

ENDURING CONDITIONS DRAFT

Draft: 29 May 2007

LICENCE TO ACT AS SEM OPERATOR

granted to

SONI LIMITED

The Department of Enterprise, Trade and Investment

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LICENCE TO ACT AS SEM OPERATOR GRANT OF THE LICENCE

1. Terms of the Licence

The Department of Enterprise, Trade and Investment (the “**Department**”), in exercise of the powers conferred by Article 10(1)(d) of the Electricity (Northern Ireland) Order 1992 (the “**Order**”), hereby grants to SONI Limited (a body corporate registered in Northern Ireland under company number NI038715) (the “**Licensee**”) a licence (the “**Licence**”) authorising it to act as SEM operator within the meaning of Article 8(d) of the Order:

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

such role to be undertaken (where required by the Licence) in conjunction with the Republic of Ireland Market Operator Licensee with the objective that (insofar as is required by the Licence) the Licensee will, with the Republic of Ireland Market Operator Licensee, undertake the Single Market Operation Business.

2. Conditions of the Licence

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

3. Definitions

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

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

.....

The Department of Enterprise, Trade and Investment

[DATE]

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Condition 1. Interpretation and Construction

Construction

- 1 Unless the contrary intention appears, in the conditions of the Licence:
 - (a) words and expressions, and references to legislation, shall be construed as if they were in an enactment and the Interpretation Act (Northern Ireland) 1954 applied to them; and
 - (b) words and expressions defined in the Order, the Energy Order or the SEM Order shall have the same meaning.

- 2 Unless otherwise specified, any reference in the conditions of the Licence to:
 - (a) a numbered Condition or Schedule is a reference to the condition of, or the schedule to, the Licence that bears that number;
 - (b) a numbered paragraph is a reference to the paragraph of the Condition in which such reference is made that bears that number;
 - (c) “this Condition” is a reference to all of the paragraphs of the Condition in which the reference occurs; and
 - (d) any agreement, licence, code or other instrument shall be a reference to such agreement, licence, code or other instrument as varied, supplemented or replaced from time to time.

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

- 4 Where any obligation of the Licensee is expressed to require performance within a specified time limit that obligation shall continue to be binding and enforceable after that time limit if the Licensee fails to perform that obligation within that time limit (but without prejudice to all rights and remedies available against the Licensee by reason of the Licensee’s failure to perform within the time limit).

- 5 Unless otherwise specified, when used in this or any other Part, the words “other”, “including” and “in particular” shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible.

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Service of Documents

- 6 The provisions of section 24 of the Interpretation Act (Northern Ireland) 1954 shall be deemed to apply for the purposes of the delivery or service of any document, direction or notice to be delivered or served pursuant to the Licence, whether by the Authority or by the Licensee.

Acting in Conjunction

- 7 Where any Condition of the Licence requires the Licensee to act “*in conjunction with the Republic of Ireland Market Operator Licensee*” in the fulfilment of an obligation, the Licensee shall:
- (a) to the extent the Licensee is reasonably capable of fulfilling that obligation without the assistance of the Republic of Ireland Market Operator Licensee, be obliged to fulfil that obligation and shall use all reasonable endeavours to work together with the Republic of Ireland Market Operator Licensee in so doing;
 - (b) to the extent the Licensee is not reasonably capable of fulfilling that obligation without the assistance of the Republic of Ireland Market Operator Licensee:
 - (i) ensure that the Market Operator Agreement requires the Republic of Ireland Market Operator Licensee to provide the assistance in question, and, where it does not, seek to amend the Market Operator Agreement so that it does;
 - (ii) exercise all rights available to the Licensee (including under the Market Operator Agreement) in order to obtain the assistance in question; and
 - (iii) on obtaining the assistance in question, be obliged to fulfil that obligation and shall use all reasonable endeavours to work together with the Republic of Ireland Market Operator Licensee in so doing; and
 - (c) to the extent the Republic of Ireland Market Operator Licensee is obliged (by the laws or licence obligations applicable to it) to act in conjunction with the Licensee in the fulfilment of an equivalent obligation, be obliged to provide such assistance as the Republic of Ireland Market Operator Licensee reasonably requests in order to enable it to fulfil that obligation.

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Definitions

8 Except where expressly stated to the contrary and unless the context otherwise requires, the following terms shall have the meanings ascribed to them below.

“affiliate”	means, in relation to any person, any company which is a subsidiary of such person or a company of which such person is a subsidiary or a company which is another subsidiary of a company of which such person is a subsidiary.
“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 electricity operator”	means any person (other than the Licensee in its capacity as the holder of the Licence) who holds a licence granted pursuant to Article 10 of the Order or whose activities are exempt pursuant to Article 9 of the Order, and any person transferring electricity across an Interconnector or who has made application for use of an Interconnector which has not been refused.
“Authority”	means the Northern Ireland Authority for Utility Regulation.
“Commission for Energy Regulation”	means the body established as such under the Republic of Ireland Electricity Act.
“competent authority”	means the Department, the Authority and any local or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or the European Community.
“Department”	means the Department of Enterprise, Trade and Investment.
“Directive”	means Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common

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rules for the internal market in electricity.

“Distribution Business”	has the meaning given to that term in the Transmission Owner Licence.
“electricity undertaking”	means an authorised electricity operator and/or a Republic of Ireland electricity operator.
“Energy Order”	means the Energy (Northern Ireland) Order 2003.
“final customers”	means customers who purchase electricity for their own consumption.
“Grid Code”	means the code of that name to be prepared and approved in accordance with the Transmission System Operator Licence.
“holding company”	has the meaning attributed to it at Article 4 of the Companies (Northern Ireland) Order 1986.
“Interconnector”	means electric lines and electrical plant and meters used for conveying electricity only directly to or from a substation or converter station on the Island of Ireland into or out of the Island of Ireland, and (for the avoidance of doubt) does not include the North/South Circuits.
“Island of Ireland”	means Northern Ireland and the Republic of Ireland.
“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.
“Licensee”	means SONI Limited (a body corporate registered in Northern Ireland under company number NI038715).
“Market Operation Activity”	means the business of the Licensee (or any affiliate or related undertaking of the Licensee) in undertaking the obligations imposed on the Licensee under, or as a consequence of, the Licence, and in exercising the rights conferred on the Licensee by virtue of the Licence

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(including any obligations imposed, or rights conferred, on the Licensee, in its capacity as the holder of a licence granted under Article 10(1)(d) of the Order, by the Single Electricity Market Trading and Settlement Code and any enactment).

- “Market Operator Agreement”** has the meaning given to that term in Condition 14.
- “Market System Development Plan”** has the meaning given to that term in Condition 16.
- “Northern Ireland Fuel Security Code”** means the document of that title designated as such by the Department, dealing with the co-operation of licence holders in strategic contingency planning in respect of fuel stocks, the modification of the merit order and certain other systems and procedures under the Grid Code during periods when the Department has given (and there is in force) one or more directions under Article 37(4) of the Order, the entitlement of the Licensee and authorised electricity operators to and the collection of certain payments in anticipation of, during and after the expiry of any such periods, and connected matters.
- “North/South Circuits”** means the electric lines and electrical plant and meters used for conveying electricity only directly to or from a substation or converter station within Northern Ireland directly to or from a substation or converter station within the Republic of Ireland.
- “Order”** means the Electricity (Northern Ireland) Order 1992.
- “Permitted Purpose”** means the purpose of all or any of the following:
- (a) the Market Operation Activity;
 - (b) the Single Market Operation Business;
 - (c) the Transmission System Operator Business;
 - (d) without prejudice to the generality of sub-paragraphs (a), (b) and (c), any payment or transaction lawfully made or undertaken by the Licensee in relation to the

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disposal of or relinquishment of operational control over any relevant market asset in accordance with Condition 7; and

- (e) without prejudice to the generality of sub-paragraphs (a), (b) and (c), any payment or transaction lawfully made or undertaken by the Licensee for a purpose within sub-paragraphs (i) to (vi) of paragraph 1(b) of Condition 8.

“related undertaking”

means, in respect of any person, any undertaking in which that person has a participating interest (and “participating interest” shall have the meaning given to that term in the Companies (Northern Ireland) Order 1986).

“Republic of Ireland Electricity Act”

means the Republic of Ireland legislation known as the Electricity Regulation Act 1999.

“Republic of Ireland electricity operator”

means any person engaged in the generation, transmission, distribution or supply of electricity in the Republic of Ireland, including any holder of a licence or authorisation to do so, or a person who has been granted a permit under Section 37 of the Republic of Ireland legislation known as the Electricity (Supply) Act 1927, and any person transferring electricity across an Interconnector or who has made an application for use of an Interconnector which has not been refused.

“Republic of Ireland Market Operator Licence”

means the licence granted, under Section 14(1)(j) of the Republic of Ireland Electricity Act, to EirGrid plc (a company formed pursuant to regulation 34 of the Republic of Ireland legislation known as the European Communities (Internal Market in Electricity) Regulations 2000).

“Republic of Ireland Market Operator Licensee”

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

“SEM Go-Live”

means the time and date designated as such by the Authority (with the consent of the Department) for the

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purpose of licences granted under the Order, being the commencement date for a number of matters including the Single Electricity Market.

- “SEM Order”** means the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.
- “Separate Business”** means the business of undertaking the Market Operation Activity taken separately from any other business of the Licensee or any affiliate or related undertaking of the Licensee, but so that where all or any part of such business is carried on by an affiliate or related undertaking of the Licensee such part of the business as is carried on by that affiliate or related undertaking shall be consolidated with any other such business of the Licensee (and of any other affiliate or related undertaking of the Licensee) so as to form a single Separate Business.
- “Single Electricity Market”** means the single wholesale electricity market for the Island of Ireland, implemented in Northern Ireland pursuant to Section 23 of the Northern Ireland (Miscellaneous Provisions) Act 2006.
- “Single Electricity Market Trading and Settlement Code”** means the code of that name referred to in Condition 15.
- “Single Electricity Market Trading and Settlement System”** means the hardware, software and processes, operated by or on behalf of the Licensee (in its capacity as the holder of a licence granted to it under Article 10(1)(d) of the Order) and/or the Republic of Ireland Market Operator Licensee, for the trading of electricity in the Single Electricity Market and the settlement of financial obligations in respect thereof.
- “Single Market Operation Business”** means the Market Operation Activity taken together with the activities of the Republic of Ireland Market Operator Licensee in its capacity as such.
- “subsidiary”** means a subsidiary within the meaning of Article 4 of the

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Companies (Northern Ireland) Order 1986;

- “System Operator Agreement”** means the agreement of that name established pursuant to the Transmission System Operator Licence.
- “Transmission Owner”** means the person authorised, from time to time, under the Transmission Owner Licence in its capacity as the holder of that licence.
- “Transmission Owner Business”** has the meaning given to that term in the Transmission Owner Licence.
- “Transmission Owner Licence”** means the licence granted, under Article 10(1)(b) of the Order, to Northern Ireland Electricity plc (a body corporate registered in Northern Ireland under company number NI026041) on 31 March 1992.
- “Transmission System Operator”** means the person authorised, from time to time, under the Transmission System Operator Licence in its capacity as the holder of that licence.
- “Transmission System Operator Business”** has the meaning given to that term in the Transmission System Operator Licence.
- “Transmission System Operator Licence”** means the licence granted, under Article 10(1)(b) of the Order, to SONI Limited (a body corporate registered in Northern Ireland under company number NI038715) on [DATE].
- “ultimate controller”** means:
- (a) any holding company of the Licensee which is not itself a subsidiary of another company; and/or
 - (b) any person who (whether alone or with a person or persons connected with him) is in a position to control, or to exercise significant influence over, the policy of the Licensee, or any holding company of the Licensee, by virtue of:
 - (i) rights under contractual arrangements to which

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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 subparagraph (b) above.

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Condition 2. Preparation of Accounts

Financial Years

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

Accounting and Reporting

- 2 Paragraphs 2 to 6 (inclusive) of this Condition apply for the purpose of ensuring that the Licensee (and any affiliate or related undertaking of the Licensee) maintains accounting and reporting arrangements which enable separate accounts to be prepared for each Separate Business and showing the financial affairs of each such Separate Business.
- 3 The Licensee shall, in respect of each Separate Business:
 - (a) keep or cause to be kept for the period referred to in Article 230(5)(b) of the Companies (Northern Ireland) Order 1986 and in the manner referred to in that Article, such accounting records in respect of each Separate Business as would by Article 229 of the Companies (Northern Ireland) Order 1986 be required to be kept in respect of each such business if it were carried on by a separate company, so that the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to, each Separate Business are separately identifiable in the books of the Licensee (and any affiliate or related undertaking of the Licensee) from those of any other business;
 - (b) prepare on a consistent basis from such accounting records in respect of the first and each subsequent financial year, accounting statements comprising a profit and loss account, a balance sheet and a cash flow statement, together with notes thereto, and showing separately in respect of 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;
 - (c) procure, in respect of the accounting statements prepared in accordance with this

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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;

- (d) take all appropriate steps within its power to procure a report by the Auditors and addressed to the Authority verifying whether the obligation to avoid discrimination and cross-subsidies specified in Article 19 of the Directive has been respected; and
- (e) deliver to the Authority a copy of the Auditors' reports referred to in sub-paragraphs (c) and (d) and the accounting statements referred to in sub-paragraph (b) as soon as reasonably practicable, and in any event not later than six months after the end of the financial year to which they relate.

Accounting Policy and Practice

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

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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.

Single Market Operation Business Accounting

- 7 Without prejudice to paragraph 3, the Licensee shall, in conjunction with the Republic of Ireland Market Operator Licensee, keep or cause to be kept accounts for the Single Market Operation Business.
- 8 Where requested to do so, from time to time, by the Authority, the Licensee shall deliver such accounts to the Authority in the form and at the times specified by the Authority.
- 9 Such accounts shall be prepared in accordance with such regulatory accounting guidelines as may be issued by the Authority from time to time and in accordance with any and all directions by the Authority as are reasonable and appropriate for the purposes of this Condition. Such regulatory accounting guidelines or directions may, amongst other things:
 - (a) specify the form of the accounting statements/records, including but not limited to, profit and loss accounts, balance sheets, recognised gains and losses statements, cash flow statements and statements of the amounts of any revenues, costs, assets, liabilities, reserves or provisions which have been either charged from or to any other business or determined by allocation or apportionment between the Single Market Operation Business and any other business or businesses;
 - (b) specify the nature and content of the accounting statements/records, including information on specified types of revenue, cost, asset or liability and information on the revenues, costs, assets and liabilities attributable to specified activities; and
 - (c) specify the accounting principles (including the basis for the allocation of costs) and the bases of valuation to be used in preparing accounting statements/records.

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Interpretation and Construction

- 10 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.

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Condition 3. Availability of Resources and Undertaking of Ultimate Controller

General Duty

1. The Licensee shall at all times act in a manner calculated to secure that it has sufficient resources (including management resources, financial resources and financial facilities) to enable it to:
 - (a) carry on the Market Operation Activity; and
 - (b) comply with its obligations under the Order, the Energy Order, the SEM Order and the Licence.

Directors' Certificate

2. The Licensee shall submit a certificate addressed to the Authority, approved by a resolution of the board of the Licensee and signed by a director of the Licensee pursuant to that resolution. Such certificate shall be submitted on SEM Go-Live and thereafter on 30 September of each subsequent 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 Market Operation Activity 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 Market Operation Activity 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 Market Operation Activity."
 - (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 Market Operation Activity for a period of 12 months from the date of this certificate."

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3. The Licensee shall submit to the Authority, together with the certificate referred to in paragraph 2, a statement of the principal factors which the directors of the Licensee have taken into account in giving that certificate.
4. The Licensee shall inform the Authority in writing immediately if the directors of the Licensee become aware of any circumstances which cause them no longer to have the expectation expressed in the certificate most recently submitted to the Authority in accordance with paragraph 2.

Auditors' Report

5. The Licensee shall use its best endeavours to obtain and submit to the Authority with the certificate referred to in paragraph 2 a report prepared by its Auditors and addressed to the Authority stating whether or not the Auditors are aware of any inconsistencies between:
 - (a) that certificate and the statement submitted with it; and
 - (b) any information which they obtained during their audit work.

Undertaking from Ultimate Controller

6. The Licensee shall procure, from each person that the Licensee knows (or reasonably should know) is at any time an ultimate controller, a legally enforceable undertaking in favour of the Licensee:
 - (a) in a form approved by the Authority;
 - (b) that will remain in force for as long as the Licensee remains the holder of the Licence and the person giving the undertaking remains an ultimate controller; and
 - (c) to the effect that the ultimate controller will refrain from any action, and will procure that every subsidiary of the ultimate controller (other than the Licensee and its subsidiaries) will refrain from any action, which would be likely to cause the Licensee to breach any of its obligations under the Order, the Energy Order, the SEM Order or the Licence.
7. The Licensee shall, in respect of each ultimate controller, comply with the Licensee's obligation under paragraph 6 within seven days after the later of the grant of the Licence, and the person in question becoming an ultimate controller.
8. The Licensee shall:

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- (a) deliver to the Authority evidence that the Licensee has complied with the obligation under paragraph 6 (including a copy of the undertaking to be procured under that paragraph);
 - (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.
9. The Licensee shall not, save with the consent in writing of the Authority, enter (directly or indirectly) into any contract or arrangement with an ultimate controller or any of the subsidiaries of that ultimate controller (other than the subsidiaries of the Licensee) at a time when:
- (a) an undertaking complying with paragraph 6 is not in place in relation to that ultimate controller;
 - (b) there is an unremedied breach of such undertaking; or
 - (c) the Licensee is in breach of the terms of any direction issued by the Authority under paragraph 8 in respect of such undertaking.

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Condition 4. Restriction on Dividends

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

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

- (a) that the Licensee is in compliance in all material respects with all the obligations imposed on it by conditions 3, 5, 6, 7, 8 and 11 of the Licence; and
- (b) that the making of a distribution of [] on [] will not, either alone or when taken together with other circumstances reasonably foreseeable at the date of this certificate, cause the Licensee to be in breach to a material extent of any of those obligations in the future.”

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

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

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Condition 5. Prohibition of Cross-Subsidies

1. The Licensee shall procure that the Market Operation Activity gives no cross-subsidy to, and receives no cross-subsidy from, any other business of the Licensee or of any affiliate or related undertaking of the Licensee.

2. Nothing:
 - (a) which the Licensee is obliged to do or not to do pursuant to the Licence or any other licence held by the Licensee under the Order; or

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

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

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Condition 6. Provision of Information to the Authority

General Duty

1. Subject to paragraphs 4 and 5, the Licensee shall furnish to the Authority, in such manner and at such times as the Authority may require, such information as the Authority may consider necessary in the light of the Conditions or Schedules or as it may require for the purpose of performing any functions assigned or transferred to it by or under the Order, the Energy Order or the SEM Order.
2. Without prejudice to the generality of paragraph 1, the Authority may call for the furnishing of accounting information which is more extensive than or differs from that required to be prepared and supplied to the Authority under Condition 2.
3. The power of the Authority to require information under paragraph 1 is in addition to the power of the Authority to call for information under or pursuant to any other Condition or Schedule.

Exceptions

4. The Licensee may not be required by the Authority to furnish it under this Condition with information for the purpose of the exercise of its functions under Article 7 of the Energy Order.
5. The Licensee may not be required by the Authority to furnish it under this Condition with any information in relation to an enforcement matter which the Licensee could not be compelled to produce or give in evidence in civil proceedings in the High Court.

Undertaking from Ultimate Controller

6. The Licensee shall procure, from each person that the Licensee knows (or reasonably should know) is at any time an ultimate controller, a legally enforceable undertaking in favour of the Licensee:
 - (a) in a form approved by the Authority;
 - (b) that will remain in force for as long as the Licensee remains the holder of the Licence and the person giving the undertaking remains an ultimate controller; and
 - (c) to the effect that the ultimate controller will give to the Licensee, and will procure that every subsidiary of, or person controlled by, the ultimate controller (other than the Licensee and its subsidiaries) will give to the Licensee, all such information as may be necessary to enable the Licensee to comply fully with paragraph 1 of this Condition.

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7. The Licensee shall, in respect of each ultimate controller, comply with the Licensee's obligation under paragraph 6 within seven days after the later of the grant of the Licence, and the person in question becoming an ultimate controller.

8. The Licensee shall:
 - (a) deliver to the Authority evidence that the Licensee has complied with the obligation under paragraph 6 (including a copy of the undertaking to be procured under that paragraph);
 - (b) inform the Authority immediately in writing if the directors of the Licensee become aware that the undertaking has ceased to be legally enforceable or that its terms have been breached; and
 - (c) comply with any direction from the Authority to enforce any such undertaking.

9. The Licensee shall not, save with the consent in writing of the Authority, enter (directly or indirectly) into any contract or arrangement with an ultimate controller or any of the subsidiaries of that ultimate controller (other than the subsidiaries of the Licensee) at a time when:
 - (a) an undertaking complying with paragraph 6 is not in place in relation to that ultimate controller;
 - (b) there is an unremedied breach of such undertaking; or
 - (c) the Licensee is in breach of the terms of any direction issued by the Authority under paragraph 8 in respect of such undertaking.

Definition

10. In this Condition, unless the context otherwise requires:

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

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

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Condition 7. Disposal of Relevant Market Assets

Preparation of Register

- 1 Where required by the Authority, and within such time frame as the Authority may reasonably require, the Licensee shall, in conjunction with the Republic of Ireland Market Operator Licensee, prepare and maintain a register of the relevant market assets in the form specified by the Authority from time to time, and identifying those relevant market assets of which the Licensee and the Republic of Ireland Market Operator Licensee are both owners. The Licensee shall update such register, and provide updated versions to the Authority, on an annual basis.

General Duty

- 2 The Licensee shall not dispose of, or relinquish operational control over, any relevant market asset otherwise than in accordance with the following paragraphs of this Condition. Where a relevant market asset is owned jointly with the Republic of Ireland Market Operator Licensee, references in this Condition to the disposal of that relevant market asset shall be read as references to the disposal of the Licensee's interest in that relevant market asset.

Duty to Give Notice

- 3 Save as provided in paragraph 4, 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 market asset, together with such further information as the Authority may request relating to such asset or the circumstances of the intended disposal or relinquishment of control or to the intentions in regard to the asset of the person proposing to acquire it or operational control over it.

Permitted Disposals

- 4 Notwithstanding paragraphs 2 and 3, the Licensee may dispose of or relinquish operational control over any relevant market 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 market assets of a specified description; and

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- (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 market 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.
- 5 Notwithstanding paragraph 2, the Licensee may dispose of or relinquish operational control over any relevant market asset specified in any notice given under paragraph 3 in circumstances where:
 - (a) subject to paragraph 6, 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 market 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 3.

Procedure of the Authority

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

Definitions

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

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

means:

- (a) any material asset for the time being employed or held for employment by the Licensee in performance of its obligations under the Order, the Energy Order, the SEM Order or the Licence in (in each case) its capacity as the holder of a licence granted under Article 10(1)(d) of the Order;
- (b) any asset that, the disposal or relinquishment of operational control by the Licensee of, would adversely affect the ability of the Transmission System Operator or the Republic of Ireland Market Operator Licensee to comply with their respective obligations in those capacities under any applicable licence, law or regulation; and
- (c) any legal or beneficial right, title or interest in land upon which any of the assets referred to in subparagraphs (a) or (b) are situated.

“relinquishment of operational control”

includes entering into any agreement or arrangement whereby operational control of a relevant market asset (or relevant market assets) is not, or ceases to be, under the sole management of the Licensee or of the Licensee and the Republic of Ireland Market Operator Licensee.

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Condition 8. Restriction on Dealings with Assets

- 1 Without prejudice to Condition 7, the Licensee shall not, without the written consent of the Authority (after disclosure of all material facts by the Licensee to the Authority):
- (a) create, or permit to remain in effect, any mortgage, charge, pledge, lien or other form of security or encumbrance whatsoever, undertake any indebtedness to any other person or enter into any guarantee of any obligation otherwise than:
 - (i) on an arm's length basis;
 - (ii) on normal commercial terms;
 - (iii) for a Permitted Purpose; and
 - (iv) (if the transaction is within the ambit of paragraph 1 of Condition 7) in accordance with paragraphs 4 and 5 of Condition 7.
 - (b) transfer, lease, license or lend any sum or sums, asset, right or benefit to any affiliate or related undertaking of the Licensee otherwise than by way of:
 - (i) a dividend or other distribution out of distributable reserves;
 - (ii) repayment of capital;
 - (iii) payment properly due for any goods, services or assets provided on an arm's length basis and on normal commercial terms;
 - (iv) a transfer, lease, licence or loan of any asset, right or benefit on an arm's length basis and on normal commercial terms and made in compliance with the payment requirement referred to in paragraph 2;
 - (v) repayment of any loan or payment of any interest on a loan not prohibited by subparagraph (a);
 - (vi) payments for group corporation tax relief or under any group payment arrangement pursuant to section 36 of the Finance Act 1998 calculated on a basis not exceeding the value of the benefit received; or
 - (vii) a loan to any affiliate or related undertaking of the Licensee which is made for a Permitted Purpose;

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

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

- 2 The payment requirement referred to in paragraph 1(b)(iv) is that the consideration due in respect of the transfer, lease, licence or loan of the asset, good, right or benefit in question is paid in full prior to such transfer, lease, licence or loan unless:
- (a) the counter-party to the transaction has, and maintains until payment is made in full, an investment grade credit rating; or
 - (b) the obligations of the counter-party to the transaction are fully and unconditionally guaranteed throughout the period during which any part of the consideration remains outstanding by a guarantor which has and maintains an investment grade credit rating.
- 3 Notwithstanding paragraph 1, the Licensee shall be entitled, while the Transmission Owner is an affiliate of the Licensee, to enter into such loan arrangements with the Transmission Owner as the Authority may approve from time to time.

Definitions

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

“cross-default obligation” means a term of any agreement or arrangement whereby the Licensee’s liability to pay or repay any debt or other sum arises or is increased or accelerated or could reasonably be expected to be capable of arising,

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increasing or of being accelerated by reason of a default (howsoever such default may be described or defined) by any person other than the Licensee, unless:

- (a) that liability can arise only as a result of a default by a subsidiary of the Licensee;
- (b) the Licensee holds a majority of the voting rights in that subsidiary and has the right to appoint or remove a majority of its board of directors; and
- (c) that subsidiary carries on business solely for the purposes of a Permitted Purpose (but not a purpose identified in sub-paragraph (d) or (e) of the definition of Permitted Purpose).

“indebtedness”

means all liabilities which are, now or later, due, owing or incurred, whether actual or contingent, whether solely or jointly with any other person and whether as principal or surety, together with any interest accruing on such liabilities and all costs, charges, penalties and expenses incurred in connection with them.

“investment grade credit rating” means:

- (a) unless sub-paragraph (b) below applies:
 - (i) an issuer rating of not less than BBB- by Standard & Poor's Ratings Group or any of its subsidiaries;
 - (ii) an issuer rating of not less than Baa3 by Moody's Investors Service Inc. or any of its subsidiaries;
 - (iii) an issuer senior unsecured debt rating of not less than BBB- by Fitch Ratings Ltd or any of its subsidiaries; or

an equivalent rating from any other reputable credit rating agency which, in the opinion of the Authority, notified in writing to the Licensee, has comparable standing in both the United Kingdom and the United

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States of America; or

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

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Condition 9. Restriction on Use of Certain Information

General Restriction

- 1 Where the Licensee or any affiliate or related undertaking of the Licensee is in possession of any protected information, the Licensee shall (and shall procure that such affiliate or related undertaking shall) procure:
 - (a) that neither the Licensee nor any other person shall use that protected information for the purpose of obtaining any unfair commercial advantage in relation to the Market Operation Activity 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 reasonably considered by the Authority to be necessary for the purpose of securing compliance by the Licensee with its obligations under paragraph 1.

Exceptions

- 4 Sub-paragraphs 1(b) and 1(c) shall not apply to any disclosure of information which is:
 - (a) authorised by Article 63(3) or (4) of the Energy Order;
 - (b) made in compliance with the duties of the Licensee, or of any affiliate or related undertaking of the Licensee, in accordance with any:
 - (i) licence granted under the Order (including the Licence);

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- (ii) applicable law (including the Order, the Energy Order and the SEM Order);
 - (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 the Licence (including the Market Operator Agreement, the System Operator Agreement and the Single Electricity Market Trading and Settlement Code) with which the Licensee or any affiliate or related undertaking of the Licensee is required to comply;
- (d) necessary in order to enable the Licensee to enter into, or give effect to, arrangements for the purpose of carrying on the Market Operation Activity; or
- (e) necessary in order to enable the Licensee and the Republic of Ireland Market Operator Licensee to carry on the Single Market Operation Business.

Restrictions Regarding Personnel and Advisers

- 5 The Licensee shall ensure that protected information received by the Licensee (or any affiliate or related undertaking of the Licensee) is:
- (a) (except where one of the exceptions under paragraph 4 applies) not divulged by any business person to any person unless that person is an authorised recipient; and
 - (b) not used by any business person otherwise than for the purpose of pursuing an authorised purpose or advising in relation to the pursuit of an authorised purpose.

Evidence

- 6 The Licensee shall:
- (a) procure and furnish to the Authority, in such manner and at such times as the Authority may require, such information and reports as the Authority may consider necessary concerning the performance by the Licensee of its obligations under paragraphs 1 and 5 and the effectiveness of the measures, procedures and steps specified in the directions referred to in paragraph 3;
 - (b) procure that access to any premises of the Licensee shall be given at any time and from

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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.

Definitions

7 In this Condition, unless the context otherwise requires:

"authorised adviser" means such professional advisers of the Licensee (or of any affiliate or related undertaking of the 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.

"control" has the meaning attributed to it by section 416 of the

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Income and Corporation Taxes Act 1988.

“protected information”

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

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Condition 10. Independence of the Market Operation Activity

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 Market Operation Activity from any Associated Business.

Specific Duties

- 2 For the purpose of facilitating its compliance with paragraph 1, the Licensee shall ensure that:
 - (a) the Market Operation Activity is provided with the premises, systems, equipment, facilities, property, personnel, data and management resources that are necessary for its efficient and effective managerial and operational independence from any Associated Business;
 - (b) it does not hold or acquire shares in a holding company of the Licensee or in any electricity undertaking engaged in the generation or supply of electricity on the Island of Ireland;
 - (c) decisions relating to the operation of the Single Electricity Market Trading and Settlement System are only taken by those persons who are employed by, and are engaged in the operation and management of, the Single Market Operation Business;
 - (d) any Associated Business does not use or have access to:
 - (i) premises or parts of premises occupied by persons engaged in the management or operation of the Market Operation Activity, except where access is allowed to electricity undertakings (or a class of electricity undertakings not limited to one or more Associated Businesses) generally, in which case Associated Businesses may be allowed access to the same extent, as further detailed in the Compliance Plan;
 - (ii) systems for the recording, processing or storage of data to which persons engaged in the management or operation of the Market Operation Activity also

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- have access;
- (iii) equipment, facilities or property employed for the management or operation of the Market Operation Activity;
 - (iv) the services of persons who are (whether or not as their principal occupation) engaged in the management or operation of the Market Operation Activity;
- (e) it can and does, in so far as is legally possible:
- (i) ensure that any director of the Licensee is not at the same time also a director of a company which carries on an Associated Business engaged in the generation or supply of electricity; and
 - (ii) prevent any person who has ceased to be engaged in the management or operation of the Market Operation Activity from being engaged in the activities of any Associated Business that is engaged in the generation or supply of electricity until the expiry of an appropriate time (being a period of at least 3 months) from the date on which he ceased to be engaged by the Market Operation Activity; and
- (f) an up-to-date register of all persons engaged in the Market Operation Activity, confirming that the provisions of paragraph (e) have been complied with in respect of each person so engaged, is established.

Compliance Plan

- 3 The Licensee shall, by no later than SEM Go-Live, prepare and submit to the Authority for its approval a compliance plan setting out the practices, procedures, systems and rules of conduct which the Licensee has adopted, or intends to adopt, together with the timescales for adoption, to ensure its compliance with this Condition.
- 4 The Licensee shall use all reasonable endeavours to comply with its approved compliance plan (the “**Compliance Plan**”) and shall publish the up to date Compliance Plan on its website.
- 5 The Authority may:
- (a) within 30 days of the Licensee submitting an initial or revised Compliance Plan; and
 - (b) following any review of the Compliance Plan that the Authority may conduct from time to time,

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notify the Licensee that, in its opinion, the Compliance Plan is not, or is no longer, sufficient for the purposes of the Licensee's compliance with this Condition, and require such revisions to be made to the Compliance Plan as are in the Authority's opinion necessary or expedient in order for it to be sufficient for the purposes of ensuring the Licensee's compliance or continued compliance with this Condition.

- 6 Where the Licensee receives a notification in accordance with paragraph 5, it shall within 30 days revise the Compliance Plan in such manner and to such extent as will reflect the Authority's requirements.
- 7 The Licensee shall at least once every year during which this Condition is in force review the Compliance Plan so as to ensure:
 - (a) its continued compliance with its obligations under this Condition; and
 - (b) that the information set out in the Compliance Plan continues to be accurate in all material respects.
- 8 Where the Licensee revises the Compliance Plan, either in accordance with paragraph 6 or following a review conducted by it in accordance with paragraph 7, it shall submit the revised Compliance Plan to the Authority for its approval.
- 9 The Licensee shall ensure that persons engaged in the management and operation of the Market Operation Activity:
 - (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

- 10 The Licensee shall, following consultation with the Authority, appoint a senior member of its personnel engaged in the management and operation of the Market Operation Activity as a manager (the "**Compliance Manager**") for the purpose of facilitating compliance with its obligations under this Condition and with the Compliance Plan.

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- 11 The Licensee shall ensure that the Compliance Manager has access to such staff, premises, systems, information, documentation, equipment, facilities and other resources as he might reasonably expect to require to fulfil the duties and tasks assigned to him.
- 12 The duties and tasks assigned to the Compliance Manager shall include:
- (a) providing relevant advice and information to the Licensee for the purpose of ensuring its compliance with this Condition and with the Compliance Plan;
 - (b) monitoring the effectiveness of and the Licensee's compliance with the Compliance Plan;
 - (c) investigating any complaint or representation received by the Licensee from any person in respect of any matter arising under or by virtue of this Condition or in relation to the Compliance Plan;
 - (d) recommending and advising upon the remedial action which any such investigation has demonstrated to be necessary or desirable, including where necessary revising the Compliance Plan to reflect such recommendation and advice; and
 - (e) reporting, at such frequency as is determined in writing by the Authority, to the directors of the Licensee on his activities during the period covered by the report, the investigations he has conducted and on progress towards implementation of the Compliance Plan.
- 13 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;
 - (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 such investigations.

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Definitions

14 In this Condition, unless the context otherwise requires:

- “Associated Business”** means any business of the Licensee (or of any affiliate or related undertaking of the Licensee) other than a relevant holding company, the Market Operation Activity, the Transmission System Operator Business, the Transmission Owner Business and the Distribution Business.
- “Compliance Manager”** shall have the meaning attributed to that expression in paragraph 10.
- “Compliance Plan”** shall have the meaning attributed to that expression in paragraph 4.
- “relevant holding company”** means each holding company of the Licensee which does not itself generate or supply electricity on the Island of Ireland and which has no holding company that itself generates or supplies electricity on the Island of Ireland (regardless of whether any subsidiaries of such companies undertake such generation or supply).

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Condition 11. Prohibited Activities

General Prohibitions

- 1 Except with the prior written consent of the Authority and in accordance with any conditions of that consent, the Licensee shall not purchase or otherwise acquire electricity for the purpose of sale or other disposition to third parties on the Island of Ireland, save to the extent it does so in compliance with any other licence it holds under the Order.
- 2 In paragraph 1, the reference to purchase or other acquisition of electricity shall include entering into or acquiring the benefit of a contract conferring rights or obligations (including rights or obligations by way of option) in relation to or by reference to the sale, purchase or delivery of electricity at any time or the price at which electricity is sold or purchased at any time.

Prohibitions Following Divestment

- 3 Paragraph 4 shall apply only from the point in time at which the Licensee first ceases, following the date on which the Licence is granted, to be an affiliate of Northern Ireland Electricity plc (a company registered in Northern Ireland under company number NI026041).
- 4 Where this paragraph applies in accordance with paragraph 3, the Licensee shall at all times ensure that:
 - (a) neither the Licensee nor any affiliate or related undertaking of the Licensee undertakes an activity which requires authorisation by virtue of Articles 8(1)(a) or (c) of the Order, or which is licensable under Section 14(1)(a), (b), (c), or (d) of the Republic of Ireland Electricity Act; and
 - (b) the Licensee is not controlled by a person who undertakes an activity which requires authorisation by virtue of Articles 8(1)(a) or (c) of the Order, or which is licensable under Section 14(1)(a), (b), (c), or (d) of the Republic of Ireland Electricity Act, or by a person who also controls a person that undertakes any such activity.
- 5 For the purposes of paragraph 4, “control” shall have the meaning attributed to it in section 416 of the Income and Corporation Taxes Act 1988, and “controlled” shall be construed accordingly.

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Condition 12. Security Arrangements

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

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Condition 13. Non-Discrimination

1. In respect of the Market Operation Activity, the Licensee shall not unduly discriminate as between any persons or class or classes of persons (including itself in undertaking any activity other than the Market Operation Activity).

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Condition 14. Market Operator Agreement

Market Operator Agreement

- 1 The Licensee shall enter into, comply with and, in conjunction with the Republic of Ireland Market Operator Licensee, at all times maintain in force, an agreement (the “**Market Operator Agreement**”) which:
- (a) insofar as any matter is within the control of the Republic of Ireland Market Operator Licensee and affects the ability of the Licensee to carry on the Market Operation Activity, ensures that such matter is carried out in a manner such that the Licensee is capable, on a continuing basis, of carrying on the Market Operation Activity;
 - (b) insofar as any matter is within the control of the Licensee in carrying on the Market Operation Activity and affects the ability of the Republic of Ireland Market Operator Licensee to carry on the Republic of Ireland Market Operator Activity, ensures that such matter is carried out in a manner such that the Republic of Ireland Market Operator Licensee is capable, on a continuing basis, of carrying on the Republic of Ireland Market Operator Activity; and
 - (c) is designed to facilitate achievement of the following objectives:
 - (i) the efficient discharge by the Licensee of the obligations imposed upon it by the Licence and by the Republic of Ireland Market Operator Licensee of the obligations imposed upon it by the Republic of Ireland Market Operator Licence; and
 - (ii) the development and administration of the Single Market Operation Business in an efficient and coordinated manner.
- 2 Without prejudice to any other Condition in this Licence, the Licensee shall perform its obligations under the Market Operator Agreement in a manner that facilitates the carrying out of the Single Market Operation Business in conjunction with the Republic of Ireland Market Operator Licensee.

Review and Amendment of the Market Operator Agreement

- 3 The Licensee shall, in conjunction with the Republic of Ireland Market Operator Licensee, periodically review (including at the request of the Authority) the Market Operator Agreement and its implementation.

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

Publication of the Market Operator Agreement

- 8 Where, and to the extent, required to do so by the Authority, the Licensee shall publish the Market Operator Agreement on the web site for the Single Market Operation Business.

Definitions

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

“Republic of Ireland Market Operator Activity” has the meaning attributed to the expression “Market Operation Activity” in the Republic of Ireland Market Operator Licence.

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Condition 15. Single Electricity Market Trading and Settlement Code

1 The Licensee shall enter into and, in conjunction with the Republic of Ireland Market Operator Licensee, at all times administer and maintain in force, the Single Electricity Market Trading and Settlement Code, being a document which:

- (a) sets out the terms of the trading and settlement arrangements described in paragraph 3;
- (b) is designed to facilitate achievement of the objectives set out in paragraph 4; and
- (c) contains modification procedures which provide that any modifications to the Single Electricity Market Trading and Settlement Code (but not, necessarily, to the Agreed Procedures) must be subject to the prior approval of the Authority, and which enable the Authority to propose modifications to the Single Electricity Market Trading and Settlement Code,

and the Licensee shall be taken to have complied with this paragraph to the extent that it:

- (d) adopts, on the date of such designation, as the Single Electricity Market Trading and Settlement Code the document designated as such by the Authority for the purposes of this Condition; and
- (e) (on an on-going basis from SEM Go-Live) reviews and proposes such modifications to that document (in accordance with the modification provisions therein) as would be necessary to ensure that that document meets the requirements of this paragraph 1.

2 The Licensee shall comply with the Single Electricity Market Trading and Settlement Code in its capacity as the holder of a licence granted under Article 10(1)(d) of the Order.

3 The trading and settlement arrangements referred to in paragraph 1(a) are arrangements which set out the rules and procedures for the sale and purchase of wholesale electricity across the Island of Ireland.

4 The objectives referred to in paragraph 1(b) are:

- (a) to facilitate the efficient discharge by the Licensee of the obligations imposed on it by the Licence, and to facilitate the efficient discharge by the Republic of Ireland Market Operator Licensee of the obligations imposed on it by the Republic of Ireland Market Operator Licence;
- (b) to facilitate the efficient, economic and coordinated operation, administration and

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development of the Single Electricity Market in a financially secure manner;

- (c) to facilitate the participation of electricity undertakings engaged in the generation, supply or sale of electricity in the trading arrangements under the Single Electricity Market;
 - (d) to promote competition in the Single Electricity Market;
 - (e) to provide transparency in the operation of the Single Electricity Market;
 - (f) to ensure no undue discrimination between persons who are parties to the Single Electricity Market Trading and Settlement Code; and
 - (g) through the development of the Single Electricity Market, to promote the short-term and long-term interests of consumers of electricity with respect to price, quality, reliability, and security of supply of electricity.
- 5 The Licensee shall, in conjunction with the Republic of Ireland Market Operator Licensee, ensure that persons who are a party to the Single Electricity Market Trading and Settlement Code or who wish to become a party to the Single Electricity Market Trading and Settlement Code have, to the extent that is reasonably practicable, a single point of contact when interfacing with the Single Market Operation Business.
- 6 The Licensee shall provide to the Authority such information as the Authority may request concerning the Single Electricity Market Trading and Settlement System or any aspect of its operation.
- 7 The Licensee shall, in conjunction with the Republic of Ireland Market Operator Licensee and with effect from SEM Go-Live, establish and maintain a web-site for the Single Market Operation Business.
- 8 The Licensee shall, where required by the Authority, publish the Single Electricity Market Trading and Settlement Code on the web-site for the Single Market Operation Business.
- 9 In this Condition:

“Agreed Procedures”

means the detailed procedures that form part of the Single Electricity Market Trading and Settlement Code, but which are subsidiary to the main provisions of the code, as (subject thereto) such expression is defined in the code.

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Condition 16. Market System Development Plan

- 1 Where required by the Authority, and within such timeframe as the Authority may reasonably request, the Licensee shall, in conjunction with the Republic of Ireland Market Operator Licensee, prepare and submit to the Authority for approval a plan (the “**Market System Development Plan**”) for the development of the Single Electricity Market Trading and Settlement System over the following two calendar years.
- 2 The Licensee shall, in conjunction with the Republic of Ireland Market Operator Licensee, revise the Market System Development Plan at least annually in order that the information set out in the Market System Development Plan continues to be accurate in all material respects and shall submit all revisions it to the Authority for approval.
- 3 Where (and to the extent) required by the Authority, the Licensee shall amend the Market System Development Plan and shall submit such amended plan to the Authority for approval.
- 4 Where, and to the extent, required by the Authority, the Licensee shall publish the Market System Development Plan on the web-site for the Single Market Operation Business.

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Condition 17. Performance of the Single Market Operation Business

Establishing the Performance Criteria

- 1 The Licensee shall, in conjunction with the Republic of Ireland Market Operator Licensee, by no later than SEM Go-Live, submit to the Authority for approval a report setting out the performance criteria against which the performance of the Single Electricity Market Trading and Settlement System may be measured.
- 2 The performance criteria submitted in accordance with paragraph 1 shall, subject to such amendments as the Authority may direct on first approving such criteria and subject to paragraph 4, constitute the “**Performance Criteria**” for the purposes of this Condition.

Reviews of the Performance Criteria

- 3 The Authority may periodically:
 - (a) review the Performance Criteria (undertaking such consultation as it considers appropriate); or
 - (b) require the Licensee, in conjunction with the Republic of Ireland Market Operator Licensee, to review the Performance Criteria in consultation with electricity undertakings, and report to the Authority on the outcome of such review and consultation.

Revision of the Performance Criteria

- 4 The Authority may, following any review undertaken in accordance with paragraph 3, issue directions requiring the Licensee to revise the Performance Criteria in such manner as may be specified in the directions, and the Licensee shall forthwith comply with any such directions.

Compliance with the Performance Criteria

- 5 The Licensee shall, in conjunction with the Republic of Ireland Market Operator Licensee, conduct the Single Market Operation Business in the manner that it reasonably considers best calculated to achieve the Performance Criteria.
- 6 The Licensee shall, in conjunction with the Republic of Ireland Market Operator Licensee, report annually to the Authority on the performance of the Single Electricity Market Trading and Settlement System against the Performance Criteria.

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Other Matters

- 7 Where required by the Authority, the Licensee shall publish the Performance Criteria, and the report on performance referred to in paragraph 6, on the web-site for the Single Market Operation Business.

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Condition 18. System Operator Agreement

- 1 The Licensee shall accede to and comply with the System Operator Agreement in its capacity as the holder of a licence granted under Article 10(1)(d) of the Order.

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Condition 19. Procurement of Assets and Services

- 1 Subject to paragraphs 2 and 3, the Licensee shall procure such assets and services as may be necessary and appropriate to enable the Licensee to discharge its obligations, in its capacity as the holder of a licence granted under Article 10(1)(d) of the Order, under the Order, the Energy Order, the SEM Order, the Licence and the Single Electricity Market Trading and Settlement Code.
- 2 In procuring assets and services pursuant to paragraph 1, the Licensee shall (where appropriate) do so jointly with the Republic of Ireland Market Operator Licensee.
- 3 In procuring assets and services pursuant to paragraph 1, the Licensee shall follow a procurement strategy designed to facilitate (to the extent within the Licensee's control in undertaking the Single Market Operation Business) achievement of the objectives set out in paragraph 4, and which, to the extent that a procurement decision (whether alone or when considered with other procurement decisions) will have a material impact on the costs to be incurred by a class of electricity undertakings, includes the prior consultation by the Licensee with such class of electricity undertakings.
- 4 The objectives referred to in paragraph 3 are, insofar as the procurement of the Single Electricity Market Trading and Settlement System (and/or the manner in which such procurement is undertaken) can achieve the same:
 - (a) ensuring that the Single Electricity Market is developed and, at all times, administered in a financially secure, economical, efficient and coordinated manner;
 - (b) minimising (in aggregate) (i) where the Licensee is aware of such costs, the overall costs of the development, implementation and operation of the hardware, software and processes which electricity undertakings require in order to participate in the Single Electricity Market; and (ii) the overall costs of the development, implementation and operation of the Single Electricity Market Trading and Settlement System; and
 - (c) facilitating the participation of electricity undertakings in the Single Electricity Market in a manner that does not unduly disadvantage any person or class or classes of persons when compared with any other person or class or classes of persons.
- 5 Without prejudice to Conditions 2 and 8, the Licensee shall ensure that any assets or services of a material nature provided by the Market Operation Activity to any other business of the Licensee, or to the Market Operation Activity by any other business of the Licensee, shall (insofar as

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possible given that they are a single legal entity) be undertaken on arm's length terms (or such other terms as may be approved in advance by the Authority), and:

- (a) where such other business is the Transmission System Operator Business, the cost of such provision shall be apportioned between the Market Operation Activity and the Transmission System Operator Business at cost; or
 - (b) where such other business is not the Transmission System Operator Business, the cost of such provision shall be apportioned between the Market Operation Activity and such other business at a commercial rate.
- 6 Any question as to materiality arising under paragraph 5 shall be determined by the Authority for the purposes of this Condition.

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Condition 20. Charging and Revenue Restriction

- 1 The Licensee shall ensure that no revenue is derived from the Single Market Operation Business in the period prior to SEM Go-Live.
- 2 The Licensee shall use best endeavours to ensure that the revenue derived from the Single Electricity Market Operation Business in the period from SEM Go-Live (or any part thereof) shall not exceed such amount as the Authority determines is reasonable in all the circumstances.
- 3 Paragraph 2 shall cease to have effect on the date 12 months after SEM Go-Live unless, by that date, the Authority has made a reference to the Competition Commission under Article 15 of the Order requiring the Competition Commission to investigate and report on whether this Condition operates, or may be expected to operate, against the public interest.

[It is the Authority's intention that this condition is amended under Article 14 of the Order (with the agreement of the licensee) in the period prior to Go-Live to include a more detailed enduring revenue restriction condition.]

Schedule 1. Revocation

1. The Authority may at any time revoke the Licence by not less than 30 days' notice in writing to the Licensee:
 - (a) if the Licensee agrees in writing with the Authority that the Licence should be revoked;
 - (b) if any licence fee required to be paid under the Licence is unpaid 30 days after it has become due, and remains unpaid for a period of 14 days after the Authority has given the Licensee notice that the payment is overdue, provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;
 - (c) if the Licensee fails to comply with a final order (within the meaning of Article 42 of the Energy Order) or with a provisional order (within the meaning of Article 42 of the Energy Order) which has been confirmed under Article 42 of the Energy Order and which (in either case) has been made in respect of a contravention or apprehended contravention of a Condition of the Licence or of a relevant requirement as defined in Article 41(2)(a) of the Energy Order imposed on the Licensee in its capacity as holder of the Licence and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 44 of the Energy Order could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined;
 - (d) if the Licensee fails to comply with an order made by a court under section 34 of the Competition Act 1998; or fails to comply with an order made under section 72, 75, 76, 81, 83, 84, 158, 160 or 161 of, or under paragraph 2, 5, 6, 10 or 11 of schedule 7 to, the Enterprise Act 2002; or is found guilty of an offence under section 188, 193 or 194 of the Enterprise Act 2002;
 - (e) if the Licensee:
 - (i) is unable to pay its debts (within the meaning of Article 103(1) or (2) of the Insolvency (Northern Ireland) Order 1989, but subject to paragraphs 2 and 3 below) or if any voluntary arrangement is proposed in relation to it under Article 14 of that Order, or if it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);

- (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; or
 - (v) becomes subject to an order for winding-up by a court of competent jurisdiction;
- (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 of the Licence or of a “relevant requirement” as defined in Article 41(2)(a) of the Energy Order by the due date for such payment and such payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 49 of the Energy Order could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined; or
- (h) if the Licensee ceases to carry on the Market Operation Activity, other than with the consent of the Authority.
2. For the purposes of paragraph 1(e)(i) above, Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 shall have effect as if for “£750” there was substituted “£250,000” or such higher figure as the Authority may from time to time determine by notice in writing to the Licensee.
3. The Licensee shall not be deemed to be unable to pay its debts for the purposes of paragraph 1(e)(i) above if any such demand as is mentioned in Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 is being contested in good faith by the Licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1 above.