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**ELECTRICITY SUPPLY LICENCE**

**FOR**

**DEMAND SIDE UNIT OPERATOR**

**KIWI POWER LIMITED**

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## GRANT OF THE LICENCE

### Terms of the Licence

- 1 The Northern Ireland Authority for Utility Regulation (the “**Authority**”), in accordance with Article 10(1) of the Electricity (Northern Ireland) Order 1992 (as amended) (the ‘**Order**’) and in exercise of the power conferred by Article 10(1)(c) of the Order hereby grants to Kiwi Power Limited (a company incorporated in England with registered number 07104653) and having its principal place of business at 35 Ballards Lane, London, N3 1XW (the “**Licensee**”) a licence (the “**Licence**”) to supply electricity:
  - (a) to the premises specified or of the description specified in schedule 1; and
  - (b) during the period specified in paragraph 2 below.
  
- 2 The Licence shall come into force on the date of the grant and shall continue in force until:
  - (a) determined by not less than 25 years’ notice in writing given by the Authority to the Licensee, such notice not to be served earlier than the tenth anniversary of the date on which this licence comes into force; or
  - (b) the date, if earlier, on which the licence is revoked in accordance with the provisions specified as a term of the licence in schedule 2 hereto.

### Conditions of the Licence

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

### Definitions

- 4 Unless the contrary intention appears, words and expressions used in the terms of the Licence shall have the same meaning as was given to them, and shall be construed in accordance with the rules of construction and interpretation set out, in the conditions of the Licence at the date on which the Licence was granted.

Date.....

Signed.....

Name.....

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

## CONDITIONS OF THE LICENCE

### 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 the Companies (Northern Ireland) Order 1986.

**Authorised** in relation to any business or activity means authorised by licence granted under Article 10 or exemption granted

	under Article 9 of the Order.
<b>Authorised electricity operator</b>	means any person (other than the Licensee in its capacity as the holder of the Licence) who holds a licence granted pursuant to Article 10 of the Order or whose activities are exempt pursuant to Article 9 of the Order and any person transferring electricity to or from Northern Ireland across an interconnector or who has made an application for use of an interconnector which has not been refused
<b>Authority</b>	means the Northern Ireland Authority for Utility Regulation.
<b>Cancel</b>	in relation to the Authority means the exercise of its cancellation powers.
<b>Cancellable generating unit agreement</b>	means a generating unit agreement which may be the subject of a cancellation direction, being the generating unit agreement specified in Schedule 8 of the transmission licence issued to Northern Ireland Electricity plc with effect from 1 April 1992 (as it may be modified pursuant to paragraph 12 of Condition 12 of Part III thereof or paragraph 5 of Condition 7 of Part III thereof).
<b>Cancellation direction</b>	means a direction issued by the Authority to cancel a cancellable generating unit agreement.
<b>Cancellation powers</b>	means the powers of the Authority to direct any person to a cancellable generating unit agreement to terminate that agreement upon such date or the happening of such event as shall be specified in the notice containing the direction.
<b>Charges for the Supply of Electricity</b>	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.

<b>Contract</b>	means a contract for the supply of electricity made between the Licensee and a Customer but does not include a Deemed Contract.
<b>Customer</b>	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.
<b>Deemed Contract</b>	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.
<b>Department</b>	means the Department of Enterprise Trade and Investment formerly known as the Department of Economic Development.
<b>Designated</b>	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.
<b>Directive</b>	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.

<b>Directive Regulations</b>	means the Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 2005 and/or the Electricity Regulations (Northern Ireland) 2007.
<b>Distribution Code</b>	has the meaning given to it in the Transmission Owner 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 business</b>	Means the authorised business (if any) of the Licensee or any affiliate or related undertaking of the Licensee in the generation of electricity or in the provision of system support services.
<b>Generation set</b>	means any plant or apparatus for the production of electricity.
<b>Generator</b>	means a person authorised by a licence granted under Article 10(1)(a) of the Order.
<b>Grid Code</b>	has the meaning given to it in the Transmission System Operator Licence.
<b>Holding company</b>	means a holding company within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986.
<b>Interconnector</b>	means 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.

<b>Licence</b>	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.
<b>Licensee</b>	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.
<b>Market Operator</b>	means the person authorised, from time to time, under the Northern Ireland Market Operator Licence in its capacity as the holder of that licence.
<b>Metering equipment</b>	includes any meter and any associated equipment which materially affects the operation of that meter.
<b>Modification</b>	includes addition, omission, amendment and substitution, and cognate expressions shall be construed accordingly.
<b>NIE Energy Supply Licence</b>	means the licence granted under Article 10(1)(c) of the Order to Northern Ireland Electricity plc on 31 March 1992, which is to be transferred to NIE Energy Limited (a body corporate registered in Northern Ireland under company number NI27394) pursuant to a statutory scheme on or around SEM Go-Live.
<b>Non-Domestic Customer</b>	means a customer supplied, or requiring to be supplied, with electricity at Non-Domestic Premises.
<b>Non-Domestic Premises</b>	has the meaning given in, and is to be interpreted in accordance with, Condition 25.
<b>Northern Ireland Fuel</b>	means the document of that title designated as such by

<b>Security Code</b>	the Department as from time to time amended in accordance with its provisions, dealing with the co-operation of licence holders in strategic contingency planning in respect of fuel stocks, the modification of the merit order and certain other systems and procedures under the Grid Code during periods when the Department has given and there is in force one or more directions under Article 37(4) of the Order, the entitlement of authorised electricity operators to and the collection of certain payments in anticipation of, during and after the expiry of any such periods, and connected matters.
<b>Northern Ireland Market Operator Licence</b>	means the licence granted, under Article 10(1)(d) of the Order, to SONI Limited (a body corporate registered in Northern Ireland under company number NI038715) on 3 July 2007.
<b>Notice</b>	means (unless otherwise specified) notice given either in writing or by electronic data transfer.
<b>Order</b>	means the Electricity (Northern Ireland) Order 1992.
<b>Power Procurement Business</b>	has the meaning given in the NIE Energy Supply Licence.
<b>Power purchase agreement</b>	means a contract for the provision to the Licensee or any other authorised electricity operator of the whole or any part of the available capacity and/or the sale or other disposal to the Licensee or any other authorised electricity operator of the whole or any part of the output of a generation set or combination of generation sets.
<b>Power station agreement</b>	means an agreement made with effect from 1 April 1992 between a generator and the Power Procurement Business, in relation to matters concerning a generating

station and designated for the purposes of the generation licences granted to the successor companies.

**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.

**PSO Agreement**

means the agreement of that title with the Transmission Owner in the form approved from time to time by the Authority.

**Related undertaking**

in relation to any person means any undertaking in which

	that person has a participating interest as defined by Article 268 of the Companies (Northern Ireland) Order 1986.
<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) 1992.
<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>Separate Business</b>	Means each of the Supply 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.
<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>Supply Business</b>	means the business of the Licensee in the supply of electricity pursuant to the Licence.
<b>System Support Services</b>	Has the meaning given to it in the Transmission System Operation Licence
<b>Transmission Owner</b>	means the person authorised, from time to time, under the Transmission Owner Licence in its capacity as the holder of that licence.
<b>Transmission Owner Licence</b>	means the licence granted, under Article 10(1)(b) of the Order, to Northern Ireland Electricity plc (a body corporate registered in Northern Ireland under company number NI026041) on 31 March 1992.
<b>transmission system</b>	has the meaning given in the Transmission Owner Licence.
<b>Transmission System</b>	means the person authorised, from time to time, under

<b>Operator</b>	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.
<b>undertaking</b>	bears the meaning ascribed to it by Article 267 of the Companies (Northern Ireland) Order 1986.
<b>unmetered supply</b>	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.

## **Condition 2: Separate Accounts for Separate Businesses**

- 1 This Condition shall only apply if the Licensee (or any affiliate or related undertaking of the Licensee) holds a licence (other than the Licence) granted under Article 10 of the Order.
- 2 The first financial year of the Licensee shall run from the date this Condition comes into force to 31 December 2015 and thereafter each financial year of the Licensee shall run from 1 January to the following 31 December.
- 3 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.
- 4 The Licensee shall in respect of each Separate Business:
  - (a) keep or cause to be kept for the period referred to in Article 230(5)(b) of the Companies (Northern Ireland) Order 1986 and in the manner referred to in that Article such accounting records in respect of each Separate Business as would by Article 229 of the Companies (Northern Ireland) Order 1986 be required to be kept in respect of each such business if it were carried on by a separate company, so that the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to, each Separate Business are separately identifiable in the books of the Licensee (and any affiliate or related undertaking of the Licensee) from those of any other business;
  - (b) prepare on a consistent basis from such accounting records in respect of:
    - (i) the first financial year and each subsequent financial year, accounting statements comprising a profit and loss account, a balance sheet and a cash flow statement, together with notes thereto, and showing separately in respect of each Separate Business and in appropriate detail the amounts of any revenue, cost, asset, liability, reserve or provision which has been either:
      - (A) charged from or to any other business (whether or not a Separate

Business) together with a description of the basis of that charge;

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

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

(c) procure, in respect of the accounting statements prepared in accordance with this Condition in respect of a financial year, a report by the Auditors and addressed to the Authority stating whether in their opinion those statements have been properly prepared in accordance with this Condition and give a true and fair view of the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to, the Separate Business to which the statements relate; and

(d) deliver to the Authority a copy of the account referred to in sub-paragraph (b)(ii), the Auditors' report referred to in sub-paragraph (c) and the accounting statements referred to in sub-paragraph (b)(i) as soon as reasonably practicable, and in any event not later than three months after the end of the period to which it relates in the case of the account referred to in sub-paragraph (b)(ii), and six months after the end of the financial year to which they relate in the case of the accounting statements and Auditors' report referred to in sub-paragraphs (b)(i) and (c), provided that in the case of the account, report and statements which, but for this proviso, would have been due on --, they shall instead be due on --.

5 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 4(b)(i) from those applied in respect of the previous financial year, unless the Authority shall previously have issued directions for the purposes of this Condition directing the Licensee to change such bases in a manner set out in the directions or the Authority gives its prior written approval to the change in such bases. The Licensee shall comply with any directions issued for the purposes of this Condition.

6 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.

7 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 Article 234 and, where appropriate, Article 235 of the Companies (Northern Ireland) Order 1986 and conform to the best commercial accounting practices including Statements of Accounting Practice issued or adopted by the Accounting Standards Board currently in force; and
- (b) state the accounting policies adopted; and
- (c) (with the exception of the part of such statements which shows separately the amounts charged, apportioned or allocated and describes the bases of charge or apportionment or allocation respectively), be published with the annual accounts of the Licensee.

8 Unless the accounting statements prepared under sub-paragraph 4(b)(i) are prepared on the current cost basis as provided by the alternative accounting rules, the Licensee shall, unless otherwise agreed by the Authority, in addition to preparing those accounting statements under that paragraph, prepare accounting statements for each Separate Business covering the same period, which shall comprise and show separately:

- (a) a profit and loss account, a balance sheet and a cash flow statement, together with notes thereto, which shall:
  - (i) include in respect of current cost assets amounts determined on the current cost basis as provided by the alternative accounting rules; and
  - (ii) show or disclose the information and other matters required by the

alternative accounting rules to be shown or disclosed in accounts where the amounts included in respect of assets covered by any items shown in those accounts have been determined on any basis mentioned in paragraph 31 of Section C of Part II of Schedule 4 to the Companies (Northern Ireland) Order 1986;

- (b) in respect of each Separate Business the adjusted amount of any such provision for depreciation as is referred to in paragraph 32(2) of Section C of Part II of Schedule 4 to the Companies (Northern Ireland) Order 1986 and the items shown in the profit and loss account of the Separate Business for the relevant period which are affected by the determination of amounts on the current cost basis as provided by the alternative accounting rules, including the profit (or loss) before taxation; and
- (c) such other current cost information as is referred to in the Handbook as the Authority may require,

and shall deliver the same, together with an Auditors' report prepared in relation to the current cost basis accounting statements in the form referred to in sub-paragraph 4(c), to the Authority within the time limits referred to in sub-paragraph 4(d), and shall (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) publish the same with the annual accounts of the Licensee.

- 9 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.
- 10 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.
- 11 In this Condition:

**alternative accounting rules**

means the rules set out in Section C of Part II of Schedule 4 to the Companies (Northern Ireland)

	Order 1986.
<b>current cost accounts</b>	means assets of any description mentioned in paragraph 31 of Section C of Part II of Schedule 4 to the Companies (Northern Ireland) Order 1986.
<b>Generation Business</b>	means the authorised business (if any) of the Licensee or any affiliate or related undertaking of the Licensee in the generation of electricity or in the provision of System Support Services.
<b>Handbook</b>	means the handbook issued or adopted by the Accounting Standards Board or any successor body entitled <b>Accounting for the effects of changing prices: a Handbook</b> in its current edition for the time being or in the event that no such handbook shall be in issue such guidance or publication as may be issued in replacement or substitution therefor.
<b>Separate Business</b>	means each of the Supply 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.

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

1. The Licensee shall comply with the provisions of the Grid Code and the Distribution Code insofar as applicable to it.
2. The Authority may:
  - (a) following consultation with the Transmission System Operator, issue directions relieving the Licensee of its obligation under paragraph 1 above in respect of such parts of the Grid Code and to such extent as may be specified in those directions; and
  - (b) following consultation with the Transmission Owner, issue directions relieving the Licensee of its obligation under paragraph 1 above in respect of such parts of the Distribution Code and to such extent as may be specified in those directions.
3. The Authority shall be entitled, in order to implement the requisite arrangements referred to in Condition 5, 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: [Not Used]**

**Condition 5: Modification of the 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.
- 5. The powers specified in paragraph 4 may not be exercised in relation to any cancellable generating unit agreement in the table appearing in Annex 4 of the NIE Energy Supply Licence earlier than the date appearing opposite that cancellable generating unit agreement in that table. The Authority may, in relation to any cancellable generating unit agreement and upon the application of either party to that cancellable generating unit agreement, modify the table appearing in Annex 4 of the NIE Energy Supply Licence by substituting a later date for the date appearing opposite that agreement in that table.
- 6. The procedural requirements which require to have been followed for the purposes of paragraph 1 are:
  - (a) in its preparations for the making of the determination referred to in paragraph 1, the Authority shall have consulted with the Department, all licence holders, the General Consumer Council and such other persons as the Authority shall consider likely to be materially affected in relation to the steps that it believes require to be taken and the documentation and other obligations which it believes require to be entered into, imposed or assumed in order to satisfy the requirements of paragraph 3 and to create and implement the requisite arrangements;
  - (b) in the consultations referred to in sub-paragraph (a) above, the Authority shall have made available to each person so consulted such drafts of the documentation in question and of the instruments or other means by which the obligations in question

are to be imposed or assumed, as it shall consider are necessary so as properly to inform such persons of the detail of its proposals;

- (c) the Authority shall have given each person so consulted the opportunity to make representations in relation to the relevant steps and the relevant documentation and shall have taken into consideration all such representations (other than those which are frivolous or trivial) in making the determination;
- (d) the Authority shall have published its conclusions as to the relevant steps and the relevant documentation (including drafts of the relevant documentation) and its reasons for those conclusions;
- (e) the Authority shall, before exercising any power under paragraph 4, have given not less than 180 days' notice to the Department, the Power Procurement Business, every person who at the time it gives the notice is a licence holder, and the General Consumer Council that it intends to do so; and
- (f) the Authority shall, in publishing any statement of proposals or the reasons for them, have treated as confidential any representation (including any submission of any written material) which (and to the extent that) the person making the representation shall, by notice in writing to the Authority or by endorsement on the representation of words indicating the confidential nature of such representation, have specified as confidential information.

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

- (a) they permit the Authority to relieve the licence holder in question from compliance with them or any of them; or

- (b) they make provision that they are to apply to particular licence holders or classes of licence holder differently from the way or ways in which they apply to other licence holders.
8. Notwithstanding paragraph 6, the Authority shall be entitled, after having carried out the consultations referred to in paragraph 6 and published its conclusions, both before and after it shall have given any notice of the kind referred to in sub-paragraph (e) of paragraph 6, to make any modification of the relevant documentation which either:
- (a) is, in its opinion, necessary or desirable in order to refine the requisite arrangements;
  - (b) involves only a change of a technical nature in the requisite arrangements; and
  - (c) will not increase the liability or decrease the rights of any person bound or to be bound by the Single Electricity Market Trading and Settlement Code beyond what may be regarded as reasonable in relation to that person;
- provided it gives due notice of such amendment or variation to such persons as appear to it to be likely to be affected thereby,
- or
- is made in accordance with the provisions of the relevant documentation being modified.
9. The 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).
10. The Licensee's reasonable direct costs of complying with a request made under paragraph 9 (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.

11. In this Condition:

<b>Land Bank Business</b>	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 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.

**Condition 7: [Not Used]**

**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 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.
- 6 In paragraphs 1 to 5, **information** shall include any documents, accounts, estimates, returns or reports (whether or not prepared specifically at the request of the Authority) of any description specified by the Authority.
- 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 but in any event before 31 December 2015 the Licensee shall pay to the Authority an initial fee of £1500.
- 3 In respect of the year beginning on 1 April of the year following the grant of the licence and in each subsequent year, the Licensee shall pay to the Authority a fee which is the aggregate of the following amounts:
  - (a) an amount which is a proportion, as determined by the Authority, of the amount estimated by the Authority, according to a method which has previously been disclosed in writing to the Licensee, as likely to be its costs during the year in question in the exercise of its functions 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);
  - (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 of the year following the grant of the licence] and for each subsequent year, the Authority may pay the Licensee an amount (**the refund**) calculated in accordance with the method previously disclosed in writing to the Licensee and by reference to the difference between:

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

## **Condition 12: Prohibition of Cross-Subsidies**

- 1 This Condition shall only apply if the Licensee (or an affiliate or related undertaking of the Licensee) holds a licence (other than the Licence) granted under Article 10 of the Order.
- 2 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).
- 3 Nothing which the Licensee is obliged to do or not do pursuant to this Licence or any other licence granted to the Licensee under the Order shall be regarded as a cross-subsidy for the purposes of this Condition.
- 4 In this Condition:

**Generation Business**

means the authorised business (if any) of the Licensee or any affiliate or related undertaking of the Licensee in the generation of electricity or in the provision of System Support Services.

**Separate Business**

means each of the Supply 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.



**Condition 13: [Not Used]**

**Condition 14: [Not Used]**

**Condition 15: [Not Used]**

**Condition 16: [Not Used]**

**Condition 17: [Not Used]**

**Condition 18: [Not Used]**

**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.

**Condition 20: 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 21: [Not Used]**



**Condition 22: [Not Used]**

**Condition 23: [Not Used]**

**Condition 24: [Not Used]**

## **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).

**Condition 25a: Balancing Market Principles Code of Practice**

1. This Condition applies to the Licensee only where the Licensee operates in the Single Electricity Market as a Demand Side Unit. The Licensee shall ensure that, in formulating and submitting Commercial Offer Data to the Single Market Operation Business in the Balancing Market under the Single Electricity Market Trading and Settlement Code (whether by the Licensee itself or by any person acting on its behalf in relation to a Demand Side Unit for which the Licensee is the licensed supplier), it acts so as to secure its compliance with the Balancing Market Principles Code of Practice.
2. The Authority shall publish and subject to paragraph 3 below, from time to time by direction amend, a document to be known as the Balancing Market Principles Code of Practice, which:
  - (a) shall apply to such categories of Commercial Offer Data submitted into the Balancing Market as may be specified in the Code of Practice from time to time;
  - (b) shall make such provision as appears requisite to the Authority for the purpose of securing that such Commercial Offer Data reasonably reflect the short run marginal cost of operating the Demand Side Unit to which they relate (and thereby facilitating, by contributing to the mitigation of market power in the Single Electricity Market, the efficient operation of the Balancing Market);and the Authority may elect to perform the functions conferred by this paragraph jointly with the Commission for Energy Regulation.
3. The Authority shall, without prejudice to any additional requirements specified in the Code of Practice, consult with all licensees required to comply with the Code of Practice and such other persons as the Authority considers appropriate before making any direction to amend the Code of Practice.
4. The Authority may issue directions to the Licensee for the purposes of securing that the Licensee, in carrying out the activity to which paragraph 1 refers, complies with this

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

5. The Licensee shall retain records of each set of Relevant Commercial Offer Data, and all of its supporting data relevant to the calculation of the components of such Relevant Commercial Offer Data, for a period of at least four years commencing on the date on which the Relevant Commercial Offer Data are submitted to the Single Market Operation Business.
6. The Licensee shall, if requested to do so by the Authority, provide the Authority with:
  - (a) a reasoned explanation of its calculations in relation to any Relevant Commercial Data; and
  - (b) supporting evidence sufficient to establish the consistency of those Relevant Commercial Offer Data with the obligations of the Licensee under this Condition and the Code of Practice.
7. In any case in which Relevant Commercial Offer Data are submitted to the Single Market Operation Business which are not consistent with the Licensee's obligation under paragraph 1 of this Condition, the Licensee shall immediately inform the Authority and provide to the Authority a statement of its reasons for the Relevant Commercial Offer Data submitted.
8. The Licensee shall by 1 June in each year submit to the Authority a certificate, signed by at least one director on behalf of the board of directors of the Licensee, to confirm that during the period of twelve months ending on the preceding 31 March:
  - (a) it has acted independently in relation to all submissions of Relevant Commercial Offer Data that have been submitted, by it or on its behalf, under the Single Electricity Market Trading and Settlement Code; and
  - (b) no such submissions made by it or on its behalf have been co-ordinated with any other submissions made by or on behalf of another party to the Single Electricity Market Trading and Settlement Code.
9. The provisions of this Condition (other than those of this paragraph and paragraph 10 below

which shall come into immediate effect) shall come into effect on such day, and subject to such transitional arrangements, as the Authority may by direction appoint. Different days may be so appointed for different provisions and for different purposes.

10. In this Condition:

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



**Condition 25b: Capacity Market Code**

- 1 The Licensee shall be party to and shall comply with the Capacity Market Code insofar as applicable to it.
- 2 The provisions of this Condition (other than those of this paragraph and paragraph 3 below which shall come into immediate effect) shall come into effect on such day, and subject to such transitional arrangements, as the Authority may by direction appoint.
- 3 In this Condition:

<b>“Capacity Market Code”</b>	has the meaning given to that term in the Transmission System Operator licence.
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**Customer Related Conditions**

**Condition 26: [Not Used]**

**Condition 27: [Not Used]**

**Condition 27A: [Not Used]**

**Condition 28: [Not Used]**

**Condition 29: [Not Used]**

**Condition 30: [Not Used]**

**Condition 31: [Not Used]**



**Condition 32: [Not Used]**

**Condition 33: [Not Used]**

**Condition 34: [Not Used]**

**Condition 35: [Not Used]**

**Condition 35A: [Not Used]**

**Condition 36: [Not Used]**

**Condition 37: [Not Used]**

**Condition 38: [Not Used]**



**Condition 39: [Not Used]**

**Condition 40: [Not Used]**

**Condition 41: [Not Used]**

## **Condition 42: 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 43: [Not Used]**

**Condition 44: [Not Used]**

### **Condition 45: 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>



	compliance plan setting out how it will meet the obligation.
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**Condition 45A: Prohibition on Supply Business**

- 1 The Licensee shall not carry on a business in the supply of electricity to premises unless it has first obtained the Authority's written consent to it doing so.
  
- 2 The Authority may attach such conditions as it considers appropriate to any consent given by it in accordance with paragraph 1 and, where it does so, the Licensee may carry on a business in the supply of electricity to premises only if it complies with those conditions.

**Schedule 1 Specified Premises**

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 in which the Licensee has the consent of the Authority, in accordance with Condition 45A, to carry on a business in the supply of electricity to premises; or
  - (i) if, in accordance with any provisions of an enactment that come into force after the grant of this Licence, the Authority issues to the Licensee another form of licence which the Licensee is required by those provisions to hold in order to carry on a business as a Generator Aggregator or DSU Operator (as those terms are defined, at the date of the Grant of this Licence) in the Grid Code.
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.