

DRAFT FOLLOWING SECOND CONSULTATION

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**LICENCE CONDITIONS FOR NIE ENERGY LIMITED'S POWER
PROCUREMENT BUSINESS
CONSULTATION DRAFT**

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Note: These licence conditions relate to the Power Procurement Business of NIE Energy. For their full force and effect they must be read in the context of the draft supply licence to be granted to NIE Energy, of which they will form a part.

Definitions generally applicable to the supply licence as a whole, and other general conditions, such as those relating to the provision of information, are not reproduced in this document, but will apply to the Power Procurement Business as they do to the core Supply Business of NIE Energy.

The other licence conditions applying to NIE Energy are the subject of a separate consultation paper. A consolidated version of the two sets of licence conditions, comprising the entire proposed licence for NIE Energy, will be produced shortly.

The numbering of the conditions in this document relates to their position in the licence of NIE Energy.

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ANNEX 3 - DETERMINATION OF PPB AMOUNT

Condition 56: Power Procurement

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

Condition 57: Cost-Reflective Bidding in the Single Electricity Market

- 1 The Licensee shall ensure that the price components of all Commercial Offer Data submitted to the Single Market Operation Business under the Single Electricity Market Trading and Settlement Code, whether by the Licensee itself or by any person acting on its behalf in relation to a generation set for which the Licensee is the licensed generator, are cost-reflective.
- 2 For the purposes of this Condition, the price component of any Commercial Offer Data shall be treated as cost-reflective only if, in relation to each relevant generation set, the Schedule Production Cost related to that generation set in respect of the Trading Day to which the Commercial Offer Data submitted by or on behalf of the Licensee apply is equal to the Short Run Marginal Cost related to that generation set in respect of that Trading Day.
- 3 For the purposes of paragraph 2, the Short Run Marginal Cost related to a generation set in respect of a Trading Day is to be calculated as:
 - (a) the total costs that would be attributable to the ownership, operation and maintenance of that generation set during that Trading Day if the generation set were operating to generate electricity during that day;minus
 - (b) the total costs that would be attributable to the ownership, operation and maintenance of that generation set during that Trading Day if the generation set was not operating to generate electricity during that day,the result of which calculation may be either a negative or a positive number.
- 4 For the purposes of paragraph 3, the costs attributable to the ownership, operation or maintenance of a generation set shall be deemed, in respect of each relevant cost-item, to be the Opportunity Cost of that cost-item in relation to the relevant Trading Day.
- 5 The Authority may publish, and from time to time by direction amend, a document to be known as the Bidding Code of Practice, which shall have the purposes of:

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- (a) defining the term Opportunity Cost;
- (b) making provision, in respect of the calculation by the Licensee and electricity generators of the Opportunity Cost of specified cost-items, for the treatment of:
 - (i) the costs of fuel used by generators in the generation of electricity;
 - (ii) the value to be attributed to credits issued under the Emissions Trading Scheme established by the European Commission;
 - (iii) variable operational and maintenance costs;
 - (iv) start-up and no load costs; and
 - (v) any other costs attributable to the generation of electricity; and
- (c) setting out such other principles of good market behaviour as, in the opinion of the Authority, should be observed by the Licensee and electricity generators in carrying out the activity to which paragraph 1 refers.

6 The Licensee shall, in carrying out the activity to which paragraph 1 refers, act so as to ensure its compliance with the requirements of the Bidding Code of Practice.

7 The Authority may issue directions to the Licensee for the purpose of securing that the Licensee, in carrying out the activity to which paragraph 1 refers, complies with the requirements of this Condition and of the Bidding Code of Practice, and the Licensee shall comply with any such directions.

8 The Licensee shall retain each set of Commercial Offer Data, and all of its supporting data relevant to the calculation of the price component of that Commercial Offer Data, for a period of at least four years commencing on the date on which the Commercial Offer Data is submitted to the Single Market Operation Business.

9 The Licensee shall, if requested to do so by the Authority, provide the Authority with:

- (a) a reasoned explanation of its calculations in relation to any Commercial Offer Data; and

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- (b) supporting evidence sufficient to establish the consistency of that data with the obligations of the Licensee under this Condition.
- 10 In any case in which Commercial Offer Data are submitted to the Single Market Operation Business which are not consistent with the Licensee's obligation under paragraph 1 of this Condition, the Licensee shall immediately inform the Authority and provide to the Authority a statement of its reasons for the Commercial Offer Data submitted.
- 11 The Licensee shall by 1 June in each year submit to the Authority a certificate, signed by at least one director on behalf of the board of directors of the Licensee, to confirm that during the period of twelve months ending on the preceding 31 March:
- (a) it has acted independently in relation to all submissions of Commercial Offer Data that have been made, by it or on its behalf, under the Single Electricity Market Trading and Settlement Code; and
- (b) no such submissions made by it or on its behalf have been co-ordinated with any other submissions made by or on behalf of any other party to the Code.
- 12 The Licensee shall not be regarded as having failed to comply with any obligation under paragraphs 1 to 11 to the extent that the obligation is not met solely in consequence of the Licensee's reasonable reliance on data provided to it by a generator under the terms of any Intermediary Agreement.
- 13 In this Condition:

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

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

Opportunity Cost shall have the meaning set out in, and the value calculated in accordance with, the terms of the

Bidding Code of Practice.

Schedule Production Cost has the meaning given to it in the Single Electricity Market Trading and Settlement Code, as it may be amended from time to time.

Short Run Marginal Cost means certain costs attributable to the ownership, operation and maintenance of a generation set, as calculated in accordance with paragraph 3 of this Condition.

Single Market Operation Business has the meaning given to it in the market operator licence for Northern Ireland.

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

Condition 58: Trading and Settlement Code

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

2 In this Condition:

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

Condition 59: Intermediary Agreements

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

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

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

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

6 The Licensee shall from time to time, in conjunction and co-operation with each Relevant Electricity Generator, review the terms and operation of the Intermediary Agreements, and may following that review propose any amendments to an Intermediary Agreement that it considers appropriate.

7 Any amendment that the Licensee proposes to make to an Intermediary Agreement shall require to be submitted to the Authority for its approval and, if the Authority approves that amendment, shall be given effect in the Intermediary Agreement.

8 In this Condition:

Relevant Electricity means AES Kilroot Limited, Coolkeeragh ESB Limited and Premier Power Limited, each in

Generators

their respective capacities as the holder of an electricity generation licence in Northern Ireland.

Condition 60: Modification of Supply Competition Code and Cancellation of Contracts

- 1 When the Authority shall have determined that the requisite arrangements have been developed and that they satisfy the requirements of paragraph 3, it shall be entitled to exercise the powers specified in paragraph 4, provided that the procedural requirements of paragraph 6 have been followed.
2. The requisite arrangements are arrangements which, if implemented by means of the making of modifications of the Supply Competition Code, the Grid Code and the Northern Ireland Fuel Security Code, or otherwise implemented (in whole or in part) under or by virtue of the powers contained in the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007, would facilitate an increase in competition in the generation of electricity available for supply in Northern Ireland or the supply of electricity in Northern Ireland for the benefit of consumers of electricity in Northern Ireland in respect of the prices charged and the other terms of supply, the continuity of supply and the quality of the electricity supply services provided.
3. The requirements of this paragraph are:
 - (A) that there is available for immediate establishment an electricity trading system by which (except as provided in paragraph 7) the power procurement manager and all licence holders will be bound and which, in the opinion of the Authority, will:
 - (i) constitute proper and adequate arrangements for the trading of electricity and the calculation and settlement of payments due for the provision of available generating capacity and the delivery or supply of electricity;
 - (ii) ensure that adequate arrangements are in place for the provision by relevant generators of all necessary System Support Services and the proper remuneration of those services;
 - (iii) be based upon a system of despatch of generation sets which is technically viable and will not prejudice the security and stability of the total system or any part of it;

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- (iv) ensure that there are adequate incentives for relevant generators to make available such generation capacity as will in aggregate be at least sufficient to ensure that all reasonable demands for electricity in Northern Ireland are satisfied;
 - (v) ensure that all generators and relevant licensed suppliers are contractually bound to comply with the provisions of the Northern Ireland Fuel Security Code or, to the extent superseded by any other code or arrangement, such other code or arrangement;
 - (vi) ensure that either:
 - (a) relevant suppliers shall contract for or acquire, in aggregate, amounts of generation capacity and quantities of electricity from the power procurement manager which are not less than the amounts of generation capacity and quantities of electricity for which the power procurement manager is committed to pay under:
 - A. the power purchase agreements to which the power procurement manager is a party and which are cancellable generating unit agreements which at all relevant times have not been cancelled; and
 - B. the power purchase agreements to which the power procurement manager is a party and which are not liable to be cancelled;
- or:
- (b) arrangements are in place pursuant to which the power procurement manager is entitled to recover monies equal to the shortfall (if any) between the sums it pays for amounts of generation capacity and quantities of electricity under:

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- A. the power purchase agreements to which the power procurement manager is a party and which are cancellable generating unit agreements which at all relevant times have not been cancelled; and
- B. any power purchase agreements to which the power procurement manager is a party and which are not liable to be cancelled;

and the amounts it recovers for the provision of such generation capacity and the sale of such quantities of electricity;

- (vii) not in its operation require any generator to breach any obligation incumbent upon it under the Large Combustion Plants (Control of Emissions) Regulations (Northern Ireland) 1991 in relation to emissions;
 - (viii) contain arrangements which will ensure that each generator which shall be a party to a cancellable generating unit agreement, for so long as such agreement shall not have been cancelled, shall be in no worse a financial position in respect of its rights under that cancellable generating unit agreement by reason of the operation of Clause 7.3.2 of each power station agreement;
 - (ix) ensure that an appropriate share of the costs of the Land Bank Business shall be borne by each relevant supplier;
 - (x) not, in its operation, cause the Licensee to be unable to finance the carrying on of the activities which it is authorised by this licence to carry on; and
- (B) that each generator which shall have applied for a licence under Article 10(2) of the Order to have effect from the date upon which any cancellable generating unit agreement to which it is a party is to be cancelled, shall have been granted such a licence, provided -

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- (a) the Authority shall at the relevant time have power under Article 10 of the Order to grant such a licence;
 - (b) the criteria for the grant of such a licence shall otherwise have been satisfied at the date of the application and the date upon which it is first to have effect; and
 - (c) there shall have been no material change in the circumstances of the applicant in any relevant respect between the date of the application and the date upon which the licence is to have effect.
- 4. The powers referred to in paragraph 1 are powers to serve upon the power procurement manager and the generator under a cancellable generating unit agreement a notice directing them to terminate the cancellable generating unit agreement pursuant to Clause 9.3 thereof upon such date or the happening of such event as shall be specified in the notice. The Licensee shall comply with such a direction addressed to him.
- 5. The powers specified in paragraph 4 may not be exercised in relation to any cancellable generating unit agreement in the table appearing in Schedule 8 of the transmission licence earlier than the date appearing opposite that cancellable generating unit agreement in that table. The Authority may, in relation to any cancellable generating unit agreement and upon the application of either party to that cancellable generating unit agreement, modify the table appearing in Schedule 8 of the transmission licence by substituting a later date for the date appearing opposite that agreement in that table.
- 6. The procedural requirements which require to have been followed for the purposes of paragraph 1 are:
 - (a) in its preparations for the making of the determination referred to in paragraph 1, the Authority shall have consulted with the Department, all licence holders, the power procurement manager, the General Consumer Council and such other persons as the Authority shall consider likely to be materially affected in relation to the steps that it believes require to be taken and the documentation and other obligations which it believes require to be entered into, imposed or

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assumed in order to satisfy the requirements of paragraph 3 and to create and implement the requisite arrangements;

- (b) in the consultations referred to in sub-paragraph (a) above, the Authority shall have made available to each person so consulted such drafts of the documentation in question and of the instruments or other means by which the obligations in question are to be imposed or assumed, as it shall consider are necessary so as properly to inform such persons of the detail of its proposals;
 - (c) the Authority shall have given each person so consulted the opportunity to make representations in relation to the relevant steps and the relevant documentation and shall have taken into consideration all such representations (other than those which are frivolous or trivial) in making the determination;
 - (d) the Authority shall have published its conclusions as to the relevant steps and the relevant documentation (including drafts of the relevant documentation) and its reasons for those conclusions;
 - (e) the Authority shall, before exercising any power under paragraph 4, have given not less than 180 days' notice to the Department, the power procurement manager, every person who at the time it gives the notice is a licence holder, and the General Consumer Council that it intends to do so; and
 - (f) the Authority shall, in publishing any statement of proposals or the reasons for them, have treated as confidential any representation (including any submission of any written material) which (and to the extent that) the person making the representation shall, by notice in writing to the Authority or by endorsement on the representation of words indicating the confidential nature of such representation, have specified as confidential information.
7. The rules of the electricity trading system referred to in paragraph 3(A) contained in the Supply Competition Code as modified by the Authority in the exercise of its powers under paragraph 3 of Condition 5 of Part III of the transmission licence or in any instrument code, agreement or other document having effect (in whole or in part) under or by virtue of the powers contained in the Electricity (Single Wholesale

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Market) (Northern Ireland) Order 2007, may provide that they are to apply to all licence holders except if and to the extent that:

- (a) they permit the Authority to relieve the licence holder in question from compliance with them or any of them; or
- (b) they make provision that they are to apply to particular licence holders or classes of licence holder differently from the way or ways in which they apply to other licence holders.

8. Notwithstanding paragraph 6, the Authority shall be entitled, after having carried out the consultations referred to in paragraph 6 and published its conclusions, both before and after it shall have given any notice of the kind referred to in sub-paragraph (e) of paragraph 6, to make any modification of the relevant documentation which either:

- (a) is, in its opinion, necessary or desirable in order to refine the requisite arrangements;
- (b) involves only a change of a technical nature in the requisite arrangements; and
- (c) will not increase the liability or decrease the rights of any person bound or to be bound by the Supply Competition Code beyond what may be regarded as reasonable in relation to that person;

provided it gives due notice of such amendment or variation to such persons as appear to it to be likely to be affected thereby,

or

is made in accordance with the provisions of the relevant documentation being modified.

9. The implementation of the requisite arrangements may be secured (in whole or in part) either

- (a) by the exercise by the Authority of its powers:

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- (i) under paragraph 3 of Condition 5 of Part III of the transmission licence granted to Northern Ireland Electricity plc (to make modifications of the Supply Competition Code);
- (ii) under paragraph 5 of Condition 18 of Part II of the transmission licence granted to Northern Ireland Electricity plc (to direct the transmission licensee to revise the Grid Code);
- (iii) under paragraph 12 of Condition 3 of Part III of the transmission licence granted to Northern Ireland Electricity plc (to direct the transmission licensee to alter the form of the bulk supply tariff);
- (iv) under paragraph 9 of Condition 6 of Part IV of the transmission licence granted to Northern Ireland Electricity plc (to direct that the economic purchasing obligation of Northern Ireland Electricity plc as public electricity supplier shall come into force); and
- (v) under Clause 2.01(F) of Part 2 of the Northern Ireland Fuel Security Code (to make amendments to that Code);

or

- (b) by the exercise of powers under or by virtue of the Electricity (Single Market) Northern Ireland Order 2007.

10. The Licensee shall afford the Authority such co-operation as it shall in directions issued to the Licensee for the purposes of this Condition request in developing and testing its proposals for the establishment of the requisite arrangements and the electricity trading system referred to in paragraph 3(A).

11. The Licensee's reasonable direct costs of complying with a request made under paragraph 10 (incurred prior to the date upon which the Authority shall have first exercised its cancellation powers and for which an invoice shall have been submitted by the Licensee to the transmission licensee not later than 2 months prior to the date upon which the first cancellation direction shall take effect) shall be audited in such manner as the Authority shall from time to time require and shall be recoverable from the transmission licensee.

12. In this Condition:

power procurement manager shall:

- (a) whilst Condition 1 of this licence contains a definition of that term, have the meaning given to that term in that condition; and
- (b) where Condition 1 of this licence does not contain a definition of that term, shall mean the Power Procurement Business.

Land Bank Business has the meaning given to that expression in the transmission licence granted to Northern Ireland Electricity plc on 31 March 1992;

relevant documentation means the documentation and other obligations referred to in sub paragraph (a) of paragraph 6;

relevant generator means a generator and/or a person granted a licence pursuant to section 14(1)(a) of the Electricity Regulation Act 1999 to engage in the generation of electricity;

relevant steps means the steps referred to in sub paragraph (a) of paragraph 6; and

requisite arrangements means the arrangements referred to as such in paragraph 2.

Condition 61: Independence of the Power Procurement Business

General Duty

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

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

- 2 Without limiting:
 - (a) the ability of the Authority to require revisions to the Compliance Plan pursuant to paragraph 6 to ensure its compliance with this Condition (including paragraph 1); or
 - (b) the obligation of the Licensee to review the Compliance Plan in accordance with paragraph 8 to ensure its compliance with this Condition (including paragraph 1),

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

Specific Duties

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

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

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

Compliance Plan

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4 The Licensee shall, no later than 3 months after the date on which this paragraph becomes effective, prepare and submit to the Authority for its approval a compliance plan setting out the practices, procedures, systems and rules of conduct which the Licensee has adopted, or intends to adopt, together with the timescales for adoption, to ensure its compliance with this Condition.

5 The Licensee shall comply with its approved compliance plan (the **Compliance Plan**) and shall from time to time publish the up-to-date Compliance Plan on its website.

6 The Authority may:

(a) within 30 days of the Licensee submitting an initial or revised Compliance Plan; and

(b) following any review of the Compliance Plan that the Authority may conduct from time to time,

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

7 Where the Licensee receives a notification in accordance with paragraph 6, it shall within 30 days revise the Compliance Plan in such manner and to such extent as will reflect the Authority's requirements.

8 The Licensee shall at least once every year during which this Condition is in force review the Compliance Plan so as to ensure:

(a) its continued compliance with its obligations under this Condition; and

(b) that the information set out in the Compliance Plan continues to be accurate in all material respects.

9 Where the Licensee revises the Compliance Plan, either in accordance with paragraph 7 or following a review conducted by it in accordance with paragraph 8, it shall submit the revised Compliance Plan to the Authority for its approval.

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- 10 The Licensee shall ensure that persons engaged in the management and operation of the Power Procurement Business:
- (a) are made aware of the practices, procedures, systems and rules of conduct set out in the Compliance Plan;
 - (b) have the necessary information and facilities to comply with their respective obligations as provided for in the Compliance Plan; and
 - (c) are aware of the disciplinary procedures that may be activated should they fail to comply with their obligations under the Compliance Plan.

Compliance Manager

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

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

Undertakings

- 15 The Licensee shall procure from each relevant holding company a legally enforceable undertaking in favour of the Licensee, in a form specified by the Authority, that the relevant holding company will not exercise its corporate governance role in relation to the Licensee (as referred to in paragraph 3(b)) other than in a manner calculated to ensure that such exercise does not restrict, prevent or distort competition in the supply or generation of electricity on the Island of Ireland.

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- 16 The undertaking referred to in paragraph 15 shall be obtained within seven days after the date when these modifications become effective, or after the person in question becomes a relevant holding company (as the case may be), and shall remain in force for as long as the Licensee remains the holder of this Licence and the giver of the undertaking remains a relevant holding company of the Licensee.
- 17 The Licensee shall:
- (a) deliver to the Authority evidence (including a copy of each such undertaking) that the Licensee has complied with the obligation to procure undertakings pursuant to paragraph 15;
 - (b) inform the Authority immediately in writing if the directors of the Licensee become aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached; and
 - (c) comply with any direction from the Authority to enforce any such undertaking.
- 18 The Licensee shall not, save with the written consent of the Authority, enter (directly or indirectly) into any agreement or arrangement with a relevant holding company at a time when:
- (a) an undertaking in compliance with paragraph 15 is not in place in relation to that relevant holding company;
 - (b) there is an unremedied breach of such undertaking; or
 - (c) the Licensee is in breach of the terms of any direction issued by the Authority under paragraph 17.
- 19 Where and to the extent that either the directors of the Licensee or a relevant holding company exercise their corporate governance role in relation to the Licensee (as referred to in paragraph 3(b)), the Licensee shall within three days of such exercise notify the Authority of that fact and provide such other information regarding such exercise as the Authority may require.

Definition

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20 In this Condition:

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

Condition 62: New Electricity Purchase Contracts

- 1 The Licensee shall not, in the course of carrying out the activities of the Power Procurement Business:
 - (a) enter into any power purchase agreement involving the sale by it of electricity other than under the Single Electricity Market Trading and Settlement Code;
 - (b) subject to paragraph 2, enter into any power purchase agreement involving the acquisition by it of electricity; or
 - (c) subject to paragraph 2, enter into any other form of electricity purchase or electricity sale contract at any time, or having effect at any time, after 1 April 2012.

- 2 Sub-paragraphs 1(b) and (c) shall not apply in respect of any contract entered into by the Licensee:
 - (a) with the prior written approval of the Authority;
 - (b) in accordance with any permission or requirement by virtue of any other condition of this Licence; or
 - (c) in the exercise or fulfilment of any of its rights or obligations, or otherwise for the purpose of managing its contractual position, under any contract binding on it at the date at which this Condition comes into force.

Condition 63: Undue Discrimination and Undue Preference

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

Condition 64: Disposal of Relevant Assets

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

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

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

6 In this Condition:

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

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

Condition 65: Payment Security Policy

- 1 The Licensee shall develop, and may from time to time amend, a payment security policy describing its security cover and debt recovery procedures in respect of power procurement energy sales revenue, including details of what is to be considered reasonable recovery costs and reasonable interest for the purposes of calculating uncollected revenue.
- 2 The Licensee shall submit the payment security policy and any amendments thereto to the Authority for its approval.

3 In this Condition:

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

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

Condition 66: PPB / TO Interface Agreement

General Duty

- 1 The Licensee shall, in common with the Transmission Owner, prepare, obtain the Authority's approval of, and at all times have in force, implement and comply with, an agreement (the **PTIA**) which:
 - (a) sets out the terms and arrangements referred to in paragraph 3;
 - (b) in so far as consistent with the terms and arrangements referred to in paragraph 3, is designed to maintain the confidentiality of protected information (as defined in Condition 49); and
 - (c) sets out the matters referred to in paragraph 4.
- 2 The Licensee shall be taken to have complied with paragraph 1 by:
 - (a) adopting as the PTIA, the document designated as such by the Authority, within 3 days of the Authority so designating such a document (such designation not to occur prior to 17 October 2007); and
 - (b) reviewing such document and proposing modifications to it in accordance with paragraphs 6, 7 and 8.
- 3 The terms and arrangements referred to in sub-paragraph 1(a) are those terms and arrangements between the Licensee and the Transmission Owner that are requisite for the enjoyment and discharge of the rights and obligations of the Licensee or the Transmission Owner under this Licence or the Transmission Owner Licence (respectively) and such other code or document as may be specified from time to time by the Authority. The Licensee shall not enter into any terms or arrangements with the Transmission Owner otherwise than pursuant to the PTIA or another document or code referred to in this Licence.
- 4 The PTIA shall provide for any disputes between the parties thereto over revisions to the PTIA to be referred to the Authority for determination. In addition, the PTIA may provide for there to be referred to the Authority for determination such additional matters arising under the PTIA as may be specified in the PTIA.

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

Review of the Arrangements

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

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

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

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

Revision of the Arrangements

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

Publication of the Arrangements

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

Condition 67: PPB / TSO Interface Agreement

General Duty

- 1 The Licensee shall, in common with the Transmission System Operator, prepare, obtain the Authority's approval of, and at all times have in force, implement and comply with, an agreement (the **PSIA**) which:
 - (a) sets out the terms and arrangements referred to in paragraph 3;
 - (b) in so far as consistent with the terms and arrangements referred to in paragraph 3, is designed to maintain the confidentiality of protected information (as defined in Condition 49); and
 - (c) sets out the matters referred to in paragraph 4.
- 2 The Licensee shall be taken to have complied with paragraph 1 by:
 - (a) adopting as the PSIA, the document designated as such by the Authority, within 3 days of the Authority so designating such a document (such designation not to occur prior to 17 October 2007); and
 - (b) reviewing such document and proposing modifications to it in accordance with paragraphs 6, 7 and 8.
- 3 The terms and arrangements referred to in sub-paragraph 1(a) are those terms and arrangements between the Licensee and the Transmission System Operator that are requisite for the enjoyment and discharge of the rights and obligations of the Licensee or the Power Procurement Business under the Licence or the Transmission System Operator Licence (respectively) and such other code or document as may be specified from time to time by the Authority. The Licensee shall not enter into any terms or arrangements with the Transmission System Operator otherwise than pursuant to the PSIA or another document or code referred to in the Licence.
- 4 The PSIA shall provide for any disputes between the parties thereto over revisions to the PSIA to be referred to the Authority for determination. In addition, the PSIA may provide for there to be referred to the Authority for determination such additional matters arising under the PSIA as may be specified in the PSIA.

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

Review of the Arrangements

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

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

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

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

Revision of the Arrangements

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

Publication of the Arrangements

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

Condition 68: [Undirected Contracts and Directed Contracts]

[A further Condition may be the subject of a separate consultation paper.]

Condition 69: Recovery of the PPB Amount

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

(a) notification by the Licensee of its schedule of monthly charges in relation to the PPB Amount for each relevant year, in such amounts each month as the Licensee reasonably considers appropriate, and any mid-year adjustments that may from time to time be agreed with the Authority; and

(b) an obligation on the Transmission Owner to make payments each month to the Power Procurement Business of the monthly charge relating to the PPB Amount (or, where the PPB Amount is a negative number, for payment in the relevant month of the monthly charge by the Power Procurement Business to the Transmission Owner).

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

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

4 In this Condition, unless the context otherwise requires:

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

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

Condition 70: Obligation on Economic Purchasing by Power Procurement Business

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

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

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

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

8 In this Condition:

buy-out agreement means the contract entitled "Availability payment buy-out contract" dated 6 December 2000 between the Licensee and Premier Power Limited.

contract includes the purchase of electricity under power purchase agreements and electricity purchase contracts.

gas conversion agreement means the agreement entitled "Agreement in respect of the Conversion to Gas Firing of Ballylumford Power Station" dated 1 April 1992 between the Licensee and Ballylumford Power Limited and shall include any contract entered into or to be entered into resulting from the Licensee's exercise of its rights under Schedule 3, Clause 5.6

(BG Option) thereof.

re-powering agreement

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

ANNEX 3 – DETERMINATION OF THE PPB AMOUNT

Restriction on PPB Amount

- 1 The PPB Amount applicable from time to time shall be the amount determined as such by the Licensee, provided that:
 - (a) such amount, and any amendment to such amount, must be approved by the Authority before they can be effective; and
 - (b) in setting such amount, the Licensee shall use its best endeavours to ensure that, in any relevant year, the revenue (measured on an accruals basis) derived by the Power Procurement Business under the agreement referred to in Condition 69 (after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived) does not exceed the maximum allowed PPB revenue determined in accordance with paragraph 2 (or, where such maximum allowed amount is a negative figure, the Licensee will use its best endeavours to ensure that, in the relevant year, it pays that amount to the Transmission Owner under the agreement referred to in Condition 69).

Maximum PPB Revenue

- 2 The maximum allowed PPB revenue shall be such amount as is submitted by the Licensee and agreed by the Authority as reasonable in all the circumstances.
- 3 The maximum allowed PPB revenue referred to in paragraph 2 shall always include (without limitation) an amount calculated by reference to the difference between the sums the Power Procurement Business pays in relation to the purchase of amounts of generation capacity and quantities of electricity (including, without limitation, use of system and similar charges) under or in relation to:
 - (a) the power purchase agreements to which the Power Procurement Business is a party and which are cancellable generating unit agreements which at all relevant times have not been cancelled; and
 - (b) any power purchase agreements to which the Power Procurement Business is a party and which are not liable to be cancelled,

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and the amounts the Power Procurement Business recovers for the provision of such generation capacity and the sale of such quantities of electricity (including under a contract for differences related to such agreements or for system support services).

4 The maximum allowed PPB revenue referred to in paragraph 2 (including where established pursuant to paragraph 5) shall include provision for the following amounts:

- (a) the amount always to be included in the maximum allowed revenue as calculated in accordance with paragraph 3 above;
- (b) amounts payable for the provision or use (to the extent permitted by the Licence) of any interconnector;
- (c) amounts payable for the early termination or amendment of any power purchase agreement;
- (d) amounts payable for holding stocks of fuel or other materials for the purposes of generation of electricity; and
- (e) amounts payable for the provision of any other services approved by the Authority;
- (f) an entitlement for the Power Procurement Business not less than the entitlement allowance for the Power Procurement Business as in effect prior to modifications being made for the purposes of NI 2007 to NIE plc's combined transmission and public electricity supply licence.
- (g) any other amounts, not included in the revenues under the Transmission Owner licence or the NIE Energy Supply Amount, requested by the Licensee and approved by the Authority;
- (h) a correction factor (whether a positive or a negative number) to be derived as follows: $K_t = (M_{t-1} - R_{t-1}) * (1 + I_t / 100)$, where M_{t-1} is the revenue entitlement under paragraph 2 in the relevant year immediately preceding the relevant year t, R_{t-1} is the revenue actually recovered under paragraph 2 in the

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relevant year immediately preceding the relevant year t , and I_t is the Average Specified Rate.

Miscellaneous

- 5 Paragraphs 4 and 7 of Schedule 5A and paragraphs 4 and 6 of Schedule 5C to Northern Ireland Electricity plc's combined transmission and public electricity supply licence as in effect on 1 June 2007 shall be incorporated, mutatis mutandis, into (and to the extent applicable to) this Annex 3.
- 6 Paragraph 2 shall be amended to read "The maximum allowed PPB revenue shall be such amount as the Licensee determines is reasonable in all the circumstances" on the date 4 months after SEM Go-Live or such other later date as may be agreed by the Licensee and the Authority, unless, by that date, the Authority has made a reference to the Competition Commission under Article 15 of the Order requiring the Competition Commission to investigate and report on whether this Annex operates, or may be expected to operate, against the public interest.
- 7 In this Annex:

relevant year means a financial year of the Licensee.