

MARKET OPERATOR LICENCE

GRANTED TO

EIRGRID plc

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PART 1 TERMS OF THE LICENCE

1. The Commission for Energy Regulation (hereinafter referred to as "**the Commission**"), in exercise of the powers conferred by Section 14(1)(j) of the Electricity Regulation Act 1999 (hereinafter referred to as "**the Act**"), as inserted by Section 12 of the Electricity Regulation (Amendment) (Single Electricity Market) Act 2007, hereby grants to EirGrid plc (hereinafter referred to as "**the Licensee**") a licence (hereinafter referred to as "**this Licence**") to undertake in the Republic of Ireland the role of single market operator of the Single Electricity Market subject to the Conditions (hereinafter referred to as "**the Conditions**") set out in Part 2, such role to be undertaken (where required by this Licence) in conjunction with the holder of the licence granted under Article 10(1)(d) of the Electricity (Northern Ireland) Order 1992 in Northern Ireland ("**the Northern Ireland Market Operator Licensee**") with the objective that, so far as is required by this Licence, the Licensee will, with the Northern Ireland Market Operator Licensee, undertake the Single Market Operation Business.
2. The Conditions are subject to modification or amendment in accordance with Sections 14(3), 14(6), 14A and 19 of the Act. The Licence hereby granted is further subject to the terms as to revocation specified in the Schedule to this Licence.
3. This Licence shall come into force on [●] and, unless revoked in accordance with the provisions of the Schedule, shall continue in full force and effect until determined by notice in writing given by the Commission to the Licensee.

Sealed with the common seal of the Commission for Energy Regulation on [date as applicable]
2007

Commissioner

Member of Staff of the Commission

PART 2 CONDITIONS OF THE LICENCE

Condition 1 Interpretation and Construction

1. Unless the contrary intention appears:
 - (a) words and expressions used in the Conditions or the Schedule shall be construed as if they were in an enactment and the Interpretation Act 2005 applied to them; and
 - (b) references to an enactment shall include subordinate legislation and, in both cases, any statutory modification or re-enactment thereof either before or after the date when this Licence comes into force.
2. Any word or expression defined for the purposes of any provision of the Act or the Internal Market Regulations shall, unless otherwise defined herein, have the same meaning when used in the Conditions or in the Schedule.
3. In the Conditions and in the Schedule, unless otherwise specified or the context otherwise requires:

"**Act**" refers to the Electricity Regulation Act 1999;

"**affiliate**" in relation to the Licensee or any subsidiary of a holding company of the Licensee, means any holding company of the Licensee or any subsidiary of the Licensee or any subsidiary of a holding company of the Licensee;

"**Authority**" means the Northern Ireland Authority for Utility Regulation established under Article 3 of the Energy (Northern Ireland) Order 2003, as amended by Article 3 of the Water and Sewerage Services (Northern Ireland) Order 2006;

"**Board**" means the Electricity Supply Board;

"**Distribution Code**" means the Distribution Code prepared by the Board pursuant to Section 33 (Preparation of grid code and distribution code) of the Act, and approved by the Commission, as from time to time revised, amended, supplemented or replaced with the approval or at the instance of the Commission;

"**distribution system**" means all electric lines of the Board which the Board may, with the approval of the Commission, specify as being part of the Board's distribution system, and includes any electric plant, transformers and switchgear of the Board which is used for conveying electricity to final customers;

"**EirGrid plc**" means the company formed under Regulation 34 of S.I. 445 of 2000;

"**electricity undertaking**" means any person engaged in the generation, transmission, distribution or supply of electricity, including any holder of a licence or authorisation or a person who has been granted a permit under Section 37 of the Electricity (Supply) Act 1927 and any

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person transferring electricity to or from the Republic of Ireland across an Interconnector or across the North/South Circuits or who has made an application for use of an Interconnector which has not been refused;

"**final customers**" means customers who purchase electricity for their own consumption;

"**Grid Code**" means the Grid Code prepared by the Transmission System Operator pursuant to Section 33 (Preparation of grid code and distribution code) of the Act and approved by the Commission, as from time to time revised, amended, supplemented or replaced;

"**holding company**" means a holding company within the meaning of the Companies Acts;

"**Interconnector**" means for the purposes of this Licence, equipment used to link the transmission system to electricity systems outside of the Island of Ireland, ~~but excluding~~ **(for the avoidance of doubt) does not include** the North/South Circuits;

"**Internal Market Regulations**" means S.I. 445 of 2000 and the European Communities (Internal Market in Electricity) Regulations 2005 (S.I. 60 of 2005);

"**Island of Ireland**" means the Republic of Ireland and Northern Ireland;

"**Licensee**" means EirGrid plc, in its capacity as Republic of Ireland Market Operator for the Single Electricity Market;

"**Market Operation Activity**" means the business of the Licensee as provided for in this Licence;

"**Market Operator Agreement**" has the meaning given to that expression in Condition 2;

"**Market System Development Plan**" means the plan required to be prepared by the Licensee in accordance with Condition 4 of this Licence;

"**Metering Code**" means the metering code prepared by the Board and approved by the Commission, as from time to time revised, amended, supplemented or replaced with the approval of, or at the instance of, the Commission;

"**modification**" includes addition, deletion, amendment and substitution; and cognate expressions shall be construed accordingly;

"**North/South Circuits**" means the electric lines and electrical plant and meters used for conveying electricity directly to or from a substation or convertor station within the Republic of Ireland directly to or from a substation or convertor station within Northern Ireland (and not for conveying electricity elsewhere);

"**Northern Ireland Market Operator Licence**" means the licence granted, under Article 10(1)(d) of the Electricity (Northern Ireland) Order 1992, to SONI;

"Northern Ireland Market Operator Licensee" means SONI and/or any other company or person which may from time to time be authorised to undertake the role of market operator of the Single Electricity Market by a licence granted under Article 10(1)(d) of the Electricity (Northern Ireland) Order 1992;

"Northern Ireland System Operator" means the person authorised, from time to time, under the Northern Ireland System Operator Licence in its capacity as the holder of that licence;

"Northern Ireland System Operator Licence" means the licence granted under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 to SONI on [●] 2007 or a licence subsequently granted under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992;

"participating interest" has the meaning given to that term in Regulation 35 of the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. 201 of 1992);

"related undertaking" means any undertaking having a participating interest in the Licensee or any undertaking in which the Licensee has a participating interest;

"Republic of Ireland Market Operator" means EirGrid plc and/or any other company or person which may from time to time be authorised to undertake in the Republic of Ireland the role of single market operator of the Single Electricity Market by a licence granted under Section 14 (1)(j) of the Act;

"representation" includes any objection or any other proposal made in writing;

"SEM Go-Live" means the time and date designated as such by the Commission for the purposes of the Single Electricity Market;

"Separate Business" means any business or businesses of the Licensee, whether carried out directly or by an affiliate or related undertaking of the Licensee, other than the Single Market Operation Business;

"S.I. 445 of 2000" means the European Communities (Internal Market in Electricity) Regulations 2000;

"Single Electricity Market" means the single wholesale electricity market for the Island of Ireland implemented in the Republic of Ireland pursuant to the Act and the Single Market Regulations;

"Single Electricity Market Trading and Settlement Code" means the Trading and Settlement Code provided for in Regulation [●] of the Single Market Regulations, as from time to time revised, amended, supplemented or replaced ~~with the approval or at the instance of the Commission;~~

"Single Electricity Market Trading and Settlement System" means the hardware, software and processes operated by or on behalf of the Licensee and/or the Northern Ireland Market Operator Licensee for the trading of electricity in the Single Electricity Market and the settlement of financial obligations in respect thereof;

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"Single Market Operation Business" means the Market Operation Activity and the activity of Northern Ireland Market Operator Licensee as provided for in the licence granted under Article 10(1)(d) of the Electricity (Northern Ireland) Order 1992;

"Single Market Regulations" means the Electricity Regulation Act 1999 (Single Electricity Market) Regulations 2007 (S.I. [●] of 2007);

"SONI" means SONI Limited, a company incorporated in Northern Ireland under company number NI 038715;

"subsidiary" has the meaning given in the Companies Acts;

"System Operator Agreement" means the agreement of that name established pursuant to the license held by the Transmission System Operator;

"transmission system" means the system of electric lines comprising wholly or mainly the Board's high voltage lines and electric plant and which is used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another or to or from any Interconnector or to final customers (including such part of the North/South Circuits as is owned by the Board) (but shall not include any such lines which the Board may, with the approval of the Commission, specify as being part of the distribution system), and shall include any Interconnector owned by the Board;

"Transmission System Operation Business" means the business of the Transmission System Operator as operator of the transmission system;

"Transmission System Operator" means the Licensee in its capacity as the licensed transmission system operator;

"Transmission System Owner" means the Board as owner of the transmission system, licensed pursuant to Section 14(1)(f) of the Act.

4. Unless otherwise specified:

- (a) any reference to a numbered Condition is a reference to the Condition bearing that number in this Licence;
- (b) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the Condition or Schedule in which the reference occurs; and
- (c) without prejudice to any provision which restricts such variation, supplement or replacement, any reference to any agreement, licence (other than this Licence), code or other instrument shall include a reference to such agreement, licence, code or other instrument as varied, supplemented or replaced from time to time.

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

6. Where any obligation of the Licensee is expressed to require performance within a specified time limit that obligation shall continue to be binding and enforceable after that time limit if the Licensee fails to perform that obligation within that time limit (but without prejudice to all rights and remedies available against the Licensee by reason of the Licensee's failure to perform within the time limit).
7. The provisions of Section 4 (Service of notices) of the Act shall apply for the purposes of the delivery or service of any document, direction or notice to be delivered or served pursuant to this Licence and directions issued by the Commission pursuant to any Condition shall be delivered or served as aforesaid.
8. Where any Condition of this Licence requires the Licensee to act "*in conjunction with the Northern 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 Northern Ireland Market Operator Licensee, be obliged to fulfil that obligation and shall use all reasonable endeavours to work together with the Northern 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 Northern Ireland Market Operator Licensee:
 - (i) ensure that the Market Operator Agreement requires the Northern 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; and
 - (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 Northern Ireland Market Operator Licensee in so doing; and
 - (c) to the extent the Northern 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 Northern Ireland Market Operator Licensee reasonably requests in order to enable it to fulfil that obligation.

Condition 2 Market Operator Agreement

1. The Licensee shall enter into, comply with and, in conjunction with the Northern 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 Northern 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 Northern Ireland Market Operator Licensee to carry on the Northern Ireland Market Operation Activity, ensures that such matter is carried out in a manner such that the Northern Ireland Market Operator Licensee is capable, on a continuing basis, of carrying on the Northern Ireland Market Operation 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 this Licence and by the Northern Ireland Market Operator Licensee of the obligations imposed upon it by the Northern Ireland Market Operator Licence; and
 - (ii) the development and administration of the Single Market Operation Business in a financially secure, economical, 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 Northern Ireland Market Operator Licensee.
3. The Licensee shall, in conjunction with the Northern Ireland Market Operator Licensee, periodically review (including at the request of the Commission) the Market Operator Agreement and its implementation.
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 Commission 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 Commission 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 Northern Ireland Market Operator Licensee, amend the Market Operator Agreement to conform to) that amendment to the extent it is approved by the Commission.

6. In addition to the matters specified in paragraph 5, the Market Operator Agreement may provide for there to be referred to the Commission for determination (subject to the Commission 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 the Northern Ireland Market Operator Licensee, report annually to the Commission on the operation of the Market Operator Agreement to the extent relevant to the functions, rights and obligations of the Licensee.
8. Where, and to the extent, required by the Commission, the Licensee shall publish and make available the Market Operator Agreement on the web-site for the Single Market Operation Business.
9. In this Condition:

**“Northern Ireland Market
Operation Activity”**

has the meaning given to the expression “Market Operation Activity” in the Northern Ireland Market Operator Licence.

Condition 3 Market System and the Single Electricity Market Trading and Settlement Code

1. The Licensee shall enter into and, in conjunction with the Northern 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 and all 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 Commission and which enable the Commission 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 Commission 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 insofar as applicable to it as the holder of a licence granted under Section 14(1)(j) of the Act.
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 this Licence and to facilitate the efficient discharge by the Northern Ireland Market Operator Licensee of the obligations imposed on it by the Northern Ireland Market Operator Licence;
 - (b) to facilitate the efficient, economic and coordinated operation, administration and 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 provide and operate the Single Electricity Market Trading and Settlement System in accordance with the Single Electricity Market Trading and Settlement Code and in accordance with this Licence and any requirements which the Commission may impose on the Licensee.
 6. The Licensee shall, in conjunction with the Northern 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.
 7. The Licensee shall provide to the Commission such information as the Commission may request concerning the Single Electricity Market Trading and Settlement System or any aspect of its operation.
 8. The Licensee shall, in conjunction with the Northern Ireland Market Operator Licensee and with effect from SEM Go-Live, establish and maintain a web-site for the Single Market Operation Business.
 9. The Licensee shall, where required by the Commission, publish the Single Electricity Market Trading and Settlement Code on the web-site for the Single Market Operation Business.
 10. 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 Single Electricity Market Trading and Settlement Code, as (subject thereto) such expression is defined in the Single Electricity Market Trading and Settlement Code.

Condition 4 Market System Development Plan

1. Where required by the Commission, and within such timeframe as the Commission may reasonably request, the Licensee shall in conjunction with the Northern Ireland Market Operator Licensee, prepare and submit to the Commission for approval a plan, to be known and referred to as 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 Northern 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 to the Commission for approval.
3. The Licensee shall:
 - (i) engage in a public consultation process, including any other form of consultation that the Commission may direct, before submitting the Market System Development Plan to the Commission for approval; and
 - (ii) report in writing to the Commission on the results of that process not later than when submitting the Market System Development Plan to the Commission for approval.
4. Where, and to the extent, required by the Commission, the Licensee shall amend the Market System Development Plan and shall submit such amended plan to the Commission for approval.
5. Where, and to the extent, required by the Commission, the Licensee shall publish and make available the Market System Development Plan on the web-site for the Single Market Operation Business.
6. The Commission may from time to time give directions to the Licensee in respect of:
 - (i) the matters to be specified in the Market System Development Plan; and
 - (ii) the review and revision by the Licensee from time to time of the Market System Development Plan,and the Licensee shall comply with directions given by the Commissioner under this subparagraph.

Condition 5 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 under the Act, the Single Market Regulations, this 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 Northern 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 cost 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. Any provision of assets or services:
 - (a) to the Licensee by any affiliate or related undertaking of the Licensee; or
 - (b) by the Licensee to any affiliate or related undertaking of the Licensee,shall be on arms-length terms.
6. Any provision of assets or services of a material nature by the Market Operation Activity to any Separate Business of the Licensee, or by any Separate Business of the Licensee to

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the Market Operation Activity shall (insofar as possible given that they are a single legal entity) be undertaken on arms-length terms (or such other specific terms as agreed in advance in writing by the Commission); and:

- (a) where such Separate Business is the Transmission System Operation Business, the cost of such provision shall be apportioned between the Market Operation Activity and the Transmission System Operation Business at cost; and
 - (b) where such Separate Business is not the Transmission System Operation Business, the cost of such provision shall be apportioned between the Market Operation Activity and ~~the Transmission System Operations~~ such Separate Business at a commercial rate.
7. Any question arising as to materiality shall be determined by the Commission for the purposes of this Condition.

Condition 6 Relevant Market Assets

1. Where required by the Commission, and within such time frame as the Commission may reasonably require, the Licensee shall, in conjunction with the Northern Ireland Market Operator Licensee, prepare and maintain a register of all relevant market assets in a form as specified by the Commission from time to time, and identifying those relevant market assets of which the Licensee and Northern Ireland Market Operator Licensee are both owners. The Licensee shall provide the Commission with such a register within such time frame as the Commission may direct and shall provide the Commission with an updated version of such a register annually.
2. The Licensee shall not dispose of, or relinquish operational control over, any relevant market asset if the disposal or relinquishment of control would adversely affect its ability or the ability of Northern Ireland Market Operator Licensee to discharge their respective obligations under any applicable laws or regulation, or the carrying on of activities authorised or required by this Licence or the licence held by Northern Ireland Market Operator Licensee, and any question arising under this Condition shall be determined by the Commission.
3. The Licensee shall not dispose of, or relinquish operational control over, any relevant market asset if the disposal or relinquishment of control would adversely affect the ability of the Transmission System Operator or Northern Ireland System Operator to discharge their respective obligations under any applicable law or regulation, or the carrying on of activities authorised or required by the licence to operate the transmission system held by the Transmission System Operator or the licence to participate in the transmission of electricity held by Northern Ireland System Operator, and any question arising under this Condition shall be determined by the Commission.
4. The Commission shall issue directions from time to time requiring the Licensee to give prior written notification to the Commission of proposed disposals of relevant market assets of a specified description and these directions may include a direction that certain categories of such disposals may not take place until either the Commission has expressly agreed to them or a specified time period has elapsed.
5. Where a relevant market asset is owned jointly with the Northern 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.
6. In this Condition:

"disposal"

includes any sale, assignment, gift, lease, licence, transfer, mortgage, charge, restriction on use (whether physical or legal), or the grant of any other encumbrance or the permitting of any encumbrance to subsist or any other disposition to a third party and "dispose" shall be construed

accordingly;

"relevant market asset"

means:

- (a) any material Single Electricity Market Trading and Settlement System equipment used by the Licensee in the discharge of its functions under this Licence; and
- (b) any legal or beneficial interest which can be considered material in land and/or premises upon which any of the foregoing is situate and/or used by the Licensee in the discharge of its functions under this Licence.

"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 Northern Ireland Market Operator Licensee.

7. Any question arising as to materiality shall be determined by the Commission for the purposes of this Condition.

Condition 7 Additional Use or Disposal of Relevant Market Assets

1. If any or all of the relevant market assets are being used or disposed of, or if any or all of the relevant market assets are proposed to be used or disposed of by the Licensee (or any Separate Business of the Licensee) for interests other than or in addition to discharging the functions of the Single Market Operation Business, the Licensee shall, as soon as is practicable after the date of issue of this Licence, notify the Commission in writing of same and provide the Commission with such information as the Commission may require in relation to such usage or disposal.

2. The Commission shall issue directions from time to time requiring the Licensee to give prior written notification to the Commission of proposed additional uses or disposals of relevant market assets of a specified description and these directions may include a direction that certain categories of such disposals may not take place until either the Commission has expressly agreed to them or a specified time period has elapsed.

3. In this Condition:

"disposal"	has the meaning as defined in Condition 6 and "disposed" shall be construed accordingly;
"relevant market assets"	has the meaning as defined in Condition 6.

4. Any question arising as to materiality shall be determined by the Commission for the purposes of this Condition.

Condition 8 System Operator Agreement

1. The Licensee shall, no later than 1 October 2007, accede to and comply with the System Operator Agreement insofar as applicable to the Licensee in its capacity as the holder of a licence granted under Section 14(1)(j) of the Act.

Condition 9 Duty of Non-Discrimination

1. In the carrying out of its functions under this Licence, the Licensee shall not discriminate unduly between persons or classes of persons, or between system users or classes of system users, particularly in favour of its subsidiaries, associated or affiliated undertakings, joint ventures or shareholders.
2. The Licensee shall establish a compliance programme on the measures taken to ensure that discriminatory conduct by it or its employees is prevented, which shall include specific obligations imposed on its employees to prevent discrimination.
3. The Licensee shall report to the Commission at intervals of not more than one year, in such form as the Commission determines, specifying the measures taken and the level of compliance in relation to paragraph 2. The report shall be published by the Licensee in such manner as shall be determined by the Commission.

Condition 10 Performance of the Single Market Operation Business

1. The Licensee shall, in conjunction with the Northern Ireland Market Operator Licensee, no later than SEM Go-Live, submit to the Commission 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 Commission may direct on first approving such criteria and subject to paragraph 4, constitute the "**Performance Criteria**" for the purposes of this Condition.
3. The Commission may periodically:
 - (a) review the Performance Criteria (undertaking such consultation as it considers appropriate); or
 - (b) require the Licensee, in conjunction with the Northern Ireland Market Operator Licensee, to review the Performance Criteria in consultation with electricity undertakings, and following any such review send to the Commission:
 - (i) a report on the outcome of such review;
 - (ii) any revisions which the Licensee proposes to make to the Performance Criteria (having regard to the outcome of the review); and
 - (iii) any written representations or objections from any electricity undertakings arising during the consultation process and subsequently maintained.
4. The Commission 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.
5. The Licensee shall, in conjunction with the Northern 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 Northern Ireland Market Operator Licensee, report annually to the Commission on the performance of the Single Electricity Market Trading and Settlement System against the Performance Criteria.
- [7. The Licensee shall, in conjunction with the Northern Ireland Market Operator Licensee, on a monthly basis or at such other intervals as the Commission may reasonably request, submit to the Commission a report, setting out in reasonable detail, information about the level of compliance with their obligations under the Single Electricity Market Trading and Settlement Code achieved by the parties thereto. *[Note: This paragraph to be reviewed in light of Trading and Settlement Code review]*

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

Condition 11 Prohibited Activities

1. The Licensee shall not, and shall procure that any affiliate or related undertaking of the Licensee shall not, on behalf of the Licensee, engage in the generation, distribution or supply of electricity on the Island of Ireland.

2. The Licensee shall notify the Commission of any interests the Licensee has in any other electricity undertaking forthwith, outside of the Island of Ireland, directly or indirectly acquired. The Licensee shall provide not less than two months prior written notification to the Commission of interests in any other electricity undertakings that the Licensee intends to, directly or indirectly, acquire.

Condition 12 Restriction on Use of Certain Information

1. The Licensee shall preserve the confidentiality of commercially sensitive information held and/or obtained by it in carrying on the Single Market Operation Business.
2. The Licensee shall prevent information about its own activities which may be commercially advantageous being disclosed in a discriminatory manner.
3. The Licensee shall implement such measures and procedures and take all such other steps as it shall reasonably consider and/or shall be specified in directions issued by the Commission from time to time to be necessary for the purpose of securing compliance by the Licensee with its obligations under paragraph 1.
4. The Licensee shall ensure that confidential information is only disclosed to authorised recipients, classes of authorised recipients or authorised advisers.
5. Paragraphs 1, 2 and 4 shall not apply to:
 - (a) any confidential information which, before or after it is furnished to the Licensee's employees, is in the public domain; or
 - (b) the disclosure of any confidential information:
 - (i) in compliance with the duties of the Licensee under the Act, the Single Market Regulations or any other requirement of a competent authority; or
 - (ii) in compliance with the Conditions granted in this Licence or any document referred to in this Licence with which the Licensee is required by virtue of the Act, the Single Market Regulations or this Licence to comply; or
 - (iii) in compliance with any other requirement of law; or
 - (iv) pursuant to any judicial or other arbitral process or tribunal of competent jurisdiction; or
 - (v) necessary in order to enable the Licensee and Northern Ireland Market Operator Licensee to carry on the Single Market Operation Business; or
 - (c) any confidential information to the extent that the Licensee is expressly permitted or required to disclose that information under the terms of any agreement or arrangement (including the Grid Code, the Distribution Code, the Metering Code and the Single Electricity Market Trading and Settlement Code) with the relevant person to whose affairs such confidential information relates.
6. Without prejudice to the other provisions of this Condition, the Licensee shall procure that any additional copies made of the confidential information, whether in hard copy or computerised form, will clearly identify the confidential information as confidential.

7. The Licensee shall take all reasonable measures to prevent (so far as the Licensee can so require) any person who is or ceases to be employed by the Licensee, whether that person is or was employed part time or full time in the Market Operation Activity, from disclosing confidential information.
8. The Licensee shall take all reasonable steps to ensure that every authorised adviser, consultant, director or member of staff to whom the Licensee discloses confidential information does not:
 - (a) use that confidential information for any purpose other than that for which it was provided; and
 - (b) disclose that confidential information otherwise than in accordance with the provisions of this Condition, such authorised adviser, consultant, director or member of staff of the Licensee having first been duly authorised by the Licensee to disclose the confidential information.
9. This Condition is without prejudice to the duties at law of the Licensee towards outside persons.
10. In this Condition:

"authorised adviser"

means such professional advisers of the Licensee, engaged and acting in that capacity, as require access to any confidential information;

"authorised recipient"

means, in relation to any confidential information, any employee who, before the confidential information had been divulged to him by the Licensee, had been informed of the nature and effect of this Condition and who requires access to such confidential information for the proper performance of his duties as an employee of the Licensee in the course of permitted activities;

"confidential information"

means any commercially sensitive information held and/or obtained by the Licensee in the discharge of its functions as market operator under the Act, the Market Operator Agreement and this Licence;

"commercially sensitive information"

means any matter the disclosure of which would materially prejudice the interests of any person;

"permitted activities"

means any activities directly connected with the discharge by the Licensee of its functions as market operator pursuant to this Licence.

Condition 13 Separate Accounts for Separate Businesses

1. Notwithstanding that the Market Operation Activity is not carried on by EirGrid plc through a separate legal entity to which the Companies Acts apply, the Licensee shall prepare accounts in respect of the Market Operation Activity in accordance with the requirements of the Companies Acts and shall deliver to the Commission a copy of the audited accounts so prepared as soon as reasonably practicable, and in any event no later than three months after the end of the period to which the accounts relate.
2. For the purposes of paragraph 1, the financial years of the Market Operation Activity in respect of which the Licensee shall prepare accounts shall be determined as follows:
 - (a) the first financial year shall run from (and including) SEM Go-Live up to (and including) 31 December 2007; and
 - (b) each subsequent financial year shall run from (and including) 1 January up to (and including) the following 31 December.
3. Without prejudice to paragraph 1, the Licensee shall, in its internal accounting, keep or cause to be kept accounts for the Market Operation Activity as a whole which when requested from time to time by the Commission, must be delivered to the Commission in the form and at the times specified by the Commission. The accounts shall be in accordance with such regulatory accounting guidelines as may be issued by the Commission from time to time. The accounts shall also be in accordance with any and all directions as are reasonable and appropriate for the purposes of this Condition as the Commission may, from time to time, notify to the Licensee.
4. The regulatory accounting guidelines or directions notified by the Commission to the Licensee under paragraph 3 may, inter alia:
 - (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 Market Operation Activity and any other business;
 - (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;
 - (c) require any reconciliation that may be required with the annual accounts of the Licensee prepared under the Companies Acts;
 - (d) 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.

5. The Licensee shall not, in relation to the accounting statements in respect of a financial year, change the basis of charge, apportionment or allocation from those applied in respect of the previous financial year, unless the Commission shall previously have issued directions for the purposes of this Condition directing the Licensee to change such basis in a manner set out in the directions or the Commission gives its prior written approval to the change in such basis.
6. The Licensee shall comply with any directions issued by the Commission for the purposes of this Condition.
7. Without prejudice to paragraph 1, the Licensee shall, in conjunction with the Northern Ireland Market Operator Licensee, keep or cause to be kept accounts for the Single Market Operation Business which when requested from time to time by the Commission, must be delivered to the Commission in the form and at the times specified by the Commission. The accounts shall be in accordance with such regulatory accounting guidelines as may be issued by the Commission from time to time. The accounts shall also be in accordance with any and all directions as are reasonable and appropriate for the purposes of this Condition as the Commission may, from time to time, notify to the Licensee.
8. The regulatory accounting guidelines or directions notified by the Commission to the Licensee under paragraph 7 may, inter alia:
 - (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;
 - (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.

Condition 14 Prohibition of Subsidies and Cross-subsidies

1. The Licensee shall procure that the Market Operation Activity shall not give any subsidy or cross-subsidy (direct or indirect) to any Separate Business of the Licensee and/or any affiliate or related undertaking of the Licensee.
2. For the purposes of this Condition, the Commission shall determine whether or not subsidisation or cross-subsidisation is taking place. Where the Commission determines that a subsidy or cross-subsidy is taking place, the Commission may issue a direction to that effect and require the cessation of same.
3. Nothing which the Licensee is obliged or permitted to do or not do pursuant to this Licence shall be regarded as a subsidy or cross-subsidy for the purposes of this Condition.

Condition 15 Charges of the Market Operator

1. The provisions of Section 36A (Charges of Market Operator) and Section 36B (Approval by Commission of statement of charges of Market Operator) of the Act shall apply to the Licensee.
2. The Licensee shall comply with any directions, decisions or determinations given to it by the Commission, from time to time, pursuant to Section 36A or Section 36B of the Act.
3. Where required by the Commission, the Licensee shall publish and make available on the Licensee's web-site the statement of charges in relation to participation in the trading arrangements under the Single Electricity Market approved by the Commission under Section 36B of the Act.

Condition 16 Provision of Information to the Commission

1. The Licensee shall procure and furnish to the Commission, in such form and at such times as the Commission may require, such information as the Commission may consider relevant in the light of the Conditions of this Licence or as it may require for the purpose of performing the functions assigned or transferred to it by or under the Act or the Internal Market Regulations.
2. The power of the Commission to call for information under paragraph 1 is without prejudice to the power of the Commission to call for information under or pursuant to any other Condition of this Licence or under or pursuant to the Act or the Internal Market Regulations.
3. In this Condition "information" means oral or written and shall include, without limitation, any books, documents, records, accounts (statutory or otherwise), estimates, returns or reports of any description (whether or not in electronic or any other format, or prepared specifically at the request of the Commission) requested by the Commission and any explanations (oral or written) in relation to such information as may be requested by the Commission.
4. The information shall be to a level of audit as may be required by the Commission from time to time.
5. The Commission may publish any information provided to the Commission under this Licence. In exercising its discretion under this Condition, the Commission shall have regard to the need to protect confidential information.

Condition 17 Code of Conduct

1. The Licensee shall prepare a code of conduct, for approval by the Commission, which shall apply to every director and to every person employed by the Licensee under a contract of employment.
2. The code of conduct shall be consistent with this Licence and, in particular, the requirements in relation to preserving the confidentiality of confidential information.
3. The Licensee shall ensure that the code of conduct be included as part of every contract of employment with the Licensee.
4. In this Condition:

"confidential information" has the meaning as defined in Condition 12.

Condition 18 Compliance with Laws and Directions

1. The Licensee shall comply with the Act, the Internal Market Regulations, the Single Market Regulations, the Market Operator Agreement, the Single Electricity Market Trading and Settlement Code and the Conditions of this Licence and all relevant laws of the European Union.
2. The Licensee shall comply with any requirements, directions or determinations made by the Commission pursuant to the Act, the Internal Market Regulations, the Single Market Regulations, the Market Operator Agreement or this Licence.
3. Any costs associated with compliance with this Condition shall be the responsibility of the Licensee.
4. The Licensee shall monitor and keep a record of its compliance with this Licence.

Condition 19 Environment

1. The Licensee shall comply with all applicable European Union and Irish Environmental Laws whether in force at the date hereof or in the future and also with any direction given to it from time to time by the Commission in pursuance to the Commission's duty under Section 9(5)(a) of the Act to take account of the protection of the environment.

2. For the purposes of this Licence, "Environmental Laws" means those laws which are from time to time in force whose purpose is the protection of the environment including the protection of human health, flora, fauna and the eco-systems on which they depend, and for the avoidance of doubt shall include but shall not be limited to the Environmental Protection Agency Act 1992, the Waste Management Act 1996, the Protection of the Environment Act 2003 and all relevant legislation relating to the assessment of environmental impacts, and the protection of air, land and water.

Condition 20 Health and Safety

The Licensee shall take all reasonable steps to protect persons and property from injury and damage that may be caused by the Licensee when carrying out the Market Operation Activity.

SCHEDULE – Right of Commission to Revoke this Licence

1. The Commission may at any time revoke this Licence by not less than 30 days' notice in writing to the Licensee:
 - (a) if the Licensee agrees in writing with the Commission that this Licence should be revoked;
 - (b) if the Licensee fails to comply with a direction, determination or order under the Act, the Internal Market Regulations, or the Single Market Regulations which (in respect of any of these cases) has been made in respect of a contravention or apprehended contravention of any of the Conditions of this Licence or any requirement, direction or determination made under this Licence and (in respect of any of these cases) such failure is not rectified to the satisfaction of the Commission within three months or such other period as the Commission shall determine after the Commission has given notice of such failure to the Licensee, provided that in respect of a direction under Section 24 (Issue of notice by Commission concerning contraventions, etc.) of the Act, no such notice shall be given by the Commission before the expiration of the period within which representations or objections under Section 24 (Issue of notice by Commission concerning contraventions, etc.) of the Act could be made questioning a direction under Section 24 (Issue of notice by Commission concerning contraventions, etc.) of the Act or before the proceedings relating to any such representations or objections are finally determined;
 - (c) if the Licensee fails to comply with any order made by the Minister under Sections 39 (Public service obligations) or 40 (Transitional arrangements) of the Act;
 - (d) if the Licensee:
 - (i) is unable to pay its debts (within the meaning of Section 214 of the Companies Act, 1963) 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 omission); or
 - (ii) has a receiver or an examiner within the meaning of the Companies (Amendment) Act, 1990 of the whole or any material part of its assets or undertaking appointed; or
 - (iii) passes any resolution for winding up other than a resolution previously approved in writing by the Commission; or
 - (iv) becomes subject to an order for winding up by a court of competent jurisdiction;

- (e) if:
 - (i) there is a change in the control of the Licensee; and
 - (ii) the Commission is satisfied that the new shareholder (together with the other companies in the group) does not have adequate technical, financial or managerial strength, taking into account the size of its shareholding in the Licensee; and
 - (iii) the Commission serves notice on the Licensee stating that the Commission proposes to revoke this Licence in pursuance of this paragraph unless such further change in control of the Licensee as is specified in the notice takes place within the period of three months beginning with the date of service of the notice; and
 - (iv) that further change does not take place within that period;
 - (f) if the Licensee shall have failed to notify the Commission as soon as practicable thereafter that a change in the control of the Licensee shall have occurred;
- 2.
- (a) For the purposes of paragraph 1(d)(i) of this Schedule, Section 214 of the Companies Act 1963 shall have effect as if for "£1,000" there was substituted "€63,486" or such higher figure as the Commission may from time to time determine by notice in writing to the Licensee.
 - (b) There is a change in the control of the Licensee for the purposes of paragraphs 1(e) and (f) of this Schedule whenever a person has control of the Licensee who did not have control of the Licensee when this Licence was granted.

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