giving a supply to any premises or enabling a supply to be so given in the authorised transmission area designated in paragraph 1 of Schedule 1, during the period specified in paragraph 3, subject to the Conditions set out in Parts II and III and Schedules 4 and 5;
  - (b) a licence as public electricity supplier to supply electricity to any premises in the authorised supply area designated in paragraph 1 of Schedule 2, during the period specified in paragraph 3, subject to the Conditions set out in Parts II and IV and Schedules 4 and 6.
- 2 The Conditions referred to above are subject to modification or amendment in accordance with their terms or with Articles 14, 17, 17A or 18 of the Order and/or with any provision for the modification of the same in the Energy (Northern Ireland) Order 2003. Each of the licences hereby granted is further subject to the terms as to revocation specified in Schedule 3.
- 3 Each of the licences hereby granted shall come into force on the transfer date appointed under Article 69(3) of the Order and, unless revoked in accordance with the terms specified in Schedule 3, shall continue in force until determined by not less than 25 years' notice in writing given by the Department to the licensee in relation to that licence, such notice not to be served earlier than the tenth anniversary of the transfer date appointed under Article 69(3) of the Order.

31 March 1992

Assistant Secretary  
Department of Economic Development

**The Licensing Scheme made on 23 October 2007, as coming into force on 1 November, by the Northern Ireland Authority for Utility Regulation under Article 35 of the Electricity Regulations (Northern Ireland) 2007 provides for:**

- **the licence granted under paragraph 1(a) above to be amended as set out in Annex 2 to the Licensing Scheme; and**
- **the licence granted under paragraph 1(b) above to be amended as set out in Annex 1 to the Licensing Scheme and held by NIE Energy Limited as if it were a licence granted to NIE Energy Limited under Article 10(1)(c) of the Electricity Order as amended by Regulation 6 of the Electricity Regulations.**

## **Part I: General Conditions**

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

- 1 Unless the contrary intention appears:
  - (a) words and expressions used in the Conditions or in the Schedules below 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, 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 below.

- 3 In the Conditions and the Schedules unless the context otherwise requires:

**Affiliate** in relation to the Licensee or any subsidiary of any holding company of the Licensee means any holding company or subsidiary of that person or any subsidiary of a holding company of that person.

**Auditors** means the Licensee's auditors for the time being holding office in accordance with the requirements of Chapter 2 of Part 16 of the Companies Act 2006.

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

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

Order and any person transferring electricity to or from Northern Ireland across an interconnector or who has made an application for use of an interconnector which has not been refused

**Authority** means the Northern Ireland Authority for Utility Regulation.

**Cancel** in relation to the Authority, means the exercise of its cancellation powers.

**Cancellable Generating Unit Agreement** means a generating unit agreement which may be the subject of a cancellation direction, being the generating unit agreements specified in Annex 4 of this Licence.

**Cancellation Direction** means a direction issued by the Authority to cancel a cancellable generating unit agreement.

**Cancellation Powers** means the powers of the Authority to direct any party to a cancellable generating unit agreement to terminate that agreement upon such date or the happening of such event as shall be specified in the notice containing the direction.

**Charges for the Supply of Electricity** means, as between an Electricity Supplier and a Customer, charges made by the Electricity Supplier in respect of the supply of electricity to that Customer.

**Competition and Markets Authority or CMA** means the body of that name established by section 25 of the Enterprise and Regulatory Reform Act 2013.

**Contract** means a contract for the supply of electricity made between the Licensee and a Customer but does not include a Deemed Contract.

**Customer** means any person supplied or requiring to be supplied with electricity by the Licensee (including any affiliate

or related undertaking of the Licensee) or, where the context requires, by any other Electricity Supplier at any premises in Northern Ireland, but shall not include any authorised electricity operator in its capacity as such.

**Deemed Contract**

means, as between the Licensee and a Customer, a contract for the supply of electricity deemed to have been made under paragraph 3 of Schedule 6 to the Order.

**Department**

means the Department of Enterprise Trade and Investment formerly known as the Department of Economic Development.

**Designated**

in relation to any agreement, arrangement, code, notice, proposal 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 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**

means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC.

**Directive Regulations**

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

<b>Distribution Code</b>	means, in relation to any Licensed Distributor, the code of that title required to be prepared by it and approved by the Authority in accordance with a condition of the Distribution Licence held by that Licensed Distributor.
<b>Distribution Licence</b>	means a licence granted or treated as granted under Article 10(1)(bb) of the Order.
<b>Distribution Owner</b>	means the person authorised, from time to time, under the Successor Distribution Licence in its capacity as the holder of that Licence.
<b>Distribution System</b>	means all electric lines owned and/or operated by any person for the purpose of the distribution of electricity to Customers, including any electrical plant and meters which are used in connection with electricity distribution and any other electric lines which the Authority may specify as forming part of the distribution system, but excluding lines forming part of the transmission system or any interconnector.
<b>Domestic Customer</b>	means a customer supplied, or requiring to be supplied, with electricity at Domestic Premises.
<b>Domestic Premises</b>	has the meaning given in, and is to be interpreted in accordance with, Condition 25.
<b>Electricity Supplier</b>	means any person authorised by a licence under Article 10(1)(c) of the Order to supply electricity.
<b>Emissions</b>	means the discharge of substances into the air.
<b>Energy Consumer Checklist</b>	means the document of that name which constitutes the guidance for consumers of gas and electricity as prepared and published, from time to time, by the Authority in accordance with Article 7(5) of the Energy



Order.

<b>Energy Order</b>	means the Energy (Northern Ireland) Order 2003.
<b>General Consumer Council</b>	means the General Consumer Council for Northern Ireland.
<b>Generating Unit Agreement</b>	means a power purchase agreement between a generator and the Power Procurement Business in respect of a generation set or combination of generation sets.
<b>Generation Licence</b>	means a licence granted under Article 10(1)(a) of the Order.
<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>	has the meaning given to it in the Transmission System Operator Licence.
<b>Holding Company</b>	means a holding company within the meaning of section 1159 of the Companies Act 2006.
<b>Interconnector</b>	means the 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.
<b>Internal Markets Regulations</b>	means the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011.
<b>Island of Ireland</b>	means Northern Ireland and the Republic of Ireland.
<b>Last Resort Supply Direction</b>	means a direction given by the Authority to the Licensee that specifies or describes the premises to be

supplied with electricity in accordance with Condition 22.

**Licence** means the licence comprised in the licence grant in which these Conditions are referred to, granted on the terms, and subject to the Conditions, referred to therein.

**Licensed Distributor** means any person holding a Distribution Licence.

**Licensee** means the person identified as such in the Grant and Terms of this Licence, or any person to whom the Licence may subsequently be assigned or transferred in accordance with the Order, the Energy Order, the SEM Order, the Directive Regulations, or the Licence and (where the context so requires) shall include any business in respect of which the Licensee is a successor company.

**Market Operator** means the person authorised, from time to time, under the Northern Ireland Market Operator Licence in its capacity as the holder of that licence.

**Metering equipment** includes any meter and any associated equipment which materially affects the operation of that meter.

**Modification** includes addition, omission, amendment and substitution, and cognate expressions shall be construed accordingly.

**Non-Domestic Customer** means a customer supplied, or requiring to be supplied, with electricity at Non-Domestic Premises.

**Non-Domestic Premises** has the meaning given in, and is to be interpreted in accordance with, Condition 25.

**Northern Ireland Fuel** means the document of that title designated as such by the Department as from time to time amended in

**Security Code**

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 authorised electricity operators to and the collection of certain payments in anticipation of, during and after the expiry of any such periods, and connected matters.

**Northern Ireland Market  
Operator Licence**

means the licence granted, under Article 10(1)(d) of the Order, to SONI Limited (a body corporate registered in Northern Ireland under company number NI038715) on 3 July 2007.

**Notice**

means (unless otherwise specified) notice given either in writing or by electronic data transfer.

**Order**

means the Electricity (Northern Ireland) Order 1992.

**Power Procurement  
Business**

means the business of the Licensee when it is acting in the discharge of the obligations stated or referred to in Part IV of this Licence.

**Power Purchase Agreement**

means a contract for the provision to the Licensee or any other authorised electricity operator of the whole or any part of the available capacity and/or the sale or other disposal to the Licensee or any other authorised electricity operator of the whole or any part of the output of a generation set or combination of generation sets.

**Power Station Agreement**

means an agreement made with effect from 1 April 1992 between a generator and the predecessor

company, in relation to matters concerning a generating station and designated for the purposes of the generation licences granted to the successor companies.

**Predecessor company**

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

**Principal Terms**

means in respect of any Contract or Deemed Contract, the terms and conditions that relate to:

- (i) the duration of the Contract or Deemed Contract;
- (ii) the Charges for the Supply of Electricity, including the applicable tariff and the unit rate, expressed in “pence per kWh” of the applicable tariff;
- (iii) any requirement to pay Charges for the Supply of Electricity through a prepayment meter;
- (iv) any requirement for a Security Deposit;
- (v) the termination of the Contract (including any requirement to pay a termination fee) or the circumstances in which the Deemed Contract will terminate,

and any other term or condition that may reasonably be considered to significantly affect the evaluation by the consumer of the Contract.

**Promotional Materials**

means any document which contains information about the Licensee’s electricity supply activities, and is handed out, or sent directly, by or on behalf of the Licensee to Customers.

<b>PSO Agreement</b>	means the agreement of that title with the Distribution Owner in the form approved from time to time by the Authority.
<b>Related undertaking</b>	in relation to any person means any undertaking in which that person has a participating interest within the meaning of section 421a of the Financial Services and Market Act 2000.
<b>Relevant exempt self supplier</b>	means a relevant exempt self supplier within the meaning of the Electricity (Class Exemptions from the requirement for a Licence) Order (Northern Ireland) 2013.
<b>Relevant supplier</b>	means a licensed electricity supplier or a relevant exempt self supplier.
<b>Representation</b>	includes any objection or any other proposal made in writing.
<b>Security Deposit</b>	means a deposit of money as security for the payment of Charges for the Supply of Electricity.
<b>SEM Go-Live</b>	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.
<b>SEM Order</b>	means the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.
<b>Single Electricity Market</b>	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.

<b>Single Electricity Market Trading and Settlement Code</b>	has the meaning given to it in the Northern Ireland Market Operator Licence.
<b>Subsidiary</b>	means a subsidiary within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986.
<b>Successor Company</b>	bears the meaning ascribed to it for the purposes of Part III of the Order.
<b>Successor Distribution Licence</b>	means the licence which, pursuant to Regulation 90(1)(b) of the Internal Markets Regulations, has effect as a licence under Article 10(1)(bb) of the Order and is held by Northern Ireland Electricity Limited ( a body corporate registered in Northern Ireland under company number NI026041).
<b>Successor Transmission Licence</b>	means the licence which, pursuant to Regulation 90(1)(b) of the Internal Markets Regulations, has effect as a licence under Article 10(1)(b) of the Order and is held by Northern Ireland Electricity Limited ( a body corporate registered in Northern Ireland under company number NI026041).
<b>Supply Business</b>	means the business of the Licensee in the supply of electricity pursuant to the Licence.
<b>Transmission system</b>	has the meaning given in the Successor Transmission Licence.
<b>Transmission System Operator</b>	means the person authorised, from time to time, under the Transmission System Operator Licence in its capacity as the holder of that licence.
<b>Transmission System Operator Licence</b>	means the licence granted under Article 10(1)(b) of the Order to SONI Limited (a body corporate registered in Northern Ireland under company number NI038715) on

3 July 2007.

**Undertaking** bears the meaning ascribed to it by section 1161 of the Companies Act 2006.

**Unmetered supply** means a supply of electricity to premises which is not, for the purpose of calculating the charges for electricity supplied to the Customer at such premises, measured by metering equipment.

- 4 Unless otherwise specified:
- (a) any reference to a numbered Part is a reference to the Part bearing that number in this Licence;
  - (b) any reference to a numbered Condition, or Annex or to a numbered Schedule is respectively a reference to the Condition or Annex or the Schedule bearing that number in this Licence;
  - (c) any reference to **the Conditions** in relation this Licence means the Conditions to which this licence is subject and references to **any Conditions** and to any cognate expression shall be construed accordingly;
  - (d) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the Condition, Annex or Schedule in which the reference occurs; and
  - (e) (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, Annex, 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 purpose 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 Each relevant legal instrument shall, if the condition (whether of the Licence or any licence held by the predecessor company) under which it was issued was modified at SEM Go-Live, continue to have effect under any corresponding provision of the Licence, as if it had been made under that corresponding provision.
- 9 For the purposes of paragraphs 8 and 10 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 of the Licence in force and effect at that time:
- (a) including any instrument issued:
    - (i) to another holder of the Licence, from whom the Licence was subsequently transferred or assigned to the Licensee;
    - (ii) before the conversion of the Licence to a supply licence under Article 10(1)(c) of the Order;
  - (b) of any licence held by the predecessor company.
- 10 For the purposes of paragraph 8 a “**corresponding provision**” of the Licence shall be any provision which, following its modification at SEM Go-Live, has (notwithstanding that it was 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.



Licence granted: 31 March 1992  
Last updated: 20 December 2016

**Condition 2: Not Used**

**Condition 3: Compliance with the Grid Code and Distribution Code**

1. The Licensee shall comply with the provisions of the Grid Code and each Distribution Code insofar as applicable to it.
2. The Authority may:
  - (a) following consultation with the Transmission System Operator, 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) in respect of a Distribution Code of any Licensed Distributor and following consultation with the relevant Licensed Distributor, issue directions relieving the Licensee of its obligation under paragraph 1 above in respect of such parts of that 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 60, to issue directions to the Transmission System Operator requiring it to revise the Grid Code in such manner and with effect from such date as may be specified in the directions, provided that such revisions shall not affect the rights and obligations of any party to:
  - (a) a power purchase agreement which is not a cancellable generating unit agreement; or
  - (b) a cancellable generating unit agreement, which has not, at the relevant time, been the subject of a cancellation direction,under that agreement beyond what may reasonably be regarded as de minimis in relation to that person.

**Condition 4: The Market Registration Framework Agreement**

1 The Licensee shall become a party to, and shall thereafter comply with the obligations applicable to it under, the Market Registration Framework Agreement.

2 In this Condition:

**Market Registration Framework Agreement** shall have the meaning given to it from time to time in the Successor Distribution Licence.

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**Condition 5: Not Used**

**Condition 6: Security arrangements**

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

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Last updated: 20 December 2016

**Condition 7: Not Used**

Licence granted: 31 March 1992  
Last updated: 20 December 2016

**Condition 8: Not Used**

**Condition 9: 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 10: Provision of information to the Authority**

- 1 Subject to paragraphs 2 and 3 below, the Licensee shall furnish to the Authority, in such a 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 any of its functions relating to electricity as conferred on, or assigned or transferred to, it by or under any legislation.
- 2 The Licensee may not be required by the Authority to furnish it under this Condition with information for the purpose of the exercise of its functions under Article 7 of the Energy Order.
- 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 In paragraphs 1 to 4, **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.
- 6 The Licensee shall, if so requested by the Authority, give reasoned comments on the accuracy and text of any information and advice (so far as relating to the supply of electricity authorised by this licence) which the Authority proposes to publish pursuant to Article 7 of the Energy Order.

7 In this Condition:

**enforcement matter**

means any matter in respect of which any function of the Authority under Article 42 of the Energy Order is or may be exercisable.

**Condition 11: Payment of fees**

- 1 The Licensee shall, at the times stated hereunder, pay to the Authority fees of the amount specified in or determined under the following paragraphs of this Condition.
- 2 Within 30 days after the grant of this Licence, the Licensee shall pay to the Authority an initial fee of £308,000.
- 3 In respect of the year beginning on 1 April 1993 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 relating to electricity conferred on, or assigned or transferred to, it by or under any legislation (**electricity functions**) ;
  - (b) an amount which is a proportion, as determined by the Authority, of the amount notified to the Authority by the General Consumer Council and approved by the Department as being the General Consumer Council's estimate of its likely costs during the year in question in the exercise of the functions relating to electricity assigned to it by or under the Order, the Energy Order, the SEM Order and the Directive Regulations and any other such functions as it has been or may be required to exercise by the Authority or, in the event that the Authority shall not have received such notification by 31 July in the year in question, an amount which is the relevant proportion of the Authority's estimate of such likely costs (having regard to any estimate of such costs in any forward work programme published by the General Consumer Council in respect of the year in question); 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:
  - (A) had the amount comprised therein under sub-paragraph (a) been calculated by reference to the total costs of the Authority in connection with the functions referred to in sub-paragraph (a) and the proportion thereof actually attributable to the Licensee,
  - (B) had the amount comprised therein under sub-paragraph (b) been calculated by reference to the total costs of the General Consumer Council in connection with the functions referred to in sub-paragraph (b) and the proportion thereof actually attributable to the Licensee,

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

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

- 4 In respect of the year beginning on 1 April 1998 and for each subsequent year, the Authority may pay the Licensee an amount (**the refund**) calculated in accordance with the method previously disclosed in writing to the Licensee and by reference to the difference between:

- (a) the proportion of the licence fee for that year paid by the Licensee which is attributable to the Authority's estimate of its costs in accordance with paragraph 3(a), and the estimate of the General Consumer Council or the Authority (as appropriate) of the General Consumer Council's costs in accordance with paragraph 3(b); and
- (b) the Authority's reasonable revised estimate of those costs (taking account of any revised estimate of the costs referred to in paragraph 3(b) which is approved by the Department and notified to the Authority by the General Consumer Council);

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

Licence granted: 31 March 1992  
Last updated: 20 December 2016

**Condition 12: Not Used**

Licence granted: 31 March 1992  
Last updated: 20 December 2016

**Condition 13: Not Used**

**Condition 14: Prohibition of discrimination in supply**

- 1 This Condition applies where the Licensee (taken together with its affiliates and related undertakings) is in a dominant position in a market for the supply of electricity to Customers.
- 2 Where this Condition applies the Licensee shall not supply or offer to supply electricity to Customers in any market in which it is dominant on terms which are predatory.
- 3 Where this Condition applies but subject to paragraph 4, the Licensee (taken together with its affiliates and related undertakings) shall not, in supplying or offering terms for the supply of electricity to Customers in any market in which it is dominant:
  - (a) show undue preference to any person (or class of persons) within such market;
  - (b) exercise undue discrimination between any persons (or classes of person) within such market; or
  - (c) set terms which are unduly onerous.
- 4 Nothing in paragraph 3 shall prohibit the Licensee, within any area or class of Customers (the **relevant area or class**) in respect of which there is established competition in the supply of electricity, from supplying or offering to supply electricity on terms which are reasonably necessary to meet that competition, save that the Licensee (taken together with its affiliates and related undertakings) shall not, in supplying or offering terms for the supply of electricity:
  - (a) show undue preference to any persons (or class of persons) or exercise undue discrimination between any persons (or classes of person) within the relevant area or class of Customers; or
  - (b) set terms in respect of any person (or class of persons) in a market in which the Licensee is dominant, save such persons who are within the relevant area or class of Customers, which are unduly onerous.
- 5 For the purposes of this Condition, terms are unduly onerous if the revenue from the supply of electricity to Customers on those terms:

- (a) significantly exceeds the costs of that supply; and
  - (b) exceeds such costs to a significantly greater degree than the revenue from supply to all other Customers of the Licensee (and of its affiliates and related undertakings) within the same market exceeds the costs of supply to those Customers.
- 6 For the purposes of this Condition, a market may be defined by reference to a geographical area, or to a class of Customer or both.
- 7 In determining, for the purposes of this Condition, whether any persons constitute a class of person, due regard shall be had to the circumstances of supply to such persons including (without limitation) volumes, load factors, conditions of interruptibility, location of premises being supplied and date and duration of the Contract or Deemed Contract.
- 8 For the purposes of this Condition, the Authority shall determine any question as to:
  - (a) whether any area or class of Customers constitutes a market for the supply of electricity;
  - (b) whether the Licensee (taken together with its affiliates and related undertakings) is dominant in any market for the supply of electricity;
  - (c) whether there is established competition in respect of the supply of electricity in any area or to any class of Customers; and
  - (d) whether any terms are predatory, having due regard to whether such terms:
    - (i) incorporate charges which do not reasonably cover the avoidable costs incurred in consequences of supplying the Customers in question; and
    - (ii) are intended or are likely to restrict, distort or prevent competition in the supply of electricity.
- 9 The Authority may, on the application of the Licensee, and following such consultation (if any) as the Authority may consider appropriate, issue directions relieving the Licensee of its obligations under this Condition in respect of such of the Licensee's arrangements



or agreements as are specified in the direction and to such extent and subject to such conditions as may be specified in the direction.

10 In this Condition:

**terms** means all the terms on which a supply of electricity is offered or provided, including terms as to price, which significantly affect the evaluation of that supply.

**Condition 15: Duration of discrimination conditions**

- 1 Condition 14 shall cease to have effect (in whole or in part, as the case may be) if the Licensee delivers to the Authority a request (a “Disapplication Request”) made in accordance with this Condition and:
  - (a) the Authority agrees in writing to the Disapplication Request; or
  - (b) the application of Condition 14 (or part of it) is terminated by a notice (a “Disapplication Notice”) given by the Licensee in accordance with paragraph 5 and not withdrawn.
- 2 A Disapplication Request pursuant to this Condition may be made by the Licensee only where the Authority has notified the Licensee, in accordance with paragraph 8 of Condition 14, of its determination that the Licensee is dominant in a specified market.
- 3 Save where the Authority otherwise agrees, no disapplication following delivery of a Disapplication Request pursuant to this Condition shall have effect earlier than the date (the “Disapplication Date”) which is 12 months after the date on which the request is made.
- 4 A Disapplication Request pursuant to this condition shall:
  - (a) be in writing addressed to the Authority;
  - (b) specify Condition 14, or any part of it to which the request relates; and
  - (c) state the date from which the Licensee wishes the Authority to agree that Condition 14 (or the specified part of it) shall cease to have effect.
- 5 A Disapplication Notice pursuant to this Condition:
  - (a) may be given in the circumstances described in either paragraph 6 or 7;
  - (b) may be withdrawn at any time prior to the Disapplication Date; and
  - (c) where it is given shall:
    - (i) be in writing addressed to the Authority;

- (ii) specify Condition 14 (or any part of it, which shall comprise only such part as was specified in the Disapplication Request) to which the notice relates; and
  - (iii) state the date from which the notice is to take effect, which shall not be earlier than the Disapplication Date.
- 6 The circumstances described in this paragraph are that, by the beginning of the period of six months which will end the Disapplication Date, the Authority has not in response to the Disapplication Request published a decision under Article 14(8) of the Order to modify:
  - (a) Condition 14, or any part of it to which the Disapplication Request relates; or
  - (b) this condition 15, so as to remove the right of the Licensee to give to the Authority a Disapplication Notice in respect of the relevant Disapplication Request.
- 7 The circumstances described in this paragraph are that:
  - (a) by no later than the beginning of the period of six months which will end with the Disapplication Date, the Authority has in response to the Disapplication Request published a decision of a type referred to in paragraph 6;
  - (b) the Licensee has exercised its right to appeal to the CMA against that decision in accordance with Article 14B of the Order;
  - (c) the CMA has, in respect of the provisions to which the Disapplication Request relates:
    - (i) quashed the decision of the Authority under Article 14E(2)(a) of the Order; and
    - (ii) neither remitted the matter back to the Authority under Article 14E(2)(b) of the Order nor substituted its own decision for that of the Authority under Article 14E(2)(c) of the Order; and
  - (d) no more than 30 days has elapsed since the date on which the CMA quashed the decision of the Authority.

- 8 For the purposes of this Condition 15, any reference to a Disapplication Request or Disapplication Notice relating to the application of Condition 14 'in part' shall be interpreted as including a reference both to a part of that Condition and to the application of that Condition in respect of one or more specified markets.

**Condition 16: Duty to offer terms for meter provision**

- 1 The Licensee shall on application made by any person:
  - (a) offer to enter into an agreement for the provision of any relevant metering equipment whether, at the discretion of the Licensee, by way of sale, hire or loan; and
  - (b) where the terms offered are acceptable to the person making the application, sell, hire or loan the relevant metering equipment in accordance with such terms.
- 2 In making an offer to enter into an agreement in accordance with paragraph 1, the Licensee shall set out:
  - (a) the date by which the terms of the agreement shall be fulfilled (time being of the essence unless otherwise agreed between the parties);
  - (b) the charges to be paid to the Licensee; and
  - (c) such other detailed terms as are or may be appropriate for the purpose of the agreement.
- 3 The Licensee shall offer terms for agreements in accordance with paragraph 1 as soon as practicable after the receipt by the Licensee of an application containing all such information as it may reasonably require for the purpose of formulating the terms of the offer.
- 4 The Licensee shall not be obliged pursuant to this Condition to offer to enter or to enter into any agreement if to do so would be likely to cause the Licensee to be in breach of regulations made under Article 32 of the Order, provided that it has taken all reasonable steps to prevent such breach from occurring.
- 5 The Authority may, on the application of the Licensee, issue a direction relieving the Licensee of its obligations under paragraph 1 in respect of such relevant metering equipment and subject to such terms and conditions as may be specified in the direction.
- 6 The Licensee shall not enter into an agreement with any person for the provision of an

electricity meter at any premises (whatever the nature of that agreement) which is intended or is likely to restrict, distort or prevent competition in the supply of electricity.

7 In this Condition:

**relevant metering equipment**

means metering equipment owned by the Licensee and sited at any premises to which a supply of electricity is being or is required to be given by an Electricity Supplier other than the Licensee.

**Condition 17: Procedures for the detection and prevention of theft, damage and meter interference**

- 1 The Licensee shall (and shall ensure that its agents) take all reasonable steps to detect and prevent:
  - (a) the theft of electricity at premises which are supplied by it;
  - (b) damage to any electrical plant, electric line or electricity meter through which such premises are supplied; and
  - (c) interference with any electricity meter through which such premises are supplied.
  
- 2 The Licensee shall, as soon as is reasonably practicable, inform the owner of the relevant electrical plant, electric lines or meter of any incident where it has reason to believe:
  - (a) there has been damage to any electrical plant, electric line or meter; or
  - (b) there has been interference with any meter to alter its register or prevent it from duly registering the quantity of electricity supplied.
  
- 3 Where the Licensee has reason to believe that any incident reported to the owner in accordance with paragraph 2 has been caused by the criminal act of any person it shall, on complying with the requirement of that paragraph, provide the owner with such information as is reasonably required for the purposes of investigating the incident and resolving any safety concerns arising out of it.
  
- 4 The Licensee shall inform the owner of its policy in relation to incidents of the type referred to at paragraph 3, and in particular of the circumstances in which it requires the owner and/or operator of the distribution system to which the premises are connected to remedy such incidents by the use of:
  - (a) the substitution of alternative meters;
  - (b) the provision of prepayment meters; and
  - (c) the discontinuation of supply to the premises at which the incident occurred.

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**Condition 18: Licensee's apparatus on Customers' side of meter**

- 1 This Condition applies where the Licensee installs a second meter or other apparatus for the purpose of ascertaining or regulating the amount of electricity supplied, the period of supply, or any other quantity or time connected with the supply on the Customer's side of the meter or meters registering the quantity of the supply to a Customer.
- 2 Any second meter or other apparatus installed by the Licensee in the position and for a purpose described in paragraph 1 shall be such that the power consumed by it, when aggregated with the power consumed by any other meter or apparatus installed by the Licensee in the like position and for a like purpose in relation to the Customer, does not exceed 10 watts except where otherwise agreed with the Customer.

**Condition 19: Provision of Information to Transmission System Operator and Market Operator**

1. The Licensee shall furnish to:

- (a) the Transmission System Operator; and
- (b) the Market Operator,

in such manner and at such times as may be required, such information as each of them may reasonably require and which the Authority deems necessary for the purpose of complying with their respective 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.

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**Condition 20: Not Used**

**Condition 21: The PSO Agreement**

- 1 The Licensee shall enter into, and at all times remain a party to, the PSO Agreement in its capacity as an Electricity Supplier.

## **Condition 22: Supplier of Last Resort**

- 1 The Authority may give a Last Resort Supply Direction to the Licensee if it considers that:
  - (a) circumstances have arisen that would entitle it to revoke the electricity supply licence of an Electricity Supplier other than the Licensee (for this Condition only, the **other supplier**); and
  - (b) the Licensee could comply with the Last Resort Supply Direction without significantly prejudicing its ability:
    - (i) to continue to supply electricity to its Customers' premises; and
    - (ii) to fulfil its contractual obligations for the supply of electricity.
- 2 The Last Resort Supply Direction will:
  - (a) have effect on and from the date on which and the time at which the other supplier's electricity supply licence is revoked; and
  - (b) stop having effect on and from a date, specified in the Last Resort Supply Direction, that is up to six months after the date on which the direction has effect.
- 3 The Licensee shall, subject to paragraph 4, comply with a Last Resort Supply Direction.
- 4 The Licensee is not required to comply with a Last Resort Supply Direction in respect of premises to which it would not be required to supply electricity because of either of the exceptions set out in sub-paragraphs 4(a) and (b) of Condition 26.
- 5 Within a reasonable period of time after receiving a Last Resort Supply Direction, the Licensee must send a copy of a notice to each of the premises specified or described in the Last Resort Supply Direction to inform the Customer:
  - (a) that the other supplier stopped supplying electricity to his premises with effect on and from the date on which the Last Resort Supply Direction had effect;
  - (b) that the Licensee began to supply electricity to his premises with effect on and

from the date on which the Last Resort Supply Direction had effect;

- (c) that the Licensee is supplying electricity to the Customer's premises under a Deemed Contract;
  - (d) that the Customer may enter into a Contract with the Licensee or any other Electricity Supplier under which electricity will be supplied to his premises; and
  - (e) of the Charges for the Supply of Electricity that the Licensee may charge the Customer while supplying him under the Last Resort Supply Direction.
- 6 The Licensee's Charges for the Supply of Electricity to the premises specified or described in the Last Resort Supply Direction must not exceed an amount that may be expected, in total, approximately to equal the Licensee's reasonable costs of supply (including, where appropriate, the costs of purchasing electricity at short notice) and a reasonable profit.
- 7 If the Licensee purchases electricity to comply with a Last Resort Supply Direction, it must take all reasonable steps to do so as economically as possible in all the circumstances of the case.
- 8 The Licensee shall, so far as is reasonably practicable, give the Authority at least five days' notice of any increase in the Charges for the Supply of Electricity to premises to be supplied with electricity by it in accordance with a Last Resort Supply Direction.
- 9 Where, within five days of the receipt by the Authority of the notice referred to in paragraph 8, the Authority determines that the charges proposed by the Licensee would be likely to cause hardship to Domestic Customers, it may issue a direction to the Licensee requiring it to ensure that its Charges for the Supply of Electricity do not exceed those specified in the direction as being appropriate in order to avoid or mitigate such hardship.
- 10 The Licensee shall comply with any direction issued by the Authority under paragraph 9, but shall not be required by that direction to set its Charges for the Supply of Electricity at a level less than that applicable to the supply by it under Deemed Contracts of comparable Domestic Premises otherwise than in accordance with a Last Resort Supply Direction.

### **Condition 23: Claims for Last Resort Supply Payments**

1. If the Licensee has received the Authority's consent under paragraph 5, it may make a claim for a Last Resort Supply Payment under condition 33 of the Successor Distribution Licence.
2. The Licensee must not make a claim for a Last Resort Supply Payment if it has waived its ability to do so by notice given to the Authority before the Authority gave it a Last Resort Supply Direction.
3. If the Licensee intends to make a claim for a Last Resort Supply Payment, it must:
  - (a) give notice to the Authority of its claim; and
  - (b) give the Authority a calculation of the amount claimed with information to support that calculation,  
  
within six months after the date on which the Last Resort Supply Direction to which the claim relates stops having effect.
4. The total amount of the Last Resort Supply Payment (for this Condition only, **the relevant amount**) to be claimed by the Licensee must not exceed the amount by which:
  - (a) the total costs (including interest on working capital) reasonably incurred by the Licensee in supplying electricity to premises pursuant to the Last Resort Supply Direction and a reasonable profit,  
  
are greater than:
  - (b) the total amounts recovered by the Licensee through Charges for the Supply of Electricity to premises under the Last Resort Supply Direction (after taking all reasonable steps to recover such charges).
5. If the Authority considers it appropriate in all the circumstances of the case for the Licensee to make the claim notified to it in accordance with paragraph 3, the Authority will give its consent in writing to the Licensee.
6. Within three months after it has been notified of the claim in accordance with paragraph

- 3, the Authority may determine that an amount other than the one calculated by the Licensee is a more accurate calculation of the relevant amount.
7. If the Authority makes a determination under paragraph 6, the amount specified by it must be treated as the relevant amount for the purpose of paragraph 8.
8. A claim by the Licensee for a Last Resort Supply Payment from the Distribution Owner must specify:
- (a) the relevant amount to be paid by the Distribution Owner; and
  - (b) whether payment is to be made by quarterly or monthly instalments.
9. A claim will lapse if the Licensee does not make it within six months after the Authority has given its consent under paragraph 5.
10. In this Condition:

**Last Resort Supply Payment**

means a sum of money payable to the Licensee to compensate for any additional costs it incurs in complying with a Last Resort Supply Direction.



**Condition 24: Standards of Performance**

- 1 The Licensee shall conduct the Supply Business in the manner which it reasonably considers to be best calculated to achieve any standards of overall performance or standards of performance in connection with the promotion of the efficient use of electricity by Customers that may be determined by the Authority pursuant to Articles 43 and 44 respectively of the Order.

## **Condition 25: Classification of Premises**

### General Rule

1. For the purposes of this Licence:
  - (a) a Domestic Premises is any premises at which a supply of electricity is taken wholly or mainly for a domestic purpose; and
  - (b) any other premises shall be treated as a Non-Domestic Premises, except to the extent otherwise provided by paragraph 2.

### Exceptions to the General Rule

2. A premises that would otherwise be a Domestic Premises shall be treated as a Non-Domestic Premises if it is a premises of a type (a **relevant premises**) described at one or more of paragraphs 3, 4 and 5 below.

### Accommodation services, Landlords etc.

3. A premises is a relevant premises if:
  - (a) the person who has entered into a Contract with the Licensee for the supply of electricity to those premises is a person who has entered or will enter into an agreement with any other person for the provision of a residential or any other accommodation service at the premises, and
  - (b) the terms of the agreement referred to in sub-paragraph (a) are commercial in nature and include a charge for the supply of electricity to the premises (whether such charge is express or implied).

### Change of Use

4. A premises is a relevant premises if the Customer at that premises has begun to take a supply of electricity wholly or mainly for a domestic purpose only subsequent to:
  - (a) the Licensee entering into a Contract with that Customer for those premises to be supplied with electricity as Non-Domestic Premises; or

- (b) a Deemed Contract for the supply of electricity to Non-Domestic Premises has commenced in relation to those premises,

in which case the premises shall be treated as a Non-Domestic Premises until the Contract or the Deemed Contract (as the case may be) comes to an end.

### Multi-Site Contracts

- 5. A premises is a relevant premises during any period in which it is supplied with electricity under a Multi-Site Contract.

- 6. For the purposes of paragraph 5, a **Multi-Site Contract** is a Contract for the supply of electricity to:

- (a) one or more Non-Domestic Premises; and
- (b) one or more premises at which electricity is taken wholly or mainly for a domestic purpose, but which are occupied for a purpose ancillary to that for which any of the Non-Domestic Premises that are supplied under the Contract is occupied,

and where all of those premises are owned or occupied by:

- (c) the same person or body of persons, whether corporate or unincorporate; or
- (d) an undertaking (the **principal undertaking**) and an affiliate of that principal undertaking, or any other undertaking in which the principal undertaking has a participating interest (as defined by Article 268 of the Companies (Northern Ireland) Order 1986).

## **Part II: Customer Related Conditions**

### **Condition 26: Duty to Offer Terms**

- 1 Where the Licensee supplies, or offers to supply, electricity to Domestic Premises, it must, within a reasonable period of time after receiving a request from a Domestic Customer for a supply of electricity to Domestic Premises, offer to enter into a Contract with that Customer.
- 2 If the Domestic Customer accepts the terms of the Contract offered to him under paragraph 1, the Licensee must supply electricity in accordance with that Contract.
- 3 A Contract must:
  - (a) be in writing; and
  - (b) include all the terms and conditions for the supply of electricity as provided for in Condition 27.
- 4 The Licensee is not required to comply with the obligations set out in paragraphs 1 or 2 in any of the following circumstances:
  - (a) supplying electricity to the Domestic Premises would put the Licensee in breach of regulations made under Article 32 of the Order, provided that it has taken all reasonable steps to prevent such breach from occurring;
  - (b) it is not reasonable in all the circumstances of the case for the Licensee to supply electricity to the Domestic Premises, provided that, if it is already supplying electricity to the premises, it has given at least seven working days' notice of its intention to stop doing so; or
  - (c) the Licensee requires the Domestic Customer to pay a reasonable Security Deposit and he does not do so.
- 5 In this Condition:

**Security Deposit**

means a deposit of money paid by a Customer as security for the payment of charges for the supply of

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electricity by the Licensee to the premises at which he is (or is to be) supplied, and may include a sum as security the provision of metering equipment.

### **Condition 27: Terms and Conditions of Electricity Supply Contracts**

- 1 The Licensee shall ensure that any Contract it enters, or offers to enter, into with a Customer for a supply of electricity contains provisions which are in clear and comprehensible language and which incorporate all relevant information so as to enable the Customer to understand the terms and conditions under which the supply of electricity is, or is to be, made.
  
- 2 The Licensee shall ensure that the terms and conditions of any Contract it enters into with a Customer for a supply of electricity provide:
  - (a) that the Contract will terminate automatically from the date that a Last Resort Supply Direction, given to another Electricity Supplier, takes effect in relation to the premises supplied under that Contract;
  
  - (b) that the Licensee will, where the premises is at the date of the Contract connected to an electricity distribution system, start supplying electricity under the Contract by no later than 15 working days after the Relevant Date, unless:
    - (i) the Customer requests that the supply starts from a later date; or
  
    - (ii) the Registered Supplier for the premises objects to the Supplier Transfer; or
  
    - (iii) there are other circumstances beyond the Licensee's control which prevent it from starting to supply by that date.
  
- 3 The Licensee shall not enter, or offer to enter, into a Contract, for the supply of electricity to premises, which contains a term that requires or has the effect of requiring the Customer to:
  - (a) obtain a supply of electricity to the same premises from another Electricity Supplier from a date and for such period as may be specified (whether in the Contract or otherwise) by the Licensee; and
  
  - (b) immediately following the expiry of that specified period, recommence taking a supply of electricity at the premises from the Licensee.

4 Before entering into or concluding a Contract with any Domestic Customer, the Licensee shall:

- (a) explain to and draw to the attention of the Domestic Customer, the Principal Terms of the Contract; and
- (b) inform the Domestic Customer of the Energy Consumer Checklist and of the sources from where the Customer may obtain a copy;
- (c) provide a copy of the Energy Consumer Checklist free of charge to any Domestic Customer requesting it; and
- (d) give the Domestic Customer a written copy of the full terms and conditions of the Contract, including without limitation all the information referred to in paragraph 7.

5 The Licensee:

- (a) shall determine standard terms and conditions for the supply of electricity to Domestic Customers;
- (b) may determine different standard terms and conditions for different cases or classes of case or for different areas;
- (c) shall ensure that each set of standard terms and conditions it determines includes all of the terms and conditions that will apply to any Contract entered into with a Domestic Customer on that set of standard terms and conditions;
- (d) shall not determine standard terms and conditions which impose an obligation on the Domestic Customer to pay a termination fee, unless any such obligation has been approved in advance by the Authority;
- (e) shall ensure that an up to date copy of each set of standard terms and conditions that it has determined is published on and accessible from its website;
- (f) shall not enter, or offer to enter, into a Contract for the supply of electricity with a Domestic Customer otherwise than on a set of standard terms and conditions as determined in accordance with this paragraph 5.

- 6 The Licensee shall for any different case, class of case or area in respect of which it has determined standard terms and conditions in accordance with paragraph 5, as a minimum determine a set of standard terms and conditions:
- (a) which provide for a Contract of an indefinite length; and
  - (b) in respect of which the terms as to price do not differ as between any Domestic Customers who may enter into that Contract (a **standard evergreen tariff**), provided that the Licensee may have a different standard evergreen tariff for each payment method offered by it.
- 7 The Licensee shall ensure that each set of standard terms and conditions it determines for Domestic Customers shall be fair (as between the Licensee and each Domestic Customer) and shall, as a minimum, include the following:
- (a) the identity and address of the Licensee and any other appropriate contact details;
  - (b) the services to be provided, the service quality levels offered by the Licensee (which may be subject to the approval of the Authority pursuant to Condition 29) and the date for the commencement of the electricity supply under the Contract;
  - (c) the duration of the Contract, the terms and conditions for renewal and for termination of the Contract (which terms and conditions shall be compliant with the requirements of this Condition), the services provided under the Contract and the existence of any right of cancellation or termination of the Contract;
  - (d) (if offered by the Licensee) the types of maintenance service offered under the Contract;
  - (e) a right for the Domestic Customer to withdraw from and cancel the Contract:
    - (i) where a supply of electricity has at any time previously been taken at the premises, within ten working days of entering into the Contract; or
    - (ii) where a supply of electricity has not previously been taken at the premises, within ten working days of entering into the Contract, or any time up to ten working days prior to the premises being connected to a distribution system, whichever is the later;



- (f) a right for the Domestic Customer to terminate the Contract where the Licensee proposes a variation to the terms and conditions of the Contract and the Domestic Customer does not wish to accept such new terms and conditions;
- (g) the tariffs, charges and other payments which apply to the Contract and are required to be paid by the Domestic Customer, in a manner that enables the Domestic Customer to:
  - (i) identify the applicable tariff and the unit rate, in terms expressed as “pence per kWh”, of the applicable tariff;
  - (ii) identify any other charge or payment, including in particular:
    - (A) any applicable standing charge;
    - (B) any payment which is or has the effect of being a Security Deposit;
  - (iii) where the applicable tariff is not a standard evergreen tariff (because the Contract is not of an indefinite length), compare the unit rate of the applicable tariff against the unit rate of the standard evergreen tariff (in each case expressed in “pence per kWh”) that would apply if the relevant set of standard terms and conditions applied to a Contract of indefinite length;
- (h) the means by which up to date information on all applicable tariffs, charges and other payments (including any discounts and promotions) for the supply of electricity and for any other services which are to be provided under the Contract:
  - (i) can be promptly obtained by the Domestic Customer; and
  - (ii) will be communicated to the Domestic Customer in writing by the Licensee;
- (i) the compensation and the refund arrangements (if any) which will apply if contracted service quality levels, including service quality levels relating to the timing, frequency and accuracy of bills and statements, are not met (which arrangements may be subject to the approval of the Authority pursuant to Condition 29);

- (j) details of how the Domestic Customer may initiate the Licensee's complaint handling procedure (as established under Condition 33); and
  - (k) details of how the Domestic Customer can contact, and the relevant address and telephone number of, the General Consumer Council for further help and advice.
- 8 Subject to paragraph 9, the Licensee shall not start to supply electricity under a Contract entered into with a Domestic Customer until the cancellation period referred to in paragraph 7(e) has expired.
- 9 The requirement in paragraph 8 does not apply where:
- (a) the Licensee or any other Electricity Supplier has applied in writing to the Authority for paragraph 8 not to apply in respect of such circumstances or cases as described in the application; and
  - (b) the Authority has issued a direction to the Licensee that the requirement in paragraph 8 shall not apply in respect of such circumstances or cases as are specified in direction and from such date as may be specified in the direction.
- 10 The Authority may, at any time and following consultation with the Licensee, by a further direction amend or revoke a direction (or part thereof) given to the Licensee under paragraph 9(b).
- 11 Where the Licensee proposes to vary any of the terms and conditions of a Contract it has with a Domestic Customer, it shall, by way of sending a notice that:
- (a) sets out the information in clear, transparent and easy to read and understand language; and
  - (b) where the variation relates to terms as to price, sets out the unit rate (expressed in each case in 'pence per kWh') of the Domestic Customer's current tariff and of the proposed new tariff,
- notify each such Domestic Customer of the proposed variation, together with the Customer's right (as included in the Contract in accordance with paragraph 7(f)) to terminate the Contract before the proposed variation is due to take effect, at least 21 days in advance of the date the variation is due to take effect.

- 12 Where the Licensee enters into a Contract with a Domestic Customer which has a fixed term period:
- (a) any such Contract may not include any term or condition which has the effect of:
    - (i) extending the length of that fixed term period; or
    - (ii) applying a consecutive fixed term period,unless the Domestic Customer has the right to terminate the Contract at any time in the extended or consecutive fixed term period without payment of a termination fee; and
  - (b) the Licensee shall, by way of sending a notice, notify each such Domestic Customer of:
    - (i) the expiry date of the fixed term period at least 21 but no more than 42 days before that expiry date;
    - (ii) the name and unit rate, expressed as “pence per kWh”, of the Domestic Customer’s current tariff; and
    - (iii) details of the standard evergreen tariff, including the applicable unit rate expressed as “pence per kWh”, that will apply under the Contract following the expiry date of the fixed term period.
- 13 The Licensee shall, on the request of a Domestic Customer and without charge, send to that Customer a copy of the then current set or sets of standard terms and conditions (as determined in accordance with this Condition) that are applicable to the request (including, for the avoidance of doubt, the applicable charges and tariffs relating to each such set).
- 14 The Licensee shall ensure that its standard terms and conditions provide Domestic Customers with a choice of payment methods, including as a minimum making payment:
- (a) in arrears (at such frequency as is set out in the terms and conditions);
  - (b) by direct debit (at such frequency as is set out in the terms and conditions); and

- (c) in advance through a prepayment meter.
- 15 Any difference in or between the Licensee's standard terms and conditions, including terms as to price, relating to the choice of payment methods shall be determined by the Licensee on a basis which reflects the costs to the Licensee of providing the different payment methods.
- 16 The Licensee shall not impose on, or request from, a Domestic Customer any charge or payment for the purpose of enabling that Customer to exercise or preventing him from exercising (as the case may be) his right to receive a supply of electricity from his Electricity Supplier of choice.
- 17 Where a Contract also relates to or governs the provision of other good or services, the Licensee shall ensure that the charges for such other goods or services are identified separately from the Charges for the Supply of Electricity.
- 18 In this Condition:

**Market Registration Service**

means the service described in the electricity distribution licence held by the person that is the owner and/or operator of the Distribution System to which the premises are connected and through which the Customer is supplied with electricity ;

**Relevant Date**

means the earlier of:

- (i) the day after the end of any period within which the Customer has a right to withdraw from and cancel the Contract; or
- (ii) 10 working days after the day on which the Customer entered into the Contract.

**Registered Supplier**

means the electricity supplier which is registered with the Market Registration Service as being the electricity supplier responsible for providing a supply of electricity to the Customer at the relevant premises.

**Supplier Transfer**

means, as the case may be, the transfer of responsibility for the supply of electricity to a premises from the Licensee to another Electricity Supplier or from another Electricity Supplier to the Licensee.

**terms and conditions**

means all the terms and conditions, including terms as to price, of the Contract.

**Condition 27A: Security Deposits**

- 1 The Licensee shall not require a Domestic Customer to pay a Security Deposit in respect of the supply of electricity to the Domestic Customer's premises:
  - (a) where the Domestic Customer agrees for the electricity to be supplied through a prepayment meter and it is safe and reasonably practicable in all the circumstances of the case for the Licensee to supply the premises through such a meter; or
  - (b) where it is unreasonable in all the circumstances of the case to require the Domestic Customer to pay a Security Deposit.
  
- 2 Any Security Deposit required by the Licensee shall be of an amount that:
  - (a) is reasonable in all the circumstances of the case; and
  - (b) does not exceed the Charges of the Supply of Electricity likely to be applicable for an average three month period of supply, as calculated by reference to the consumption of electricity reasonably expected at the relevant premises by the Domestic Customer..
  
- 3 The Licensee shall, where it requires a Domestic Customer to pay a Security Deposit, at the same time inform the Domestic Customer of the effect of paragraph 5.
  
- 4 Subject to paragraph 5, any Security Deposit given by a Domestic Customer shall be repaid by the Licensee:
  - (a) within 28 days where, in the previous 12 months, the Domestic Customer has paid all Charges for the Supply of Electricity demanded from him within 28 days of each written demand made; or
  - (b) as soon as reasonably practicable, and in any event within 1 month, where the Licensee has ceased to supply the Domestic Customer and the customer has paid all Charges for the Supply of Electricity demanded from him.
  
- 5 Sub-paragraph 4(a) shall not apply where it is reasonable in all the circumstances for the Licensee to retain the Security Deposit.

**Condition 28: Deemed Contracts**

- 1 The Licensee shall, in accordance with paragraph 3 of Schedule 6 to the Order, make a scheme for determining the terms and conditions of its Deemed Contracts.
- 2 The Licensee shall ensure that each of its Deemed Contracts provides that it will terminate automatically in the event that a Last Resort Supply Direction is given to another Electricity Supplier in relation to the premises supplied under that Deemed Contract.
- 3 Subject to paragraph 5, the Licensee must take all reasonable steps to ensure that the terms of each of its Deemed Contracts are not unduly onerous.
- 4 For the purposes of paragraph 3, the terms of a Deemed Contract shall be unduly onerous for any class of Domestic Customers, or for any class of Non-Domestic Customers, only if the revenue derived from supplying electricity to the premises of the relevant class of customers on those terms:
  - (a) significantly exceeds the Licensee's costs of supplying electricity to those premises; and
  - (b) exceeds such costs of supplying electricity by significantly more than the Licensee's revenue exceeds its costs of supplying electricity to the premises of the generality of its Domestic Customers or, as the case may be, to the premises of the generality of its Non-Domestic Customers (in each case excluding from the calculation premises supplied under a Last Resort Supply Direction).
- 5 Where a Customer is being supplied by the Licensee with electricity under a Deemed Contract as a result of a Last Resort Supply Direction being issued in relation to his premises, paragraph 3 shall not apply until that direction stops having effect.
- 6 The Licensee shall ensure that each of its Deemed Contracts shall provide that, where a Customer intends his premises to be supplied with electricity under a Contract agreed with the Licensee or any other Electricity Supplier, the Deemed Contract will continue to have effect until the Licensee or the other Electricity Supplier, as appropriate, begins to supply electricity to the premises under such a Contract.

- 7 If the Licensee supplies electricity to a Customer under a Deemed Contract, the Licensee may not demand of the Customer any sum of money or other compensation (whether financial or otherwise) solely because the Deemed Contract is terminated (by whatever means).
- 8 If the Licensee supplies electricity to a Customer's premises under a Deemed Contract, it must take all reasonable steps to:
  - (a) provide that Customer with a notice:
    - (i) setting out the Principal Terms of the Deemed Contract;
    - (ii) informing the Customer that Contracts with terms and conditions that may be different from the terms and conditions of Deemed Contracts may be available from the Licensee and of how further information about such terms may be obtained; and
  - (b) enter into a Contract with the Customer as soon as reasonably practicable.
- 9 If any person requests a copy of a Deemed Contract that the Licensee has available, the Licensee must provide it to that person within a reasonable period of time after receiving the request.
- 10 In determining the number of kilowatt hours of electricity that are to be treated as supplied to or taken at premises under a Deemed Contract, the Licensee must act reasonably and take into account available electricity consumption data for the premises and any other relevant factor.



**Condition 29: Approval of the Authority to the Licensee's Arrangements**

- 1 The Licensee shall, within 28 days of any notice from the Authority requiring it to do so, provide to the Authority full details of the arrangements which it has in place in respect of any of the matters set out in paragraph 3 and referred to in that notice.
- 2 If the Authority, within three months of the Licensee providing such details to the Authority, by notice in writing to the Licensee requires the Licensee to make any modifications to those arrangements, the Licensee shall, as soon as is practicable but in any event within 60 days of the date of the notice, modify such arrangements accordingly.
- 3 The matters referred to in paragraph 1 are:
  - (a) the service quality levels offered by the Licensee to Domestic Customers under and in accordance with any Contract for the supply of electricity to such Customers; and
  - (b) the compensation and refund arrangements which are to apply where the Licensee is unable to meet such contracted service quality levels.

**Condition 30: Code of Practice on payment of bills**

- 1 This Condition shall apply where the Licensee supplies, or offers to supply, electricity to Domestic Premises.
- 2 The Licensee shall, no later than three months after this Condition takes effect or such later date as the Authority directs, prepare, submit to and have approved by the Authority a code of practice which sets out the services the Licensee will make available to assist Domestic Customers who through misfortune or inability to cope with credit terms, may have difficulty in paying their electricity bills (the **Code of Practice**).
- 3 The Code of Practice shall set out the arrangements by which the Licensee will:
  - (a) distinguish, so far as is reasonably practicable, those Customers who may have difficulty in paying bills through misfortune or inability to cope with credit terms ("**Customers in difficulties**") from other Customers in default;
  - (b) provide relevant information as to how Customers in difficulties might be able to reduce their bills in the future by the more efficient use of electricity;
  - (c) make arrangements, taking into account Customers' ability to comply with such arrangements, which enable Customers in difficulties to pay in instalments the charges accrued for the supply of electricity ("instalment arrangements");
  - (d) detect failures by Customers in difficulties to comply with the instalment arrangements;
  - (e) ascertain, with the assistance of any information provided by other persons or organisations, the ability of Customers in difficulties to comply with the instalment arrangements;
  - (f) provide for Customers who have failed to comply with the instalment arrangements, or procure for them the provision of, a prepayment meter (where safe and practicable to do so);
  - (g) calibrate any prepayment meter provided, whether in accordance with paragraph (f) above or otherwise, so as to take into account Customers' ability to pay any

outstanding charges due from them to the Licensee in addition to the other charges lawfully being recovered through the prepayment meter;

- (h) ensure that any calibration of the prepayment meter to recover outstanding charges due from any Customer does not operate so as to recover more than 40% (except where the Customer has in writing requested for a higher percentage to apply) from each amount that is purchased by the Customer in any single transaction (and thereby transferred to the token, key or card by which the prepayment meter is operated), as payment of or towards the outstanding charges; and
- (i) in so far as is reasonable and practicable to do so, take all reasonable steps to avoid cutting off the supply of electricity to Domestic Premises occupied by Customers in difficulties unless it has first taken all reasonable steps to recover the charges accrued for the supply of electricity to the premises by means of a prepayment meter.

- 4 This Condition is subject to Condition 35: Preparation, Revision Of and Compliance with Codes of Practice.

**Condition 31: Code of Practice on Provision of Services for persons who are of Pensionable Age or Disabled or Chronically Sick**

- 1 This Condition shall apply where the Licensee supplies, or offers to supply, electricity to Domestic Premises.
- 2 The Licensee shall, no later than three months after this Condition takes effect or such later date as the Authority directs, prepare, submit to and have approved by the Authority a code of practice describing the particular services the Licensee will make available for each of its Domestic Customers who is:
  - (a) of pensionable age;
  - (b) disabled, including in particular Domestic Customers who are disabled by virtue of being blind, partially sighted, deaf or hearing impaired; or
  - (c) chronically sick,(the **Code of Practice**).
- 3 The Code of Practice shall set out the arrangements by which the Licensee will at the request of any such Domestic Customer, where reasonably practicable and appropriate, and in each case free of charge:
  - (a) provide special controls and adaptors for electrical appliances and meters and reposition meters (including in both cases prepayment meters);
  - (b) provide special means, including agreeing a password with the Customer, of identifying officers authorised by the Licensee;
  - (c) give advice on the use of electricity;
  - (d) send bills in respect of the supply of electricity to the Customer's premises to any other person as nominated by the Customer where that person agrees to receive them (irrespective of whether or not the bill is also sent to the Customer); and
  - (e) where neither the Customer nor any other person occupying his premises is able to read the electricity meter at the premises, arrange to read that meter at least once each quarter and inform the Customer of that reading.

- 4 The Code of Practice shall include arrangements by which the Licensee will:
- (a) on request and free of charge:
    - (i) provide services which will enable a Domestic Customer who is blind or partially sighted to receive, by means that are readily accessible to such Customers, information about (or set out in) any bill or statement relating to the supply of electricity or any other services provided to the Customer by the Licensee;
    - (ii) make available facilities which will assist any Domestic Customer who is blind or partially sighted or deaf or hearing impaired and in possession of appropriate equipment, to enquire or complain about any bill or statement relating to the supply of electricity to him or any service provided by the Licensee;
  - (b) not cut off, in any month from October to March, the supply of electricity to the Domestic Premises in respect of which the Domestic Customer has not paid Charges for the Supply of Electricity if the Domestic Customer at the Domestic Premises:
    - (i) is of pensionable age, disabled or chronically sick; and
    - (ii) lives alone or only with other persons who are of pensionable age, disabled, chronically sick or under the age of 18;
  - (c) take all reasonable steps to avoid, in any month from October to March, cutting off the supply of electricity to a Domestic Premises in respect of which the Domestic Customer has not paid the Charges for the Supply of Electricity to the Domestic Premises where the occupants of the Domestic Premises include a person who is of pensionable age, disabled or chronically sick and to whom paragraph 4(b) does not apply; and;
  - (d) take all reasonable steps to ascertain, before it exercises any right it may have to cut off the supply of electricity to Domestic Premises, whether the Domestic Premises is one that falls within the scope of paragraph (b) or (c) above.

- 5 The Code of Practice shall include the Licensee's arrangements for:
- (a) establishing and maintaining a register which:
    - (i) lists all of the Licensee's Domestic Customers who are of pensionable age, disabled or chronically sick and have asked to be included in the register; and
    - (ii) contains sufficient information about the age, disability or chronic sickness of each such Domestic Customer in order to identify his special needs or requirements;
  - (b) informing on at least an annual basis each of its Domestic Customers of the existence of the register and how Domestic Customers who are of pensionable age, disabled or chronically sick can be included on it;
  - (c) providing, without charge, to a Domestic Customer included on the register, advice and information on the services that can be provided to him by the Licensee because of his age, disability or chronic sickness; and
  - (d) providing the information in the register to any relevant party licensed under the Electricity Order to distribute electricity in an appropriate form and at appropriate intervals.
- 6 The Licensee shall, in respect of each Domestic Premises to which it cuts off the supply of electricity:
- (a) maintain for at least a period of six months, or (where a complaint has been made in respect of the Licensee's actions to cut off the supply) for at least a period of six months after the complaint has been resolved; and
  - (b) provide to the Authority on request,
- evidence of the reasonable steps it took pursuant to the arrangements set out in its Code of Practice in accordance with paragraph 4(e) above.
- 7 For the purposes of this Condition a person is 'disabled' if he/she has a 'disability' within the meaning given to that term in the Disability Discrimination (Northern Ireland) Order

Licence granted: 31 March 1992  
Last updated: 20 December 2016

2006.

- 8 This Condition is subject to Condition 35: Preparation, Revision Of and Compliance with Codes of Practice.

**Condition 32: Code of Practice on the efficient use of electricity**

- 1 The Licensee shall, no later than three months after this Condition takes effect or such later date as the Authority directs, prepare, submit to and have approved by the Authority a code of practice setting out the ways in which the Licensee will make available to Customers information and guidance on the efficient use of electricity (the **Code of Practice**).
  
- 2 The Code of Practice shall include arrangements by which the Licensee will make available information and advice about:
  - (a) the efficient use of electricity as will enable Customers to make informed judgments about measures to improve the efficiency with which they use the electricity supplied to them;
  
  - (b) the availability of heating systems and controls which are best calculated to make efficient use of electricity, and the selection and operation of such systems and controls;
  
  - (c) the financial costs and benefits of energy efficient electricity appliances;
  
  - (d) sources, including the availability of a telephone information service, within the Licensee's organisation from which Customers may obtain further information about the efficient use of electricity supplied to them; and
  
  - (e) organisations (to the extent that the Licensee is aware of them) outside the Licensee's business from which Customers may obtain additional information or assistance about:
    - (i) measures to improve the efficiency with which they use the electricity supplied to them;
  
    - (ii) the availability of financial assistance from Central or Local Government in respect of the costs of any such measures; and
  
    - (iii) bodies in receipt of financial support from Government in connection with measures to promote the efficiency of energy use.



- 3 The arrangements included in the Code of Practice pursuant to paragraph 2(e) shall provide for the contact details (including web-site addresses) of at least one organisation that provides information or assistance in respect of paragraph 2(e)(i) to be made available to customers:
  - (a) on each occasion the Licensee:
    - (i) enters into a Contract with the Customer; or
    - (ii) makes a variation to the Contract entered into with a Customer;
  - (b) with each bill or statement sent to the Customer; and
  - (c) on the Licensee's web-site
- 4 This Condition is subject to Condition 35: Preparation, Revision Of and Compliance with Codes of Practice.

### **Condition 33: Code of Practice on Complaints Handling Procedure**

- 1 The Licensee shall, no later than three months after this Condition takes effect or such later date as the Authority directs, prepare, submit to and have approved by the Authority a code of practice for the handling of consumer complaints (the **Code of Practice**).
- 2 The Code of Practice shall include arrangements by which the Licensee will establish and operate an accessible, equitable and transparent, simple and inexpensive complaints procedure which shall enable any person who is being supplied with electricity by the Licensee or has at any time received a supply of electricity from the Licensee, to bring and have promptly dealt with any complaint he may have in respect of the Licensee's activities in providing such a supply.
- 3 The complaints procedure established and operated by the Licensee in accordance with the Code of Practice shall as a minimum:
  - (a) specify the period, which may differ for different types of complaint but which shall not be longer than three months, within which it is intended that complaints will be processed and resolved;
  - (b) be made available to any person without charge;
  - (c) facilitate the fair and prompt settlement of complaints and disputes; and
  - (d) provide for a system, where required by the Authority under Condition 29 or otherwise warranted, of making a reimbursement and/or compensation payment to complainants.
- 4 This Condition is subject to Condition 35: Preparation, Revision Of and Compliance with Codes of Practice.

### **Condition 34: Code of Practice on Services for Prepayment Meter Customers**

- 1 This Condition shall apply where the Licensee supplies, or offer to supply, electricity to Domestic Premises.
- 2 The Licensee shall, no later than three months after this Condition takes effect or such later date as the Authority directs prepare, submit to and have approved by the Authority a code of practice describing the services the Licensee will make available for its Domestic Customers who pay by prepayment meter (the **Code of Practice**).
- 3 The Code of Practice shall include arrangements by which the Licensee will:
  - (a) provide advice, information, services and facilities, including the availability of emergency credit, which will assist the Domestic Customer to avoid being without a supply of electricity at particular times or in particular circumstances;
  - (b) instructions for the operation of the prepayment meter system, including token availability, emergency credit and other such facilities;
  - (c) details of the advantages and disadvantages of prepayment meters, including situations or types of Customer for which they are particularly suited or unsuited;
  - (d) details of any additional charges which may be payable for the use of prepayment meters and the basis on which these charges are calculated;
  - (e) details of where the Customer may obtain information or assistance if the prepayment meter or any device used to allow the Charges for the Supply of Electricity to be paid through the prepayment meter is not operating effectively; and
  - (f) information about the procedures the Licensee will follow when removing or resetting the prepayment meter, including the timescale and any conditions for removing or resetting it.
  - (g) ensure that any calibration of the prepayment meter to recover outstanding charges due from any Customer does not operate so as to recover more than 40% (except where the Customer has in writing requested for a higher percentage to apply) from each amount that is purchased by the Customer in any single

transaction (and thereby transferred to the token, key or card by which the prepayment meter is operated), as payment of or towards the outstanding charges.

4 The Licensee shall, no later than three months after this Condition takes effect or such later date as the Authority directs establish, and submit to the Authority, such arrangements as will ensure that in an event in which:

- (a) the Authority considers that circumstances have arisen that would entitle the Authority to revoke the Licence; or
- (b) the Licensee proposes to assign or transfer its business to another electricity supplier or cease its business as an electricity supplier,

each of the Licensee's prepayment Domestic Customers is able to continue using, and to do so on the same basis, the prepayment meter services being provided to that Domestic Customer by the Licensee until at least such time as either:

- (c) a Last Resort Supply Direction issued to another Electricity Supplier in accordance with Condition 22 takes effect; or
- (d) another Electricity Supplier starts to supply electricity to the Domestic Customer.

5 The Licensee shall not prevent the customer from purchasing their electricity in advance through a prepayment meter.

6 In this Condition "prepayment meter services" means the system of services for the operation of prepayment meters operated by the use of tokens, keys or cards.

7 Paragraphs 2 and 3 of this Condition are subject to Condition 35: Preparation, Revision Of and Compliance with Codes of Practice.

**Condition 35: Preparation, Revision Of and Compliance with Codes of Practice**

- 1 This Condition applies to any Code of Practice (**Code**) which the Licensee is, pursuant to Conditions 30 – 34 of this Licence, required to prepare, submit to and have approved by the Authority.
- 2 The Licensee shall comply with the Code of Practice minimum standards on Payment of Bills, Code of Practice minimum standards on Provision of Services for persons who are of Pensionable Age or Disabled or Chronically Sick, Code of Practice minimum standards on Complaints Handling Procedure, Code of Practice minimum standards on Services for Prepayment Customers and Code of Practice minimum standards on the efficient use of electricity, as amended or replaced from time to time.
- 3 The Licensee shall, before submitting any Code to the Authority for its approval, consult the General Consumer Council and shall consider any representations made by it about the Code or the manner in which it is likely to be operated.
- 4 The Licensee shall, whenever requested to do so by the Authority, review any Code and the manner in which it has been operated, with a view to determining whether any modification should be made to that Code or to the manner of its operation.
- 5 In carrying out any such review the Licensee shall consult the General Consumer Council and shall consider any representations made by it about the Code or the manner in which it is likely to be or has been operated.
- 6 The Authority, following consultation with the Licensee, the General Consumer Council and any other person who in the opinion of the Authority is likely to be interested or affected, may from time to time make such modifications to Conditions 30-34, as the Authority considers are necessary or expedient.
- 7 Where the Authority modifies a Condition in accordance with paragraph 6:
  - (a) it shall:
    - (i) send a copy of the modification to the Licensee and the Department;
    - (ii) publish a copy of the modification in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely

to be affected by the making of the modification; and

- (b) the Licensee shall revise the Code to which the modification relates in such manner and to such extent as is required to ensure that the Code reflects and complies with the modified Condition.

8 Where the Licensee revises a Code:

- (a) in accordance with paragraph 7(b) above; or
- (b) following a review undertaken in accordance with paragraphs 4 and 5,

it shall submit the revised Code to, and have it approved by, the Authority.

9 The Licensee shall:

- (a) as soon as practicable following the Authority's approval of a Code (including following a revision):
  - (i) send a copy of the Code to the Authority and the General Consumer Council; and
  - (ii) draw the attention of its Customers to the Code and of how they may inspect or obtain a copy of it;
- (b) publish on and make readily accessible from its website a copy of the Code;
- (c) give or send free of charge a copy of the Code (as from time to time revised) to any person who requests it; and
- (d) make available to members of the public, in such form and in such manner as the Authority considers appropriate, information published by the Authority pursuant to Article 7 of the Energy Order.

10 Subject to paragraph 12, the Licensee shall comply with each Code to which this Condition applies and which has been approved by the Authority.

11 The Licensee shall provide the Authority with all assistance reasonably necessary to enable the Authority to monitor the implementation and operation of any Code and this

assistance shall include providing statistical data at such times and in such a format as the Authority reasonably requires and permitting the Authority access to relevant documentation held by the Licensee.

- 12 The Authority may (following consultation with the Licensee) issue directions relieving the Licensee of any of its obligations under Conditions 30-34 and this Condition to such extent as may be specified in those directions and subject to such terms and conditions as the Authority thinks fit.

**Condition 35A: Customer Protection: Modification of Conditions**

- 1 The Authority, following consultation with the Licensee, the General Consumer Council and any other person who in the opinion of the Authority is likely to be interested or affected, may from time to time modify the Conditions of the Licence in accordance with paragraph 2.
- 2 The Authority may modify the Conditions of the Licence under this paragraph where both:
  - (a) the effect of the modification is to require the Licensee to prepare, submit and have approved by the Authority one or more codes of practice relating to the services or arrangements, as set out in the modification, to be provided or made available by the Licensee to such persons or class of persons as are specified in the modification; and
  - (b) the Authority is satisfied that the modification is necessary or expedient for the purposes of:
    - (i) ensuring that any activity authorised by the Licence is carried out in compliance with the requirements and prohibitions, relating to the protection of consumers, laid down by the Directive;
    - (ii) ensuring a high level of protection for consumers, in accordance with the purpose of the Directive; or
    - (iii) giving effect to Article 11A(9) of the Order.



### **Condition 36: Report on Performance**

- 1 The Licensee shall keep a record of the operation of the arrangements set out in any Code of Practice prepared in accordance with Conditions 30-34 and, if the Authority so directs in writing, of the operation of any Code of Practice in particular cases specified, or of a description specified, by it.
- 2 The Licensee shall also keep for each quarter ending 30 June, 30 September, 31 December and 31 March, a statistical record of its performance in that quarter in relation to the provision of electricity supply services to Domestic Customers including:
  - (a) the number of the different type of services offered by the Licensee to Domestic Customers on the register maintained by it pursuant to Condition 31 and the number of Domestic Customers included on the register;
  - (b) the number of the Licensee's Domestic Customers using each payment method offered by the Licensee;
  - (c) the number of Domestic Premises to which the supply of electricity was cut off by the Licensee for reason of non-payment of charges;
  - (d) the quantities of electricity supplied and the recovery of electricity charges;
  - (e) the number of consumer complaints, whether made in writing, in person or by telephone;
    - (i) received by the Licensee;
    - (ii) resolved by the Licensee; and
  - (f) the number of visits made to Customers' premises and the number of responses made to enquiries.
- 3 As soon as reasonably practicable after 31 December in each year, the Licensee shall submit to the Authority and the General Consumer Council a report dealing with the matters mentioned in this Condition which shall include a comparison of the Licensee's performance against any established standards in relation to that year and shall:
  - (a) make public the report so submitted in such manner as will in the reasonable

opinion of the Licensee secure adequate publicity for it; and

(b) send a copy of it free of charge to any person requesting one,

except that, in performing the obligations under paragraphs (a) and (b), the Licensee shall exclude from the report such information as appears to it to be necessary or expedient to ensure that, save where they consent, individual Customers referred to therein cannot readily be identified.

4 The report shall be presented, so far as is reasonably practicable, in a standard format determined by the Authority.

**Condition 37: Relations with the General Consumer Council**

- 1 The Licensee shall meet with the General Consumer Council whenever requested to do so by it, up to a maximum of six times in every year during the period of the Licence.
- 2 Without prejudice to paragraph 1, the Licensee shall meet the General Consumer Council at least once in every year during the period of the Licence.
- 3 In at least one meeting with the General Consumer Council in every year during the period of the Licence, the Licensee shall be represented by one or more directors of the Licensee.

**Condition 38: Provision of Information to Customers**

Consumer Checklist

- 1 The Licensee shall:
  - (a) make readily accessible from its website an up to date copy of the Energy Consumer Checklist:
    - (i) as published by the Authority; and
    - (ii) in each alternative form or language as the Licensee has, in accordance with paragraph 1(b)(ii), sent to a Domestic Customer;
  - (b) on request, send to a Domestic Customer a copy of the Energy Consumer Checklist:
    - (i) in the form or language that is available on its website and is requested by the Domestic Customer; or
    - (ii) where practicable, in such alternative form or language as is reasonably requested by the Domestic Customer.

Billing Code

- 2 The Licensee shall comply with the Billing Code of Practice.

Billing Options

- 3 The Licensee shall:
  - (a) before entering into or concluding a contract with a Customer; and
  - (b) on at least an annual basis thereafter,  
  
inform the Customer:
    - (c) that the Customer may request for bills and statements to be sent to him by electronic communication; and
    - (d) of the different types of electronic communications used by the Licensee which

can be made available to the Customer.

- 4 The Licensee shall, where the Customer requests for bills and statements to be sent to him by electronic communication and the type of electronic communication requested by the Customer is used by the Licensee, send bills and statements to the Customer by electronic communication as requested by the Customer.

#### Frequency of Bills and Statements

- 5 The Licensee shall send a bill or statement:
- (a) at least once a quarter:
    - (i) to any Customer that the Licensee is required, pursuant to the provisions of paragraph 4, to send bills or statements by electronic communication;
    - (ii) to any Customer that has requested the Licensee to send bills or statements on a quarterly basis;
  - (b) at least once every six months to any Customer taking a supply of electricity at premises at which the installed meter is not a Prepayment Meter; and
  - (c) at least once every twelve months to any Customer taking a supply of electricity at premises at which the installed meter is a Prepayment Meter.
- 6 The Licensee shall ensure that each bill or statement sent to a customer is:
- (a) complete and accurate; and
  - (b) sent by way of a paper hard copy or such other form as agreed by the Customer.

#### Information on Bills and Statements

- 7 The Licensee shall ensure that each bill or statement sent to a Customer includes:
- (a) the name and address of the Licensee;
  - (b) the relevant Meter Point Registration Number;
  - (c) details of the Customer's applicable tariff including:

- (i) the full name of the tariff;
  - (ii) the unit rate, expressed where applicable in “pence per kWh”, of the tariff;  
and
  - (iii) where the Customer is a Domestic Customer, any discount or premium that applies to the tariff (and the period for which it applies) when compared with the Licensee’s standard evergreen tariff for Domestic Customers;
- (d) the total charges, setting out separately any applicable standing charge and showing charges both inclusive and exclusive of any value added tax, for the period of the bill or statement;
- (e) the amount of electricity which the Licensee’s records show has been consumed by the Customer since the last bill or statement sent to that Customer;
- (f) where the bill or statement relates to any period during which the Customer was supplied with electricity through a Prepayment Meter (the ‘relevant period’), the number and total value of pre-payments made by the Customer in each calendar month falling (whether in whole or in part) in the relevant period;
- (g) where the Licensee has provided a supply of electricity to the Customer at the same premises continuously for:
- (i) 12 months or more, the amount of electricity which the Licensee’s records show has been consumed by the Customer at those premises in the previous 12 months;
  - (ii) less than 12 months, the amount of electricity which the Licensee’s records show has been consumed by the Customer at those premises since the date the Licensee started to provide the supply of electricity;
- (h) a statement to the effect that the Customer may change his electricity supplier and details of where the Customer can obtain impartial advice and information about changing electricity supplier;
- (i) where the customer is a Domestic Customer, a statement to the effect that the

Licencee has a Code of Practice which sets out the services, advice and assistance it provides to Domestic Customers who may be having difficulty in paying for the supply of electricity; and

- (j) the Fuel Mix Information.

#### Bills and Statements Based on Meter Readings

- 8 For the purposes of paragraph 7(e), the amount of electricity calculated as having been consumed by the Customer shall be determined by reference to:
- (a) an actual meter reading;
  - (b) a meter reading taken by the Customer that the Licencee considers to be reasonably accurate (a ‘customer meter reading’); or
  - (c) where no actual or customer meter reading is available, the estimate of the Licencee (an ‘estimated meter reading’).
- 9 Where the Licencee considers that a meter reading taken by the Customer is not reasonably accurate it must take all reasonable steps to contact the Customer and request a new meter reading.
- 10 Where the Customer receives a bill from the Licencee showing an estimated meter reading and following receipt of that bill provides a customer meter reading to the Licencee, the Licencee shall, where requested by the Customer, send an updated bill to the Customer reflecting the customer meter reading.
- 11 The Licencee shall:
- (a) use all reasonable endeavours to take an actual meter reading in respect of each of its Customers (save insofar as he receives an unmetered supply) on at least an annual basis;
  - (b) send a bill or statement to the Customer which reflects the actual meter reading taken in accordance with paragraph (a); and
  - (c) maintain, for a period of at least three years, and provide to the Authority on request, evidence of the reasonable endeavours it has used to obtain such an actual

meter reading for each of its Customers.

#### Consumption Information

- 12 The Licensee shall, on request, provide to a Customer information on the quantity of electricity which the Licensee's records show as consumed by that Customer:
- (a) where the Licensee has provided a supply of electricity to the Customer at the same premises continuously for 12 months or more, in the 12 months preceding the date of the request; or
  - (b) where the Licensee has provided a supply of electricity to the Customer for less than 12 months, in the period from the date the Licensee started to provide the supply of electricity to the date of the request.

#### Final Bill or Statement

- 13 Where a Domestic Customer terminates the Contract in accordance with its provisions, the Licensee shall:
- (a) send a final bill to the Domestic Customer within six weeks of the Licensee ceasing to provide a supply of electricity to the Domestic Customer; and
  - (b) use best endeavours to refund any outstanding credit to the Domestic Customer within eight weeks of the Licensee ceasing to provide a supply of electricity to the Domestic Customer via an appropriate mechanism.

#### Complaints Handling Information

- 14 The Licensee shall keep each of its Customers informed:
- (a) of the Customer's rights to initiate the Licensee's complaints handling procedure (as established in accordance with the requirements of Condition 33);
  - (b) that the General Consumer Council can assist in resolving complaints which the Licensee has not resolved to the Customer's satisfaction;
  - (c) that the Customer has the right to refer complaints which relate to billing matters to the Authority where the General Consumer Council has not been able to resolve



- the complaint to the Customer's satisfaction;
  - (d) that the Energy Consumer Checklist can be accessed from the Licensee's website and that the Licensee will, on request, send a copy to the Customer free of charge; and
  - (e) of the contact address and telephone number of:
    - (i) the Licensee's complaints handling department; and
    - (ii) the General Consumer Council.
- 15 The Licensee shall discharge its obligations under paragraph 14 by providing the information:
- (a) referred to in paragraphs 14(a)-(d) on or with each bill or statement sent to the Customer;
  - (b) referred to in paragraph 14(e):
    - (i) on or with each bill or statement sent to the Customer; and
    - (ii) on all of its Promotional Materials.

#### Format of Bills and Statements

- 16 The Licensee shall provide the information required under this condition on or with each bill and in such format as:
- (a) where the Authority has published the Billing Code of Practice, meets the requirements of the Billing Code of Practice; and
  - (b) where the Authority has not published the Billing Code of Practice, has been determined by the Licensee in consultation with the Authority and the General Consumer Council.
- 17 The Licensee shall not charge the Customer for any information, including any bill or statement which it is required to provide in accordance with or pursuant to this Condition 38. This paragraph does not apply in respect of providing additional copies of a bill or

statement to the Customer.

### Definitions

18 In this Condition:

<b>"Billing Code of Practice"</b>	means the document of that name, prepared and published from time to time by the Authority, following consultation with the Licensee, other electricity suppliers and such other persons as the Authority deems appropriate (which consultation may take place before paragraph 2 comes into effect), in relation to customer billing matters.
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**Condition 39: Security and safety of supplies**

- 1 The Licensee shall make arrangements to keep each of its Customers informed of the postal address and telephone number of an enquiry service established and operated for the purposes of receiving reports from any person about any matter or incident that:
  - (a) causes danger or requires urgent attention, or is likely to cause danger or require urgent attention, in relation to the supply or distribution of electricity; or
  - (b) affects or is likely to affect the maintenance of the security, availability and quality of service of any distribution system through which the relevant Customer is supplied with electricity.
  
- 2 The enquiry service referred to at paragraph 1 must be such a service as shall:
  - (a) be provided without charge to the Customer;

- (b) be available to receive and process telephone reports and enquiries at all times on every day of each year; and
    - (c) be operational no later than such date as the Authority may specify.
  - 3 The Licensee may discharge the duty imposed by paragraph 1 by providing the requisite information to each of its Customers:
    - (a) on the occasion of the Customer first commencing to take a supply from the Licensee; and
    - (b) either:
      - (i) where bills or statements in respect of charges for the supply of electricity are rendered to the Customer, on a quarterly basis (it being sufficient that the information is included on or with any bill or statement); or
      - (ii) where no bills or statements in respect of charges for the supply of electricity are rendered to the Customer, on an annual basis
- and by publishing such information in such manner as will in the opinion of the Licensee secure adequate publicity for it.
- 4 The Licensee shall, in so far as is practicable, take steps to inform each of its Customers of any change to the address or telephone number of the service referred to at paragraph 1 prior to such change becoming effective.

### **Condition 40: Marketing of Electricity**

- 1 This Condition shall apply, from the date of the direction, where the Authority has directed that it shall apply to the Licensee. This Condition applies to the selling methods and marketing activities of the Licensee in respect of the supply or proposed supply of electricity.
- 2 The Licensee shall (and shall procure that its agents or sub-contractors shall) comply with the Marketing Code of Practice for Domestic Customers and/or the Marketing Code of Practice for Business Customers.

- 3 In this Condition:

**Marketing Code of Practice for Domestic Customers** means the relevant document of that name, prepared and published from time to time by the Authority, relating to marketing activities.

**Marketing Code of Practice for Business Customers** means the relevant document of that name, prepared and published from time to time by the Authority, relating to marketing activities.

**Agent of Sub-contractor** means any person directly or indirectly authorised to represent the Licensee in its dealings with Customers.

**Condition 40A: Fuel Mix Disclosure**

- 1 The Licensee shall, in respect of a Disclosure Period during which it has at any time supplied electricity to Customers, publish:
  - (a) the contribution, expressed as a percentage, of each Energy Source to the overall fuel mix of the total amount of electricity supplied by the Licensee to Customers in the Disclosure Period;
  - (b) the environmental impact of the carbon dioxide emissions and radioactive waste, measured and expressed as [tonnes/grammes per KWh], resulting from the overall fuel mix of the total amount of electricity supplied by the Licensee to Customers in the Disclosure Period;
  - (c) the contribution, expressed as a percentage, of each Energy Source to the overall fuel mix of the total amount of electricity supplied in the Island of Ireland;
  - (d) the environmental impact of carbon dioxide emissions and radioactive waste, measured and expressed as [tonnes/grammes per KWh], resulting from the overall fuel mix of the total amount of electricity supplied in the Island of Ireland;
  - (e) details of reference sources, including addresses of websites, from which Customers can obtain further information on the environmental impact of their electricity supply; and
  - (f) the address of a website from which Customers can obtain the contribution, expressed as a percentage of each Energy Source to the overall fuel mix of the total amount of electricity supplied in Great Britain.
- 2 Where the Licensee has not supplied electricity to Customers at any time during a Disclosure Period it shall nevertheless publish the information set out in paragraphs 1(c), (d) and (e).
- 3 The Licensee shall for each Disclosure Period publish the information referred to in paragraphs 1 and 2 by:

- (a) including it on or with each bill or statement it sends to its Customers at any time following two months after the Disclosure Date; and
- (b) no later than two months following the Disclosure Date, including it in all Promotional Materials issued by or on behalf of the Licensee until the date two months following the next Disclosure Date.

4 The information referred to:

- (a) in paragraph 1(c) shall be that which has been calculated, verified and provided to the Licensee by the Authority (or a body appointed by the Authority) in accordance with the Fuel Mix Methodology notified to the Licensee;
- (b) in paragraph 1(d) shall be that which is provided to the Licensee by the Authority (or a body appointed by the Authority).

5 The Licensee shall comply with its obligations under the Fuel Mix Methodology.

6 In this Condition –

**Disclosure Date**

means, in relation to a Disclosure Period, the date that the information referred to in paragraphs 1 and 2 is provided to the Licensee by the Authority (or a body appointed by the Authority);

**Disclosure Period**

means each period of 1 January to 31 December and shall include the period ending 31 December immediately prior to the date this Condition takes effect;

**Energy Source**

means one of the following categories of fuel used for the generation of electricity:–

- (a) Coal;

- (b) Natural Gas;
- (c) Nuclear;
- (d) Renewables;
- (e) Peat;
- (f) Oil; and
- (g) Other; and

**Fuel Mix Methodology**

means the methodology determined by the Authority, and amended from time to time, which, among other things, sets out (i) the principles for calculating and verifying the information to be published by the Licensee, (ii) the obligations of the Licensee to provide information (of the type and to the extent and in the form specified) to enable such calculation and verification to be undertaken, and (iii) the manner and format in which the information shall be provided by, or to, the Licensee.



### **Condition 40B: Wholesale Contracts and Electricity Derivatives**

- 1 Subject to paragraph 2, the Licensee shall, for every Contract or Electricity Derivative entered into by the Licensee with a Wholesale Customer or a Transmission Licence Holder (the **relevant agreement**) and every transaction undertaken under or in accordance with the provisions of a relevant agreement (the **relevant transaction**), retain for a period of at least five years after the end date of the relevant agreement or the date of the relevant transaction (as the case may be) the information set out in paragraph 4.
- 2 Paragraph 1 shall not apply to an Electricity Derivative entered into by the Licensee with a Wholesale Customer or a Transmission Licence Holder or to any transaction undertaken, under or in accordance with the provisions of an Electricity Derivative entered into with a Wholesale Customer or a Transmission Licence Holder, prior to the date of the Guidelines referred to in Article 40(4) of the Directive (the **Guidelines**).
- 3 The Licensee shall retain the relevant information in accordance with such methods and arrangements for record keeping and in such form as may be set out in the Guidelines.
- 4 The information to be retained shall:
  - (a) provide particulars of:
    - (i) the characteristics of the relevant agreement or the relevant transaction, including characteristics relating to duration and delivery and settlement rules;
    - (ii) the amount of electricity specified in the relevant agreement or relevant transaction;
    - (iii) the time and date the relevant agreement or relevant transaction was executed and the prices pertaining to that agreement or transaction;
    - (iv) the means of identifying the Wholesale Customer to whom the relevant agreement or relevant transaction relates; and

(b) include such information as is specified in a direction given to the Licensee by the Authority about relevant agreements under which any transactions continue to be unsettled.

5 The Licensee shall provide to the Authority, in such manner and at such times as the Authority may specify, such information as the Authority may require which is retained by the Licensee in accordance with this Condition.

6 In this Condition:

**Electricity Derivative** means a financial instrument specified in points 5, 6, or 7 of Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, which relates to electricity;

**Transmission Licence Holder** means any person holding a licence granted under Article 10(1)(b) of the Order; and

**Wholesale Customer** means a Customer who is purchasing electricity for the purposes of reselling it to another person and not for his own use.

### **Condition 40C: Facilitating Supplier Transfers**

- 1 The Licensee shall ensure that its practices, procedures and systems facilitate Supplier Transfers to take place within the Relevant Period.
- 2 The Licensee shall inform the Authority as soon as it becomes aware that its practices, procedures and systems may not, as a result of the number of notifications it is receiving from the Market Registration Service, be able to facilitate compliance with paragraph 1.
- 3 The Authority may issue directions requiring the Licensee to take steps to review and improve its practices, procedures and systems to facilitate a Supplier Transfer in such manner as may be specified in the directions and the Licensee shall comply with any such directions from the date specified.

- 4 In this Condition –

**Market Registration Service** has the meaning given in Condition 27.

**Objection Period** means any period within which the Licensee or the Registered Supplier (as the case may be) may in accordance with the industry rules and procedures raise and/or withdraw (as the case may be) an objection to the Supplier Transfer.

**Relevant Date** has the meaning given in Condition 27.

**Relevant Period** means:

- (i) where the Licensee is the Registered Supplier for the premises, the 15 working day period (excluding the Objection Period) following notification to it by the Market Registration Service that another Electricity Supplier has applied to be the Registered Supplier for the

relevant premises;

- (ii) where the Licensee has entered into a Contract with a Customer, the 15 working day period (excluding the Objection Period) following the Relevant Date.

**Registered Supplier** has the meaning given in Condition 27.

**Supplier Transfer** has the meaning given in Condition 27.

## **Condition 40D: Provision of Information to Electricity Suppliers and Energy Service**

### **Providers**

- 1 Where paragraph 2 applies, the Licensee shall, within ten working days of receiving a Customer Information Request from any Electricity Supplier or Energy Services Provider, provide, free of charge, to the Electricity Supplier or Energy Services Provider (as the case may be) the Billing Information specified in the Customer Information Request and held or recorded by the Licensee.
- 2 This paragraph applies where the Licensee is supplying electricity, or has at any time in the 12 months prior to the date of the customer information request supplied electricity, to the premises identified in the request and where the Customer identified in the request is or was (as the case may be), a Customer of the Licensee.
- 3 Where, in respect of any Customer Information Request, the specified Billing Information is not held or recorded by the Licensee in a form that can be determined or ascertained for the Specified Period, the Licensee shall:
  - (a) give notice to the Electricity Supplier or the Energy Services Provider (as the case may be) that the Billing Information cannot be provided for only the Specified Period; and
  - (b) provide the requested Billing Information held or recorded by the Licensee in respect of any period that includes the Specified Period.
- 4 The Licensee shall not submit a customer information request to another Electricity Supplier unless it has, and retains evidence of, the consent of the Customer for it to obtain the information which is specified in the request to the other Electricity Supplier.
- 5 The Licensee shall not charge the Customer for any services provided to the Customer or to any Electricity Supplier or Energy Services Provider pursuant to this Condition.
- 6 The Licensee is not required to comply with paragraph 1 in respect of any customer information request received from an Energy Services Provider where:
  - (a) the Licensee does not have the consent of the Customer to provide Billing Information to the Energy Services Provider; and

- (b) the Energy Services Provider does not submit, with the customer information request, written evidence of the consent of the Customer for the Energy Services Provider to obtain from the Licensee such Billing Information as is specified in the customer information request.

7 In this Condition:

**Billing Information** means:

- (a) any information relating to the consumption of electricity by the Customer at the premises identified, in the request; and
- (b) any information enclosed with, or set out in, any bill or statement previously sent by the Licensee to the Customer at such premises.

**Customer Information Request** means a request, for Billing Information in respect of the Customer at the premises identified, and for the period specified, in the request.

**Energy Services Provider** means any person, other than an Electricity Supplier, that provides goods or services to Customers at their premises for the purposes of enabling the Customer to reduce their electricity consumption or to make efficient use of electricity.

**Specified Period** means the period specified in the Customer Information Request.

**Condition 40E: Business Separation**

- 1 This Condition applies where any affiliate or related undertaking of the Licensee is:
- (a) carrying on the activities of an Associated Business; and
  - (b) that Associated Business is subject to Separation Conditions.
- 2 Where this Condition applies the Licensee shall not:
- (a) act in a manner which is inconsistent with the relevant affiliate or related undertaking's obligations under the Separation Condition; or
  - (b) take any action that may impede or frustrate the relevant affiliate or related undertaking from fulfilling its obligations under the Separation Condition.
- 3 In this Condition:

<b>Associated Business</b>	means any business which is carrying on any activity that requires authorisation in accordance with either Article 8(1)(b) or (bb) of the Order or section 4(1)(b) or (bb) of the Electricity Act 1989; and
<b>Separation Conditions</b>	means any conditions: <ul style="list-style-type: none"><li>(a) which are included in a licence held by the affiliate or related undertaking of the Licensee, as granted under either Article 10(1)(b) or (bb) of the Order or section 6(1)(b) or (c) of the Electricity Act 1989;</li><li>(b) which are at any given time applicable and in force in relation to the licence holder; and</li><li>(c) which in combination impose an obligation on the Associated Business to ensure the legal, managerial and operational separation of the Associated Business <u>and</u> to produce a</li></ul>

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	compliance plan setting out how it will meet the obligation.
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### **Part III: Special Conditions**

#### **Condition 41: Additional Definitions**

1 In Parts III and IV, unless the contrary intention appears:

<b>accountable interest</b>	has the meaning given to it in paragraph 7 of Condition 44.
<b>CHP</b>	means combined heat and power.
<b>CHP generation</b>	means the generation of electricity solely by CHP generation sets.
<b>CHP Generation Business</b>	means any business of the Licensee or of any affiliate or related undertaking of the Licensee in CHP generation.
<b>CHP generation set</b>	means a generation set used for the simultaneous generation of usable heat and power in a single process at high efficiency.
<b>Distribution Business</b>	has the meaning given to it in the Transmission Owner Licence.
<b>electricity purchase contract</b>	shall include any contract or arrangement under which provision is made for the making or receipt of payments by reference to the difference between:  <ul style="list-style-type: none"><li>(a) an amount specified or ascertainable under the terms of such contract or arrangement; and</li><li>(b) the price at which electricity is sold or purchased under the Single Electricity Market Trading and Settlement Code, or</li></ul>

any component of such price

and **electricity sale contract** shall be construed accordingly.

**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, being a business involving own-generation sets or in which there is an accountable interest in generation sets, but shall not include any CHP Generation Business.

**high efficiency**

means achieving a year round total energy efficiency which would normally be in excess of 70% calculated on the basis of net calorific value.

**Operator**

means, in relation to any generation set, the authorised electricity operator or any person for the time being responsible (under contract or otherwise) for the generation or sale of electricity from such plant.

**own-generation set**

means any generation set the majority of the beneficial ownership of which is vested in the Licensee or an affiliate or related undertaking of the Licensee (other than by virtue only of the ownership of the Licensee or any affiliate or related undertaking of the Licensee or the interest of the lessor under a relevant lease) or in respect of which the Licensee or an affiliate or related undertaking of the Licensee is the operator, and references to own-generation sets of an authorised electricity operator shall be construed as if the references herein to the Licensee were replaced by

**protected information**

references to that authorised electricity operator.

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

**Related Supply Business**

means the business of any affiliate or related undertaking of the Licensee in the supply of electricity pursuant to a licence under Article 10(1)(c) of the Order.

**Separate Business**

means each of the Supply Business, the Power Procurement Business and the Generation Business (if any) 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.

**System Support Services**

has the meaning given to it in the Transmission System Operator Licence.

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**Transmission Owner Business** has the meaning given to it in the Transmission Owner Licence.

## **Condition 42: Availability of Resources and Undertakings**

### Availability of Resources

- 1 The Licensee shall at all times act in a manner calculated to secure that it has sufficient resources (including, without limitation, management resources, financial resources and financial facilities) to enable it to:
  - (a) carry on each Separate Business; and
  - (b) comply with its obligations under the Order, the Energy Order, the SEM Order, the Directive Regulations and the Licence.
  
- 2 The Licensee shall submit a certificate addressed to the Authority, approved by a resolution of the Board of Directors of the Licensee and signed by a director of the Licensee pursuant to that resolution. Such certificate shall be submitted on 30 September of each year. Each certificate shall be in one of the following forms:
  - (a) "After making enquiries, the directors of the Licensee have a reasonable expectation that the Licensee will have available to it, after taking into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid, sufficient financial resources and financial facilities to enable the Licensee to carry on the Supply Business and the Power Procurement Business for a period of 12 months from the date of this certificate."
  - (b) "After making enquiries, the directors of the Licensee have a reasonable expectation, subject to the Terms of this certificate, that the Licensee will have available to it, after taking into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid, sufficient financial resources and financial facilities to enable the Licensee to carry on the Supply Business and Power Procurement Business for a period of 12 months from the date of this certificate. However, they would like to draw attention to the following factors which may cast doubt on the ability of the Licensee to carry on the Supply Business and/or Power Procurement Business."

- (c) "In the opinion of the directors of the Licensee, the Licensee will not have available to it sufficient financial resources and financial facilities to enable the Licensee to carry on the Supply Business and/or Power Procurement Business for a period of 12 months from the date of this certificate."
- 3 The Licensee shall submit to the Authority together with the certificate referred to in paragraph 2 of this Condition a statement of the main factors which the directors of the Licensee have taken into account in giving that certificate.
- 4 The Licensee shall inform the Authority in writing immediately if the directors of the Licensee become aware of any circumstances which cause them no longer to have the reasonable expectation expressed in the then most recent certificate given under paragraph 2.
- 5 The Licensee shall use its best endeavours to obtain and submit to the Authority with each certificate provided for in paragraph 2 a report prepared by its auditors and addressed to the Authority stating whether or not the auditors are aware of any inconsistencies between, on the one hand, that certificate and the statement submitted with it and, on the other hand, any information which they obtained during their audit work.

#### Undertaking of the Ultimate Controller

- 6 The Licensee shall procure from each company or other person which the Licensee knows or reasonably should know is at any time an ultimate controller of the Licensee a legally enforceable undertaking in favour of the Licensee in a form specified by the Authority that the ultimate controller will refrain from any action, and will procure that every subsidiary of the holding company (other than the Licensee and its subsidiaries) will refrain from any action, which would then be likely to cause the Licensee to breach any of its obligations under the Order, the Energy Order, the SEM Order, the Directive Regulations or this Licence. Such undertaking shall be obtained within 7 days after the date when these modifications become effective, or after the person in question becomes an ultimate controller (as the case may be) and shall remain in force for as long as the Licensee remains the holder of this Licence and the giver of the undertaking remains an ultimate controller of the Licensee.

- 7 The Licensee shall:
- (a) deliver to the Authority evidence (including a copy of each such undertaking) that the Licensee has complied with the obligation to procure undertakings pursuant to paragraph 6;
  - (b) inform the Authority immediately in writing if the directors of the Licensee become aware that the undertaking has ceased to be legally enforceable or that its terms have been breached; and
  - (c) comply with any direction from the Authority to enforce any such undertaking.
- 8 The Licensee shall not, save with the written consent of the Authority, enter (directly or indirectly) into any agreement or arrangement with an ultimate controller of the Licensee or any of its subsidiaries (other than subsidiaries of the Licensee) at a time when:
- (a) an undertaking complying with paragraph 6 is not in place in relation to that ultimate controller; or
  - (b) there is an unremedied breach of such undertaking; or
  - (c) the Licensee is in breach of the terms of any direction issued by the Authority under paragraph 7.

#### Undertaking of Ultimate Controller

- 9 The Licensee shall within seven days after the date when these modifications became effective or after the person in question becomes an ultimate controller (as the case may be) procure from each person which the Licensee knows (or reasonably should know) is at any time an ultimate controller of the Licensee a legally enforceable undertaking in favour of the Licensee in a form specified by the Authority, which shall provide that the ultimate controller will give to the Licensee, and will procure that each subsidiary of that ultimate controller (other than the Licensee and its subsidiaries) will give to the Licensee, all such information as may be necessary to enable the Licensee to comply fully with paragraph 1 of Condition 10. Such undertaking shall remain in force for as long as the Licensee remains the holder of this licence and the giver of the undertaking remains an ultimate controller of the Licensee.

- 10 The Licensee shall:
- (a) deliver to the Authority evidence (including a copy of each such undertaking) that the Licensee has complied with the obligation to procure any undertakings pursuant to paragraph 9;
  - (b) inform the Authority immediately in writing if the directors of the Licensee become aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached; and
  - (c) comply with any direction from the Authority to enforce any such undertaking.
12. The Licensee shall not, save with the consent in writing of the Authority, enter (directly or indirectly) into any contract or arrangement with an ultimate controller of the Licensee or any of the subsidiaries of that ultimate controller (other than the subsidiaries of the Licensee) at a time when:
- (a) an undertaking complying with paragraph 9 is not in place in respect of that ultimate controller; or
  - (b) there is an unremedied breach of such undertaking; or
  - (c) the Licensee is in breach of the terms of any direction issued by the Authority under paragraph 10 in respect of such an undertaking.
13. In this Condition, unless the context otherwise requires:

**ultimate controller** means:

- (a) any person which is a holding company of the Licensee, and which is not itself a subsidiary of another company; and/or
- (b) any person who (whether alone or with a person or persons connected with him) is in a position to control, or to exercise significant influence over, the policy of the Licensee, or any holding company of



the Licensee by virtue of:

- (i) rights under contractual arrangements to which he is a party or of which he is a beneficiary;
- (ii) rights of ownership (including rights attached to or deriving from securities or rights under a trust) which are held by him or of which he is a beneficiary, but shall exclude any director or employee of a corporate body in his capacity as such and any minister, ministry, department, agency, authority, official or statutory person;

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

**Condition 43: Restriction on Dividends**

1. The directors of the Licensee shall not declare or recommend a dividend, and the Licensee shall not make any other form of distribution within the meaning of section 829 (Part 23) of the Companies Act 2006, or redeem or repurchase any share capital of the Licensee, unless prior to the declaration, recommendation or making of the distribution (as the case may be) the Licensee has issued to the Authority a certificate in the following form:

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

- (a) that the Licensee is in compliance in all material respects with all the obligations imposed on it by Conditions 10, 42, 48 and 62 of the Licence; and
  - (b) that the making of a distribution of [*sum*] on [*date*] will not, either alone or when taken together with other circumstances reasonably foreseeable at the date of this certificate, cause the Licensee to be in breach to a material extent of any of those obligations in the future.”
2. The certificate given under paragraph 1 must be signed by a director of the Licensee and must have been approved by a resolution of the board of directors of the Licensee passed not more than 14 days before the date on which the declaration, recommendation or payment in question will be made.
  3. Where the certificate given under paragraph 1 has been issued in respect of the declaration or recommendation of a dividend, the Licensee shall be under no obligation to issue a further certificate prior to payment of that dividend, provided that such payment is made within six months of the issuing of that certificate.

**Condition 44: Restriction on own-generation and gas pipeline capacity**

- 1 The Licensee shall procure that the Generation Business of the Licensee is held as a Separate Business by or through a wholly-owned subsidiary of the Licensee.
- 2 The Licensee shall ensure that the sum of the amounts in megawatts (calculated as provided under paragraphs 5 and 6) represented by the declared net capacity of the own-generation sets in Northern Ireland of the Licensee and any affiliate and any related undertaking of the Licensee, and the appropriate share of the declared net capacity of generation sets in Northern Ireland in which the Licensee and any affiliate and any related undertaking of the Licensee has an accountable interest, shall not exceed:
  - (a) in the case of non-fossil generation sets, 5 MW or such greater amount as the Authority shall from time to time specify in directions issued to the Licensee for the purposes of this Condition;
  - (b) in the case of CHP generation sets, 50 MW;
  - (c) in the case of diesel generation sets, 50MW; and
  - (d) in the case of any other generation sets and except in the permitted circumstances or where the Licensee is complying with a direction given to it under Article 58 of the Order or any other emergency legislation, zero MW.

Before exercising its cancellation powers, the Authority shall consider whether or not to increase the limit provided for in sub-paragraph (a).

- 3 Paragraph 2 shall cease to have effect from the date the Licensee:
  - (a) ceases to be an affiliate or related undertaking of the holder of the Northern Ireland Market Operator Licence; and
  - (b) ceases to be an affiliate or related undertaking of the holder of the Transmission System Operator Licence.
- 4 Paragraph 2 shall not apply to mobile generation sets which are either own-generation sets in Northern Ireland of the Licensee or mobile generation sets in which the Licensee

has an accountable interest in Northern Ireland where such mobile generation sets are used solely for the purposes of the Transmission Owner Business or the Distribution Business.

- 5 Where the Licensee is in breach of paragraph 2 by reason of the acquisition of own-generation sets or an accountable interest in other generation sets in consequence of the occurrence of a specified event affecting the operator or any third party, the Licensee shall forthwith notify the Authority for the purpose of applying to the Authority for retroactive directions under sub-paragraph 2(a).
- 6 For the purpose of calculating the limit under paragraph 2, and subject to paragraph 7, there shall be attributed to the Licensee:
  - (a) the whole of the declared net capacity represented by own-generation sets; and
  - (b) the appropriate share (namely the share representing the Licensee's economic interest therein) of the declared net capacity of generation sets in which it has an accountable interest, ascertained in such manner as the Licensee, with the approval of the Authority, may determine.
- 7 Where the Authority is satisfied that by virtue of the Licensee's economic interest (ascertained in such manner as the Authority may determine) therein:
  - (a) generation sets in which the Licensee has only an accountable interest should more properly be treated as own-generation sets;
  - (b) own-generation sets should more properly be treated as sets in which the Licensee only has an accountable interest;
  - (c) own-generation sets, or generation sets in which the Licensee has an accountable interest, should not be treated as falling in either category; or
  - (d) generation sets not declared as sets in which the Licensee has an accountable interest, should be treated as generation sets in which the Licensee has an accountable interest;

the Authority may issue directions to that effect.

8 For the purposes of this Condition, and subject to paragraphs 7, 9 and 12, the Licensee shall have an accountable interest in a generation set in circumstances where (such generation set not being an own-generation set of the Licensee):

- (a) the operator is a related undertaking of the Licensee or any affiliate of the Licensee; or
- (b) the Licensee or any affiliate of the Licensee is in partnership with or is party to any arrangement for sharing profits or cost-savings or any joint venture with the operator or with any third party with regard to the operator; or
- (c) the Licensee or any affiliate of the Licensee has (directly or indirectly):
  - (i) any beneficial share holding interest in the operator; or
  - (ii) any beneficial underlying interest in the generation set; or
  - (iii) provided or agreed to provide finance to the operator otherwise than on arm's length terms; or
  - (iv) provided or agreed to provide, or has determined or is responsible for determining the price (or other terms affecting the financial value) of, the fuel used in the generation sets;

other than by virtue only of the ownership of the Licensee or any affiliate or related undertaking of the Licensee of any land forming part of the land bank.

9 The Licensee shall not be deemed to have an accountable interest in a generation set where:

- (a) the Licensee's interest arises wholly under the terms of a power purchase agreement, an agreement for the provision of System Support Services, the Single Electricity Market Trading and Settlement Code, or under any electricity purchase or sale contract; or
- (b) the Licensee's interest arises solely by virtue of arrangements for the sharing with the operator of any generation set of the risks associated with changes in the price of fuel used by the generation set.

- 10 The Licensee shall, on each such occasion as it provides to the Authority separate accounts for the Generation Business pursuant to Condition 47 and at any other time upon request of the Authority, provide to the Authority a statement:
- (a) confirming compliance with paragraphs 1, 2 and 5 as at the date of the statement and throughout the period since the last such statement; and
  - (b) identifying (in such detail and with such supporting documents or information as the Authority may require) the amount of capacity in megawatts represented by the declared net capacity of own-generation sets attributable to the Licensee and the appropriate share of the Licensee in the declared net capacity of generation sets in which the Licensee has an accountable interest, as at the date of the statement.
- 11 Where the Authority is satisfied that the basis of calculation used by the Licensee is not in conformity with paragraphs 6 and 7, the Authority may issue directions specifying an alternative basis of calculation, and the basis of calculation by the Licensee shall be adjusted accordingly with effect from the date of issue of the directions or such other date as may be specified in the directions.
- 12 In relation to gas pipelines:
- (a) except as provided in sub-paragraph (b), this Condition (except for paragraph 3) shall at all times apply mutatis mutandis to gas pipelines as it applies to generation sets other than non-fossil generation sets, and as if for references to the or any amount of capacity or declared net capacity of any own-generation set or generation set in which the Licensee is permitted to have an accountable interest there were substituted references to any capacity of a gas pipeline; and
  - (b) the Licensee shall be permitted to hold its interest under the gas conversion agreement and shall exercise any rights which it shall have under Schedule 3, Clause 5.6 (BG Option) of the gas conversion agreement in accordance with such directions as the Authority shall from time to time issue to it. In this sub-paragraph, references to agreements are to those agreements in the forms in which they shall have been entered into.

- 13 Before the Department authorises the Licensee to operate or otherwise deal with a generating station in the permitted circumstances, or, having made such an authorisation, modifies it, the terms of such authorisation or modification shall first be made available to each generator and Electricity Supplier, and the Department shall take into consideration any representations timeously made by any such person.
- 14 Where the Department has authorised the Licensee to operate or otherwise deal with a generating station in the permitted circumstances, the Licensee shall not unduly discriminate between:
- (a) itself or any of its affiliates or related undertakings (including in its capacity as the operator of the generating station to which the authorisation relates); and
  - (b) any other person or class or classes of persons.

15 In this Condition:

<b>declared net capacity</b>	means in relation to a generation set, the highest generation of electricity, at the main alternator terminals, which can be maintained for an indefinite period of time without causing damage to the plant less so much of that capacity as is consumed by the plant.
<b>land bank</b>	has the meaning given in the Successor Distribution Licence.
<b>mobile generation set</b>	means any generation set which is not affixed to land or to a building so as to be part of such land or building.
<b>natural gas</b>	means any gas derived from natural strata.
<b>non-fossil generation set</b>	means a generation set which is (or may be) fuelled or driven otherwise than by a fossil fuel or natural gas.
<b>permitted circumstances</b>	means where the shares in the successor company owning a generating station have not been disposed of by the Department before 2 April 1992 and the

Department has authorised the Licensee to operate or otherwise deal with that generating station and for so long as the Licensee acts in accordance with the conditions of that authorization.

**specified event**

means any such event as is described in sub-paragraph (1)(f) of Schedule 2, but for this purpose as if references to the Licensee were replaced by references to the operator or third party in question, or any revocation of any generation licence.

**underlying interest**

in relation to any generation set means any interest arising by reason of the Licensee or affiliate or any related undertaking of the Licensee or affiliate (whether alone or with others):

- (a) holding or being entitled to acquire an interest in the land on which the generation set, or any part thereof, is built;
- (b) being in partnership with or party to any arrangement for sharing of profits or cost-savings or any joint venture with any person holding or entitled to acquire an interest in the land on which the generation set, or any part thereof, is built;
- (c) owning any electrical plant situated on or operated as a unit with the generation set (and for such purpose, any electrical plant or equipment to the possession of which the Licensee, affiliate or related undertaking is entitled under any agreement for hire, hire purchase, conditional sale or loan shall be deemed to be owned by such person) provided



always that such electrical plant shall not be deemed to be operated as a unit with any generation set by reason only of connections with any other system for the transmission or distribution of electricity or with metering required pursuant to (and as defined in) the Grid Code; or

- (d) having obtained any consent under Article 39 of the Order required for the construction or extension of the generation set or any part thereof;

in any such case other than by virtue only of having a beneficial interest in the interest of the lessor under a relevant lease.

**Condition 45: Prohibited activities and ring-fencing**

- 1 The Licensee shall not, and shall procure that any affiliate or related undertaking of the Licensee shall not, purchase or otherwise acquire for value any electricity which has been or is to be generated by any own-generation set or generation set in which the Licensee has an accountable interest (whether or not located in Northern Ireland) except with the prior written consent of the Authority and in accordance with any conditions of that consent, provided that the Authority's consent shall not be required in relation to the purchase or acquisition for value of electricity generated principally by CHP generation sets or generated by diesel generation sets. This paragraph does not apply to any business as an Electricity Supplier of any affiliate or related undertaking of the Licensee.
- 2 No Core Business of the Licensee shall be held by or carried on through any affiliate or related undertaking of the Licensee.
- 3 The Licensee shall procure that all businesses of the Licensee other than the Core Businesses shall be held by or through affiliates or related undertakings of the Licensee.
- 4 Save as provided by paragraphs 6 and 7, the Licensee shall not conduct any business or carry on any activity other than those falling within the definition of Core Businesses.
- 5 The Licensee shall not without the written consent of the Authority acquire shares in any affiliate or related undertaking except:
  - (a) shares in any body corporate which was a subsidiary of the predecessor company on 8 February 1998;
  - (b) shares acquired in a body corporate to satisfy the obligation imposed by paragraph 6;
  - (c) shares in a body corporate which conducts business in accordance with a licence granted under Article 10(1)(c) of the Order; or
  - (d) shares acquired in order to avoid dilution of a shareholding in a body corporate in which the Licensee holds shares in conformity with the Licence.

6 Notwithstanding paragraph 4, the Licensee may continue to conduct any business or carry on any activity otherwise prohibited by paragraph 4 which the predecessor company was conducting or carrying on as at 8 February 1998, but by such later date as the Authority shall specify to the Licensee in writing, shall transfer any such business or activity to an affiliate or related undertaking or otherwise cease to conduct or carry on any such other business or activity.

7 Nothing in this Condition shall prevent:

- (a) any affiliate or related undertaking from conducting any business or carrying on any activity which the Licensee is prohibited from conducting or carrying on by virtue of paragraph 4;
- (b) the Licensee from holding shares as, or performing the supervisory or management functions of, an investor in respect of any body corporate in which it holds an interest consistently with the provisions of the Licence;
- (c) the Licensee from performing the supervisory or management functions of a holding company in respect of any subsidiary conducting any business or carrying out any activity which the Licensee is prohibited from conducting or carrying out by virtue of paragraph 4;
- (d) the Licensee from carrying on any business or conducting any activity otherwise prohibited by paragraph 4 to which the Authority has given its consent in writing;  
or
- (e) the Licensee from carrying on any business or conducting any activity other than the Separate Businesses provided that the aggregate turnover of all such other businesses or activities does not in any financial year exceed 5% of the aggregate turnover of the Separate Businesses (excluding the turnover on transactions which the Separate Businesses make with each other) in the immediately preceding financial year.

8 In this Condition:

**Core Business** means the Power Procurement Business or the Supply

Licence granted: 31 March 1992  
Last updated: 20 December 2016

**Business.**

**diesel generation set**

means a generation set which is fuelled by 35 second gas oil.

**Condition 46: Obligation on economic purchasing**

- 1 Subject to Condition 52 and paragraph 9 of this Condition, the provisions of paragraph 2 shall apply separately in relation to purchases of electricity from the following sources:
  - (a) qualifying renewable generation;
  - (b) generation from any source other than qualifying renewable generation.
  
- 2 In respect of each category referred to in paragraph 1 above, and subject to paragraph 7, the Licensee shall:
  - (a) itself purchase;
  - (b) procure any affiliate of the Licensee to purchase; and
  - (c) insofar as it is able through the exercise of voting rights or otherwise to do so, procure any related undertaking of the Licensee or any defined undertaking to purchase,  
  
electricity at the best effective price reasonably obtainable having regard to:
    - (i) the sources available;
    - (ii) the quantities of electricity required by the Licensee to meet the demand of Customers; and
    - (iii) the desirability to ensure the stability of, and minimise the frequency of changes in, the Licensee's Charges for the Supply of Electricity.
  
- 3 The Licensee shall within 28 days of the date of the Authority's direction given under paragraph 11 and following consultation with interested parties, prepare and submit to the Authority for its approval a document to be known as the 'Hedging Policy Statement'.
  
- 4 The Hedging Policy Statement shall:
  - (a) set out the Licensee's policy for entering into electricity purchase contracts designed to enable the Licensee to hedge its risks in respect of the costs of the purchase of electricity by the Licensee (and by any affiliate or related undertaking

of the Licensee or any defined undertaking) for the purpose of ensuring the Licensee's compliance with its obligations under paragraph 2; and

(b) require to be approved by the Authority.

5 The Licensee shall:

(a) publish the Hedging Policy Statement, as approved by the Authority, in such manner as it considers appropriate to bring it to the attention of interested parties;

(b) from time to time, and whenever requested to do so by the Authority, review (including where appropriate consulting with interested parties) the Hedging Policy Statement with a view to determining whether it should be revised; and

(c) where following such review it proposes to revise the Hedging Policy Statement, submit the revised statement to the Authority for its approval.

6 In determining the effective price at which electricity is purchased by the Licensee or any affiliate or related undertaking of the Licensee or any defined undertaking, regard shall be had to any payments made or received or to be made or received for the grant of or pursuant to any electricity purchase contract.

7 In the discharge of its obligations under paragraph 2, the Licensee:

(a) shall have regard to the Hedging Policy Statement; and

(b) may additionally have regard to any considerations liable to affect its ability and that of any affiliate or related undertaking of the Licensee to discharge its obligations under this Condition in the future, including the future security, reliability and diversity of sources of electricity available for purchase.

8 In this Condition (and subject to paragraph 9) references to qualifying renewable generation shall refer to generation from capacity of that description which:

(a) was contracted by the predecessor company or any defined undertaking under arrangements of the kind mentioned in Article 35(1)(a) of the Order entered into prior to the relevant date; or

(b) is available to be contracted under arrangements to be produced to the Authority

in satisfaction of an obligation imposed on the predecessor company or the Licensee by order made under Article 35 of the Order after the relevant date.

- 9 Notwithstanding that generation may previously have been contracted as being qualifying renewable generation, it shall cease to be so treated to the extent that:
- (a) the Licensee (or any affiliate or related undertaking of the Licensee or any defined undertaking) enjoys contractual freedom to vary or discontinue its obligation to purchase such generation; and
  - (b) capacity from which qualifying renewable generation is otherwise contracted by the Licensee or any affiliate or related undertaking of the Licensee or any defined undertaking is equal to or exceeds the aggregate capacity specified in any orders previously made under Article 35 of the Order and continuing in force, as being required to be available to the predecessor company or the Licensee at that time or in respect of any future period covered by such orders.
- 10 Paragraphs 2, 6 and 7 shall apply mutatis mutandis where the Licensee (or any affiliate or related undertaking of the Licensee) exercises a discretion or (by agreement or otherwise) varies the terms of an existing agreement (whether or not entered into prior to the relevant date) in such a manner as to alter the effective price under such agreement.
- 11 The Licensee shall not be in breach of this Condition by reason only of performing a must-take obligation to purchase electricity.
- 12 This Condition shall have effect from the date specified for its coming into force in a direction issued to the Licensee by the Authority for the purposes of this Condition.
- 13 In this Condition:

<b>defined undertaking</b>	means any entity through which the Licensee enters into arrangements of the kind mentioned in Article 35(1)(a) of the Order.
<b>interested parties</b>	means such persons as in the opinion of the Licensee are likely to have an interest in the Licensee's Hedging Policy Statement.
<b>must-take obligation</b>	an agreement which imposes an obligation on the Licensee to make a payment to another party to the agreement in the event that the Licensee does not purchase electricity (or a minimum quantity of electricity) under the agreement shall be deemed to be an agreement under which the Licensee has a must-take obligation to purchase electricity and any quantity of electricity purchased by the Licensee pursuant to the agreement shall be deemed to have been purchased in performance of a must-take obligation to purchase electricity if the Licensee would have been obliged to make a payment to another party to the agreement had it not purchased such quantity of electricity.
<b>purchase</b>	includes the acquisition of electricity from sources falling to be treated as own-generation for the purpose of Condition 44, and the purchase of electricity under electricity purchase contracts.
<b>relevant date</b>	means 31 March 1992.



**Condition 47: Separate Accounts for Separate Businesses**

- 1 Each financial year of the Licensee shall run from 1 April to the following 31 March.
- 2 The remaining paragraphs of this Condition apply for the purpose of ensuring that the Licensee (and any affiliate or related undertaking of the Licensee) maintains accounting and reporting arrangements which enable separate accounts to be prepared for each Separate Business and showing the financial affairs of each such Separate Business.
- 3 The Licensee shall in respect of each Separate Business:
  - (a) keep or cause to be kept for the period referred to in section 388 of the Companies Act 2006 and in the manner referred to in that section such accounting records in respect of each Separate Business as would by section 386 of the Companies Act 2006 be required to be kept in respect of each such business if it were carried on by a separate company, so that the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to, each Separate Business are separately identifiable in the books of the Licensee (and any affiliate or related undertaking of the Licensee) from those of any other business; and
  - (b) prepare on a consistent basis from such accounting records in respect of the financial year commencing on 1 April 1992 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:
    - (i) charged from or to any other business (whether or not a Separate Business) together with a description of the basis of that charge; or
    - (ii) 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
  - (c) procure under joint obligation with the Authority, 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 both the Licensee and 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) facilitate the completion of the Auditor's report referred to in sub-paragraph (c) the accounting statements referred to in sub-paragraph (b) as soon as reasonably practicable, and in any event not later than six months after the end of the financial year to which they relate.

4 The Licensee shall not in relation to the accounting statements in respect of a financial year change the bases of charge, apportionment or allocation referred to in sub-paragraph 3(b) from those applied in respect of the previous financial year, unless the Authority shall previously have issued directions for the purposes of this Condition directing the Licensee to change such bases in a manner set out in the directions or the Authority gives its prior written approval to the change in such bases. The Licensee shall comply with any directions issued for the purposes of this Condition.

5 Where, in relation to the accounting statements in respect of a financial year, the Licensee has changed 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.

6 Accounting statements in respect of a financial year prepared under sub-paragraph 4(b)(i) shall, so far as reasonably practicable and unless otherwise approved by the Authority having regard to the purposes of this Condition:

- (a) have the same content and format (in relation to each Separate Business) as the annual accounts of the Licensee (and any affiliate or related undertaking of the Licensee) prepared under Part 15 of the Companies Act 2006 and conform to the best commercial accounting practices including International Accounting Standards and International Financial Reporting Standards issued by the

International Accounting Standards Board and adopted for use in the European Union;

- (b) state the accounting policies adopted; and
  - (c) (with the exception of the part of such statements which shows separately the amounts charged, apportioned or allocated and describes the bases of charge or apportionment or allocation respectively), be published with the annual accounts of the Licensee.
- 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 The licensee shall, where requested to do so by the Department, provide to the Department a copy of its accounting records for the period specified in the request.

**Condition 48: Prohibition of Cross-Subsidies and of Discrimination**

- 1 Subject to paragraphs 2 and 3, 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 Nothing which the Licensee is obliged to do or not do pursuant to the Licence shall be regarded as a cross-subsidy for the purposes of this paragraph 1.
- 3 The Licensee shall not, and shall procure that no affiliate or related undertaking of the Licensee shall, supply or sell or offer to supply or sell electricity (including under any electricity sale contract) to any one purchaser or person seeking to become a purchaser 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 it supplies or sells or offers to supply or sell electricity (including under any electricity sale contract) to comparable purchasers. For these purposes, due regard shall be had to the circumstances of supply or sale to such purchasers including (without limitation) volumes, voltages, load factors, conditions of interruptibility, location and number of premises being supplied and date and duration of the agreement. This paragraph shall not apply to any business as an Electricity Supplier of any affiliate or related undertaking of the Licensee and it shall not apply by reason of any supply or sale or offer to supply or sell electricity generated by CHP generation sets or renewable electricity made by the Licensee or of any affiliate or related undertaking of the Licensee or any sale made by the Power Procurement Business pursuant to a direction issued by the Authority requiring the Power Procurement Business to offer to sell electricity to licensed suppliers, in such quantity and on such terms (including terms as to price) as the Authority shall specify in the directions.
- 4 For the purposes of paragraph 3, 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.

**Condition 49: Restriction on use of certain information**

- 1 Where the Licensee or any affiliate or related undertaking of the Licensee is in possession of any protected information, the Licensee shall (and shall procure that such affiliate or related undertaking shall) procure:
  - (a) that neither the Licensee nor any other person shall use that protected information for the purpose of obtaining any unfair commercial advantage in relation to any of the Separate Businesses or any other business;
  - (b) that the protected information is not disclosed to any other person except with the prior consent in writing of each person to whose affairs that information relates; and
  - (c) that the protected information in the possession of any Separate Business is not disclosed to any other business of the Licensee except with the prior consent in writing of each person to whose affairs that information relates.
- 2 The Licensee's obligation under paragraph 1 to procure any action on the part of an affiliate or related undertaking shall be taken, in relation to any affiliate or related undertaking which has control of the Licensee, as an obligation to use all reasonable endeavours to procure the taking of that action by obtaining (and enforcing) an appropriate contractual undertaking from that affiliate or related undertaking in respect of the protected information.
- 3 The Licensee shall implement such measures and procedures and take all such other steps as may be specified in directions issued by the Authority from time to time for the purposes of this Condition and considered by the Authority to be reasonably necessary for the purpose of securing compliance by the Licensee with its obligations under paragraph 1.
- 4 Sub-paragraphs 1(b) and 1(c) shall not apply to any disclosure of information which is:
  - (a) authorised by Article 63(3) or (4) of the Energy Order;
  - (b) made in compliance with the duties of the Licensee, or of any affiliate or related undertaking of the Licensee, in accordance with any:

- (i) licence granted under the Order (including the Licence);
  - (ii) applicable law (including the Order, the Energy Order, the SEM Order or the Directive Regulations);
  - (iii) requirement of a competent authority;
  - (iv) judicial or arbitral process of a competent jurisdiction; or
  - (v) requirement of a relevant stock exchange, or of the Panel on Takeovers and Mergers;
- (c) permitted by and made in compliance with any document referred to in this Licence with which the Licensee or any affiliate or related undertaking of the Licensee is required to comply; or
- (d) necessary in order to enable the Licensee to enter into or give effect to arrangements for the purpose of carrying on any of the Separate Businesses.
- 5 The Licensee shall ensure that protected information received by the Licensee (or any affiliate or related undertaking of the Licensee) is:
- (a) (except where one of the exceptions under paragraph 4 applies) not divulged by any business person to any person unless that person is an authorised recipient; and
  - (b) not used by any business person otherwise than for the purpose of pursuing an authorised purpose or advising in relation to the pursuit of an authorised purpose.
- 6 The Licensee shall:
- (a) procure and furnish to the Authority, in such manner and at such times as the Authority may require, such information and reports as the Authority may consider necessary concerning the performance by the Licensee of its obligations under paragraphs 1 and 5 and the effectiveness of the measures, procedures and steps specified in the directions referred to in paragraph 3;
  - (b) procure that access to any premises of the Licensee shall be given at any time and from time to time to any nominated person(s) for the purpose of investigating

whether the Licensee has performed its obligations under paragraphs 1, 3 and 5, and shall procure that the Licensee and its employees co-operate in any such investigation to the extent requested by the nominated person(s); and

- (c) procure that nominated person(s) shall be entitled to inspect and/or take copies of such records and data of the Licensee as they shall consider to be reasonably necessary for the purpose referred to in sub-paragraph (b) above.

7 In this Condition, unless the context otherwise requires:

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

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

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

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

<b>competent authority</b>	means the Department, the Authority and any local or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or the European Community.
<b>control</b>	has the meaning attributed to it by section 450 ( as it read in conjunction with section 451) of the Corporation Tax Act 2010.
<b>nominated person(s)</b>	means the person(s) from time to time nominated by the Authority for the purposes of this Condition by notice to the Licensee.



**Condition 50: Independence of the Transmission Owner and Distribution Businesses**

1. The Licensee shall co-operate with:
  - (a) the Transmission Owner, to the extent that such co-operation is reasonably required, to ensure that the Transmission Owner is able to fulfil its obligations under Condition 12 of the Successor Transmission Licence; and
  - (b) with the Distribution Owner, to the extent that such co-operation is reasonably required, to ensure that the Distribution Owner is able to fulfil its obligations under Condition 12 of the Successor Distribution Licence.

**Condition 51: Separation of Businesses**

- 1 This Condition applies where any affiliate or related undertaking of the Licensee carries on a Related Supply Business.
- 2 The Licensee shall make arrangements in accordance with paragraph 4 to secure, save as required pursuant to any legislative or regulatory requirement, as provided for by the Licence, or as permitted pursuant to arrangements or agreements approved in writing by the Authority, the full managerial and operational independence of its Regulated Businesses from the Related Supply Business.
- 3 The arrangements referred to in paragraph 2 shall be subject to the approval of the Authority, who may from time to time direct the Licensee to take such reasonable steps or desist from such action as the Authority considers appropriate to secure compliance with the arrangements referred to in paragraph 2.
- 4 The Licensee shall:
  - (a) nominate an officer of adequate seniority to monitor compliance with the provisions of this Condition and Condition 49 (who shall not be a member of the board of the Licensee or any affiliate or related undertaking of the Licensee) who will report at regular intervals to the Authority;
  - (b) without prejudice to Condition 49, not disclose, and shall procure that any employees (whether part-time or full-time) or officers (and require that any agents or consultants of each Regulated Business) shall not disclose, any information relating to a Regulated Business to the Related Supply Business which could give the Related Supply Business any unfair commercial advantage from its possession of such information, other than information which:
    - (i) a Regulated Business is required to disclose pursuant to any legislative or regulatory requirement;
    - (ii) is in or enters the public domain (other than as a result of a breach by the Licensee or any affiliate or related undertaking of the Licensee of its obligations under this Condition); or

- (iii) may be disclosed pursuant to arrangements or agreements approved in writing by the Authority;
  - (c) take measures to prevent (so far as the Licensee can so require) any person who is engaged by or was previously engaged by a Regulated Business from being engaged by the Related Supply Business until the expiry of:
    - (i) a period of three months; or
    - (ii) such shorter period as the Authority, having due regard to considerations of seniority and involvement in commercially sensitive activities, may permit in respect of any person or class of persons;
  - (d) establish and maintain an up-to-date register of all persons engaged by each Regulated Business, confirming that the provisions of sub-paragraphs (b) and (c) have been complied with in respect of each person;
  - (e) not enter into any contracts with the Related Supply Business other than on an arm's length basis on normal commercial terms;
  - (f) not, save as required pursuant to any legislative or regulatory requirement, as provided for by this Licence, or as may be permitted pursuant to arrangements or agreements approved in writing by the Authority, permit the Related Supply Business to use any assets of (or obtained from) a Regulated Business, for any purpose whatsoever;
  - (g) not permit the Related Supply Business to use a name, brand or trade name associated with a Regulated Business in the Related Supply Business' name, brand, trade name or advertising; and
  - (h) prepare for approval by the Authority, and comply with, a code of conduct on ring-fencing provisions in relation to the transfer and movement of employees (either full-time or part-time) between the Licensee and the Related Supply Business.
- 5 The Licensee shall be taken to have complied with paragraph 1 where it complies with:
- (a) the arrangements as approved by the Authority; and

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(b) any direction issued by the Authority under paragraph 3.

6 In this Condition:

**Asset** includes (without limitation) any premises, offices, information systems, software, hardware, electronic systems, billing systems, equipment, materials, resources, intellectual property, telephone numbers or lines, mobile telephones, e-mail systems or addresses, websites and computer servers.

**Regulated Business** means the Generation Business, the Power Procurement Business or the Supply Business.

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**Condition 52: Single Electricity Market Trading and Settlement Code**

- 1 The Licensee shall become a party to the Single Electricity Market Trading and Settlement Code, and shall at all times remain a party to and comply with the Code, insofar as it is applicable to the Licensee in its capacity as an Electricity Supplier.

**Condition 52A: Top-up and Standby**

Requirement to offer terms

- 1 The Licensee shall (subject to paragraph 3) offer to enter into an agreement with any person who requests the same to provide top-up or standby, such offer to make provision for the charges to be made in respect of top-up or standby, such charges:
  - (a) to be presented in such a way as to be referable to the statement prepared in accordance with paragraph 4 (or, as the case may be, paragraph 7) or any revision of such statement; and
  - (b) to be set in conformity with the requirements of paragraph 6.
- 2 The Licensee shall offer terms for agreements in accordance with paragraph 1 as soon as practicable and (save where the Authority consents to a longer period) in any event not more than 28 days after receipt by the Licensee of an application containing all such information as the Licensee may reasonably require for the purpose of formulating the terms of the offer.
- 3 The Licensee shall not be obliged pursuant to this Condition to offer to enter or to enter into any agreement:
  - (a) if to do so would involve the Licensee being:
    - (i) in breach of the Electricity, Safety, Quality and Continuity Regulations (Northern Ireland) 2012 or of any regulations made under Article 32 of the Order; or
    - (ii) in breach of the Conditions; or
    - (iii) in breach of the Grid Code; or
  - (b) if to do so would cause the Licensee to be in breach of the Distribution Code.

Basis of Charges – requirements for transparency

- 4 The Licensee shall as soon as practicable after this Condition has come into force and, in any event, not later than such date as the Authority shall specify in directions issued to the Licensee for the purposes of this Condition, prepare a statement approved by the Authority setting out the basis upon which charges will be made for the provision of top-up and standby.
- 5 The statement referred to in paragraph 4 shall:
- (a) be in such form and contain such detail as shall be necessary to enable any person to make a reasonable estimate of the charges to which it would become liable for the provision of such services; and
  - (b) set out the methods by which and the principles on which charges for the provision of each of top-up and standby will be made.
- 6 The basis on which charges for the provision of top-up and standby shall be set shall reflect the costs directly incurred in the provision thereof, together with a reasonable rate of return on the capital represented by such costs.
- 7 In addition to, and without prejudice to, the Licensee's obligations under paragraph 4, the Licensee shall, upon being directed to do so in directions issued by the Authority from time to time for the purposes of this Condition and within such period as shall be specified in the directions, prepare a statement approved by the Authority providing that charges for the provision of top-up and standby will be made on such basis as shall be specified in the directions and such statement shall be in such form and contain such detail as shall be necessary to enable any person to make a reasonable estimate of the charges to which it would become liable for the provision of such services and (without prejudice to the foregoing) including such information as shall be specified in the directions. Each statement prepared in accordance with this paragraph shall, with effect from the date on which it is approved by the Authority or such later date as the Authority shall specify, replace the corresponding statement prepared by the Licensee in accordance with paragraph 4 or, as the case may be, this paragraph (as from time to time revised in accordance with paragraph 8) which is in force at such date and the Licensee shall, with effect from such date make charges in accordance with the statement (as

from time to time revised in accordance with paragraph 8) which has replaced such corresponding statement.

- 8 The Licensee may periodically revise the information set out in and, with the approval of the Authority, alter the form of the statements prepared in accordance with paragraphs 4 and 7 and shall, at least once in every year the Licence is in force, revise such statements in order that the information set out in the statements shall continue to be accurate in all material respects.
- 9 The Licensee shall send a copy of the statement prepared in accordance with paragraphs 4 and 7 and of each revision of such statement in accordance with paragraph 8 to the Authority. Each such revision shall require to be approved by the Authority and shall not become effective until approved by the Authority.
- 10 The Licensee shall give or send a copy of the statement prepared in accordance with paragraphs 4 and 7 or (as the case may be) of the latest revision of such statements in accordance with paragraph 8 approved by the Authority pursuant to such paragraph to any person who requests a copy of such statement.
- 11 The Licensee may make a charge for any statement given or sent pursuant to paragraph 10 of an amount reflecting the Licensee's reasonable costs of providing such a statement which shall not exceed the maximum amount specified in directions issued by the Authority from time to time for the purposes of this Condition.

#### Non-discrimination in the provision of top-up or standby

- 12 In the provision of top-up or standby the Licensee shall not discriminate as between any persons or class or classes of persons except insofar as any difference in the amounts charged for or any other terms or conditions of such provision reflects, to the satisfaction of the Authority, the difference between the costs or other circumstances of such provision or carrying out to one person or class of persons and another.
- 13 Without prejudice to paragraph 12, the Licensee shall not make charges for the provision of top-up or standby to any person or class or classes of persons which differ from the charges for such provision to any other person or class or classes of persons except insofar as such differences reasonably reflect differences in the costs associated with such provision.



- 14 The Licensee shall not in setting its charges for provision of top-up or standby restrict, distort or prevent competition in the generation, transmission, distribution or supply of electricity.
- 15 The Licensee shall not be in breach of its obligations under this Condition only by reason of its establishing and performing its obligations under Condition 53 (Small Renewable Spill Arrangements).

#### Functions of the Authority

- 16 If, after a period which appears to the Authority to be reasonable for the purpose, the Licensee has failed to enter into an agreement with any person entitled or claiming to be entitled thereto pursuant to a request under paragraph 1, the Authority may, pursuant to Article 11(3)(c) of the Order and on the application of that person or the Licensee, settle any terms of the agreement in dispute between the Licensee and that person in such manner as appears to the Authority to be reasonable having (insofar as relevant) regard in particular to the following considerations:
- (a) that such person should pay to the Licensee such sum as is determined in accordance with the provisions of paragraph 6;
  - (b) that the performance by the Licensee of its obligations under the agreement should not involve the Licensee in a breach such as is referred to in paragraph 3; and
  - (c) that the terms and conditions of the agreement so settled by the Authority and of any other agreements entered into by the Licensee pursuant to an application under this Condition should be, so far as circumstances allow, in as similar a form as is practicable.
- 17 If the person wishes to proceed on the basis of the agreement as settled by the Authority, the Licensee shall forthwith enter into and implement such agreement in accordance with its terms.

#### Definitions

- 18 In this Condition

**exempt supplier**

means an electricity supplier which is, by virtue of Article 9 of the Order, exempt from the requirement to hold an electricity supply licence.

**standby**

means the periodic or intermittent supply or sale of electricity by the Licensee to:

- (a) a Customer of the Licensee, to make good any shortfall between the Customer's total supply requirements and those which are met either by its own generation or by electricity supplied by an authorised electricity operator;  
or
- (b) any authorised electricity operator which is an exempt supplier, to make good any shortfall between the total requirements of a Customer of that operator and those which are met by electricity generated by that operator and supplied by it to that Customer,

such standby supply or sale being provided at such point on the transmission system or any distribution system as the Customer or operator (as the case may be) may request.

**top-up**

means the supply or sale of electricity by the Licensee on a continuing or regular basis to:

- (a) a Customer of the Licensee, to make good any shortfall between the Customer's total supply requirements and those which are met either by its own generation or by electricity supplied by an authorised electricity operator; or
- (b) any authorised electricity operator which is

an exempt supplier, to make good any shortfall between the total requirements of a Customer of that operator and those which are met by electricity generated by that operator and supplied by it to that Customer,

such top-up supply or sale being provided at such point on the transmission system or any distribution system as the Customer or operator (as the case may be) may request.

**Condition 53: Spill Arrangements**

- 1 The Licensee shall establish arrangements by means of which it shall purchase under a tariff from any authorised generator which requests it to do so:
  - (a) an amount of spill (and any associated benefits) that the generator would be entitled to supply under a Class A exemption; and
  - (b) an amount of spill (and any associated benefits) in excess of the amount the generator would be entitled to supply under such an exemption, to the extent that this additional amount of spill is the output of one or more small renewable generating units.
  
- 2 The Licensee shall, in connection with the establishment of the arrangements referred to in paragraph 1 above, prepare a pro forma spill agreement, which shall be furnished to the Authority for its approval, and may be amended from time to time subject to the Authority's approval.
  
- 3 The pro forma spill agreement shall include:
  - (a) provisions governing eligibility to enter into a spill agreement;
  - (b) provisions about calculating the quantity of spill and any associated benefits;
  - (c) information requirements including the nature of the information, its format and where and when it must be given and to whom;
  - (d) provisions about payments for the electricity and associated benefits and related obligations;
  - (e) remedies for non-compliance;
  - (f) termination arrangements; and
  - (g) provisions for there to be referred to the Authority for determination such matters arising under the spill agreement and the spill tariff as may be specified in them.
  
- 4 On application made by any person, the Licensee shall, as soon as practicable and (save

where the Authority consents to a longer period) in any event not later than 14 days after receipt by the Licensee of the duly completed application, offer to enter into a spill agreement with such person which shall be substantially the same as the approved pro forma spill agreement.

5 The Licensee shall not be obliged pursuant to this Condition to offer to enter or to enter into any agreement:

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

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

(ii) in breach of any regulations made under Article 32 of the Order or of any other enactment relating to safety or standards applicable in respect of the Supply Business; or

(iii) in breach of any of the Conditions of the Licence; or

(iv) in breach of the Grid Code; or

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

6 The Licensee shall not, subject to paragraph 9, enter into any agreements or arrangements for the purposes of the relevant objective except under a spill agreement being substantially the same as the approved pro forma spill agreement.

7 Upon the application of any person wishing to question the terms of an agreement offered pursuant to paragraph 4 above, or upon the application of the Licensee, the Authority may, pursuant to Article 11(3)(c) of the Order, settle any terms of the agreement in dispute between the Licensee and that person in such manner as appears to the Authority to be reasonable.

8 Insofar as any person entitled to an offer under this Condition wishes to proceed on the basis of the agreement as settled by the Authority, the Licensee shall forthwith enter

into, and implement such agreement in accordance with its terms.

9 The tariff paid by the Licensee under a spill agreement and associated terms shall be set by the Licensee with the approval of the Authority. The tariff price is to be set in accordance with the following principles:

(a) in respect of renewable generators:

(i) the price shall be less than the prevailing market price paid for electricity and associated benefits in Northern Ireland; and

(ii) that part of the price representing payment for electricity and generating capacity may be above the prevailing market price in Northern Ireland for electricity that is not electricity from renewable sources; and

(b) in respect of other generators, the price shall be the same as the price available to renewable generators, less any amount attributable in the case of renewable generators to green benefits.

10 The Licensee shall (subject to paragraph 11) give or send a copy of the pro forma spill agreement to any person requesting the same.

11 The Licensee may make a charge for any copy given or sent pursuant to paragraph 10 of any amount reflecting the Licensee's reasonable costs of the documents which will not exceed any amount specified for the time being for the purposes of this Condition in directions issued from time to time by the Authority.

12 This Condition shall cease to have effect if the Authority delivers to the Licensee a notice given for the purposes of this paragraph, such notice to take effect from the date stated in the notice.

13 In this Condition:

**associated benefits** means embedded benefits and green benefits.

**authorised generator** means any person authorised to generate electricity either by virtue of a licence granted pursuant to Article 10(1)(a) of the Order or by virtue of Article 9 of the

Order from the requirement to hold a licence under Article 10(1)(a) of the Order.

**Class A exemption**

means the exemption granted, under Article 3(1)(c) of the Exemption Order, to the class of person specified in Class A: Small supply of Schedule 3 in the Exemption Order.

**embedded benefits**

means benefits available by virtue of a generating unit being connected to a distribution system, including rebates, payments and avoided costs and any instruments associated with such benefits.

**Exemption Order**

means the Electricity ( Class Exemptions from the Requirement for a Licence) Order ( Northern Ireland) 2013.

**green benefits**

means benefits available by virtue of a generating unit using non-fossil or carbon emission saving fuels or waste to generate electricity, including payments, rebates and avoided costs, and any instrument associated with such benefits, including renewables obligation certificates which are or will become available in Northern Ireland and levy exemption certificates under Schedule 6 of the Finance Act 2000.

**renewable generator**

means the owner or operator of a generating unit that generates electricity from renewable sources, when acting in its capacity as such.

**same site**

includes sites immediately adjoining each other and sites separated from each other only by road, railway or water course or by another site owned by the person, or any affiliate of the person, that owns the separated sites.

**small renewable**

means a non-fossil fuel generation set (as defined in Condition 44) located in Northern Ireland and that

**generating unit**

whether taken alone or together with other generating sets on the same site has a maximum export capacity to a transmission system or a distribution system of 100 kW.

**spill**

means electricity that is generated by a generating unit and exported onto any transmission system or distribution system, and which is neither sold by the generator to a party other than the Licensee nor supplied by it to a Customer.



**Condition 53A: Duty to Offer Terms for Relevant Arrangement(s)**

- 1 The Licensee shall on application made by any owner or operator of a generating station:
  - (a) offer to enter into a Relevant Arrangement with that owner or operator; and
  - (b) where the terms offered are acceptable to the owner or operator making the application, enter into a Relevant Arrangement in accordance with such terms.
- 2 The Licensee shall offer terms in accordance with paragraph 1 as soon as practicable after the receipt by the Licensee of an application containing all such information as it may reasonably require for the purpose of formulating the terms of the offer and, in any event, within 14 days.
- 3 In making an offer to enter into a Relevant Arrangement in accordance with paragraph 1, the Licensee shall set out the charges to be paid to it under such Relevant Arrangement. These charges shall not exceed the total costs reasonably incurred by the Licensee in relation to the Relevant Arrangement.
- 4 The Licensee shall not be obliged pursuant to this Condition to offer to enter or to enter into any Relevant Arrangement if to do so would be likely to cause the Licensee to be in breach of any obligation under the Licence or any Act or statutory instrument or if it would otherwise be unreasonable to do so in all the circumstances of the case.
- 5 In the event of any dispute between the Licensee and an owner or operator of a generating station in relation to the making of an offer, its terms or entry into a Relevant Arrangement, the Licensee or the operator of a generating station may refer the matter to the Authority for determination (which determination shall be final). The Authority shall determine any dispute referred to it as it sees fit having regard to all the circumstances of the case.
- 6 The Authority may, on the application of the Licensee and following such consultation as the Authority considers appropriate, issue a direction relieving the Licensee of its obligations under paragraph 1 in respect of such Relevant Arrangement(s) and subject to such terms and conditions as may be specified in the direction.

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7 The Licensee shall not enter into a Relevant Arrangement with any owner or operator of a generating station which:

- (a) shows undue preference towards, or undue discrimination against, that owner or operator and/or any person(s) or class or classes of persons; or
- (b) is intended or is likely to restrict, distort or prevent competition in the supply of electricity.

8 In this Condition:

**Relevant Arrangement** shall have the meaning given to it in 34(10) of the Renewables Obligation Order (Northern Ireland) 2009.

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Last updated: 20 December 2016

**Condition 54: Not used**

**Condition 54A: Tariff Methodology Statement**

- 1 The Licensee shall within 28 days of this Condition taking effect and following consultation with interested parties, prepare and submit to the Authority for its approval a document to be known as the “**Tariff Methodology Statement**”.
- 2 The Tariff Methodology Statement shall:
  - (a) for each relevant year, set out the Licensee’s policy for calculating and setting the prices it shall, for that relevant year, charge any Customer or class of Customer for the supply of electricity; and
  - (b) require to be approved by the Authority.
- 3 The Licensee shall:
  - (a) publish the Tariff Methodology Statement, as approved by the Authority, in such manner as it considers appropriate to bring it to the attention of interested parties;
  - (b) from time to time and whenever requested to do so by the Authority, review (including where appropriate consulting with interested parties) the Tariff Methodology Statement with a view to determining whether it should be revised; and
  - (c) where following such review it proposes to revise the Tariff Methodology Statement in respect of any relevant year, submit the revised statement to the Authority for its approval.
- 4 The Licensee shall, in calculating and setting the prices it charges any Customer or class of Customer for the supply of electricity, have regard to the Tariff Methodology Statement.

- 5 In this Condition:

**interested parties** means such persons as in the opinion of the Licensee are likely to have an interest in the Licensee’s Tariff Methodology Statement.

Licence granted: 31 March 1992

Last updated: 20 December 2016

**Condition 55: Supply Charges Restriction**

- 1 The Licensee shall comply with the condition set out in Annex 2.

Licence granted: 31 March 1992  
Last updated: 20 December 2016

**Annex 1 – Not used**

## **Annex 2 – Supply Charge Restriction Conditions**

### 1. Definitions

#### 1.1 In this Annex:

<b>“average charge per unit supplied”</b>	means, in respect of each relevant year, the regulated supply revenue in that relevant year divided by the quantity supplied in that relevant year;
<b>“average specified rate”</b>	means the arithmetic mean of the daily base rates of Northern Bank Limited (or such other bank as the Authority shall specify from time to time) current from time to time during the period in respect of which the calculation falls to be made;
<b>“distribution services”</b>	means all services provided as part of the Distribution Business as defined in the Transmission Owner Licence, other than excluded services (as “excluded services” is defined in Annex 2 of the Transmission Owner Licence);
<b>“Enduring Solutions Project”</b>	means the project undertaken to migrate retail customers in Northern Ireland from legacy systems;
<b>“European Target Model Project”</b>	means the project being undertaken jointly by the Authority and the Republic of Ireland’s Commission for Energy Regulation to reform the Single Electricity Market to meet the provisions of the European Target Model (being the target model for the coordination and harmonisation of Europe’s electricity markets as further described in (i) the Framework Guideline on Capacity Allocation and Congestion Management for Electricity published by the Agency for the Cooperation of Energy Regulators in July 2011, and (ii) the Framework

	Guidelines on Electricity Balancing published by the Agency for the Cooperation of Energy Regulators in September 2012).
<b>“excluded services”</b>	means those services which in accordance with the principles set out in paragraph 6 fall to be treated as excluded services;
<b>“first relevant year”</b>	means the financial year commencing on 1 April 2014.
<b>“maximum average charge per unit supplied”</b>	means the charge calculated in accordance with paragraph 2;
<b>“metered”</b>	means, in relation to any quantity supplied, as measured by metering required pursuant to and defined in the Grid Code or (where no such meter is installed) as otherwise reasonably calculated;
<b>“quantity supplied”</b>	means, in respect of each relevant year, the aggregate quantity of units supplied to supply customers by the Licensee in that relevant year metered at grid supply points;
<b>“regulated premises”</b>	means any premises supplied by the Licensee, other than the following: (a) Non-Domestic Premises and (b) other premises as may be agreed by the Authority and the Licensee from time to time;
<b>“regulated supply revenue”</b>	means the revenue (measured on an accruals basis) derived from supply charges, after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived;



<b>“relevant year”</b>	means a financial year commencing on or after 1 April 2014.
<b>“relevant year t”</b>	means that relevant year for the purposes of which any calculation falls to be made; “relevant year t – 1” means the relevant year preceding relevant year t or, in respect of the period prior to 1 April 2014 the period of 12 calendar months commencing on 1 April 2013, and similar expressions shall be construed accordingly;
<b>“renewable energy”</b>	means electricity generated from non-fossil fuel generating stations;
<b>“renewables obligation”</b>	means an obligation imposed on electricity suppliers in connection with the supply of electricity from renewable sources by any order made under Article 52 of the Energy Order;
<b>“renewables purchase obligation”</b>	means a level of renewable energy purchasing that the Supply Business must achieve in order to comply with its statutory obligation;
<b>“supply”</b>	excludes supply outside the Licensee's authorised supply area, standby, top-up and any other supplies or sales of electricity to persons other than supply customers; “supplied” and similar expressions shall be construed accordingly;
<b>“supply charge restriction conditions”</b>	means the provisions of this Annex as from time to time modified or replaced in accordance therewith or pursuant to any relevant legislation;
<b>“supply charges”</b>	means all charges (including any element of such charges as reflects amounts paid, or to be paid, by the Licensee for distribution services and transmission services, and any element of such charges as comprises standing charges) made in respect of electricity supplied to supply customers other than charges for the provision of excluded services;
<b>“supply customer”</b>	means a person who receives a supply of electricity from the Licensee at regulated

	premises;
<b>“supply contract”</b>	includes deemed supply contracts created pursuant to a former tariff customer scheme;
<b>“transmission services”</b>	means all services provided as part of the Transmission System Operator Business, as defined in the Transmission System Operator Licence; and
<b>“unit”</b>	means a kilowatt hour.

## 2. **Restriction of supply charges: basic formula**

The Licensee shall in setting its supply charges use its best endeavours to ensure that in any relevant year the average charge per unit supplied shall not exceed the maximum average charge per unit supplied. The maximum average charge per unit supplied shall be calculated in accordance with the following formula:

$$M_{St} = G_t + U_t + S_t + K_{St} + J_t + E_t - D_t$$

where:

$M_{St}$  means the maximum average charge per unit supplied in respect of relevant year t.

$G_t$  means the unit costs incurred in the purchase of electricity in pence per unit supplied in relevant year t, derived by:

- (a) aggregating the amounts payable by the Supply Business to any person (including without limitation energy (SMP) charges, capacity charges, imperfections charges, currency exposure costs, market operator charges, contracts for differences and associated costs, de minimis generation export arrangement costs, NFFO generation purchases, and amounts payable to the “Eco Energy Tariff Trust Fund”) for the purchase of electricity (measured on an accruals basis) in respect of relevant year t (excluding any purchases made for purposes other than supply

to supply customers, and excluding Excess NIE Energy Supply Costs as defined under Annex 1),

subtracting

revenue in respect of relevant year t (measured on an accruals basis) derived by the Supply Business from the Single Electricity Market Trading and Settlement Code and from the settlement payments or receipts relating to supply customers under any contracts for differences entered into by the Supply Business, after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived; and

- (b) dividing the resulting amount by the quantity supplied in relevant year t.

$U_t$  means the allowed transmission and distribution cost in pence per unit supplied in relevant year t, derived by:

- (i) aggregating the charges made against the Supply Business (measured on an accruals basis) in respect of relevant year t: (A) by the Distribution Business as defined in the Transmission Owner Licence, including in respect of distribution services, and (as approved by the Authority) other services and; (B) by the Transmission System Operator, including in respect of transmission services;
- (ii) attributing a proportion of such aggregate charges to supply customers in a manner approved by the Authority; and
- (iii) dividing the resulting amount by the quantity supplied in relevant year t.

$S_t$  means the allowed charge in pence per unit supplied to supply customers at regulated premises in relevant year  $t$ , which is derived from the following formula:

$$S_t = ((P_f + (P_c * C_t) - A_t) * P_{lt}) / Q_{st}$$

where:

$P_{lt}$  means an amount derived from the following formula:

$$P_{lt} = (1 + (rpi_t - X) / 100) * P_{lt-1}$$

but, in relation to the first relevant year,  $P_{lt-1}$  shall be equal to 1;

and, in each relevant year commencing on or after 1 April 2014,  $X$  shall equal 0;

$rpi_t$  in means the percentage change (whether a positive or negative value) in the Retail Prices Index between that published or determined with respect to October in relevant year  $t$  and that published or determined with respect to the immediately preceding October;

$C_t$  means the number of supply customers on 30<sup>th</sup> September in relevant year  $t$ . determined in such manner as the Authority shall specify from time to time by notice to the Licensee;

$Q_{st}$  means the quantity supplied in relevant year;

$P_f$  means £18,859,420 ;

$P_c$  means £15.65;

$A_t$  means:

- (a) £5.696 million or, such other amount as reasonably determined by the Authority using the same methodology used to arrive at the amount of £5.696 million or such other methodology as approved by the Authority; plus
- (b)  $£4.80 * (R_t - PN_t)$

where:

$R_t$  means the number of persons that are on 30<sup>th</sup> September in relevant year t registered as a customer on the Licensee's customer billing system, determined in such manner as the Authority shall specify from time to time by notice to the Licensee; and

$PN_t$  means the number of persons that are on 30<sup>th</sup> September in relevant year t persons in relation to whom the Licensee is the Registered Supplier (as defined in Condition 27 of the Licence), determined in such manner as the Authority shall specify from time to time by notice to the Licensee.

$K_{St}$  means a correction factor in pence per unit supplied (whether a positive or negative value) to be applied to the average charge per unit supplied in relevant year t derived using the following formula:

$$K_{St} = ((Q_{St-1} * M_{St-1} - R_{St-1}) / Q_{St}) (1 + I_t / 100)$$

where:

$Q_{St-1}$  means the quantity supplied in relevant year t-1;

$M_{St-1}$  means the maximum average charge per unit supplied in relevant year t-1;

- $R_{St-1}$  means the regulated supply revenue in relevant year  $t-1$ ;  $Q_{St}$  means the quantity supplied in relevant year  $t$ ; and
- $I_t$  means the average specified rate in respect of relevant year  $t$ .
- $J_t$  means the buyout price (for one kilowatt hour) for the renewables obligation as published for relevant year  $t$  multiplied by the percentage (in the form  $0.xx$  where  $0.01$  represents  $1\%$ ) established as the renewables purchase obligation for relevant year  $t$ .
- $D_t$  means in respect of the Licensee's costs in meeting its renewables obligation and/ or other cost specified by the Authority from time to time, in any relevant year in which the Authority and the Licensee have agreed a mechanism to reflect a sharing of any savings in such costs between the Licensee and its customers, the portion of the savings so agreed for the purposes of  $D_t$  divided by the quantity supplied in relevant year  $t$ , or, if there is no such agreed mechanism,  $D_t$  shall be zero.
- $E_t$  means the allowed charge in pence per unit supplied in relevant year  $t$  derived by aggregating the costs referred to in paragraphs (a) – (i) below and dividing the resulting amount by the quantity supplied in relevant year  $t$ :
- (a) any reasonable costs incurred by the Supply Business in complying with the requirements imposed on the Licensee under legislation and other legal requirements through which Directive 2009/72/EC is implemented, whether before or after the coming into effect of this Annex, as reasonably determined by the Authority, and to the extent not recovered under another part of the Licence or any other licence; plus
- (b) any reasonable costs incurred by the Supply Business in complying with the requirements imposed on the Licensee under the arrangements for the Single Electricity Market (being the project described in the Memorandum of Understanding dated 23 August 2004 and made between

the Authority and the Commission for Energy Regulation in Dublin), whether before or after the coming into effect of this Annex, as reasonably determined by the Authority, and to the extent not recovered under another part of the Licence or under any other licence; plus

(c) any payments made to NIE Ltd in relation to costs of systems implemented for compliance with (i) the requirements imposed under legislation and other legal requirements through which Directive 2009/72/EC is implemented; and (ii) the requirements imposed under the arrangements for the Single Electricity Market (being the project described in the Memorandum of Understanding dated 23 August 2004

and made between the Authority and the Commission for Energy Regulation in Dublin); in both cases including annual depreciation and financing costs and whether before or after the coming into effect of this Annex, as reasonably determined by the Authority, and to the extent not recovered under another part of the Licence or under any other licence; plus

(d) pension deficit costs of:

- (i) £1,973,000 per year, or
- (ii) such other amount, as reasonably determined by the Authority and notified to the Licensee, which amount reflects and is calculated in accordance with:

- (A) a report submitted by the Licensee to the Authority setting out the results of the most recent triennial actuarial review undertaken by the Licensee, or
- (B) the regulatory principles, determined by the Authority and notified to the Licensee, as applicable (from the date specified in the Authority's determination) to the allowance of pension deficit costs; plus

(e) the amounts apportioned or allocated to the Supply Business in respect

of the fees paid by the Licensee under Condition 11; plus

(f) a reasonable rate of return as reasonably determined by the Authority on the capital represented by the costs incurred by the Supply Business associated with Phase III of the Enduring Solutions Project and an allowance for depreciation of the capital represented by such costs; plus

(g) any reasonable costs incurred by the Supply Business associated with the European Target Model Project, whether before or after the coming into effect of this Annex, as reasonably determined by the Authority, and to the extent not recovered under another part of the Licence or under any other licence; plus

(h) any reasonable costs incurred by the Supply Business associated with the upgrade of its customer care and billing systems (including software and hardware) implemented as part of the Enduring Solutions Project, whether before or after the coming into effect of this Annex, as reasonably determined by the Authority, and to the extent not recovered under another part of the Licence or under any other licence; plus

(i) any reasonable costs incurred by the Supply Business in complying with any requirement that:

(i) is imposed on the Licensee under a legal instrument through which Directive 2012/27/EU is implemented; and

(ii) is substantially equivalent, or otherwise corresponds, to any requirement imposed under the Electricity and Gas (Energy Companies Obligation) Order 2012 on any person holding an electricity supply licence granted (or treated as granted) under section 6(1)(d) of the Electricity Act 1989,

whether before or after the coming into effect of this Annex, as reasonably determined by the Authority, and to the extent not recovered under another part of the Licence or under any other licence.

### 3. **Restriction of supply charges: adjustments**



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

3.2 If, in respect of any 3 successive relevant years excluding the first relevant year, the sum of the amounts by which the average charge per unit supplied has exceeded the maximum average charge per unit supplied is more than the permitted 3-year percentage, then in the next following relevant year the Licensee shall, if required by the Authority, adjust its charges such that the average charge per unit supplied would not be likely, in the judgment of the Authority, to exceed the maximum average charge per unit supplied in that next following relevant year.

3.3 In this paragraph:

**“permitted one-year percentage”** means in respect of any relevant year 4 per cent of the maximum average charge per unit supplied for that relevant year; and

**“permitted 3-year percentage”** means in respect of any three successive relevant years 5 per cent of the maximum average charge per unit supplied for the second of those relevant years

4 **Information to be provided to the Authority in connection with the supply charge restriction conditions**

- 4.1 Where any change is intended to be made in supply charges regulated under paragraph 2, the Licensee shall not later than the time referred to in paragraph 4.2 provide the Authority with:
- (a) a written forecast of the maximum average charge per unit supplied, together with its components, in respect of the relevant year  $t$  in which such change is to take effect and in respect of the next following relevant year  $t + 1$ ;
  - (b) a written estimate of the maximum average charge per unit supplied, together with its components, in respect of the relevant year  $t-1$  immediately preceding the relevant year in which the change is to take effect unless a statement complying with paragraph 4.6 in respect of relevant year  $t-1$  has been furnished by the Licensee to the Authority before the time referred to in paragraph 4.2.
- 4.2 The relevant time referred to in paragraph 4.1 shall be not later than 14 days prior to the date of publication of such charges.
- 4.3 If within 3 months of the commencement of any relevant year  $t$  the Licensee has not provided the aforementioned forecasts pursuant to paragraph 4.1 for the purpose of such changes in charges as are referred to in paragraph 4.1, the Licensee shall forthwith provide the Authority with a written forecast of the maximum average charge per unit supplied (together with its components) in respect of relevant year  $t$ .
- 4.4 The Authority may issue directions providing that any forecast or estimate provided in accordance with paragraph 4.1 or 4.3 shall be accompanied by such information as regards the assumptions underlying the forecast or estimate as may be necessary to enable the Authority to be satisfied that the forecast or estimate has been properly prepared on a consistent basis and the Licensee shall comply with any such directions.
- 4.5 Not later than 6 weeks after the commencement of each relevant year  $t$ , the Licensee shall send to the Authority a statement as to:

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- (a) whether or not the provisions of paragraph 3 are likely to be applicable in consequence of the average charge per unit supplied in the preceding relevant year t-1 or the 3 preceding relevant years t-1, t-2 and t-3; and
  - (b) its best estimate as to the relevant correction factor  $K_{S_t}$  calculated in accordance with the formula set out in paragraph 2 to be applied in calculating the maximum average charge per unit supplied in respect of relevant year t.
- 4.6 Not later than 3 months after the end of each relevant year the Licensee shall send to the Authority a statement, in respect of that relevant year, showing the specified items referred to in paragraph 4.8.
- 4.7 The statement referred to in the preceding paragraph shall be:
- (a) accompanied by a report from the Auditors that in their opinion:
    - (i) such statement fairly presents each of the specified items referred to in paragraph 4.8 in accordance with the requirements of the supply charge restriction conditions; and
    - (ii) the amounts shown in respect of each of those specified items are in accordance with the Licensee's accounting records which have been maintained in respect of each of the relevant Separate Businesses in accordance with Condition 47; and
  - (b) certified by a director of the Licensee on behalf of the Licensee that to the best of his knowledge, information and belief having made all reasonable enquiries:
    - (i) there is no amount included in such statement and the relevant calculations under paragraph 2 which is other than
      - (aa) bona fide consideration for electricity supplied to supply customers in the course of the Supply Business;
      - or

(bb) an amount permitted under the supply charge restriction conditions to be so included;

(ii) no service has been treated as an excluded service which was not properly so treated and no amount included in the revenues in respect thereof represents other than bona fide consideration for the provision of the excluded service to which it relates; and

(iii) all amounts which should properly be taken into account for the purposes of the supply charge restriction conditions have been taken into account.

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

- (a) the quantity supplied;
- (b) the average charge per unit supplied;
- (c) the Supply Business' unit costs incurred in the purchase of electricity, being  $G_t$  calculated as provided under paragraph 2;
- (d) the allowed charge for supply per unit, being  $S_t$  calculated as provided under paragraph 2;
- (e) the allowed transmission and distribution cost per unit, being  $U_t$  calculated as provided under paragraph 2;
- (f) the revenue derived from excluded services (showing separately the revenue from each category of excluded service) as provided for in paragraph 5.2; and
- (g) such other items as shall be specified in directions issued by the Authority from time to time for the purposes of this Annex.

## **5 Excluded services for the purposes of the Supply Business**

5.1 Subject to paragraph 5.3, a service provided as part of the Supply Business may be treated as an excluded service insofar as it consists of the provision of services for the

specific benefit of customers requesting the same and not made available as a normal part of the Supply Business.

- 5.2 The Licensee shall following the end of each relevant year furnish the Authority, as being one of the specified items to be included in the statement referred to in paragraph 4.6, details specifying separately the nature of all services provided as part of the Supply Business and treated as excluded services by the Licensee during the course of such year and stating the revenues derived in respect of each such service so treated.
- 5.3 Where the Authority is satisfied that in the light of the principles set out in paragraph 5.1 any service treated by the Licensee as being or not being an excluded service should not be so treated, the Authority shall issue directions to that effect, and the service or services specified in the directions shall cease to be treated as excluded services from the date of issue of the directions or such other date (being not earlier than the commencement of the relevant year to which the statement last furnished to the Authority pursuant to paragraph 4.6 prior to issue of such directions related, unless such statement or the accompanying report or certificate referred to in paragraph 4.7 or any earlier such statement, report or certificate was incorrect or misleading in any material respect) as may be specified in the directions.

## **6 Duration of supply charge restriction conditions**

- 6.1 This Annex shall apply so long as this Licence continues in force but shall cease to have effect (in whole or in part, as the case may be) if the Licensee delivers to the Authority a request (a “Disapplication Request”) made in accordance with paragraph 6.3 and:
- (a) the Authority agrees in writing to the Disapplication Request; or
  - (b) the application of this Annex (or any part of it) is terminated by a notice (a “Disapplication Notice”) given by the Licensee in accordance paragraph 6.4 and not withdrawn.

- 6.2 Save where the Authority otherwise agrees, no disapplication following deliver of a Disapplication Request pursuant to this paragraph 6 shall have effect earlier than the date (the “Disapplication Date”) which is the later of:
- (a) the date occurring 18 months after delivery of the Disapplication Request; and
  - (b) 31 March 2017.
- 6.3 A Disapplication Request pursuant to this paragraph 6.3 shall:
- (a) be in writing addressed to the Authority;
  - (b) specify this Annex or any part of it to which the request relates (excluding in either case this paragraph 6); and
  - (c) state the date from which the Licensee wishes the Authority to agree that this Annex or the specified part of it shall cease to have effect.
- 6.4 A Disapplication Notice pursuant to this paragraph 6.4:
- (a) may be given in the circumstances described in either paragraph 6.5 or paragraph 6.6;
  - (b) may be withdrawn by the Licensee at any time prior to the Disapplication Date; and
  - (c) where it is given, shall:
    - (i) be in writing addressed to the Authority;
    - (ii) specify this Annex, or any part of it (which shall comprise only such part as was specified in the Disapplication Request) to which the notice relates; and
    - (iii) state the date from which the notice takes effect, which shall not be earlier than the Disapplication Date.
- 6.5 The circumstances described in this paragraph are that, by the beginning of the period of six months which will end with the Disapplication Date, the Authority has not in

response to the Disapplication Request published a decision under Article 14(8) of the Order to modify:

- (a) this Annex, or any part of it to which that Disapplication Request relates; or
- (b) this paragraph 6, so as to remove the right of the Licensee to give to the Authority a Disapplication Notice in respect of the relevant Disapplication Request.

6.6 The circumstances described in this paragraph are that:

- (a) by no later than the beginning of the period of six months which will end with the Disapplication Date, the Authority has in response to the Disapplication Request published a decision of a type referred to in paragraph 6.5;
- (b) the Licensee has exercised its right to appeal to the CMA against that decision in accordance with Article 14B of the Order;
- (c) the CMA has, in respect of the provisions to which the Disapplication Request relates:
  - (i) quashed the decision of the Authority under Article 14E(2)(a) of the Order; and
  - (ii) neither remitted the matter back to the Authority under Article 14E(2)(b) of the Order nor substituted its own decision for that of the Authority under Article 14E(2)(c) of the Order; and
- (d) no more than 30 days has elapsed since the date on which the CMA quashed the decision of the Authority.

6.7 A Disapplication Request or Disapplication Notice served under this paragraph 6 may be served in respect of a specified geographic area.

## **Part IV: Special Conditions Applicable To NIE Power Procurement Business**

### **Condition 56: Power Procurement**

- 1 The Licensee shall carry on the Power Procurement Business.
- 2 The Power Procurement Business shall consist in the discharge by the Licensee of the obligations stated or referred to in this Part IV of the Licence.



### **Condition 57: 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, 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 electricity 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 electricity 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 The Licensee shall not be regarded as having failed to comply with any obligation under paragraphs 1 to 11 to the extent that the obligation is not met solely in consequence of the Licensee's reasonable reliance on data provided to it by a generator under the terms of any Intermediary Agreement.
- 13 In this Condition:

**Bidding Code of Practice** means the document of that title published by the Authority in accordance with paragraph 5, as it may be amended from time to time.

**Commercial Offer Data** has the meaning given to it in the Single Electricity Market Trading and Settlement Code, as it may be amended from time to time.

**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 58: Trading and Settlement Code**

1 The Licensee shall enter into and at all times remain a party to the Single Electricity Market Trading and Settlement Code, and shall comply with its obligations under the Code in the capacity of Intermediary in respect of any generation sets that are the subject of an Intermediary Agreement to which the Licensee is a party.

2 In this Condition:

**Intermediary Agreement** has the meaning given to it in Condition 59.

### **Condition 59: Intermediary Agreements**

- 1 The Licensee shall, in conjunction and co-operation with each Relevant Electricity Generator, prepare and seek to agree with that generator the terms of an agreement between them to be known as an Intermediary Agreement.
- 2 The Authority may:
  - (a) in default of agreement between the Licensee and any Relevant Electricity Generator as to the terms of an Intermediary Agreement, determine the form and content of that agreement; or
  - (b) where the Licensee and that generator agree the terms of the Intermediary Agreement, approve that agreement subject to such modifications as the Authority may consider appropriate.
- 3 The Authority may, by a direction given in writing, direct the Licensee to enter into any Intermediary Agreement which has been determined or approved by the Authority in accordance with paragraph 2, and the Licensee shall comply with that direction by any date that may be set out therein.
- 4 The Licensee shall at all times comply with any Intermediary Agreement entered into by it in accordance with this Condition.
- 5 For the purposes of paragraphs 1 to 4, an Intermediary Agreement:
  - (a) shall be a contractually-binding agreement designed to govern the relationship between the Licensee and a Relevant Electricity Generator in respect of the Licensee acting as an Intermediary in relation to the agreements specified at Schedule 2 to the licence of that generator, for so long as such agreements remain extant;
  - (b) shall specify the categories and detailed descriptions of data to be provided by the Relevant Electricity Generator to the Licensee to enable the Licensee to comply with its obligations under Condition 57 in respect of generation sets which are the subject of the agreements specified at Schedule 2 to the licence of that generator;

- (c) shall require that the Relevant Electricity Generator provides the data referred to in sub-paragraph (b) to the Licensee in a form which is both timely and accurate; and
- (d) shall make such further provision as may be necessary or expedient to ensure that
  - (i) the Licensee is able to comply with its obligations under Condition 57; and
  - (ii) the Licensee and the Relevant Electricity Generator are able to comply with their respective obligations under their licences and the Single Electricity Market Trading and Settlement Code,

in respect of generation sets which are the subject of the agreements specified at Schedule 2 to the licence of the Relevant Electricity Generator,

but may not make any provision which has the effect of increasing the liability or limiting the rights (in either case as contained in the Intermediary Agreement or any agreement specified at Schedule 2 to the licence of the Relevant Electricity Generator) of a party to the Intermediary Agreement other than where it is, in the opinion of the Authority, reasonable in all the circumstances for such a provision to be made in relation to that party.

- 6 The Licensee shall from time to time, in conjunction and co-operation with each Relevant Electricity Generator, review the terms and operation of the Intermediary Agreements, and may following that review propose any amendments to an Intermediary Agreement that it considers appropriate.
- 7 Any amendment that the Licensee proposes to make to an Intermediary Agreement shall, unless the Intermediary Agreement otherwise provides, require to be submitted to the Authority for its approval and, if the Authority approves that amendment, shall be given effect in the Intermediary Agreement.
- 8 In this Condition:

**Relevant Electricity** means AES Kilroot Limited, Coolkeeragh ESB

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Last updated: 20 December 2016

## **Generators**

Limited and Premier Power Limited, each in their respective capacities as the holder of an electricity generation licence in Northern Ireland.



**Condition 60: 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 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) 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 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 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 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 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 Wholesale 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;

<b>relevant documentation</b>	means the documentation and other obligations referred to in sub paragraph (a) of paragraph 6;
<b>relevant generator</b>	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;
<b>relevant steps</b>	means the steps referred to in sub paragraph (a) of paragraph 6; and
<b>requisite arrangements</b>	means the arrangements referred to as such in paragraph 2.



## **Condition 61: Independence of the Power Procurement Business**

### General Duty

1 The Licensee shall:

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

the full managerial and operational independence of the Power Procurement Business from any Associated Business, save that nothing in this Condition shall prevent any director of a relevant holding company from being a director of an Associated Business.

2 Without limiting:

- (a) the ability of the Authority to require revisions to the Compliance Plan pursuant to paragraph 6 to ensure its compliance with this Condition (including paragraph 1); or
- (b) the obligation of the Licensee to review the Compliance Plan in accordance with paragraph 8 to ensure its compliance with this Condition (including paragraph 1),

the Licensee shall be taken to have complied with paragraph 1 where it complies with paragraphs 3 and 5.

### Specific Duties

3 The Licensee shall ensure that:

- (a) the Power Procurement Business is provided with the premises, systems, equipment, facilities, property, personnel, data and management resources that are necessary for its efficient and effective managerial and operational independence from any Associated Business;

- (b) except as provided for in the PTIA or PSIA, decisions concerning the carrying out of the activities of the Power Procurement Business (or any part of it) are taken by those persons who are employed on behalf of, and are engaged in the operation and management of, the Power Procurement Business, provided that this sub-paragraph shall not prevent either the directors of the Licensee or any relevant holding company approving the Licensee's annual financial plan (or equivalent instrument) or exercising their corporate governance role in relation to the Licensee where they do so in a way calculated to ensure that such exercise does not restrict, prevent or distort competition in the supply or generation of electricity on the Island of Ireland;
- (c) (save in respect of those generation sets that are the subject of cancellable generating unit agreements) decisions relating to any business in the generation or supply of electricity on the Island of Ireland are not taken by those persons who are employed on behalf of, and are engaged in the operation and management of, the Power Procurement Business;
- (d) any Associated Business does not (save in so far as the Authority otherwise consents) use or have access to:
  - (i) premises or parts of premises occupied by persons engaged in the management or operation of the Power Procurement Business;
  - (ii) systems for the recording, processing or storage of data to which persons engaged in the management or operation of the Power Procurement Business also have access;
  - (iii) equipment, facilities or property employed for the management or operation of the Power Procurement Business; and
  - (iv) the services of persons who are (whether or not as their principal occupation) engaged in the management or operation of the Power Procurement Business;
- (e) in so far as is legally possible, it:

- (i) ensures that any director of the Licensee is not at the same time also a director of another company which carries on an Associated Business engaged in the generation or supply of electricity on the Island of Ireland;
  - (ii) prevents any persons who have ceased to be engaged in the management or operation of the Power Procurement Business from being engaged in the activities of any Associated Business in the generation or supply of electricity on the Island of Ireland until the expiry of an appropriate time (being a period of at least three months, or such lesser period as may be approved by the Authority for the purposes of the Compliance Plan) from the date on which they ceased to be engaged by the Power Procurement Business;
- (f) it establishes and maintains an up-to-date register of all persons engaged in the management or operation of the Power Procurement Business, confirming that the provisions of paragraph (e) have been complied with in respect of each person so engaged; and
- (g) in so far as is legally possible and without prejudice to their general duties as directors, ensures that, in making any decisions relating to the Power Procurement Business, the directors of the Licensee:
  - (i) have regard only to the need to ensure that the Power Procurement Business is able to discharge its obligations under Part IV of this Licence; and
  - (ii) act in a manner calculated to secure that the operation and management of the Power Procurement Business does not restrict, distort or prevent competition in the supply or generation of electricity on the Island of Ireland (provided that no actions necessary to ensure the compliance of the Licensee with the other provisions of this Part IV shall be held to be a breach of this sub-paragraph (ii)).

## Compliance Plan

- 4 The Licensee shall, no later than SEM Go-Live, prepare and submit to the Authority for its approval a compliance plan setting out the practices, procedures, systems and rules of conduct which the Licensee has adopted, or intends to adopt, together with the timescales for adoption, to ensure its compliance with this Condition.
- 5 The Licensee shall comply with its approved compliance plan (the **Compliance Plan**) and shall from time to time publish the up-to-date Compliance Plan on its website.
- 6 The Authority may:
  - (a) within 30 days of the Licensee submitting an initial or revised Compliance Plan; and
  - (b) following any review of the Compliance Plan that the Authority may conduct from time to time,  
  
notify the Licensee that, in its opinion, the Compliance Plan is not, or is no longer, sufficient for the purposes of the Licensee's compliance with this Condition, and require such revisions to be made to the Compliance Plan as are in the Authority's opinion necessary or expedient in order for it to be sufficient for the purposes of ensuring the Licensee's compliance or continued compliance with this Condition.
- 7 Where the Licensee receives a notification in accordance with paragraph 6, it shall within 30 days revise the Compliance Plan in such manner and to such extent as will reflect the Authority's requirements.
- 8 The Licensee shall at least once every year during which this Condition is in force review the Compliance Plan so as to ensure:
  - (a) its continued compliance with its obligations under this Condition; and
  - (b) that the information set out in the Compliance Plan continues to be accurate in all material respects.

- 9 Where the Licensee revises the Compliance Plan, either in accordance with paragraph 7 or following a review conducted by it in accordance with paragraph 8, it shall submit the revised Compliance Plan to the Authority for its approval.
- 10 The Licensee shall ensure that persons engaged in the management and operation of the Power Procurement Business:
- (a) are made aware of the practices, procedures, systems and rules of conduct set out in the Compliance Plan;
  - (b) have the necessary information and facilities to comply with their respective obligations as provided for in the Compliance Plan; and
  - (c) are aware of the disciplinary procedures that may be activated should they fail to comply with their obligations under the Compliance Plan.

#### Compliance Manager

- 11 The Licensee shall, following consultation with the Authority, appoint a senior member of its personnel engaged in the management and operation of the Power Procurement Business as a manager (the **Compliance Manager**) for the purpose of facilitating compliance with its obligations under this Condition and with the Compliance Plan.
- 12 The Licensee shall ensure that the Compliance Manager has access to such staff, premises, systems, information, documentation, equipment, facilities and other resources as he might reasonably expect to require to fulfil the duties and tasks assigned to him.
- 13 The duties and tasks assigned to the Compliance Manager shall include:
- (a) providing relevant advice and information to the Licensee for the purpose of ensuring its compliance with this Condition and with the Compliance Plan;
  - (b) monitoring the effectiveness of and the Licensee's compliance with the Compliance Plan;

- (c) investigating any complaint or representation received by the Licensee from any person in respect of any matter arising under or by virtue of this Condition or in relation to the Compliance Plan;
  - (d) recommending and advising upon the remedial action which any such investigation has demonstrated to be necessary or desirable, including where necessary revising the Compliance Plan to reflect such recommendation and advice; and
  - (e) reporting, at such frequency as is determined in writing by the Authority, to the directors of the Licensee on his activities during the period covered by the report, on the investigations he has conducted and on progress towards the implementation of the Compliance Plan.
- 14 The Licensee shall, at such frequency as is determined in writing by the Authority, submit a report to the Authority:
- (a) detailing the activities of the Compliance Manager during the period covered by the report;
  - (b) providing a progress update on the Licensee's implementation of the Compliance Plan; and
  - (c) setting out the details of any investigations conducted by the Compliance Manager, including:
    - (i) the number, type and source of the complaint or representation on which such investigations were based;
    - (ii) the outcome of such investigations; and
    - (iii) any remedial action taken by the Licensee following each such investigation.

### Undertakings

- 15 The Licensee shall procure from each relevant holding company a legally enforceable undertaking in favour of the Licensee, in a form specified by the Authority, that the

relevant holding company will not exercise its corporate governance role in relation to the Licensee (as referred to in paragraph 3(b)) other than in a manner calculated to ensure that such exercise does not restrict, prevent or distort competition in the supply or generation of electricity on the Island of Ireland.

- 16 The undertaking referred to in paragraph 15 shall be obtained within seven days after the date when these modifications become effective, or after the person in question becomes a relevant holding company (as the case may be), and shall remain in force for as long as the Licensee remains the holder of this Licence and the giver of the undertaking remains a relevant holding company of the Licensee.
- 17 The Licensee shall:
- (a) deliver to the Authority evidence (including a copy of each such undertaking) that the Licensee has complied with the obligation to procure undertakings pursuant to paragraph 15;
  - (b) inform the Authority immediately in writing if the directors of the Licensee become aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached; and
  - (c) comply with any direction from the Authority to enforce any such undertaking.
- 18 The Licensee shall not, save with the written consent of the Authority, enter (directly or indirectly) into any agreement or arrangement with a relevant holding company at a time when:
- (a) an undertaking in compliance with paragraph 15 is not in place in relation to that relevant holding company;
  - (b) there is an unremedied breach of such undertaking; or
  - (c) the Licensee is in breach of the terms of any direction issued by the Authority under paragraph 17.
- 19 Where and to the extent that either the directors of the Licensee or a relevant holding company exercise their corporate governance role in relation to the Licensee (as

referred to in paragraph 3(b)), the Licensee shall within three days of such exercise notify the Authority of that fact and provide such other information regarding such exercise as the Authority may require.

### Definition

20 In this Condition:

<b>Associated Business</b>	means any business of the Licensee (or of any affiliate or related undertaking of the Licensee) other than a relevant holding company and the Power Procurement Business.
<b>Compliance Manager</b>	has the meaning given at paragraph 11.
<b>Compliance Plan</b>	has the meaning given at paragraph 5.
<b>PSIA</b>	has the meaning given at Condition 67.
<b>PTIA</b>	has the meaning given at Condition 66.
<b>relevant holding company</b>	means each holding company of the Licensee which does not itself transmit, distribute, generate or supply electricity on the Island of Ireland and which has no holding company that itself transmits, distributes, generates or supplies electricity on the Island of Ireland (regardless of whether any subsidiaries of such companies undertake such transmission, distribution, generation or supply).



**Condition 62: New Electricity Purchase Contracts**

- 1 The Licensee shall not, in the course of carrying out the activities of the Power Procurement Business:
  - (a) enter into any power purchase agreement involving the sale by it of electricity other than under the Single Electricity Market Trading and Settlement Code;
  - (b) subject to paragraph 2, enter into any power purchase agreement involving the acquisition by it of electricity; or
  - (c) subject to paragraph 2, enter into any other form of electricity purchase or electricity sale contract at any time, or having effect at any time, after 1 April 2012.
  
- 2 Sub-paragraphs 1(b) and (c) shall not apply in respect of any contract entered into by the Licensee:
  - (a) with the prior written approval of the Authority;
  - (b) in accordance with any permission or requirement by virtue of any other condition of this Licence; or
  - (c) in the exercise or fulfilment of any of its rights or obligations, or otherwise for the purpose of managing its contractual position, under any contract binding on it at the date at which this Condition comes into force.

**Condition 63: Undue Discrimination and Undue Preference**

- 1 The Licensee shall not, in the course of carrying out the activities of the Power Procurement Business:
  - (a) show undue preference towards, or undue discrimination against, any supplier or generator, or class or classes of suppliers or generators; or
  - (b) act in a manner designed to obtain a commercial advantage for any business of the Licensee (or of any affiliate or related undertaking of the Licensee) other than the Power Procurement Business, in relation to competitors of that business operating in the same market as it.

### **Condition 64: Disposal of Relevant Assets**

- 1 The Licensee shall not dispose of or relinquish operational control over any relevant asset otherwise than in accordance with the following paragraphs of this Condition.
- 2 Save as provided in paragraph 3, the Licensee shall give to the Authority not less than two months' prior written notice of its intention to dispose of or relinquish operational control over any relevant asset, together with such further information as the Authority may request relating to such asset or the circumstances of such intended disposal or relinquishment of control or to the intentions in regard thereto of the person proposing to acquire such asset or operational control over such asset.
- 3 Notwithstanding paragraphs 1 and 2, the Licensee may dispose of or relinquish operational control over any relevant asset:
  - (a) where:
    - (i) the Authority has issued directions for the purposes of this Condition containing a general consent (whether or not subject to conditions) to:
      - (A) transactions of a specified description; and/or
      - (B) the disposal of or relinquishment of operational control over relevant assets of a specified description; and
    - (ii) the disposal or relinquishment of operational control in question is effected pursuant to a transaction of a description specified in the directions, or the relevant asset in question is of a description so specified, and the disposal or relinquishment of operational control is in accordance with any conditions to which the consent is subject; or
  - (b) where the disposal or relinquishment of operational control in question is required by or under any enactment or by or under the transfer scheme.
- 4 Notwithstanding paragraph 1, the Licensee may dispose of or relinquish operational control over any relevant asset specified in any notice given under paragraph 2 in circumstances where:

- (a) subject to paragraph 5, the Authority confirms in writing that it consents to such disposal or relinquishment (which consent may be made subject to the acceptance by the Licensee or any third party in favour of whom the relevant asset is proposed to be disposed or operational control is proposed to be relinquished of such conditions as the Authority may specify); or
- (b) the Authority does not inform the Licensee in writing of any objection to such disposal or relinquishment of control within the notice period referred to in paragraph 2.

5 In relation to a material disposal, any consent of the Authority pursuant to paragraph 4 shall be given after the Authority shall have consulted and taken into consideration any representations timeously made by any authorised electricity operator liable to be materially affected by the disposal in question

6 In this Condition:

**disposal**

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

**relevant asset**

means any power purchase agreement to which the Licensee is party in the capacity of the Power Procurement Business, and the rights of the Licensee under any such agreement, but shall not be taken to include any electricity acquired in the exercise of such rights.

### **Condition 65: Payment Security Policy**

1 The Licensee shall develop, and may from time to time amend, a payment security policy describing its security cover and debt recovery procedures in respect of:

- (a) power procurement energy sales revenue;
- (b) power procurement PSO revenue; and
- (c) revenue received from provision of System Support Services,

including details of what is to be considered reasonable recovery costs and reasonable interest for the purposes of calculating uncollected revenue.

2 The Licensee shall submit the payment security policy and any amendments thereto to the Authority for its approval.

3 In this Condition:

**power procurement energy sales revenue** means the revenue to which the Licensee is entitled:

- (a) for the sale under the Single Electricity Market Trading and Settlement Agreement of electricity acquired by it under power purchase agreements to which it is a party in the capacity of the Power Procurement Business; and
- (b) any other revenue to which the Licensee is entitled under an electricity purchase or electricity sale contract entered into in the capacity of the Power Procurement Business.

## **Condition 66: PPB / TO Interface Agreement**

### General Duty

- 1 The Licensee shall, in common with the Distribution Owner, prepare, obtain the Authority's approval of, and at all times have in force, implement and comply with, an agreement (the **PTIA**) which:
  - (a) sets out the terms and arrangements referred to in paragraph 3;
  - (b) in so far as consistent with the terms and arrangements referred to in paragraph 3, is designed to maintain the confidentiality of protected information; and
  - (c) sets out the matters referred to in paragraph 4.
- 2 The Licensee shall be taken to have complied with paragraph 1 by:
  - (a) adopting as the PTIA, the document designated as such by the Authority, within 3 days of the Authority so designating such a document (such designation not to occur prior to 17 October 2007); and
  - (b) reviewing such document and proposing modifications to it in accordance with paragraphs 6, 7 and 8.
- 3 The terms and arrangements referred to in sub-paragraph 1(a) are those terms and arrangements between the Licensee and the Distribution Owner that are requisite for the enjoyment and discharge of the rights and obligations of the Licensee or the Distribution Owner under this Licence or the Successor Distribution Licence (respectively) and such other code or document as may be specified from time to time by the Authority. The Licensee shall not enter into any terms or arrangements with the Distribution Owner otherwise than pursuant to the PTIA or another document or code referred to in this Licence.
- 4 The PTIA shall provide for any disputes between the parties thereto over revisions to the PTIA to be referred to the Authority for determination. In addition, the PTIA may provide for there to be referred to the Authority for determination such additional matters arising under the PTIA as may be specified in the PTIA.

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

#### Review of the Arrangements

- 6 Without prejudice to paragraph 5, the Licensee shall, in common with the Distribution Owner, periodically, or at any time on the receipt of a request from the Authority to do so, review the PTIA and its implementation to:

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

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

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

#### Revision of the Arrangements

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

#### Publication of the Arrangements

- 9 Where, and to the extent, required to do so by the Authority, the Licensee shall publish the PTIA on its website.

## **Condition 67: PPB / TSO Interface Agreement**

### General Duty

- 1 The Licensee shall, in common with the Transmission System Operator, prepare, obtain the Authority's approval of, and at all times have in force, implement and comply with, an agreement (the **PSIA**) which:
  - (a) sets out the terms and arrangements referred to in paragraph 3;
  - (b) in so far as consistent with the terms and arrangements referred to in paragraph 3, is designed to maintain the confidentiality of protected information; and
  - (c) sets out the matters referred to in paragraph 4.
- 2 The Licensee shall be taken to have complied with paragraph 1 by:
  - (a) adopting as the PSIA, the document designated as such by the Authority, within 3 days of the Authority so designating such a document (such designation not to occur prior to 17 October 2007); and
  - (b) reviewing such document and proposing modifications to it in accordance with paragraphs 6, 7 and 8.
- 3 The terms and arrangements referred to in sub-paragraph 1(a) are those terms and arrangements between the Licensee and the Transmission System Operator that are requisite for the enjoyment and discharge of the rights and obligations of the Licensee or the Transmission System Operator under the Licence or the Transmission System Operator Licence (respectively) and such other code or document as may be specified from time to time by the Authority. The Licensee shall not enter into any terms or arrangements with the Transmission System Operator otherwise than pursuant to the PSIA or another document or code referred to in the Licence.
- 4 The PSIA shall provide for any disputes between the parties thereto over revisions to the PSIA to be referred to the Authority for determination. In addition, the PSIA may provide for there to be referred to the Authority for determination such additional matters arising under the PSIA as may be specified in the PSIA.



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

#### Review of the Arrangements

- 6 Without prejudice to paragraph 5, the Licensee shall, in common with the Transmission System Operator, periodically, or at any time on the receipt of a request from the Authority to do so, review the PSIA and its implementation to:

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

- 7 Following any such review, the Licensee shall, in common with the Transmission System Operator, send to the Authority:

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

#### Revision of the Arrangements

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

#### Publication of the Arrangements

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

## **Condition 68: Directed Contracts**

### General Duty

- 1 The Licensee shall, from time to time following consultation with the Authority and in accordance with any DC Decision Notice issued pursuant to this Condition 68, offer to enter into Directed Contracts with the Specified Entities. The Licensee shall comply with each Directed Contract that it enters into.
- 2 The Licensee shall ensure that each of the Directed Contracts that it offers to enter into:
  - (a) is with a Counterparty specified in, or determined in accordance with, the DC Decision Notice;
  - (b) provides for the Commercial Terms specified in, or determined in accordance with, the DC Decision Notice; and
  - (c) is subject to the Contractual Terms specified in, or determined in accordance with, the DC Decision Notice .

### DC Decision Notice

- 3 The Authority may (from time to time and having undertaken such consultation as it considers appropriate) issue decisions, in respect of this Condition 68 and in respect of any proposed Directed Contracts, setting out the matters referred to in paragraph 5 (each such decision being, in respect of the Directed Contracts in question, the “**DC Decision Notice**”).
- 4 Any consultation undertaken in accordance with paragraph 3 will, amongst other things, have regard to any applicable restrictions or requirements in relation to the offering of Directed Contracts arising pursuant, or due, to any relevant law or regulation governing the carrying out of investment activities or the provision of financial services (and will be of such length as may be necessary to enable the Licensee to comply with any such restrictions or requirements).

- 5 Each DC Decision Notice shall, in respect of the Directed Contracts to which they apply, either specify the following, or set out the methodology and process to be followed by the Licensee in order to determine the following:
- (a) the Counterparty;
  - (b) the Contractual Terms; and
  - (c) the Commercial Terms.
- 6 The Licensee shall comply with the DC Decision Notices, and in particular shall follow and comply with any methodology or process set out therein for determining the matters referred to in paragraph 5.

#### Commercial Terms

- 7 The Commercial Terms may include (without limitation):
- (a) the strike price against which the System Marginal Price is to be compared for the purposes of the contract for differences calculation;
  - (b) the products to be offered (where different products provide for different volumes in different trading periods);
  - (c) the volume of electricity to be offered; and
  - (d) the period of the contract.

#### Contractual Terms

- 8 The Contractual Terms may include (without limitation) provisions concerning the following:
- (a) the mechanism for establishing, by reference to the strike price and the System Marginal Price, which of the Licensee and the Counterparty is to make a payment to the other;

- (b) the mechanism for determining the amount of the payment to be made by the Licensee or the Counterparty (as applicable), and the payment terms to apply to such payments;
- (c) any credit support obligations;
- (d) the termination rights of each of the Licensee and the Counterparty, and any payments to be made on termination; and
- (e) the dispute resolution procedures to be followed in the event of disagreement between the Licensee and the Counterparty.

### Guidance

- 9 Where directed by the Authority, the Licensee shall prepare guidelines outlining any processes or procedures to be followed by Specified Entities to whom Directed Contracts have been offered in order to enable such Specified Entities to enter into such Directed Contracts. Where directed by the Authority, the Licensee shall ensure that a copy of any such guidelines is published on the Licensee's website, and made available to any person requesting a copy of the same.

### Disputes

- 10 The Licensee shall accept and comply with the Authority's determination of any dispute provided to be determined by the Authority pursuant to the DC Decision Notice and/or the Contractual Terms.

### Definitions

- 11 In this Condition:

**Commercial Terms** means, in respect of each Directed Contract, the matters specified as such in the DC Decision Notice relating to that Directed Contract.

**Contractual Terms** means, in respect of each Directed Contract, the matters specified as such in the DC Decision

Notice relating to that Directed Contract.

<b>Counterparty</b>	means, in respect of each Directed Contract, the Licensee's counterparty thereto.
<b>DC Decision Notice</b>	has the meaning given to that expression in paragraph 3.
<b>Directed Contract</b>	means a contract for differences agreement in respect of the System Marginal Price to be entered into between the Licensee and a Specified Counterparty pursuant to this Condition 68.
<b>Republic of Ireland Electricity Operator</b>	means, from time to time, each person that holds a licence pursuant to Section 14(1) of the Republic of Ireland legislation known as the Electricity Regulation Act 1999.
<b>Specified Entities</b>	means such persons or classes of persons participating in the Single Electricity Market as are identified from time to time in any DC Decision Notice (which classes of person may include, without limitation, Electricity Suppliers, generators and/or Republic of Ireland Electricity Operators).
<b>System Marginal Price</b>	means, in respect of a trading period, the price determined as such pursuant to the Single Electricity Market Trading and Settlement Code.

### **Condition 69: Recovery of the PPB Amount**

1 The Licensee shall enter into, and at all times remain party to, an agreement with the Distribution Owner which provides for:

- (a) notification by the Licensee of its schedule of monthly charges in relation to the PPB Amount for each relevant year, in such amounts each month as the Licensee reasonably considers appropriate, and any mid-year adjustments that may from time to time be agreed with the Authority; and
- (b) an obligation on the Distribution Owner to make payments each month to the Power Procurement Business of the monthly charge relating to the PPB Amount (or, where the PPB Amount is a negative number, for payment in the relevant month of the monthly charge by the Power Procurement Business to the Distribution Owner).

2 Where the relevant monthly payment in respect of the PPB Amount is a negative number, the Power Procurement Business shall pay the relevant amount to the Distribution Owner in accordance with the agreement referred to in paragraph 1.

3 The agreement referred to in paragraph 1, and any amendment to it, shall require to be approved by the Authority.

4 In this Condition, unless the context otherwise requires:

**PPB Amount** means the amount determined as such in accordance with Annex 3.

**relevant year** has the meaning given to that expression in Annex 3.

**Condition 70: Obligation on Economic Purchasing by Power Procurement Business**

- 1 The requirements of this Condition 70 shall apply to the Licensee, in its capacity as the Power Procurement Business, in addition to the requirements (if any) of Condition 46. In the case of any conflict between the requirements of Condition 46 and this Condition 70, the requirements of this Condition 70 shall prevail in respect of the Power Procurement Business.
- 2 Subject to the requirements of Condition 62, where the Power Procurement Business contracts for electricity, it shall do so at the best effective price reasonably obtainable having regard to the sources available.
- 3 In determining the effective price at which electricity is contracted for by the Power Procurement Business, regard shall be had to any payments made or received, or to be made or received, for the grant of, or pursuant to, any electricity purchase contract.
- 4 The Licensee shall keep under review the effective prices which it shall be liable to pay under each of the contracts of the kind referred to in paragraph 2.
- 5 Subject to the requirements of Condition 62, paragraphs 2 and 3 shall apply mutatis mutandis where, as a result of any review under paragraph 4, the Power Procurement Business:
  - (a) amends or seeks to amend or fails to amend or seek to amend;
  - (b) exercises a discretion or fails to exercise a discretion under; or
  - (c) terminates or seeks to terminate or fails to terminate or seek to terminate;an existing agreement (whether or not entered into prior to the relevant date) in such a manner as to alter or not to alter the effective price under such agreement.
- 6 The Licensee shall not be in breach of this Condition by reason only of:
  - (a) having entered into the cancellable generating unit agreements, the gas conversion agreement, the re-powering agreement, the buy-out agreement and any amendment of a generating unit agreement to the extent that the amendment in question shall be made pursuant to and in accordance with the

provisions of the gas conversion agreement, the re-powering agreement, and the buy-out agreement. In this paragraph, references to agreements are to those agreements in the forms in which they shall have been entered into; or

- (b) changes in the interpretation of power purchase agreements that result automatically from amendments to the Grid Code because of provisions in the power purchase agreement (and that were in the power purchase agreement on 1 January 2007) that provide for the Grid Code to prevail in the event of inconsistency between the power purchase agreement and the Grid Code.

7 Nothing in this Condition shall oblige the Licensee to accept an offer made to the Licensee by or on behalf of a party to a power purchase agreement to which the Licensee is also a party, to convert the generation set or generation sets which are the subject of the power purchase agreement in question to burn a fuel other than the fuel which the generation set or generation sets in question are designed or capable of burning unless a reasonable share of the benefits of reduced fuel costs which would result from such conversion are made available to the Power Procurement Business.

8 In this Condition:

- |                                 |  |
|---------------------------------|--|
| <b>buy-out agreement</b>        | means the contract entitled "Availability payment buy-out contract" dated 6 December 2000 between the Licensee and Premier Power Limited.  |
| <b>contract</b>                 | includes the purchase of electricity under power purchase agreements and electricity purchase contracts.   |
| <b>gas conversion agreement</b> | means the agreement entitled "Agreement in respect of the Conversion to Gas Firing of Ballylumford Power Station" dated 1 April 1992 between the Licensee and Ballylumford Power Limited and shall include any contract entered into or to be entered into resulting from the Licensee's exercise of its rights under Schedule 3, Clause 5.6 |



(BG Option) thereof.

**re-powering agreement**

means the agreement entitled "Re-powering agreement in respect of the replacement of certain units at Ballylumford power station by CCGT plant" dated 12 October 2000 between the Licensee and Premier Power Limited.

## ANNEX

### Annex 3 – Determination of the PPB Amount

#### 1. Definitions

##### 1.1 In this Annex:

**“allowed change of law costs”** means an amount determined as such by the Authority in accordance with paragraph 7.1;

**“allowed change of law revenues”** means an amount determined as such by the Authority in accordance with paragraph 7.1;

**“average specified rate”** means the arithmetic mean of the daily base rates of Northern Bank Limited (or such other bank as the Authority shall specify from time to time) current from time to time during the period in respect of which the calculation falls to be made;

**“excluded power procurement costs”** has the meaning ascribed to it in paragraph 5.1;

**“fuel security period”** means a Security Period as defined in paragraph 2 of Part 1 of the Northern Ireland Fuel Security Code as that period may be extended for the purposes of this Annex with the approval of the Authority;

**“maximum regulated PPB PSO revenue”** means the maximum allowed revenue calculated in accordance with the formula in paragraph 2;

<b>“metered”</b>	means, in relation to any quantity sold, as measured by metering required pursuant to and defined in the Grid Code or (where no such meter is installed) as otherwise reasonably calculated;
<b>“non PSO revenue”</b>	means the revenue (measured on an accruals basis) derived by the Power Procurement Business from payments to it under the Trading and Settlement Code, from the sale of system support services to the Transmission System Operator and from the settlement payments or receipts under any contracts for differences entered into by the Power Procurement Business, after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived;
<b>“Other System Charges”</b>	means those charges referred to in paragraph 1(d) of Condition 30 of the Transmission System Operator Licence;
<b>“power procurement manager”</b>	means the Power Procurement Business;
<b>“PPB Amount”</b>	means the amount calculated in accordance with paragraph 2;
<b>“PPB Amount restriction conditions”</b>	means this Annex as from time to time modified or replaced in accordance therewith or pursuant to Article 14, 14G or 18 of the Order, under the Energy Order under the SEM Order, or under the Directive Regulations;
<b>“period of force majeure”</b>	means a period during which any generator shall have been relieved from liability for

breach of, or been entitled to suspend performance of its obligations under any power purchase agreement and in respect of which the Authority shall agree that the consequences thereof shall qualify for the purposes of paragraph 2, as that period may be extended for the purposes of this Annex with the approval of the Authority;

**“power procurement PSO revenue”** means the revenue (measured on an accruals basis) derived by the Power Procurement Business under the agreement referred to in paragraph 1 of Condition 69 after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived;

**“quantity sold”** means the aggregate quantity of units sold in the relevant year  $t$  under the Single Electricity Market Trading and Settlement Code;

**“relevant year”** means a financial year commencing on or after 1 April 1992;

**“relevant year  $t$ ”** means that relevant year for the purposes of which any calculation falls to be made; “relevant year  $t - 1$ ” means the relevant year preceding relevant year  $t$ ; and similar expressions shall be construed accordingly;

**“RPI<sub>2014</sub>”** means the value of RPI <sub>$t$</sub>  where the relevant year  $t$  is 2014 which has the value of 257.7;

<b>“RPI<sub>t</sub>”</b>	means the Retail Price Index (1987=100) published or determined with respect to October in the relevant year t;
<b>“sold”</b>	means sold or otherwise disposed of by the power procurement manager, and cognate expressions shall be construed accordingly;
<b>“uncollected PPB revenue”</b>	means any amount owed to the Licensee in respect of power procurement PSO revenue or non PSO revenue, which amount remains unpaid six months after the date it first fell due for payment or which amount the Licensee deems (in accordance with the payment security policy) to be unrecoverable before the expiry of that six month period; plus the reasonable recovery costs incurred by the Licensee in respect of such amount and the reasonable interest attributable to such amount (calculated in accordance with the payment security policy);
<b>“Varied Ballylumford Agreements”</b>	means (i) the buy-out agreement, and (ii) the generating unit agreements for generation sets nos. 4 and 6 at Ballylumford power station, and the power station agreement, each as modified by the re-powering agreement;

2. **Restriction of the PPB Amount: basic formula**

The Licensee shall in setting the PPB Amount use its best endeavours to ensure that in any relevant year the power procurement PSO revenue shall not exceed the maximum regulated PPB PSO revenue calculated in accordance with the formula for  $M_{PPBt}$  below.

$$M_{PPBt} = A_t + D_t + E_t + PGS_t - NPR_t + K_{Bt}$$

where:

$M_{PPBt}$  means the maximum regulated PPB PSO revenue in relevant year t.

$A_t$  means the actual power purchase costs incurred in the purchase of electricity in relevant year t derived by:

- (a) aggregating amounts payable by the power procurement manager to any person in relevant year t (measured on an accruals basis) for:
  - (i) the provision to the power procurement manager of the total available capacity of contracted generation sets and the purchase of electricity;
  - (ii) the use of any interconnector;
  - (iii) the early termination or amendment of any power purchase agreement;
  - (iv) holding stocks of fuel or other materials for the purposes of generation of electricity; and
  - (v) the provision of any other services approved by the Authority for the purpose of this paragraph;
- (b) deducting the excluded power procurement costs (to the extent that those costs are included in sub-paragraph (a)) and the allowed change of law costs for relevant year t;

- (c) adding the net amount (whether a positive or a negative number) payable or receivable (as the case may be and measured on an accruals basis) by the power procurement manager in relevant year  $t$  in respect of electricity purchase or sale contracts and other contracts designed to enable the power procurement manager to hedge fuel price or exchange rate risks;

$D_t$  means:

- (a) the allowed charge in relevant year  $t$  for excluded power procurement costs and changes of law calculated as the aggregate of the excluded power procurement costs plus the allowed change of law revenues, plus
- (b) any reasonable costs incurred by the Power Procurement Business in complying with the requirements imposed on the Licensee under legislation and other legal requirements through which Directive 2003/54/EC and/or 2009/72/EC<sup>2</sup> is implemented, whether before or after the coming into effect of this Annex, as reasonably determined by the Authority, to the extent not recovered under another part of this Licence or (except to the extent the Distribution Owner is recovering amounts in relation to payments due to the Licensee of the PPB Amount) under the Successor Distribution Owner Licence, plus
- (c) any reasonable costs incurred by the Power Procurement Business in complying with the requirements imposed on the Licensee under the arrangements for the Single Electricity Market (being the project described in the Memorandum of Understanding dated 23 August 2004 and made between the Authority and the Commission for Energy Regulation in Dublin), whether before or after the coming into effect of this Annex, as reasonably determined by the Authority, to the extent not recovered under another part of this

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<sup>2</sup> [Note: under LC1 1(b) it is provided that references to an enactment include any statutory modification or re-enactment thereof, but under the relevant interpretation legislation, 'enactment' does not cover EU legislation. The new IME3 Directive has therefore been referred to explicitly.]

Licence or (except to the extent the Distribution Owner is recovering amounts in relation to payments due to the Licensee of the PPB Amount) under the Successor Distribution Licence, plus

- (d) any other amounts, not included in the revenues under the Successor Distribution Licence or another Annex of this Licence, requested by the Licensee and approved by the Authority whether prior to or after the coming into effect of this Annex;

$E_t$  means the allowed Power Procurement Business entitlement in relevant year  $t$  derived using the following formula:

$$E_t = DEP_t + RTN_t + IC_t + PD_t$$

where:

$DEP_t$  means the depreciation amount allowed in respect of the PPB regulatory asset base for the relevant year  $t$  which is derived from the following formula:

$$DEP_t = PPB\_DEP_t * RPI_t / RPI_{2014}$$

where:

$PPB\_DEP_t$  means the value of the allowed PPB depreciation amount for relevant year  $t$  as shown in Part A of Schedule 3;

$RTN_t$  means the allowed return on the PPB regulatory asset base for the relevant year  $t$  which is derived from the following formula:

$$RTN_t = PPB\_RTN_t * RPI_t / RPI_{2014}$$

where:

$PPB\_RTN_t$  means the value of the allowed PPB return on the PPB regulatory asset base for relevant year  $t$  as shown in Part A of Schedule 3;



$IC_t$  means the PPB core allowance for the relevant year t which is derived from the following formula:

$$IC_t = \text{£}3.529\text{m} * RPI_t / RPI_{2014};$$

$PD_t$  means the allowed PPB pension deficit cost of:

- (i) £0.481m per year, or
- (ii) such other amount, as reasonably determined by the Authority and notified to the Licensee, which amount reflects and is calculated in accordance with:
  - (A) a report submitted by the Licensee to the Authority setting out the results of the most recent triennial actuarial review undertaken by the Licensee, or
  - (B) the regulatory principles, determined by the Authority and notified to the Licensee, as applicable (from the date specified in the Authority's determination) to the allowance of pension deficit costs;

$PGSt$  means PPB's share of the gross surplus which is derived from the following formulae:

- (a) where  $GS_t$  is less than zero:  $PGS_t = \text{zero}$  ; or
- (b) where  $GS_t$  is greater than zero and less than or equal to £10m:  $PGS_t = GS_t * 20\%$  ; or
- (c) where  $GS_t$  is greater than £10m:  $PGS_t = \text{£}2\text{m} + ( (GS_t - \text{£}10\text{m}) * 10\% )$

where:

$GS_t$  means the gross surplus for the relevant year t which is derived from the following formula:

$$GS_t = NPR_t - A_t - D_t - E_t - EX_t$$

where :

$EX_t$  means exclusions for the relevant year  $t$  relating to:

- (i) free carbon permits, the value of which shall be determined on the basis of a methodology agreed with the Authority; and/or
- (ii) certain excluded costs relating to historic cost recovery as agreed with the Authority.

$NPR_t$  means the non PSO revenue in relevant year  $t$ :

$K_{Bt}$  means a correction factor (whether a positive or negative value) to be applied to the maximum regulated PPB PSO revenue in relevant year  $t$  derived using the following formula:

$$K_{Bt} = [M_{PPBt-1} - R_{PPBt-1}](1 + I_t/100)$$

(but in relation to the first relevant year,  $K_{Bt}$  shall be equal to zero);

where:

$M_{PPBt-1}$  means the maximum regulated PPB PSO revenue in relevant year  $t-1$ ;

$R_{PPBt-1}$  means the power procurement PSO revenue in relevant year  $t-1$ ;

$I_t$  means the average specified rate,

### 3. **Restriction of the PPB Amount: adjustments**

- 3.1 If, in respect of any relevant year the power procurement PSO revenue exceeds the maximum regulated PPB PSO revenue by more than the permitted one-year percentage, the Licensee shall furnish an explanation to the Authority and in the

next following relevant year the Licensee shall not effect any increase in the PPB Amount unless it has demonstrated to the reasonable satisfaction of the Authority that the power procurement PSO revenue would not be likely to exceed the maximum regulated PPB PSO revenue in that next following relevant year.

3.2 If, in respect of any 3 successive relevant years, the sum of the amounts by which the power procurement PSO revenue has exceeded the maximum regulated PPB PSO revenue is more than the permitted 3-year percentage, then in the next following relevant year the Licensee shall, if required by the Authority, adjust its PPB Amount such that the power procurement PSO revenue would not be likely, in the judgment of the Authority, to exceed the maximum regulated PPB PSO revenue in that next following relevant year.

3.3 In this paragraph:

“**permitted one-year percentage**” means 4 per cent of the maximum regulated PPB PSO revenue; and

“**permitted 3-year percentage**” means 5 per cent of the maximum regulated PPB PSO revenue in the second of the relevant years.

4. **Information to be provided to the Authority in connection with the PPB Amount restriction conditions**

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

(a) a written forecast of the maximum regulated PPB PSO revenue, together with its components, in respect of the relevant year  $t$  in which such change is to take effect and in respect of the next following relevant year  $t + 1$ ;

(b) a written estimate of the maximum regulated PPB PSO revenue, together with its components, in respect of the relevant year  $t-1$  immediately preceding the relevant year in which the change is to take effect unless a statement complying with paragraph 4.6 in respect of relevant year  $t-1$  has

been furnished by the Licensee to the Authority before the time referred to in paragraph 4.2.

- 4.2 The relevant time referred to in paragraph 4.1 shall be 14 days prior to the date of publication of such charges.
- 4.3 If within 3 months of the commencement of any relevant year  $t$  the Licensee has not provided the aforementioned forecasts pursuant to paragraph 4.1 for the purpose of such changes in charges as are referred to in paragraph 4.1, the Licensee shall forthwith provide the Authority with a written forecast of the maximum regulated PPB PSO revenue (together with its components) in respect of relevant year  $t$ .
- 4.4 The Authority may issue directions providing that any forecast or estimate provided in accordance with paragraph 4.1 or 4.3 shall be accompanied by such information as regards the assumptions underlying the forecast or estimate as may be necessary to enable the Authority to be satisfied that the forecast or estimate has been properly prepared on a consistent basis and the Licensee shall comply with any such directions.
- 4.5 Not later than 6 weeks after the commencement of each relevant year  $t$ , the Licensee shall send to the Authority a statement as to:
- (a) whether or not the provisions of paragraph 3 are likely to be applicable in consequence of the power procurement PPB PSO revenue in the preceding relevant year  $t-1$  or the 3 preceding relevant years  $t-1$ ,  $t-2$  and  $t-3$ ; and
  - (b) its best estimate as to the relevant correction factor  $K_{Bt}$  calculated in accordance with the formula set out in paragraph 2 to be applied in calculating the maximum regulated PPB PSO revenue in respect of relevant year  $t$ .
- 4.6 Not later than 3 months after the end of each relevant year the Licensee shall send to the Authority a statement, in respect of that relevant year, showing the specified items referred to in paragraph 4.8.
- 4.7 The statement referred to in the preceding paragraph shall be:

- (a) accompanied by a report from the Auditors that in their opinion:
  - (i) such statement fairly presents each of the specified items referred to in paragraph 4.8 in accordance with the requirements of the PPB Amount restriction conditions; and
  - (ii) the amounts shown in respect of each of those specified items are in accordance with the Licensee's accounting records which have been maintained in respect of each of the relevant Separate Businesses in accordance with this Licence; and
- (b) certified by a director of the Licensee on behalf of the Licensee that to the best of his knowledge, information and belief having made all reasonable enquiries:
  - (i) there is no amount included in its calculations under paragraph 2 which represents other than
    - (aa) bona fide consideration for electricity sold; or
    - (bb) an amount permitted under the PPB Amount restriction conditions to be so included;
  - (ii) there is no amount included in its calculations of excluded power procurement costs under paragraph 5 which represents other than an amount permitted under the PPB Amount restriction conditions to be so included; and
  - (iii) all amounts which should properly be taken into account for the purposes of the PPB Amount restriction conditions have been taken into account.

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

- (a) the quantity sold;
- (b) the power procurement PSO revenue;

- (c) the Power Procurement Business's costs incurred in the purchase of electricity, calculated as provided under paragraph 2 (showing separately each component thereof);
- (d) the allowed Power Procurement Business entitlement, being  $E_t$  calculated as provided under paragraph 2, showing separately each component thereof;
- (e) the excluded power procurement costs referred to at paragraph 5 (showing separately each category of excluded cost);
- (f)  $NPR_t$  calculated as provided under paragraph 2, showing separately each component thereof;
- (g)  $PGS_t$  calculated as provided under paragraph 2, showing separately each component thereof; and
- (h) such other items as shall be specified in directions issued by the Authority from time to time for the purposes of this Annex.

## 5. **Excluded power procurement costs**

5.1 Subject to paragraph 5.2, the following costs and revenues of the power procurement manager (whether a positive or negative amount) shall be treated as excluded power procurement costs in relevant year  $t$  (and, in the case of (xii) and (xiii) below, such costs shall be so treated for each year in which the buy-out agreement continues to be in force):

- (i) the cost incurred in the purchase of electricity during fuel security periods and periods of force majeure in relevant year  $t$  calculated in accordance with the definition of  $A_t$  and with a basis for attributing costs between different periods of the year approved by the Authority;
- (ii) the Licensee's allowed power procurement related security costs, being any cost incurred by the power procurement manager and approved by the Authority as being an allowed security cost in accordance with the Northern Ireland Fuel Security Code (as that term is therein defined), but excluding any cost which forms part of;

- (a) the Distribution Owner's allowed related security costs; or
- (b) any payment of the kind referred to in sub-paragraph (ii) above;
- (iii) payments made by the power procurement manager to generators in consideration of their compliance with any directions made to them in relation to stocks of fuel and other materials under Article 37 of the Order;
- (iv) amounts paid or payable to generators by way of compensation for any damage, costs, losses and expenses suffered or incurred by them as a result of complying or attempting to comply (in either case acting as reasonable and prudent operators) with any request or instruction from the transmission system operator pursuant to OC2.6.2(c)(ii), OC2.6.2(c)(iii), OC2.6.3(c)(ii), OC2.6.3(f)(ii), OC2.6.3(f)(iii), OC2.6.3(c)(iii), OC2.6.7.4, OC7.4.6.6 and SDC2.4.2.9 of the Grid Code (and the corresponding provisions of any replacement of the Grid Code), including:
  - (a) physical damage to or operational deterioration of any generation set or other plant;
  - (b) increased costs of operation or maintenance of the generation set or other plant;
  - (c) costs and claims of contractors; and
  - (d) loss or diminution of any payments to which the generators would have been entitled for the provision of available capacity (including reductions and/or increased rebates thereof) in relation to any such compliance at any time prior to 31 March 1997,

to the extent that the Authority is satisfied that:

- (aa) the compensation in question shall have had deducted from it any payment which the Licensee shall have received or have been entitled to receive from any generator whose act or omission was responsible for the request or instruction in question from the grid operator, in relation to such act or omission;

- (bb) it was necessary for the transmission system operator to have made the request or instruction in question in order to protect or maintain the security and stability of the system; and
- (cc) the Licensee, acting reasonably and prudently, could not have avoided the threat in question to the security and stability of the system;
- (v) an amount representing 10% (the PPB share) of the demonstrable financial benefits that PPB achieves under arrangements that qualify for this incentive as the Licensee shall agree from time to time with the Authority;
- (vi) no longer used
- (vii) amounts that become uncollected PPB revenue in relevant year t less any amount or part of an amount treated as uncollected PPB revenue in respect of a preceding relevant year that has been paid to the Licensee in the relevant year t;
- (viii) no longer used;
- (ix) the following amounts:
  - (a) any amount which shall be payable by the power procurement manager to any generator or relevant supplier in compensation for the costs of complying with a request made by the Authority under paragraph 10 of Condition 15 of any generation licence (as amended or supplemented and to the extent not recovered under paragraph 11 thereof) and paragraph 9 of Condition 5 of any supply licence other than the NIE Energy Supply licence (as amended or supplemented and to the extent not recovered under paragraph 10 thereof) (as the case may be);
  - (b) the reasonable direct costs of the Licensee in complying with a request made by the Authority under paragraph 10 of Condition



60, to the extent not recovered in accordance with paragraph 11 of Condition 60; and

- (c) such amount as shall have been paid to the Authority in reimbursement of its costs and expenses incurred or to be incurred in developing the requisite arrangements provided for in Condition 60.
- (x) any other costs or revenues of the Power Procurement Business which:
  - (a) were not taken into account in setting  $E_t$  (as defined in paragraph 2);
  - (b) in the case of costs, those which cannot reasonably be controlled by the power procurement manager; and
  - (c) the Authority shall determine, upon an application to it by the Licensee, shall be included for the purposes of this paragraph.
- (xi) no longer used;
- (xii) an amount equal to the cost of servicing the buy-out agreement (being the contract entitled “Availability payment buy-out contract” dated 6 December 2000 between the Licensee and Premier Power Limited) in relevant year  $t$ ;
- (xiii) Without limitation to paragraph (xii), any additional costs which are incurred under the buy-out agreement by reason of any Increase in Tax (as such term is defined in the buy-out agreement);
- (xiv) The applicable Breakage Charges and applicable reimbursable costs (as such items are defined in the re-powering agreement) incurred as a result of the re-powering agreement; and
- (xv) Charges in respect of generating units contracted to the power procurement manager for Transmission Use of System and Other System Charges.

5.2 No cost incurred or revenues received by the power procurement manager shall be included in more than one of the categories in sub-paragraphs (i) to (xv) of paragraph 5.1.

6. **Duration of PPB Amount restriction conditions**

6.1 This Annex shall apply so long as this Licence continues in force but shall cease to have effect (in whole or in part, as the case may be) if the Licensee delivers to the Authority a request (a “Disapplication Request”) made in accordance with paragraph 6.3 and:

- (a) the Authority agrees in writing to the request; or
- (b) the application of this Annex (or any other part of it) is terminated by notice given by the Licensee in accordance with paragraph 6.4 and not withdrawn.

6.2 Save where the Authority otherwise agrees, no disapplication following delivery of a Disapplication Request pursuant to this paragraph 6 shall have effect earlier than the date (the “Disapplication Date”) which is the later of:

- (c) the date occurring 18 months after delivery of the Disapplication Request; and

31 March 2017 with Utility Regulator option to extend up to 23rd September 2018

6.3 Disapplication Request pursuant to this paragraph 6.3 shall:

- (a) be in writing addressed to the Authority;
- (b) specify this Annex or any part of it to which the request relates, (excluding in either case this paragraph 6); and
- (c) state the date from which the Licensee wishes the Authority to agree that this Annex or the specified part of it shall cease to have effect.

6.4 A Disapplication Notice pursuant to this paragraph 6.4:

- (a) may be given in the circumstances described in either paragraph 6.5 or paragraph 6.6;
- (b) may be withdrawn by the Licensee at any time prior to the Disapplication Date; and
- (c) where it is given, shall:
  - (I) be in writing addressed to the Authority;

- (II) specify this Annex, or any part of it (which shall comprise only such part as was specified in the Disapplication Request) to which the notice relates; and
- (III) state the date from which the Licensee wishes the notice to take effect, which shall not be earlier than the Disapplication Date.

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

- (a) this Annex, or any part of it to which the Disapplication Request relates; or
- (b) this paragraph 6, so as to remove the right of the Licensee to give to the Authority a Disapplication Notice in respect of the relevant Disapplication Request.

6.6 The circumstances described in this paragraph are that:

- (a) by no later than the beginning of the period of six months which will end with the Disapplication Date, the Authority has in response to the Disapplication Request published a decision of a type referred to in paragraph 6.5 above;
- (b) the Licensee has exercised its right to appeal to the CMA against that decision in accordance with Article 14B of the Order;
- (c) the CMA has, in respect of the provisions to which the Disapplication Request relates:
  - (I) quashed the decision of the Authority under Article 14E(2)(a) of the Order; and
  - (II) neither remitted the matter back to the Authority under Article 14E(2)(b) of the Order nor substituted its own decision for that of the Authority under Article 14E(2)(c) of the Order; and
- (d) no more than 30 days has elapsed since the date on which the CMA quashed the decision of the Authority.

6.7 A Disapplication Request or Disapplication Notice served under this paragraph 6 may be served in respect of a specified geographic area.

7. **Change of Law**

7.1 Where it appears to the power procurement manager that there has been, or is likely to be, a relevant change of law which has had or is likely to have a material effect on the financial position and performance of the Power Procurement Business, the power procurement manager may require the Authority to determine whether the relevant change of law has had or is likely to have such an effect, and if so, what amounts, if any, should be treated as:

- (a) allowed change of law costs in calculating  $A_t$  for relevant year  $t$  and each succeeding relevant year in accordance with paragraph 2; and
- (b) allowed change of law revenues in calculating  $D_t$  for relevant year  $t$  and each succeeding relevant year in accordance with paragraph 2,

to ensure that the financial position and performance of the Licensee is likely, so far as reasonably practicable, to be the same as if the relevant change of law had not taken place. In determining the matters provided for in sub-paragraphs (a) and (b) above, the Authority shall have regard, where relevant, to:

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

7.2 A notice given to the Authority by the power procurement manager pursuant to paragraph 7.1 shall contain or be accompanied by all relevant details of the relevant change of law and such other information as the Authority shall require and, unless the Authority shall otherwise consent, shall be given not later than the first day of

October immediately preceding the first of the relevant years in respect of which the power procurement manager wishes any change in such elements to take effect.

7.3 In this paragraph:

**“environment”** has the meaning ascribed to it in the Environmental Protection Act 1990;

**“harm to the environment”** means actual or potential adverse effects on the environment or living organisms (including man), and shall include changes in climatic conditions or other natural physical systems or functions in the world or any part thereof, and shall also include harm as that expression is defined in the Environmental Protection Act 1990;

**“legal requirement”** means, in relation to a relevant person, any of the following:

- (a) any enactment to the extent that it applies to the relevant person;
- (b) any regulation made by the Council or the Commission of the European Communities to the extent that it applies to the relevant person or a decision taken by the said Commission which is binding on the relevant person to the extent that it is so binding;
- (c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within (a) or (b) above to have effect

in a way that is different to that in which it previously had effect;

- (d) any direction of a competent authority other than, insofar as it applies to the Licensee, the Authority (except in the exercise of its powers under paragraph 4 of Condition 16 of the Transmission System Operator Licence or successor paragraph) or the Department;

**“relevant change of law”** means any of the following:

- (a) the application to the power procurement manager of any legal requirement which did not previously so apply or the change of any legal requirement relating to the Power Procurement Business (including any such legal requirement ceasing to apply, being withdrawn or not being renewed);
- (b) a change of the United Kingdom Plan, as it applies to Northern Ireland, for the reduction of emissions, made by the Secretary of State on 20 December 1990 pursuant to section 3(5) of the Environmental Protection Act 1990 (as it shall have been amended, supplemented or replaced from time to time); and
- (c) the application to any generator of any legal requirement which did not previously so apply or the change of any legal requirement relating to that generator (including any such legal requirement ceasing to apply, being withdrawn or not being renewed) which has the effect of increasing the cost of electricity

purchased by the power procurement manager,

other than in relation to:

- (i) corporation tax (or any other tax of a similar nature replacing corporation tax on profits or gains); or
- (ii) Value Added Tax (save to the extent that the generator is not entitled to credit for the same as input tax under section 14 of the Value Added Tax Act 1983);

save to the extent that the rate, incidence or basis of or other provisions applicable to such tax differ as between one case and another, by reason of considerations or matters relating to harm to the environment so as to result in the imposition of tax or costs at a greater level or higher amount, as between one case and another, than would otherwise be the case.

For the above purposes, a tax shall be treated as charged, levied, imposed or payable in relation to or because of considerations or matters relating to harm to the environment, or differences as between one case and another shall be treated as applying by reason of considerations or matters relating to harm to the environment, if in all the circumstances it may reasonably be considered that considerations or matters relating to harm to the environment were a material factor in relation to the charging, levying or imposition or making provision for payment of such tax or the making of provision for such difference;

- “**relevant person**” means a generator or the Licensee; and
- “**tax**” means any tax, duty, impost or levy of any nature whatsoever and wherever and whenever charged, levied or imposed.

8. **Modification of Generating Unit Agreements, Power Station Agreements and/or the Grid Code**

No longer used.

9. **Purpose of PPB Amount Restriction Condition**

It is acknowledged that the purpose of this Annex 3 is to ensure that, subject to the conditions contained in paragraphs 1 to 8, and having regard to other sources of revenue available to the Licensee (and the costs to be recovered therefrom), the Licensee is and shall at all times be able to recover, the aggregate payments made by the Licensee from time to time under the Varied Ballylumford Agreements in the manner described in a letter from the Authority to the predecessor company dated 27 July 2000.



**Schedule 3: PPB Price Control Allowances and Incentive Targets and Weights**

**Schedule 3 - Part A: Price Control Allowances**

The following allowances are agreed for PPB and are expressed in 2014/15 (October 2014) prices.

	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>
<b>PPB_DEP<sub>t</sub></b>	£0.292m	£0.292m	£0.293m
<b>PPB_RT<sub>Nt</sub></b>	£0.044m	£0.028m	£0.012m

#### **Annex 4 – Cancellable Generating Unit Agreements**

<u>Cancellable Generating Unit Agreement</u>	<u>Earliest Cancellation Date</u>
Agreement dated 1 April 1992 between Belfast West Power Limited and the power procurement manager in respect of generation set no. 1 at Belfast West power station	1 November 1996
Agreement dated 1 April 1992 between Belfast West Power Limited and the power procurement manager in respect of generation set no. 2 at Belfast West power station	1 November 1996
Agreement dated 1 April 1992 between Belfast West Power Limited and the power procurement manager in respect of generation set no. 3 at Belfast West power station	1 November 1996
Agreement dated 1 April 1992 between Belfast West Power Limited and the power procurement manager in respect of generation set no. 4 at Belfast West power station	1 April 2001
Agreement dated 1 April 1992 between Belfast West Power Limited and the power procurement manager in respect of generation set no. 5 at Belfast West power station	1 April 2001

Agreement dated 1 April 1992 between  
Coolkeeragh Power Limited and the  
power procurement manager in respect  
of generation set no. 3 at  
Coolkeeragh power station

31 March 2002

Agreement dated 1 April 1992 between  
Coolkeeragh Power Limited and the  
power procurement manager in respect  
of generation set no. 4 at  
Coolkeeragh power station

31 March 2002

Agreement dated 1 April 1992 between  
Coolkeeragh Power Limited and the  
power procurement manager in respect  
of generation set no. 6 at  
Coolkeeragh power station

31 March 2003

Agreement dated 1 April 1992 between  
Coolkeeragh Power Limited and the  
power procurement manager in respect  
of generation set no. 7 at  
Coolkeeragh power station

31 March 2004

Agreement dated 1 April 1992 between  
Coolkeeragh Power Limited and the  
power procurement manager in respect  
of generation set no. 8 at  
Coolkeeragh power station

1 November 2010

Agreement dated 1 April 1992 between  
Kilroot Power Limited and the  
power procurement manager in respect

1 November 2010

Licence granted: 31 March 1992  
Last updated: 20 December 2016

of generation set no. 1 at Kilroot  
power station

Agreement dated 1 April 1992 between  
Kilroot Power Limited and the  
power procurement manager in respect  
of generation set no. 2 at Kilroot  
power station

1 November 2010

Agreement dated 1 April 1992 between  
Kilroot Power Limited and the  
power procurement manager in respect  
of gas turbine generation set no. 1  
at Kilroot power station

1 November 2010

Agreement dated 1 April 1992 between  
Kilroot Power Limited and the  
power procurement manager in respect  
of gas turbine generation set no. 2  
at Kilroot power station

1 November 2010

Agreement dated 1 April 1992 between  
Ballylumford Power Limited and the  
power procurement manager in respect  
of generation set no. 1 at Ballylumford  
power station

1 November 2010 at all times prior  
to the amendment of that agreement  
in accordance with Clause 3.4 of  
re-powering agreement and,  
thereafter, 1 April 2012

Agreement dated 1 April 1992 between  
Ballylumford Power Limited and the  
power procurement manager in respect  
of generation set no. 2 at Ballylumford  
power station

1 November 2010

Agreement dated 1 April 1992 between

1 November 2010

Licence granted: 31 March 1992  
Last updated: 20 December 2016

Ballylumford Power Limited and the power procurement manager in respect of generation set no. 3 at Ballylumford power station

Agreement dated 1 April 1992 between Ballylumford Power Limited and the power procurement manager in respect of the of generation set no. 4 at Ballylumford power station

1 November 2010

Agreement dated 1 April 1992 between Ballylumford Power Limited and the power procurement manager in respect of generation set no. 5 at Ballylumford power station

1 November 2010 at all times prior to the amendment of that agreement in accordance with Clause 3.3 of the re-powering agreement and, thereafter, 1 April 2012

Agreement dated 1 April 1992 between Ballylumford Power Limited and the power procurement manager in respect of generation set no. 6 at Ballylumford power station

1 November 2010

Agreement dated 1 April 1992 between Ballylumford Power Limited and the power procurement manager in respect of gas turbine generation set no. 1 at Ballylumford power station

1 November 2010

Agreement dated 1 April 1992 between Ballylumford Power Limited and the power procurement manager in respect of gas turbine generation set no. 2

1 November 2010

Licence granted: 31 March 1992  
Last updated: 20 December 2016

at Ballylumford power station

Licence granted: 31 March 1992  
Last updated: 20 December 2016

### **Schedule 1: Specified Premises**

The Licensee is authorised to supply electricity to all premises in Northern Ireland.

## **Schedule 2: Terms as to Revocation**

- 1 The Authority may at any time revoke the Licence by not less than 30 days' notice (24 hours' notice in the case of revocation under sub-paragraph 1(e)) in writing to the Licensee:
- (a) if the Licensee agrees in writing with the Authority that the Licence should be revoked;
  - (b) if any licence fee required to be paid under the Licence is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the Licensee notice that the payment is overdue provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;
  - (c) if the Licensee fails to comply with a final order (within the meaning of Article 42 of the Energy Order) or with a provisional order (within the meaning of Article 42 of the Energy Order) which has been confirmed under Article 42 of the Energy Order and which (in either case) has been made in respect of a contravention or apprehended contravention of any of the Conditions or of any relevant requirement (as defined in Article 41(2)(a) of the Energy Order) imposed on the Licensee in its capacity as holder of the Licence and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 44 of the Energy Order could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined;
  - (d) if the Licensee fails to comply with an order made by a court under section 34 of the Competition Act 1998; or fails to comply with an order made under section 72, 75, 76, 81, 83, 84, 158, 160 or 161 of, or under paragraph 2, 5, 6, 10 or 11 of schedule 7 to, the Enterprise Act 2002; or any partner, director,



member, secretary or manager of the Licensee is found guilty of an offence under section 188 or 201 of the Enterprise Act 2002;

- (e) if the Licensee:
  - (i) is unable to pay its debts (within the meaning of Article 103(1) or (2) of the Insolvency (Northern Ireland) Order 1989, but subject to paragraph 3 of this Schedule) or if any voluntary arrangement is proposed in relation to it under Article 14 of that Order, or if it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
  - (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;
  - (iii) has an administration order under Article 21 of the Insolvency (Northern Ireland) Order 1989 made in relation to it;
  - (iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority;
  - (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;
- (f) if the Licensee is convicted of having committed an offence under Article 63 of the Order or under Article 46 of the Gas (Northern Ireland) Order 1996;
- (g) if the Licensee fails to pay any financial penalty (within the meaning of Article 45 of the Energy Order) imposed in respect of a contravention or apprehended contravention of a Condition 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;

- (h) if none of the premises specified, or of the description specified, in Schedule 1 shall have been supplied with electricity by the Licensee at any time during any period of 5 years; or
- (i) if the Licensee ceases to carry on the Power Procurement Business other than with the consent of the Authority.

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

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

**Schedule 3: PPB Price Control Allowances and Incentive Targets and Weights**

**Schedule 3 - Part A: Price Control Allowances**

The following allowances are agreed for PPB and are expressed in 2010/11 (October 2010) prices.

	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>
<b>PPB_DEP<sub>t</sub></b>	£0.326m	£0.282m	£0.267m
<b>PPB_RT<sub>t</sub></b>	£0.086m	£0.070m	£0.055m

**Schedule 3 - Part B: IC<sub>t</sub> Incentive Targets and Weights**

The following represent the Incentive Targets and the Weights applying to each that is used in Annex 3 paragraph 2 to determine the value of IC<sub>t</sub> for the relevant year.

<b>PPA Costs</b>			
<b>Description</b>	<b>Objective</b>	<b>Target / Reporting method</b>	<b>Weight</b>
Availability Payments	Challenge and verify availability declarations and payments	Enforcement of the contract. Demonstrated via PPB's testing (via SONI).	5%
Change in Law costs	Minimise costs passed through (FGD, SO <sub>3</sub> , Ash disposal, etc.)	Costs minimised. Demonstrated via report to NIAUR.	10%
Gas costs	Ensure minimum gas costs	Ensure an effective gas purchasing strategy is developed and implemented. Demonstrated ex-post.	17%
Gas management	Ensure flexibility in arrangements such that the gas position can be effectively traded out	Minimum gas quantity traded through balancing arrangements. Demonstrated ex-post.	3%
CO <sub>2</sub> management	Meet surrender obligations	Ensure no penalties for non compliance. Demonstrated ex-post.	5%
Fuel Stocking	Ensure adequate fuel supplies	Agree strategy with NIAUR/DETI and demonstrate compliance with the plan	7%

<b>Market Activity</b>			
<b>Description</b>	<b>Objective</b>	<b>Target / Reporting method</b>	<b>Weight</b>
Nomination processes	Compliance with bidding principles	Market Monitor Challenges of PPB Bids should be no greater than overall market average. Demonstrated ex-post.	5%
Market Revenue	Ensure revenue receipts are correct	Verify invoices and query all deviations. Demonstrated ex-post.	5%
Settlement Reallocations	Effective utilisation of Settlement reallocations	75% of PPB's market revenue reallocated under SRAs (unless	7%

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	(e.g. with the regulated NIE Energy Supply business)	otherwise agreed with NIAUR)	
CfD & Commodity Hedging cover position	Implement Risk Management in accordance with plans	Agree strategy/plan with NIAUR and demonstrate implementation within the agreed framework	20%
Risk Management products	Increase product portfolio to align with Supplier / Customer needs	Demonstrate product portfolio development and, where appropriate, customer satisfaction	6%
Manage counter-party risk	Minimise risk of bad debt through rigorous implementation of the Payment Security Policy	Full compliance with the PSP. Demonstrate ex-post.	5%
Manage interfaces	Ensure new interface arrangements operate effectively or are modified where deficiencies are identified	Effective operation of the interfaces with SONI and T&D. Agreed modifications and referrals to NIAUR for dispute resolution.	5%

### **Note: Modifications made since Licensing Scheme**

- 1.** Paragraph 12 of Condition 46 modified on 5 November 2007
- 2.** Modifications made to Annex 2 – 12 May 2008
- 3.** Price Control Modifications (Annex 3 and Schedule 3) – 10 December 2008.
- 4.** Modification made to add Condition 68 – Directed Contracts and amend paragraph vi of 5.1. of Annex 3 – 17 June 2009.
- 5.** Modification made to Annex 2 (full replacement) – 10 September 2009 (have signed copy)
- 6.** Modifications made to Annex 3, Annex 4 and Schedule 3 (full replacement) – 15 June 2010
- 7.** Modifications made to Annex 2 (full replacement) – 14 September 2010
- 8.** Modifications made to Annex 2 (full replacement) – 24 January 2012
- 9.** Modification made to add a new paragraph 8 of Condition 47 – 30 April 2013
- 10.** Modifications made to Annex 2 (full replacement) – 20 March 2014
- 11.** Modifications made to Conditions 10.1, 11.3, 27 (addition of new paragraphs 8, 9 and 10), 31.4, modification of definition of “market registration service” in condition 27 and renumbering of Condition 40.3.c.iii (which is now 40.3.d) – 28 March 2014
- 12.** Licence modifications to conditions 11, 15 and 54 and Annexes 1 and 2 pursuant to Regulation 7 and Regulation 8 of The Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015 (the “Regulations”). Effective from 04 August 2015.
- 13.** Modifications to conditions 32, 38 and 44 in accordance with Regulation 14 of the Energy Efficiency Regulations (Northern Ireland) 2014, for the purposes of implementation of the Energy Efficiency Directive. Notification of modifications

provided on 23 November 2015 and modifications became effective on 23 November 2015.

- 14.** Modifications to conditions 1, 2, 3, 4, 10, 17, 23, 25, 27, 34, 35, 38, 40, 43, 44, 47, 49, 50, 52A, 53, 53A, 60, 66, 69 and Annex 3; and removal of Conditions A, B, C & D became effective from 1 September 2016. Decision paper and notice of modifications published on 3 June 2016.