

## The Northern Ireland Authority for Utility Regulation

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### MODIFICATION NOTICE

Made under Article 3 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (the **SEM Order**) & Regulation 57 of the Electricity Regulations (Northern Ireland) 2007 (the **Regulations**).

In respect of the licence to act as SEM operator granted, under Article 10(1)(d) of the Electricity (Northern Ireland) Order 1992 (the **Electricity Order**), to **SONI Limited**.

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- 1 In pursuance of its powers under Article 3 of the SEM Order and Regulation 57 of the Regulations, the Northern Ireland Authority for Utility Regulation, with the consent of the Department of Enterprise, Trade and Investment, hereby modifies the conditions of the above mentioned licence so as to incorporate, immediately prior to the existing condition 1 of the licence, the new conditions A, B, C and D set out in Appendix I hereto.
- 2 The modifications referred to in paragraph 1 shall have effect immediately after the above mentioned licence is granted.
- 3 Paragraph 4 applies for the purposes of any agreement between the holder of a licence under Article 10(1)(a) of the Electricity Order and any other holder of a licence under that Order which:
  - (a) contains (in whatever terms) provisions which apply where there is a relevant change in law (as defined in the agreement), and also
  - (b) contains provisions which exclude from the definition of a relevant change in law any change in law which provides that it should not be a relevant change in law.
- 4 Neither the modifications referred to in paragraph 1, nor their coming into effect, shall constitute a relevant change in law.

Dated this      day of June 2007

Dermot MacCann

**Northern Ireland Authority for Utility Regulation**

## Appendix I

### Condition A Application of Other Licence Conditions and Further Modification

#### Application of Conditions

- 1 Notwithstanding any other provision of the Licence, the following conditions shall apply as follows:
  - (a) Conditions B and C shall cease to have effect on the date 3 months after SEM Go-Live (or such later date as the Authority may direct);
  - (b) Condition D shall cease to have effect on the date 18 months after SEM Go-Live (or such later date as the Authority may direct); and
  - (c) Conditions 10, 12, 16, 18 and 20 and the condition contained in Annex 1 shall only have effect from SEM Go-Live.

#### Further Modification of Conditions

- 2 Where a Condition ceases to have effect in accordance with paragraph 1(a) or 1(b), the Conditions shall automatically be modified by the deletion of that Condition.
- 3 Once all of the Conditions referred to in paragraphs 1(a) and 1(b) have been deleted in accordance with paragraph 2, the Conditions shall automatically be modified by the deletion of this Condition A (such deletion being without prejudice to the continued application of the conditions referred to in paragraph 1(c)).

**Condition B Transition Steps (General)**

General Requirement

- 1 The Licensee shall take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to give full and timely effect to the SEM and Directive Arrangements by which it is bound (or intended to be bound), so that the Licensee is able to comply with the SEM and Directive Arrangements by which it is bound (or intended to be bound) from the time at which they are effective (or intended to be effective).

Requirement to Co-operate

- 2 Without prejudice to paragraphs 1 and 3, the Licensee shall cooperate with authorised electricity operators and Republic of Ireland electricity operators (and with the Department, the Authority and such other persons as the Authority may direct) and shall take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to enable:
  - (a) authorised electricity operators to comply with their statutory or licence obligations to give full and timely effect to the SEM and Directive Arrangements by which they are bound (or intended to be bound), so that such authorised electricity operators are able to comply with the SEM and Directive Arrangements by which they are bound (or intended to be bound) from the time at which such SEM and Directive Arrangements are effective (or intended to be effective);
  - (b) authorised electricity operators to comply with any directions by the Authority under a provision of their licences equivalent to paragraph 4; and
  - (c) Republic of Ireland electricity operators to comply with their statutory or licence obligations to prepare for the Single Electricity Market,

and in the event of any dispute between the Licensee and such other person as to whether a particular step, or thing, is reasonable, the Licensee or such other person

may refer the matter to the Authority for determination (which determination shall be final for the purposes of this paragraph).

Requirements to Comply with Directions

- 3 Without prejudice to paragraphs 1 and 2, the Licensee shall take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to comply with any direction made from time to time by the Authority in accordance with paragraph 4 (and shall by so doing be taken to have complied with such direction).
- 4 The Authority may issue directions to the Licensee setting out the steps (including without limitation those referred to in paragraph 5) to be taken (or procured) by the Licensee which are, in the Authority's reasonable opinion, appropriate in order to give full and timely effect to the SEM and Directive Arrangements by which the Licensee is bound (or intended to be bound), so that the Licensee is able to comply with the SEM and Directive Arrangements by which it is bound (or intended to be bound) from the time at which they are effective (or intended to be effective).
- 5 The directions made by the Authority under paragraph 4 (with which the Licensee is, in accordance with paragraph 3, required to take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to comply) may include requirements regarding the following steps:
  - (a) to secure or facilitate the amendment or establishment of any of the core industry documents;
  - (b) to effect the novation of (or other transfer of rights and obligations under) any of the core industry documents from the Licensee or an authorised electricity operator to the Licensee or an authorised electricity operator; and
  - (c) for securing the co-ordinated and effective commencement and implementation of, and operations under the Single Electricity Market Trading and Settlement Code (including the testing, trialling and start-up of the systems, processes and procedures employed in such implementation and employed by authorised electricity operators and others in connection with

such operations).

- 6 The Authority may, at any time, by a further direction in accordance with paragraph 4 (in order to give (or continue to give) full and timely effect to the SEM and Directive Arrangements by which the Licensee is bound (or intended to be bound)) amend or cancel any direction (or part thereof) previously made under paragraph 4.
- 7 The Authority may not make a direction under paragraph 4 until it has undertaken such period of prior consultation with the Licensee (and such other persons as the Authority deems appropriate) as is reasonable in the circumstances. No direction made under paragraph 4 shall be effective until a copy is served on the Licensee.

Requirement not to Frustrate

- 8 Without prejudice to any public or administrative law right, or statutory right, that the Licensee may have to bring any claim against any public body or person, the Licensee shall not take any step, or exercise any right, which is intended to hinder or frustrate the giving of full and timely effect to the SEM and Directive Arrangements.

Potential Conflict

- 9 If the Licensee is aware of any conflict between its compliance with the provisions of this Condition or any direction under paragraph 4 and its compliance with any other Condition of the Licence, the Licensee shall promptly inform the Authority of such conflict.
- 10 Provided the Licensee complies with paragraph 9, the other Conditions of the Licence shall prevail over this Condition in the event of conflict. If there is any conflict between a direction made under paragraph 4 and another requirement of the Licence, the provisions of the direction shall prevail.

Information

- 11 The Licensee shall provide to the Authority, in such manner and at such times as the Authority may reasonably require, such information and shall procure and furnish to it such reports as the Authority may reasonably require or deem necessary or appropriate to enable the Authority to monitor the Licensee's compliance with the

requirements of this Condition, including (without limitation):

- (a) information as to the Licensee’s readiness concerning the SEM and Directive Arrangements by which it is bound (or intended to be bound); and
- (b) status reports concerning those matters referred to in sub-paragraph (d) of the definition of SEM and Directive Arrangements by which the Licensee is bound (or intended to be bound), and drafts of any legal documents by which such matters are to be achieved.

12 If the Licensee is aware (or should reasonably be aware) of any matter or circumstance which it considers will (or which the Licensee should reasonably consider likely to) hinder or frustrate the giving of full and timely effect to the SEM and Directive Arrangements, the Licensee shall promptly inform the Authority of such matter or circumstance.

Definitions

13 In this Condition, unless the context otherwise requires:

**“core industry documents”** means those documents which:

- (a) are (or are to be) established or required to be entered into pursuant to or in accordance with a licence granted under the Order; or
- (b) are in the Authority’s opinion central industry documents associated with the authorised activities of the Licensee or authorised electricity operators and which have been designated as such by the Authority.

**“SEM and Directive Arrangements”** means:

- (a) any modifications made (or which the Licensee knows are to be made) to the

Licence, or to the licences of any authorised electricity operator, pursuant (in each case) to the SEM Order or the Electricity (Northern Ireland) Regulations 2007;

- (b) the conditions of the Licence and the Transmission System Operator Licence;
- (c) the terms imposed in any exemption granted pursuant to Article 9 of the Order that reflect a modification referred to in sub-paragraph (a);
- (d) the matters that the Licensee knows (or should reasonably know) are envisaged by the modifications and conditions referred to in sub-paragraphs (a) and (b) (including, without limitation, the establishment, amendment or termination of, or the transfer of rights and obligations under, core industry documents); and
- (e) the proposed transfer to NIE Energy Limited (pursuant to the Electricity (Northern Ireland) Regulations 2007) of the public electricity supply licence previously held by Northern Ireland Electricity plc.

**Condition C Transition Steps (Specific)**

**Systems**

1 The Licensee shall:

- (a) undertake such testing, trialling and start-up of the systems, processes and procedures to be employed in the Market Operation Activity (including the Single Electricity Market Trading and Settlement System) as is reasonable in the circumstances;
- (b) cooperate with authorised electricity operators, Republic of Ireland electricity operators and the Authority in the development of plans for the testing and trialling of the Single Market Operation Business's systems, processes and procedures (including the Single Electricity Market Trading and Settlement System), and implement the plans so developed; and
- (c) cooperate with the Authority in relation to any audit by the Authority of the Single Market Operation Business's systems, processes and procedures.

**Condition D Run-Off Steps (General)**

General Requirement

- 1 The Licensee shall take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to fully and effectively run-off, from SEM Go-Live, the Pre-SEM Arrangements for which it is Responsible.

Requirement to Co-operate

- 2 Without prejudice to paragraphs 1 and 3, the Licensee shall cooperate with authorised electricity operators and Republic of Ireland electricity operators (and with the Department, the Authority and such other persons as the Authority may direct) and shall take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to enable:
  - (a) authorised electricity operators to comply with their statutory or licence obligations to fully and effectively run-off, from SEM Go-Live, the Pre-SEM Arrangements for which they are Responsible;
  - (b) authorised electricity operators to comply with any directions by the Authority under a provision of their licence equivalent to paragraph 4; and
  - (c) Republic of Ireland electricity operators to comply with their statutory or licence obligations (if any) to fully and effectively run-off, from SEM Go-Live, the Pre-SEM Arrangements for which they are Responsible,

and in the event of any dispute between the Licensee and such other person as to whether a particular step, or thing, is reasonable, the Licensee or such other person may refer the matter to the Authority for determination (which determination shall be final for the purposes of this paragraph).

Requirements to Comply with Directions

- 3 Without prejudice to paragraphs 1 and 2, the Licensee shall take all reasonable steps,

and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to comply with any direction made from time to time by the Authority in accordance with paragraph 4 (and shall by so doing be taken to have complied with such direction).

- 4 The Authority may issue directions to the Licensee setting out the steps to be taken (or procured) by the Licensee which are, in the Authority's reasonable opinion, appropriate in order to fully and effectively run-off, from SEM Go-Live, the Pre-SEM Arrangements for which it is Responsible.
- 5 The Authority may, at any time, by a further direction in accordance with paragraph 4 (in order to fully and effectively run-off, from SEM Go-Live, the Pre-SEM Arrangements for which the Licensee is Responsible) amend or cancel any direction (or part thereof) previously made under paragraph 4.
- 6 The Authority may not make a direction under paragraph 4 until it has undertaken such period of prior consultation with the Licensee (and such other persons as the Authority deems appropriate) as is reasonable in the circumstances. No direction made under paragraph 4 shall be effective until a copy is served on the Licensee.

Requirement not to Frustrate

- 7 Without prejudice to any public or administrative law right, or statutory right, that the Licensee may have to bring any claim against any public body or person, the Licensee shall not take any step, or exercise any right, which is intended to hinder or frustrate the full and effective run-off, from SEM Go-Live, of the Pre-SEM Arrangements.

Potential Conflict

- 8 If the Licensee is aware of any conflict between its compliance with the provisions of this Condition or any direction under paragraph 4 and its compliance with any other Condition of the Licence, the Licensee shall promptly inform the Authority of such conflict.
- 9 Provided the Licensee complies with paragraph 8, the other Conditions of the Licence shall prevail over this Condition in the event of conflict. If there is any conflict between a direction made under paragraph 4 and another requirement of the Licence,

the provisions of the direction shall prevail.

### Information

- 10 The Licensee shall provide to the Authority, in such manner and at such times as the Authority may reasonably require, such information and shall procure and furnish to it such reports as the Authority may reasonably require or deem necessary or appropriate to enable the Authority to monitor the Licensee's compliance with the requirements of this Condition.
- 11 If the Licensee is aware (or should reasonably be aware) of any matter or circumstance which it considers will (or which the Licensee should reasonably consider likely to) hinder or frustrate the full and effective run-off, from SEM Go-Live, of the Pre-SEM Arrangements, the Licensee shall promptly inform the Authority of such matter or circumstance.

### Definitions

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

**“core industry documents”** means those documents which

- (a) are established or required to be entered into pursuant to or in accordance with a licence granted under the Order; or
- (b) are in the Authority's opinion central industry documents associated with the authorised activities of the Licensee or authorised electricity operators and which have been designated as such by the Authority.

**“Pre-SEM Arrangements”** means:

- (a) the Supply Competition Code;
- (b) the Interim Settlement Code and Interim

Settlement Agreements;

- (c) the renewable output factor arrangements;
- (d) the small renewable spill arrangements;
- (e) the top-up and standby arrangements (if any);
- (f) the arrangements for payment of the bulk supply tariff;
- (f) the arrangements for wheeling; and
- (g) any other core industry document as the Authority may direct for the purposes of this paragraph.

**“Responsible”**

means, in respect of:

- (a) the Supply Competition Code, the Power Procurement Business (or such other person as the Authority may direct following consultation with the Power Procurement Business and such other person);
- (b) the Interim Settlement Code and the Interim Settlement Agreements, the Power Procurement Business (or such other person as the Authority may direct following consultation with the Power Procurement Business and such other person);
- (c) the renewable output factor arrangements, the Power Procurement Business (or such

- other person as the Authority may direct following consultation with the Power Procurement Business and such other person);
- (d) the small renewable spill arrangements, the Power Procurement Business (or such other person as the Authority may direct following consultation with the Power Procurement Business and such other person);
  - (e) the top-up and standby arrangements, the Transmission Owner (or such other person as the Authority may direct following consultation with the Transmission Owner and such other person); and
  - (f) the arrangements for payment of the bulk supply tariff, the Power Procurement Business (or such other person as the Authority may direct following consultation with the Power Procurement Business and such other person);
  - (f) the arrangements for wheeling, the Transmission Owner (or such other person as the Authority may direct following consultation with the Transmission Owner and such other person); and
  - (g) any other core industry document specified by the Authority for the

purposes of this paragraph, such person or persons as the Authority considers to be responsible for such document (as specified in the relevant direction).

**“run-off”**

means, in relation to any arrangements, the bringing to an end of those arrangements, which shall include the determination and settlement (including by way of reconciliation) of electricity and payments in connection with periods up to and including the point at which such arrangements are brought to an end.

- 13 References to documents and arrangements in the definitions of **“Pre-SEM Arrangements”** and **“Responsible”** set out in paragraph 12 shall (if such documents or arrangements are not otherwise defined in the Licence) be to such documents and arrangements as defined (or, if not defined, referred to) in the conditions of the Transmission Owner Licence, as they existed immediately prior to SEM Go-Live.