

**ELECTRICITY GENERATION LICENCE**

**GRANTED TO**

**SYNERGEN**

**CONDITIONS TO APPLY FROM SEM GO-ACTIVE UNTIL SEM GO-LIVE**

**DRAFT DECISION**

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## **PART I TERMS OF THE LICENCE**

1. The Commission for Electricity Regulation (hereinafter referred to as the "**Commission**"), in exercise of the powers conferred by Section 14(1) (a) of the Electricity Regulation Act, 1999 (hereinafter referred to as the "**Act**") hereby grants to Synergen (hereinafter referred to as the "**Licensee**") a licence to generate electricity at the generating stations identified in Schedule 1 during the period specified in paragraph 3, subject to the Conditions (hereinafter referred to as the "**Conditions**") set out in Part II.
2. The Conditions are subject to modification or amendment in accordance with their terms or with Sections 14(3), 14(6)(a) or 19 of the Act. The licence hereby granted (hereinafter referred to as "**this licence**") is further subject to the terms as to revocation specified in Schedule 2.
3. This licence came into force on 27<sup>th</sup> November 2001 and, unless revoked in accordance with the provisions of Schedule 2, shall continue in full force and effect until determined by not less than 15 years' notice in writing given by the Commission to the Licensee, such notice not to be served earlier than the 15th anniversary of the date on which this licence comes into force or where this licence relates to more than one generating station, such other determination date(s) as may be specified in Schedule 1.

Sealed with the common seal of the Commission for Electricity Regulation on 31<sup>st</sup> July 2002.

Member of Commission

Member of staff of Commission

## **PART II 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 Schedules shall be construed as if they were in an enactment and the Interpretation Acts, 1937 to 1997 applied to them; and
  - (b) references to an enactment shall include subordinate legislation and in both cases any statutory modification or re-enactment thereof after the date when this licence comes into force.
2. Any word or expression defined in the Act or the Regulations for the purposes of any provision of the Act shall, unless otherwise defined herein, have the same meaning when used in the Conditions or in the Schedules.
3. In the Conditions and in the Schedules, unless otherwise specified or the context otherwise requires:

**"affiliate"** in relation to the Licensee or any subsidiary of a holding company of the Licensee, means any holding company of the Licensee or any subsidiary of the Licensee or any subsidiary of a holding company of the Licensee, in each case within the meaning of the Companies Acts, 1963 to 1999;

**"Ancillary Services"** has the meaning given in the Grid Code;

**"Auditors"** means the Licensee's auditors for the time being holding office in accordance with the requirements of the Companies Acts, 1963 to 1999;

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

**"Distribution Business"** means the business division of the Board designated by the Board to exercise the functions of the Distribution System Operator as required by Regulation 22 of the Regulations;

**"Distribution Code"** means the Distribution Code required to be prepared by the Board pursuant to Section 33 of the Act, 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;

**"distribution system"**

means all electric lines of the Board (except lines forming part of the Board's transmission system) and any other electric lines 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 and which is used for conveying electricity to final customers;

**"Distribution System Operator"** means the Board in its capacity as operator of the distribution system licensed pursuant to Section 14(1)(g) of the Act;

**"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 person transferring electricity to or from Ireland across an interconnector or who has made an application for use of an interconnector which has not been refused;

**"financial year"**

has the meaning given to it in paragraph 1 of Condition 2;

**"Generation Business"**

means the licensed business of the Licensee in the generation of electricity or the provision of Ancillary Services;

**"Generation Licence"**

means a licence granted under Section 14(1)(a) of the Act;

**"generation unit"**

means any plant or apparatus for the production of electricity;

**"Grid Code"**

means the Grid Code prepared by the Board pursuant to Section 33 of the Act, and approved by the Commission, as from time to time revised, amended, supplemented or replaced by the Transmission System Operator with the approval or at the instance of the Commission;

<b>"holding company"</b>	means a holding company within the meaning of Section 155 of the Companies Acts, 1963 to 1999;
<b>"interconnector"</b>	means equipment used to link the electricity system of the State to electricity systems outside of the State;
<b>"Licensee"</b>	means Synergen, an unincorporated joint venture between Dublin Bay Power Limited, a subsidiary of the Board and Statoil Dublin Bay AS, a subsidiary of Statoil ASA;
<b>"Licensee's system"</b>	means the electric lines owned or operated by the Licensee through which electricity is conveyed from generation units to the point of connection with the transmission system or the distribution system, as the case may be, and any other electric lines which the Commission may specify as forming part of the Licensee's system and includes any electric plant owned or used by the Licensee in connection therewith;
<b>"Metering Code"</b>	means the metering code to be prepared by the Distribution System Operator 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;
<b>"modification"</b>	includes addition, deletion, amendment and substitution, and cognate expressions shall be construed accordingly;
<b>"participating interest"</b>	has the meaning given to that term in Regulation 35 of the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. 201 of 1992)
<b>"power purchase agreement"</b>	means a contract for the provision of the whole or any part of the available capacity and/or the sale or other disposal of the whole or any part of the output of a generation unit or combination of generation units;
<b>"Public Electricity Supply Business"</b>	means the business of the Board for the supply of electricity to final customers;

<b>"Regulations"</b>	means the European Communities (Internal Market in Electricity) Regulations, 2000;
<b>"related undertaking"</b>	any undertaking having participating interest in the Licensee, or any undertaking in which the Licensee has a participating interest;
<b>"representation"</b>	includes any objection or any other proposal made in writing;
<b>"Single Electricity Market Trading and Settlement Code"</b>	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;
<b>"Single Market Regulations"</b>	means the Electricity Regulation Act 1999 (Single Electricity Market) Regulations 2007 (S.I. [●] of 2007);
<b>"Supplier"</b>	means a person licensed to supply electricity under Sections 14(1)(b), (c) or (d) or 14(2) of the Act or the Board in its capacity as public electricity supplier;
<b>"Supply Business"</b>	means the business (if any) of the Licensee and any affiliate or related undertaking, or any affiliate of a related undertaking of the Licensee, as a Supplier;
<b>"subsidiary"</b>	has the meaning given in the Companies Acts, 1963 to 1999;
<b>"total system"</b>	means the transmission system and the distribution system of the Board taken together;
<b>"Trading and Settlement Code"</b>	means the Trading and Settlement Code developed pursuant to Section 9(1)(d) of the Act as from time to time, revised, amended, supplemented or replaced with the approval or at the instance of the Commission;
<b>"Transmission System Owner's Business"</b>	means the licensed business of the Board as owner of the transmission system;
<b>"Transmission System Owner"</b>	means the Board as owner of the transmission system licensed pursuant to Section 14(1)(f) of the Act;

**"transmission system"** means the system of electric lines comprising wholly or mainly the Transmission System Owner'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 (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; and

**"Transmission System Operator"** means the person licensed to operate the transmission system under Section 14(1)(e) of the Act.

4. Unless otherwise specified:
  - (a) any reference to a numbered Condition or to a numbered Schedule is respectively a reference to the Condition or the Schedule bearing that number in 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 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.

## **Condition 2: Separate accounts for the Generation Business**

1. For the purposes of this Condition, the Licensee's financial year shall be determined as follows:
  - (a) The Licensee's first financial year shall run from (and including) the date of the grant of this licence up to (and including) the last day of the Licensee's accounting period, provided that if the period between the date of the grant of this licence and the last day of the Licensee's accounting period is three calendar months or less, then the Licensee's first financial year shall run from (and including) the date of the grant of this licence up to (and including) the last day of the Licensee's next accounting period.
  - (b) Each subsequent financial year shall run from the day immediately following the last day of the preceding accounting period up to (and including) the last day of the accounting period.
2. The remaining paragraphs of this Condition apply for the purpose of ensuring that the Licensee (and any affiliate or related undertaking of the Licensee) maintains accounting and reporting arrangements which enable separate accounts to be prepared for the Generation Business and showing the financial affairs of the Generation Business.
3. The Licensee shall in respect of the Generation Business:
  - (a) keep or cause to be kept such accounting records in accordance with the Companies Acts, 1963 to 1999, in respect of the Generation Business as would be required to be kept in respect of the Generation Business if it were carried on by a separate company, and, where appropriate, consolidated accounts for other, non-licensed activities, so that the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to, the Generation 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 of the Licensee; and
  - (b) prepare on a consistent basis from such accounting records in respect of:
    - (i) the first financial year and each subsequent financial year, accounting statements comprising a profit and loss account, a balance sheet and a cash flow statement, together with notes thereto, and showing separately in respect of the Generation Business and in appropriate detail any transactions with a value of €100,000 or more which the Licensee has conducted with any of its affiliates or related undertakings, and the amounts of any revenue, cost, asset, liability, reserve or provision, which has been either:

- (A) charged from or to any other business together with a description of the basis of that charge; or
      - (B) determined by apportionment or allocation between the Generation Business and any other business together with a description of the basis of the apportionment or allocation; and
    - (ii) the first 6 months of the second financial year of the Licensee and the first 6 months of each subsequent financial year, an interim profit and loss account; and
  - (c) procure, in respect of the accounting statements prepared in accordance with this Condition (with the exception of interim accounts prepared in accordance with paragraph 3(b)(ii) of this Condition) in respect of a financial year, a report by the Auditors and addressed to the Commission 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 Generation Business; and
  - (d) deliver to the Commission a copy of the account referred to in sub-paragraph (b)(ii), the Auditors' report referred to in sub-paragraph (c) and the accounting statements referred to in sub-paragraph (b)(i) as soon as reasonably practicable, and in any event not later than three months after the end of the period to which it relates in the case of the account referred to in sub-paragraph (b)(ii) and six months after the end of the financial year to which they relate in the case of the accounting statements and Auditors' report referred to in sub-paragraphs (b)(i) and (c).
4. (a) The Licensee shall not in relation to the accounting statements in respect of a financial year change the bases of charge, apportionment or allocation referred to in sub-paragraph (b)(i) of paragraph 3 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 bases in a manner set out in the directions or the Commission shall have given its prior written approval to the change in such bases. The Licensee shall comply with any directions issued for the purposes of this Condition.
- (b) Where, in relation to the accounting statements in respect of a financial year, the Licensee has changed such bases of charge, apportionment or allocation from those adopted for the immediately preceding financial year, the Licensee shall, if so directed in directions issued by the Commission for the purposes of this Condition, in addition to preparing accounting statements on those bases which it has adopted, prepare such accounting statements on the bases which applied in respect of the immediately preceding financial year.

5. Accounting statements in respect of a financial year prepared under sub-paragraph (b)(i) of paragraph 3 shall, so far as reasonably practicable and unless otherwise approved by the Commission having regard to the purposes of this Condition:
  - (a) have the same content and format (in relation to the Generation Business) as the annual accounts of the Licensee prepared under the Companies Acts, 1963 to 1999, and conform to the best commercial accounting practices including Statements of Accounting Practice and Financial Reporting Standards currently in force; and
  - (b) state the accounting policies adopted; and
  - (c) (with the exception of the part of such statements which show separately the amounts charged, apportioned or allocated and describe the bases of charge or apportionment or allocation respectively), be published with the annual accounts of the Licensee.
6. Whatever the basis on which the accounting statements prepared under sub-paragraph (b)(i) of paragraph 3 are prepared, the Licensee shall prepare accounting statements in respect of the same period in accordance with such guidelines as are reasonable and appropriate for the purposes of this Condition as the Commission may, from time to time, notify to the Licensee. The Licensee shall deliver the same, together with an Auditor's report prepared in relation to the accounting statements in the form referred to in sub-paragraph (c) of paragraph 3, to the Commission within the time limits referred to in sub-paragraph (d) of paragraph 3 and shall (with the exception of the part of such statements which shows separately the amounts charged, apportioned or allocated and describes the basis of charge or apportionment or allocation respectively) publish the same with the annual accounts of the Licensee.
7. The guidelines notified by the Commission to the Licensee under paragraph 6 may:
  - (a) specify the form and content of accounting statements, including information on specified types of revenue, cost, asset or liability and information on the revenues, costs, assets and liabilities attributable to specified activities;
  - (b) require any reconciliation that may be required with the annual accounts of the Licensee prepared under the Companies Acts, 1963 to 1999;
  - (c) specify the accounting principles and the bases of valuation to be used in preparing current cost accounting statements; and
  - (d) specify the nature of the report by the Auditors required to be given in respect of accounting statements.
8. References in this Condition to costs or liabilities of, or reasonably attributable to, the Generation Business shall be construed as excluding taxation and

capital liabilities which do not relate principally to the Generation Business and interest thereon; and references to any accounting statement shall be construed accordingly.

9. In this Condition:

**"accounting period"**

means the period for which the Licensee prepares annual accounts under the Companies Acts, 1963 to 1999, provided that if the Licensee is not required to prepare annual accounts under the Companies Acts, 1963 to 1999, or is not a company within the meaning of the Companies Acts, 1963 to 1999, then the accounting period shall run from (and including) the 1 January up to (and including) the following 31 December.

**Condition 3: Prohibition of cross-subsidies and of discrimination**

1. This Condition applies:
  - (a) where the Licensee (together with its affiliates and related undertakings) is in a dominant position in a market for the generation or supply of electricity; or
  - (b) where the Licensee (or any affiliate or related undertaking of the Licensee) also carries on a Transmission System Owner's Business, or a Distribution Business or a Public Electricity Supply Business.
2. The Licensee shall procure that the Generation Business does not give any direct or indirect cross-subsidy to, nor receive any direct or indirect cross-subsidy from, any other business of the Licensee or of an affiliate or related undertaking of the Licensee, or any other person.
3. The Licensee shall procure that the Generation Business does not disclose directly or indirectly any commercially sensitive information to any other business of the Licensee or of an affiliate or related undertaking of the Licensee, or any other person.
4. The Licensee shall procure that the Generation Business does not use or obtain any commercially sensitive information from any affiliate or related undertaking of the Licensee, or any affiliate of any related undertaking of the Licensee.
5. The Licensee shall not provide or offer to provide electricity to any person (including, without limitation, any Supply Business of the Licensee, any affiliate or related undertaking of the Licensee, or any affiliate of any related undertaking of the Licensee) or class of persons on terms as to price or on other terms affecting the financial value of the supply which would be materially more or less favourable than those on which the Licensee would provide or offer to provide electricity to comparable purchasers. For these purposes, due regard shall be had to the circumstances of such provision including (without limitation):
  - (a) in the case of the provision of electricity to any Supply Business of the Licensee or any affiliate or related undertaking of the Licensee, or any affiliate of any related undertaking of the Licensee, volumes, load factors, conditions of interruptibility and date and duration of the relevant agreement; and
  - (b) in the case of any power purchase agreement, the date and duration of such contract and the circumstances by reference to which the rights of the person to whom such electricity is provided are exercisable.
6. For the purpose of paragraph 5, the provision of electricity shall (without limitation) include:

- (a) the provision of electricity to any Supply Business of the Licensee or any affiliate or related undertaking of the Licensee or any affiliate of any related undertaking of the Licensee; and
  - (b) the provision of electricity by means of the entry by the Licensee or any affiliate or related undertaking of the Licensee, or any affiliate of any related undertaking of the Licensee, into a power purchase agreement; and
  - (c) the provision of electricity by means of an agency arrangement between the Licensee and any affiliate or related undertaking of the Licensee, or any affiliate of any related undertaking of the Licensee.
7. In this Condition, references to the provision of electricity to any person shall include the provision of available capacity of any generation unit.
8. For the purposes of this Condition, the Commission shall determine any question as to:
- (a) what constitutes a market for the generation of electricity;
  - (b) whether the Licensee (taken together with its affiliates and related undertakings) is dominant in any market for the generation or supply of electricity;
  - (c) whether the Licensee is providing electricity;
  - (d) what is or is not commercially sensitive information; and
  - (e) what constitutes a cross-subsidy.
9. If the Licensee believes it is no longer dominant in a market for the generation of electricity, it may submit this issue to the Commission for redetermination.

#### **Condition 4: Separation of Generation Business**

1. The Licensee shall make arrangements in accordance with paragraph 3 to secure the complete and effective separation of the Generation Business from any other business of any affiliate or related undertaking of the Licensee, or any affiliate of any related undertaking of the Licensee.
2. The arrangements referred to in paragraph 1 shall be subject to the approval of the Commission, who may from time to time direct the Licensee to take such steps or desist from such action as the Commission considers appropriate to secure compliance with this Condition.
3. The Licensee shall:
  - (a) have an officer of adequate seniority to monitor compliance with the provisions of this Condition (who shall not be a member of the board of the Licensee or any affiliate or related undertaking of the Licensee, or any affiliate of any related undertaking of the Licensee), who will report at regular intervals to the Commission;
  - (b) not report (directly or indirectly) to any Transmission System Owner's Business or Distribution Business or Public Electricity Supply Business or generation business (which term shall include any business of the Board in its capacity as owner and operator of generation units) of an affiliate or related undertaking of the Licensee, or any affiliate of any related undertaking of the Licensee;
  - (c) ensure that any person, officers, agents or consultants employed (whether part time or full time) to work in the Generation Business, do not disclose or use confidential information obtained directly or indirectly from any affiliate or related undertaking of the Licensee or any affiliate of a related undertaking of the Licensee, nor disclose any confidential information about the Generation Business to any other person (including any affiliate or related undertaking of the Licensee or any affiliate of any related undertaking of the Licensee);
  - (d) not use the name "ESB", "Electricity Supply Board" or the "Board" or any name associated with these terms in the Licensee's name, brand, trade name, advertising or publications, and shall make it clear in all its dealings that the Licensee is independent of the Board;
  - (e) not enter into any contracts with any affiliate or related undertaking of the Licensee, or any affiliate of any related undertaking of the Licensee, other than on an arms length basis on normal commercial terms;
  - (f) ensure that, save as provided for by this Licence, assets used for any purpose relating to the Generation Business are not used by any affiliate or related undertaking of the Licensee, or any affiliate of any related undertaking of the Licensee, for any purpose other than the Generation

Business, and for the purposes of this Condition, "asset" shall include (without limitation) any premises, offices, information systems, software, hardware, electronic systems, equipment, materials, resources, intellectual property, telephone numbers or lines, mobile telephones, email systems or addresses, websites or computer servers;

- (g) not offer to generate electricity for any Supplier or conclude a contract with any Supplier where information used directly or indirectly in formulating the offer to that Supplier or in concluding a supply of electricity to that Supplier has not been obtained either from that Supplier directly or from publicly available sources; and
- (h) prepare for approval by the Commission and comply with a code of conduct on ring fencing provisions in relation to the transfer and/or movement of employees, either full time or part time, between the Licensee and any affiliate or related undertaking of the Licensee, or any affiliate of a related undertaking of the Licensee.

**Condition 5: Compliance with Grid Code, Metering Code and, where applicable, Distribution Code**

1. The Licensee shall comply with the provisions of the Grid Code, Metering Code and Distribution Code insofar as applicable to it.
2. The Commission may, following consultation with the Transmission System Operator (and, in the relevant circumstances, the Distribution System Operator), issue directions relieving the Licensee of its obligation under paragraph 1 in respect of such parts of the Grid Code, Metering Code (and, in the relevant circumstances, Distribution Code) and to such extent as may be specified in those directions.

**Condition 6: Licensee's system planning**

1. The Licensee shall plan and develop each part of the Licensee's system in accordance with a standard not less than the relevant standard insofar as applicable to it or such other standard of planning as the Licensee may, following consultation with the Transmission System Operator, the Distribution System Operator and such (if any) other electricity undertakings as the Commission shall consider appropriate and with the approval of the Commission, adopt from time to time.
2. The Commission may (following consultation with the Licensee, the Transmission System Operator, the Distribution System Operator and such (if any) other electricity undertakings as the Commission shall consider appropriate) issue directions relieving the Licensee of its obligation under paragraph 1 in respect of such parts of the Licensee's system and to such extent as may be specified in the directions.
3. In this Condition:

**"relevant standard"**

means the standard laid down in the Grid Code and the Distribution Code, if applicable.

**Condition 7: Security arrangements**

Where requested by the Commission, the Licensee shall co-operate with the Commission in strategic contingency planning in respect of fuel stocks and procedures under the Grid Code during periods when the Commission deems necessary for reasons of security of supply.

**Condition 8: Central dispatch**

1. The Licensee shall submit all available generation units and interconnector transfers to central dispatch by the Transmission System Operator where central dispatch is required by the Grid Code.
2. The Licensee shall at such times and in such manner as may be provided under the Grid Code provide the Transmission System Operator with all information reasonably required by it to enable it to operate the system of central dispatch.
3. In this Condition:

**"available"** in relation to any generation unit or interconnector transfer means a generation unit or interconnector transfer which is **"available"** in accordance with the Grid Code;

**"central dispatch"** means the process of scheduling and issuing direct instructions for dispatch of available generation units and interconnector transfers by the Transmission System Operator;

**"interconnector transfer"** means the flow of electricity across an interconnector.

### **Condition 9: Ancillary Services**

1. The Licensee shall from time to time, if requested by the Transmission System Operator and in accordance with the provisions of the Grid Code offer terms for the provision by the Licensee of Ancillary Services from any generation unit of the Licensee which the generation unit is capable of providing in accordance with its authorisation.
2. The Licensee shall from time to time upon request of the Commission provide to the Commission a report containing details of:
  - (a) prices offered pursuant to paragraph 1 for the provision of Ancillary Services from each generation unit of the Licensee; and
  - (b) an explanation of the factors justifying the prices offered including (without limitation) details of the Licensee's costs associated with making available such Ancillary Services in conformity with the Grid Code and of providing the same to the Transmission System Operator.
3. Upon the application of the Transmission System Operator wishing to question the terms offered by the Licensee pursuant to paragraph 1, the Commission shall settle any terms of the agreement in dispute between the Transmission System Operator and the Licensee in such manner as appears to the Commission to be reasonable.
4. If the Transmission System Operator wishes to proceed on the basis of the terms as settled by the Commission, the Licensee shall forthwith enter into and implement such agreement in accordance with those terms.

**Condition 10: Appointment of Operator**

1. The Licensee shall ensure that the Operator of each of its generating stations is a person approved in writing by the Commission.
2. The Commission shall not be entitled to refuse to give its approval of a person in pursuance of paragraph 1 if that person is competent to operate the generating station, but where an approved person is no longer competent to exercise that function the Commission may, by notice in writing given to the Licensee, revoke an approval of that person under this Condition.
3. In this Condition:

**"Operator"** in relation to a generating station, means the person who operates the generating station.

**Condition 11: Connection to and use of the Licensee's system - requirement to offer terms**

1. The Licensee shall, subject to paragraphs 6 and 7:
  - (a) offer to enter into an agreement to provide a connection to the Licensee's system with any person who has applied for connection to the Licensee's system; and
  - (b) offer to enter into an agreement for the modification of a connection to the Licensee's system with any person who has applied for modification of a connection to the Licensee's system; and
  - (c) offer to enter into an agreement with any electricity undertaking or person who has applied for a licence under Section 14 of the Act, and whose application has not been withdrawn or rejected, who has applied for use of the Licensee's system:
    - (i) to accept into the Licensee's system at such entry point and in such quantities as may be specified in the application, electricity to be provided by or for that person; and
    - (ii) to deliver electricity equal in quantity to that accepted into the Licensee's system (less only any losses incurred in the course of transporting such electricity through the Licensee's system) from such exit points on the Licensee's system and in such quantities as may be specified in the application to such person as the person making the application may specify.
2. The Licensee shall, subject to paragraphs 6 and 7, offer terms for an agreement in accordance with paragraph 1 as soon as practicable and in any event no later than the relevant period specified in paragraph 8 after receipt by the Licensee of an application from the person containing all such information as the Licensee may reasonably require for the purposes of formulating the terms of its offer.
3. Each offer made in accordance with paragraph 1 shall:
  - (a) make detailed provision regarding such of the following matters as are relevant for the purposes of the agreement:
    - (i) the carrying out of works (if any) required for the construction or modification of the entry point to connect the Licensee's system to the transmission system or to the distribution system or in connection with the construction or modification of any exit points for the delivery of electricity as specified in the application, and for the obtaining of any consents necessary for such purpose;

- (ii) the carrying out of works (if any) for the provision of electric plant or for the extension or reinforcement of the Licensee's system which are required to be undertaken for the provision of connection to, or the making of a modification to a connection to, the Licensee's system or for provision of use of the Licensee's system to the person making the application and for the obtaining of any consents necessary for such purposes;
  - (iii) the installation of appropriate meters or other apparatus (if any) required to enable the Licensee to measure electricity being accepted into the Licensee's system at the specified entry point and leaving such system at the specified exit points;
  - (iv) the installation of such switchgear or other apparatus (if any) as may be required for interrupting the use of the Licensee's system should there be a failure by or for a person to provide electricity at its entry point on the Licensee's system for delivery to any person specified by the person making the application from the exit points on the Licensee's system;
  - (v) the date by which any works required so as to permit access to the Licensee's system (including for this purpose any works for its extension or reinforcement) shall be completed and so that, unless otherwise agreed by the person making the application, a failure to complete such works by such date shall be a material breach of the agreement entitling the person to rescind such agreement;
  - (vi) the charges to be paid by the person making the application for the provision of electric plant, for connections to or modification of connections to, or the extension or reinforcement of, the Licensee's system, for the installation of meters, switchgear or other apparatus and for their maintenance, for disconnection from the Licensee's system and the removal of electric plant, electric lines and meters following disconnection, and for use of the Licensee's system which shall, unless manifestly inappropriate, be set in conformity with paragraph 4; and
- (b) contain such other provisions as may be appropriate for the purposes of the agreement in the circumstances in which it is likely to be entered into.
4. The charges referred to in paragraph 3 to be contained in every agreement the subject of an offer by the Licensee shall be such that:
- (a) charges for the provision of electric plant, connection charges, charges for modification of connections, charges for disconnection from the Licensee's system and the removal of electric plant, electric lines and meters following disconnection or any charges for extension or

reinforcement of the Licensee's system or for use of the Licensee's system are set at a level which will enable the Licensee to recover no more than:

- (i) the appropriate proportion (taking account of the factors referred to in paragraph 5) of the costs directly or indirectly incurred by the Licensee; and
    - (ii) a reasonable rate of return on the capital represented by such costs; and
  - (b) charges for the installation of meters, switchgear or other apparatus and for their maintenance shall not exceed the costs thereof and a reasonable rate of return on the capital represented by such costs.
5. For the purpose of determining an appropriate proportion of the costs directly or indirectly incurred in carrying out works, the Licensee shall have regard to:
- (a) the benefit (if any) to be obtained or likely in the future to be obtained by the Licensee or any other person as a result of the carrying out of such works whether by virtue of the provision of electric plant, the reinforcement or extension of the Licensee's system, or the provision of additional entry or exit points on the Licensee's system or otherwise; and
  - (b) the ability or likely future ability of the Licensee to recoup a proportion of such costs from other persons.
6. The Licensee shall not be obliged pursuant to this Condition to offer to enter into any agreement where, by reason of the capacity of the Licensee's system and the use made or reasonably expected to be made of it, the Licensee would be required to expand or reinforce the capacity of the Licensee's system and where it would be unreasonable, having regard to all the circumstances, for the Licensee to undertake such expansion or reinforcement.
7. The Licensee shall not enter into any agreement with any person if:
- (a) to do so would be likely to involve the Licensee being:
    - (i) in breach of the Grid Code; or
    - (ii) in breach of the Distribution Code; or
    - (iii) in breach of the Act or any regulations made under the Act; or
    - (iv) in breach of any other enactment relating to safety or standards applicable to the Licensee's system; or
  - (b) the person does not undertake to be bound, insofar as applicable, by the terms of the Codes referred to in sub-paragraphs (a)(i) and (a)(ii).
8. For the purposes of paragraph 2, the period specified shall be:

- (a) in the case of persons seeking use of the Licensee's system only, 28 days; and
- (b) in the case of persons seeking connection or modification of an existing connection or seeking use of the Licensee's system in conjunction with connection, three months.

**Condition 12: Connection to and use of the Licensee's system - functions of the Commission**

1. If, after a period which appears to the Commission to be reasonable for the purpose, the Licensee has failed to enter into an agreement with any person entitled or claiming to be entitled thereto pursuant to an application in accordance with Condition 11, the Commission shall, on the application of such person or the Licensee, settle any terms of the agreement in dispute between the Licensee and the person in question in such manner as appears to the Commission to be reasonable having (insofar as relevant) regard, in particular, to the following considerations:
  - (a) that the person should pay to the Licensee the whole or an appropriate proportion (as determined in accordance with paragraph 5 of Condition 11) of the costs directly or indirectly incurred by the Licensee in the carrying out of any works or in providing or doing any other thing under the agreement in question calculated in accordance with the principles set out in paragraph 4 of Condition 11 together with a reasonable rate of return on the capital represented by such costs;
  - (b) that the performance by the Licensee of its obligations under the agreement should not cause it to be in breach of any other Condition of this licence or any other statutory requirement;
  - (c) that any methods by which the Licensee's system is connected to the transmission system or distribution system accords with good engineering principles and practices;
  - (d) that the terms and conditions of agreements entered into by the Licensee pursuant to an application in accordance with Condition 11 should be, so far as circumstances allow, as similar in substance and form as is practicable.
2. If the person wishes to proceed on the basis of the agreement as settled by the Commission, the Licensee shall forthwith enter into and implement such agreement in accordance with its terms.
3. If either party to an agreement for connection to, or modification of a connection to, the Licensee's system or for use of the Licensee's system entered into pursuant to Condition 11 or this Condition proposes to vary the contractual terms of such agreement in any manner provided for under such agreement, the Commission shall, at the request of the Licensee or other party to such agreement, settle any dispute relating to such variation in such manner as appears to the Commission to be reasonable having regard (insofar as relevant), in particular, to the considerations set out in sub-paragraphs (a) to (d) of paragraph 1.

### **Condition 13: Provision of information to the Commission**

1. The Licensee shall procure and furnish to the Commission, in such manner and at such times as the Commission may require, such information as the Commission may consider relevant in the light of the Conditions or as it may require for the purpose of performing the functions assigned or transferred to it by or under the Act or the Regulations.
2. Without prejudice to the generality of paragraph 1, the Commission 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 Commission under Condition 2.
3. 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 Regulations .
4. In this Condition, "**information**" means oral or written information and shall include without limitation any books, documents, records, accounts, 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) and any explanations (oral or written) in relation to such information as may be requested by the Commission.
5. The information shall be to a level of audit as may be required by the Commission from time to time.
6. 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 14: Payment of levy**

1. The Licensee shall pay to the Commission any amounts specified in, or determined under a Levy Order, in accordance with the provisions of such Levy Order.
2. In this Condition:

**"Levy Order"**

means an Order made by the Commission under paragraph 16 of the Schedule to the Act.

**Condition 15: Trading and Settlement Codes**

1. The Licensee shall be party to, and shall comply with the Trading and Settlement Code insofar as applicable to it.
2. Subject to paragraph 3, the Licensee shall be party to, and shall comply with the Single Electricity Market Trading and Settlement Code insofar as applicable to it.
3. Where the Commission has consented to the registration of any of the Licensee's generation units by an Intermediary, the Licensee shall not be obliged to be a party to the Single Electricity Market Trading and Settlement Code in respect of such generation units but shall ensure that the Intermediary shall be party to and shall comply with the Single Electricity Market Trading and Settlement Code insofar as applicable to the Intermediary in respect of such generation units.
4. In this Condition:

**"Intermediary"**

has the meaning given to it in the Single Electricity Market Trading and Settlement Code.

### **Condition 16: 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. The Licensee shall, not later than such date as the Commission may specify and in consultation with the Commission, prepare and from time to time modify a written policy setting out the manner in which the Licensee proposes to comply with its duties and obligations under all applicable European Union and Irish Environmental Laws, and any direction issued to it under this condition.
3. The Licensee shall report annually to the Commission on its environmental performance in such form and at such times as the Commission may specify.
4. The Commission may at any time modify or vary the terms or conditions contained in this licence in order to reflect obligations imposed by any International, national or European Union Environmental Laws.
5. 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 Environment Protection Act, 1992, the Waste Management Act, 1996 and all relevant legislation relating to the assessment of environmental impacts, and the protection of air, land and water.

**Condition 17: Directions etc by the Commission**

1. The Licensee shall comply with any directions, requirements or determinations made by the Commission pursuant to the Act, the Regulations, the Single Market Regulations or this Licence.
2. Any costs associated with compliance with this condition shall be the responsibility of the Licensee.
3. The Licence shall monitor and keep a record of its compliance with this Licence, and any requirement, direction, determination, code, procedure or guideline it is required to comply with.

**Condition 18: Assignment of Licence and transfer of Generation Business**

1. The Licensee shall not, without the prior written consent of the Commission, assign this licence.
2. The Licensee shall not, without the prior written consent of the Commission, transfer to another person (the "**transferee**") all or any part of the Generation Business carried out under this licence.
3. Any consent of the Commission to any assignment of this licence or transfer of the Generation Business of the Licensee shall be subject to the Commission being satisfied that the assignee or transferee, as the case may be, will have the technical and financial capability to comply with the Conditions of this licence and, in the case of a transfer only, the transferee being granted a Generation Licence, and may be subject to compliance by the assignee or transferee, as the case may be, with any other matters determined by the Commission to be necessary, including the modification of this licence where deemed necessary by the Commission.
4. Nothing in this Condition shall prevent the Licensee transferring its Generation Business to an assignee where the Commission has consented to such assignment provided that such transfer is effected as soon as practicable after such consent has been given.

**Condition 19: Change in control of the Licensee**

The Licensee shall notify the Commission of a change in control of the Licensee as soon as is practicable after such a change in control occurs.

**SCHEDULE 1**

**Generating stations to which Licence applies**

This licence applies to the generation of electricity from the following generating stations:-

**Station**

**Licence Determination Date**

Synergen  
Pigeon House Road  
Ringsend  
Dublin 2

27<sup>th</sup> November 2016

## **SCHEDULE 2**

### **Right of Commission to revoke 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 any amount payable under a Levy Order is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Commission has given the Licensee notice in writing that the payment is overdue. Provided that no such notice shall be given earlier than the 16th day after the day on which the amount payable became due;
  - (c) if the Licensee fails to comply with a direction, determination or order under the Act, the 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, 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 may determine, after the Commission has given notice of such failure to the Licensee. Provided that in respect of a direction under Section 24 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 of the Act could be made questioning a direction under Section 24 of the Act or before the proceedings relating to any such representations or objections are finally determined;
  - (d) if the Licensee fails to comply with any order made by the Minister under Sections 39 or 40 of the Act;
  - (e) 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 Commission); or
    - (ii) has a receiver or an examiner within the meaning of Section 1 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; or
  - (v) is dissolved, terminated, declared bankrupt or being of unsound mind;
- (f) if:
- (i) there is a change in the control of the Licensee; and
  - (ii) the Commission is satisfied that the new participant, (together with the other companies in its group), does not have adequate technical, financial or managerial strength, taking into account the size of its participating interest 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;
- (g) if the Licensee fails to notify the Commission as soon as practicable thereafter that a change in the control of the Licensee shall have occurred;
- (h) if the Licensee ceases to carry on the Generation Business for a period of 6 months except where the Commission is satisfied that this has occurred as a result of events beyond the reasonable control of the Licensee in which case the Commission shall substitute such longer period as it, in its sole discretion, considers reasonable in all the circumstances; or
- (i) if the Licensee has not commenced carrying on the Generation Business within 6 months of the date this licence comes into force or the date when the generating station successfully passes its commissioning tests, whichever is the later, except where the Commission is satisfied that this has occurred as a result of events beyond the reasonable control of the Licensee in which case the Commission shall substitute such longer period as it, in its sole discretion, considers reasonable in all the circumstances.
2. (a) For the purposes of paragraph 1(e)(i) of this Schedule, Section 214 of the Companies Act, 1963 shall have effect as if for "£1,000" there was substituted "£50,000" 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(f) and (g) of this Schedule whenever a person has control of

the Licensee who did not have control of the Licensee when this licence was granted.