

## 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 participate in the transmission of electricity granted, under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 (the **Electricity Order**), to **Northern Ireland Electricity plc** under a licence document dated 31 March 1992.

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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:
- (a) modify condition 7 of Part III of the licence document insofar as is necessary to ensure that it is identical in form and content to the form of condition set out in Appendix I;
  - (b) create, at the beginning of the licence conditions, a section of the licence headed “Chapter 1” and comprising the new conditions A, B, C and D set out in Appendix II hereto;
  - (c) create, following immediately after the new Chapter 1 referred to above, a section of the licence headed “Chapter 2” and comprising the existing licence conditions (being the conditions contained in Part II of, and the Schedules to, the licence document to the extent applicable to the licence, and the conditions contained in Part III of the licence document) as modified in accordance with paragraph 1(a); and

- (d) create, following immediately after the new Chapter 2 referred to above, a section of the licence headed “Chapter 3” and comprising the new conditions set out in Appendix III hereto.
- 2 The modifications referred to in paragraph 1 shall have effect at 00.00 on 3 July 2007.
- 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**

Part IIIB

**Condition 7: 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 one or more 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;
- (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:

- 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 -

- (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 Annex 4 of the 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 Annex 4 of the 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 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 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:



- (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 Part II, Condition 2 of this licence contains a definition of that term, have the meaning given to that term in that condition; and
- (b) where Part II, Condition 2 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;

**requisite arrangements**

means the arrangements referred to as such in paragraph 2; and

**Supply Competition Code**

means the document of that title designated as such by the Department, as from time to time revised, amended, supplemented or replaced with the approval or at the instance

of the Department or the Authority.

**Appendix II**

**Chapter 1**

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

- 1 Notwithstanding any other provision of the Licence, the following Conditions shall have effect 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) save for Conditions 16, 17 and 25 of Chapter 3, which shall be effective from the date this Condition becomes effective, the Conditions contained in Chapter 3 shall (subject to paragraph 8) be of no effect.

**Further Modification of Conditions**

- 2 At SEM Go-Live, the Conditions contained in Chapter 2 shall automatically be modified insofar as is necessary to ensure that they are identical in form and content to the Conditions contained in Chapter 3.
- 3 Immediately following SEM Go-Live, the Conditions shall automatically be modified by the deletion of Chapter 3 (and the Conditions contained in it).
- 4 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.
- 5 Once all of the Conditions referred to in paragraphs 1(a) and 1(b) have been deleted in accordance with paragraph 4, the Conditions shall automatically be modified by the deletion of this Chapter 1 (and the Conditions contained in it), and by the deletion of the heading “Chapter 2” (but without prejudice to the continuation of the Conditions then contained in Chapter 2).

**Interpretation**

- 6 In Conditions A, B, C and D, references to “Chapter 1”, “Chapter 2” and “Chapter 3” are to the sections of the licence created as such by the licence modifications by which this Condition A was included in the licence.
- 7 Except in the Conditions contained in Chapter 3, references to a numbered condition are (unless expressly stated otherwise) to the relevant numbered condition contained in Chapter 2. In the Conditions contained in Chapter 3, references to a numbered condition are (unless expressly stated otherwise) to the relevant numbered condition contained in Chapter 3.
- 8 Notwithstanding paragraph 1(c), in the period prior to SEM Go-Live, the Conditions contained in Chapter 1 and Chapter 3 shall be interpreted in accordance with Condition 1 of Chapter 3, as if the provisions of Condition 1 of Chapter 3 were set out in (and applicable only to) each Condition in Chapters 1 and 3.

**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 Northern Ireland Market Operator 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)**

Proposed Property Arrangement Scheme

- 1 Where the Licensee is obliged, by this Condition C, to enter into an agreement with NIE Supply (being, prior to SEM Go-Live, the same person as the Licensee), the Licensee may (where it considers appropriate) instead enter into that agreement with NIE Energy Limited (as the person to whom it is proposed that the NIE Energy Supply Licence be transferred under the Directive Regulations).

Systems

- 2 The Licensee shall, in preparation for SEM Go-Live:
  - (a) undertake testing, trialling and start-up of its systems, processes and procedures to the extent appropriate 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 Licensee's systems, processes and procedures, and implement the plans so developed; and
  - (c) cooperate with authorised electricity operators who wish to test and trial systems employed by them in connection with the Single Market Operation Business's systems, processes and procedures, such cooperation to include provision of meter data (as defined in the Single Electricity Market Trading and Settlement Code).

Transmission Interface Arrangements

- 3 Without prejudice to the Authority's ability to designate, as the Transmission Interface Arrangements under Condition 17 of Chapter 3, such document as the Authority considers appropriate (having undertaken such consultation as the Authority considers appropriate), the Licensee shall, by 14 August 2007 (or such later date as the Authority may direct), submit to the Authority either:
  - (a) a draft of the Transmission Interface Arrangements with which both proposed parties thereto are content; or

- (b) a draft of the Transmission Interface Arrangements including those provisions with which both proposed parties thereto are content, and which highlights those matters in the draft of the Transmission Interface Arrangements that remain in dispute between those parties.

PPB / TO Interface Agreement

- 4 Without prejudice to the Authority's ability to designate, as the PTIA under Condition 25 of Chapter 3, such document as the Authority considers appropriate (having undertaken such consultation as the Authority considers appropriate), the Licensee shall, by 14 September 2007 (or such later date as the Authority may direct), submit to the Authority either:
  - (a) a draft of the PTIA with which both proposed parties thereto are content; or
  - (b) a draft of the PTIA including those provisions with which both proposed parties thereto are content, and which highlights those matters in the draft PTIA that remain in dispute between those parties.

Distribution Code

- 5 Without prejudice to the Authority's ability to approve, as the Distribution Code under Condition 27 of Chapter 3, such document as the Authority considers appropriate (having undertaken such consultation as the Authority considers appropriate), the Licensee shall:
  - (a) by 1 September 2007 (or such later date as the Authority may direct), submit to the Authority a draft of the Distribution Code which it believes meets the prospective requirements of the Licence;
  - (b) incorporate within that draft of the Distribution Code such comments and changes as the Authority may direct;
  - (c) where directed to do so by the Authority and by such subsequent date as the Authority may direct, undertake a consultation regarding the draft Distribution Code (incorporating such comments and changes) with those authorised electricity operators likely to be materially affected by its contents; and

- (d) by such subsequent date as the Authority may direct, report to the Authority on the outcome of any such consultation.

PSO Agreement

- 6 Without prejudice to the Authority's ability to designate, as the PSO Agreement under Condition 24A of Chapter 3, such document as the Authority considers appropriate (having undertaken such consultation as the Authority considers appropriate), the Licensee shall submit to the Authority, by 1 September 2007 (or such later date as the Authority may direct), a draft PSO Agreement for the Authority's consideration.

Market Registration Code

- 7 The Licensee shall ensure that, by 14 September 2007 (or such later date as the Authority may direct), a Change Report (as defined in the Market Registration Code) which meets the relevant objective is submitted to the Authority in accordance with the Market Registration Code.
- 8 In paragraph 7, the "**relevant objective**" is to set out those changes to the Market Registration Code that are necessary in order to enable the Market Registration Code to meet the requirements set out in Conditions 28 and 29 of Chapter 3 in respect of the Market Registration Code, the Market Registration Service and the Market Data Service.

Transmission Connection Agreements

- 9 In respect of each relevant connection agreement, the Licensee shall, by 1 September 2007 (or such later date as the Authority may direct), submit to the Authority either:
- (a) a draft agreement to amend the relevant connection agreement with which both proposed parties thereto are content; or
  - (b) a draft agreement to amend the relevant connection agreement including those provisions with which both proposed parties thereto are content, and which highlights those matters in the draft agreement that remain in dispute between those parties.
- 10 In respect of each relevant connection agreement, the Licensee shall enter into an

agreement that amends the relevant connection agreement in such form as the Authority may designate (having regard to the provisions of the existing agreement, the draft agreement submitted to the Authority, any responses received in connection with any consultation concerning the same, and such other matters as the Authority considers appropriate), and the Licensee shall enter into the agreement so designated within 7 days of such designation.

- 11 In respect of each relevant connection agreement, the Licensee shall, by 1 September 2007 (or such later date as the Authority may direct), submit to the Authority either:
- (a) a draft agreement to novate the relevant connection agreement (as amended, or to be amended, pursuant to the agreement referred to in paragraph 10) from the Licensee to SONI with which all three proposed parties thereto are content; or
  - (b) a draft agreement to novate the relevant connection agreement from the Licensee to SONI including those provisions with which all three proposed parties thereto are content, and which highlights those matters in the draft agreement that remain in dispute between those parties.
- 12 In respect of each relevant connection agreement, the Licensee shall enter into an agreement that novates the relevant connection agreement (as amended, or to be amended, pursuant to the agreement referred to in paragraph 10) from the Licensee to SONI in such form as the Authority may designate (having regard to the provisions of the draft agreement submitted to the Authority, any responses received in connection with any consultation concerning the same, and such other matters as the Authority considers appropriate), and the Licensee shall enter into the agreement so designated within 7 days of such designation.
- 13 In paragraphs 9, 10, 11 and 12, “**relevant connection agreement**” means each of the existing connection agreements between the Licensee and:
- (a) the holder of a licence under Article 10(1)(a) of the Order; or
  - (b) Moyle Interconnector Limited,
- which relates (in either case) to a connection to the transmission system.

Transmission Applications/Offers

- 14 Unless, on the application of the Licensee, the Authority otherwise directs, the Licensee shall ensure that any applications regarding use of, or connection to, the transmission system, that it receives after this Condition becomes effective and before SEM Go-Live, are progressed in cooperation with the Transmission System Operator.
- 15 The Licensee shall ensure that any offers to enter into an agreement for use of, or connection to, the transmission system that it makes after this Condition becomes effective and before SEM Go-Live:
- (a) are made so as to be offers by the Licensee if accepted prior to SEM Go-Live and offers by the Transmission System Operator if accepted after SEM Go-Live;
  - (b) contain connection or use of system terms (as the case may be) that are, in so far as possible, consistent with the terms that the Authority has designated in respect of similar agreements with the same class of generator (or with the terms the Licensee reasonably believes the Authority will so designate); and
  - (c) contain connection or use of system terms (as the case may be) that (if accepted prior to SEM Go-Live) provide for the automatic transfer of the agreement from the Licensee to the Transmission System Operator at SEM Go-Live.

Distribution Use of System Agreements (Excluding NIE Supply)

- 16 Subject to paragraph 18, the Licensee shall, by 1 September 2007 (or such later date as the Authority may direct), submit to the Authority:
- (a) a draft agreement to amend the existing agreements for use of the Licensee's system on which it has consulted with counterparties and other persons likely to be materially affected thereby; and
  - (b) copies of the written responses received in respect of that consultation.
- 17 Subject to paragraph 18, the Licensee shall enter into agreements that amend the existing agreements for use of the Licensee's system in such form as the Authority

may designate (having regard to the provisions of the existing use of system agreement, the proposals put forward under paragraph 16, any responses received in connection with any consultation concerning the same, and such other matters as the Authority considers appropriate), and the Licensee shall enter into the agreements so designated within 7 days of such designation.

- 18 Paragraphs 16 and 17 shall not apply to any existing arrangement between the Licensee and NIE Supply for use of the Licensee's system.

Distribution Use of System Agreement (NIE Supply)

- 19 The Licensee shall by 1 September 2007 (or such later date as the Authority may direct), submit to the Authority either:

- (a) a draft agreement for use of the Licensee's distribution system by NIE Supply with which both proposed parties thereto are content; or
- (b) a draft of such agreement including those provisions with which both proposed parties thereto are content, and which highlights those matters in the draft that remain in dispute between those parties.

- 20 The Licensee shall enter into an agreement for use of the Licensee's distribution system by NIE Energy in such form as the Authority may designate (having regard to the proposed provisions of similar agreements with other system users, the draft agreement submitted to the Authority, any responses received in connection with any consultation concerning the same, and such other matters as the Authority considers appropriate), and the Licensee shall enter into such document within 7 days of such designation.

Distribution Connection Agreements

- 21 In respect of each relevant connection agreement, the Licensee shall, by 1 September 2007 (or such later date as the Authority may direct), submit to the Authority:
- (a) a draft agreement to amend the relevant connection agreement on which it has consulted with counterparties and other persons likely to be materially affected thereby; and



- (b) copies of the written responses received in respect of that consultation.
- 22 In respect of each relevant connection agreement, the Licensee shall enter into an agreement that amends the relevant connection agreement in such form as the Authority may designate (having regard to the provisions of the relevant connection agreement, the proposals put forward under paragraph 21, any responses received in connection with any consultation concerning the same, and such other matters as the Authority considers appropriate), and the Licensee shall enter into the agreement so designated within 7 days of such designation.
- 23 In paragraphs 21 and 22, “**relevant connection agreement**” means each of the existing connection agreements between the Licensee and the holders of licences under Article 10(1)(a) of the Order that relate to the connection of a generation set or generation sets to the Licensee’s distribution system.

Distribution Connection Agreements (Others)

- 24 In respect of relevant connection agreements, the Licensee shall:
- (a) consult with relevant counterparties and other persons likely to be materially affected thereby (as it reasonably considers appropriate) and provide the Authority with copies of the written responses received in respect of that consultation; and
  - (b) (to the extent necessary having regard to the extent of the property transfer scheme provided for by the Directive Regulations) take all reasonable steps within its power to amend (with effect from SEM Go-Live) the relevant connection agreements in accordance with any general form of agreement designated by the Authority.
- 25 In paragraph 24, “**relevant connection agreement**” means each of the Licensee’s existing connection agreements other than those referred to in paragraph 23.

Distribution Applications/Offers

- 26 Unless, on the application of the Licensee, the Authority otherwise directs, the Licensee shall ensure that any offers to enter into an agreement for use of, or

connection to, the Licensee's distribution system, that it makes after this Condition becomes effective and before SEM Go-Live, contain connection or use of system terms (as the case may be) that are, in so far as possible, consistent with the terms that the Authority has designated in respect of similar agreements with the same class of person (or with the terms the Licensee reasonably believes the Authority will so designate).

Power Purchase Agreements

- 27 In respect of each relevant power purchase agreement, the Licensee shall, by 1 September 2007 (or such later date as the Authority may direct), submit to the Authority either:
- (a) a draft agreement to amend the relevant power purchase agreement with which both proposed parties thereto are content; or
  - (b) a draft agreement to amend the relevant power purchase agreement including those provisions with which both proposed parties thereto are content, and which highlights those matters in the draft agreement that remain in dispute between those parties.
- 28 In respect of each relevant power purchase agreement, the Licensee shall enter into an agreement that amends the relevant power purchase agreement in such form as the Authority may designate (having regard to the provisions of the existing agreement, the draft agreement submitted to the Authority, any responses received in connection with any consultation concerning the same, and such other matters as the Authority considers appropriate), and the Licensee shall enter into the agreement so designated within 7 days of such designation.
- 29 In respect of each relevant power purchase agreement, the Licensee shall, by 1 September 2007 (or such later date as the Authority may direct), submit to the Authority either:
- (a) a draft agreement to novate the relevant power purchase agreement (as amended, or to be amended, pursuant to the agreement referred to in paragraph 12) from the Licensee to NIE Energy Limited with which all three proposed

parties thereto are content; or

- (b) a draft agreement to novate the relevant power purchase agreement from the Licensee to NIE Energy Limited including those provisions with which all three proposed parties thereto are content, and which highlights those matters in the draft agreement that remain in dispute between those parties.

30 In respect of each relevant power purchase agreement, the Licensee shall enter into an agreement that novates the relevant power purchase agreement (as amended, or to be amended, pursuant to the agreement referred to in paragraph 28) from the Licensee to NIE Energy Limited in such form as the Authority may designate (having regard to the provisions of the draft agreement submitted to the Authority, any responses received in connection with any consultation concerning the same, and such other matters as the Authority considers appropriate), and the Licensee shall enter into the agreement so designated within 7 days of such designation.

31 In paragraphs 27, 28, 29 and 30, “**relevant power purchase agreement**” means each of the existing power purchase agreements between the Licensee and the holder of a licence under Article 10(1)(a) of the Order, including any cancellable generating unit agreements, but (subject thereto) excluding any agreements for the provision of System Support Services (as defined in Condition 2 of Chapter 2).

System Support Services Agreements (non-PPB)

32 In respect of each system support services agreement, the Licensee shall, by 1 September 2007 (or such later date as the Authority may direct), submit to the Authority either:

- (a) a draft agreement to amend the system support services agreement with which both proposed parties thereto are content; or
- (b) a draft agreement to amend the system support services agreement including those provisions with which both proposed parties thereto are content, and which highlights those matters in the draft agreement that remain in dispute between those parties.

33 In respect of each system support services agreement, the Licensee shall enter into an

agreement that amends the system support services agreement in such form as the Authority may designate (having regard to the provisions of the existing agreement, the draft agreement submitted to the Authority, any responses received in connection with any consultation concerning the same, and such other matters as the Authority considers appropriate), and the Licensee shall enter into the agreement so designated within 7 days of such designation.

34 In respect of each system support services agreement, the Licensee shall, by 1 September 2007 (or such later date as the Authority may direct), submit to the Authority either:

(a) a draft agreement to novate the system support services agreement (as amended, or to be amended, pursuant to the agreement referred to in paragraph 33) from the Licensee to SONI with which all three proposed parties thereto are content; or

(b) a draft agreement to novate the system support services agreement from the Licensee to SONI including those provisions with which all three proposed parties thereto are content, and which highlights those matters in the draft agreement that remain in dispute between those parties.

35 In respect of each system support services agreement, the Licensee shall enter into an agreement that novates the system support services agreement (as amended, or to be amended, pursuant to the agreement referred to in paragraph 33) from the Licensee to SONI in such form as the Authority may designate (having regard to the provisions of the draft agreement submitted to the Authority, any responses received in connection with any consultation concerning the same, and such other matters as the Authority considers appropriate), and the Licensee shall enter into the agreement so designated within 7 days of such designation.

36 In paragraphs 32, 33, 34 and 35, “**system support services agreement**” means each of the Licensee’s existing agreements concerning the provision of System Support Services (as defined in Condition 2 of Chapter 2), but excluding any cancellable generating unit agreements.

Moyle Interconnector Collection Agency Agreement

37 The Licensee shall, by 30 September 2007 (or such later date as the Authority may direct), either:

(a) enter into an agreement novating the Moyle Interconnector Collection Agency Agreement (as defined in Chapter 2) from the Licensee to SONI (and, to the extent appropriate, amending that agreement); or

(b) submit to the Authority a draft of such an agreement including those provisions with which the three proposed parties thereto are content, and highlighting those matters in the draft agreement that the Licensee wishes the Authority to settle.

38 Where sub-paragraph 37(b) applies, the Licensee shall enter into an agreement novating the Moyle Collection Agency Agreement from the Licensee to SONI (and, to the extent appropriate, amending that agreement) on the terms settled by the Authority, and shall do so within 7 days of the Authority so settling them.

Payment Security Policy

39 The Licensee shall, by 1 September 2007 (or such later date as the Authority may direct) and having undertaken such consultation as the Licensee reasonably considers appropriate, submit to the Authority a draft payment security policy for approval.

Definitions

40 In this Condition:

**“cancellable generating unit agreement”** shall have the meaning given to that expression in Chapter 2.

**“NIE Supply”** means the holder from time to time of the NIE Energy Supply Licence (being, prior to SEM Go-Live, the same person as the Licensee).

**“Single Market Operation** has the meaning given to that expression in

**Business”**

the Northern Ireland Market Operator Licence.

**“SONI”**

means SONI Limited (a body corporate registered in Northern Ireland under company number NI038715).

**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 Chapter 3) be to such documents and arrangements as defined (or, if not defined, referred to) in Chapter 2.

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**Condition 1 Interpretation and Construction**

- 1 Unless the contrary intention appears:
  - (a) words and expressions used in this Licence or in the Schedules below shall be construed as if they were in an enactment and the Interpretation Act (Northern Ireland) 1954 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 for the purposes of any provision of Part II of the Order or of the Energy Order, or of the SEM Order shall, unless the contrary intention appears, have the same meaning when used in this Licence or in the Schedules below.
- 3 In this Licence and in the Schedules below, unless otherwise specified or the context otherwise requires:

**“Advanced Corporation Tax”** has the meaning given to that term in Section 14 of the Income and Corporation Taxes Act 1988;

**“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 Article 4 of the Companies (Northern Ireland) Order 1986;

**“All-Island Transmission Networks”** means the transmission system and the Republic of Ireland transmission system taken together;

**“Auditors”** means the Licensee’s auditors for the time being holding office in accordance with the requirements

of the Companies (Northern Ireland) Order 1986;

- “authorised”** in relation to any business or activity means authorised by licence granted under Article 10 or exemption granted under Article 9 of the Order;
- “Authorised Area”** means the area from time to time comprised in paragraph 1 of Schedule 1;
- “authorised electricity operator”** means any person (other than the Licensee in its capacity as the holder of the Licence) who holds a licence granted pursuant to Article 10 of the Order or whose activities are exempt pursuant to Article 9 of the Order, and any person transferring electricity across a Northern Ireland Interconnector or who has made application for use of a Northern Ireland Interconnector which has not been refused;
- “Authority”** means the Northern Ireland Authority for Utility Regulation;
- “Commission for Energy Regulation”** means the body established as such under the Republic of Ireland Electricity Act.
- “competent authority”** means the Department, the Authority and any local or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or the European Community;
- “Department”** means the Department of Enterprise, Trade and Investment;
- “designated”** in relation to any agreement, arrangement, code, notice, proposal therefor or other document, means designated by the Department or the Authority (as



the case may be) or on its behalf by means of initialling or descriptive reference whether for the purposes of any Condition of this Licence or otherwise, but so that an agreement, arrangement, code, notice, proposal therefor or other document so designated may at the discretion of the Department or the Authority (as the case may be) cease to be designated if amended or modified in any material respect;

**“Directive”** means Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity;

**“Directive Regulations”** means the Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 2005 and/or the Electricity Regulations (Northern Ireland) 2007;

**“Distribution Business”** means the business of the Licensee or any affiliate or related undertaking of the Licensee in or ancillary to the transport (whether for its own account or that of third parties) of electricity through the Licensee’s distribution system, and shall include any business in providing connections to the Licensee’s distribution system and any business in providing the Market Registration Services and/or the Market Data Services, but shall not include any other business of the Licensee or any affiliate or related undertaking of the Licensee in the provision of services to or on behalf of any one or more persons;

**“Distribution Code”** means the code of that name required to be prepared and approved in accordance with Condition 27;

<b>“distribution system”</b>	in relation to the Licensee, means all electric lines of the Licensee within the Authorised Area (excepting lines forming part of the transmission system or any Interconnector), and any other electric lines which the Authority may specify as forming part of the Licensee’s distribution system, and includes any electrical plant and meters of the Licensee which are used in connection with distribution by the Licensee;
<b>“electricity undertaking”</b>	means an authorised electricity operator and/or a Republic of Ireland electricity operator;
<b>“Energy Order”</b>	means the Energy (Northern Ireland) Order 2003;
<b>“enforcement matter”</b>	means any matter in respect of which any functions of the Authority under Article 42 of the Energy Order are or may be exercisable;
<b>“financial year”</b>	bears the meaning ascribed to it in paragraph 1 of Condition 2;
<b>“General Consumer Council”</b>	means the General Consumer Council for Northern Ireland;
<b>“generator”</b>	means a person authorised by a licence granted under Article 10(1)(a) of the Order;
<b>“Grid Code”</b>	means the code of that name to be prepared and approved in accordance with the Transmission System Operator Licence;
<b>“holding company”</b>	means a holding company within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986;

<b>“Interconnector”</b>	means a Republic of Ireland Interconnector and/or a Northern Ireland Interconnector;
<b>“Island of Ireland”</b>	means Northern Ireland and the Republic of Ireland.
<b>“land”</b>	includes any right, easement or other interest in land and any wayleave;
<b>“land bank”</b>	means the land more fully described in Schedule 4 together with such additional land as shall be acquired by the Licensee by virtue of any requirement that a generator shall transfer to the Licensee a freehold interest in any land;
<b>“Land Bank Business”</b>	means the business of the Licensee in the discharge of its obligations under Condition 23;
<b>“lease”</b>	means a lease of premises, and includes an underlease and a sub-underlease;
<b>“Licence”</b>	means the licence comprised in the licence grant in which these Conditions are referred to, granted on the terms, and subject to the conditions, referred to therein;
<b>“Licensee”</b>	means Northern Ireland Electricity plc (a body corporate registered in Northern Ireland under company number NI026041) and (where the context so requires) shall include any business in respect of which the Licensee is a successor company;
<b>“Market Data Service”</b>	means the service described in paragraph 3 of Condition 28;
<b>“Market Operation Activity”</b>	has the meaning given to that term in the Northern Ireland Market Operator Licence;

<b>“Market Registration Arrangements”</b>	means the Market Registration Framework Agreement and the Market Registration Code;
<b>“Market Registration Code”</b>	means the Code of that title approved by the Authority under the provisions of Condition 29;
<b>“Market Registration Framework Agreement”</b>	means the agreement of that title approved by the Authority under the provisions of Condition 29;
<b>“Market Registration Service”</b>	means the service described in paragraph 2 of Condition 28;
<b>“modification”</b>	includes any addition, omission, amendment and substitution, and cognate expressions shall be construed accordingly;
<b>“megawatt” or “MW”</b>	includes an equivalent megawatt;
<b>“NIE Energy Supply Licence”</b>	means the licence granted under Article 10(1)(c) of the Order to Northern Ireland Electricity plc on 31 March 1992, which is to be transferred to NIE Energy Limited (a body corporate registered in Northern Ireland under company number NI27394) pursuant to a statutory scheme on or around SEM Go-Live;
<b>“Northern Ireland Fuel Security Code”</b>	means the document of that title designated as such by the Department as from time to time amended in accordance with its provisions, dealing with the co-operation of licence holders in strategic contingency planning in respect of fuel stocks, the modification of the merit order and certain other systems and procedures under the Grid Code during periods when the Department has given and there is in force one or more directions under Article 37(4) of the Order, the entitlement of the Licensee and

authorised electricity operators to and the collection of certain payments in anticipation of, during and after the expiry of any such periods, and connected matters;

**“Northern Ireland Interconnector”**

means electric lines and electrical plant and meters used for conveying electricity only directly to or from a substation or converter station within Northern Ireland into or out of Northern Ireland, but excluding the North/South Circuits;

**“Northern Ireland Market Operator Licence”**

means the licence granted, under Article 10(1)(d) of the Order, to SONI Limited (a body corporate registered in Northern Ireland under company number NI038715) on 3 July 2007.

**“Northern Ireland Market Operator Licensee”**

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

**“North/South Circuits”**

means the electric lines and electrical plant and meters used for conveying electricity only directly to or from a substation or converter station within Northern Ireland directly to or from a substation or converter station within the Republic of Ireland;

**“notice”**

means (unless otherwise specified) notice given either in writing or by electronic data transfer;

**“Order”**

means the Electricity (Northern Ireland) Order 1992;

**“payment security policy”**

means the policy of that name referred to in Condition 24;

**“Permitted Purpose”**

means the purpose of all or any of the following:

- (a) the Transmission Owner Business;
- (b) the Distribution Business;
- (c) the Land Bank Business;
- (d) any business or activity carried on in accordance with paragraph 8 of Condition 14;
- (e) any business or activity within the limits of paragraph 9 (e) of Condition 14;
- (f) without prejudice to the generality of subparagraphs (a) to (e), any payment or transaction lawfully made or undertaken by the Licensee in relation to the disposal of or relinquishment of operational control over any relevant asset in accordance with Condition 9;
- (g) and without prejudice to the generality of subparagraphs (a) to (e), any payment or transaction lawfully made or undertaken by the Licensee for a purpose within subparagraphs (i) to (vi) of paragraph 5(b) of Condition 9.

**“Power Procurement Business”**

has the meaning given to that expression in the NIE Energy Supply Licence;

**“related undertaking”**

in relation to any person means any undertaking in which that person has a participating interest as defined by Article 268 of the Companies (Northern Ireland) Order 1986;

**“relevant lease”**

means a lease of any land or building granted pursuant to the transfer scheme under Article 69(1)

of the Order or granted or assigned pursuant to directions issued by the Authority pursuant to Condition 23;

**“relevant licensed supplier”** means a person authorised by a licence granted under Article 10(1)(c) of the Order;

**“Republic of Ireland Board”** means the Electricity Supply Board in the Republic of Ireland;

**“Republic of Ireland distribution system”** means all electric lines of the Republic of Ireland Board in the Republic of Ireland which the Republic of Ireland Board may, with the approval of the Commission for Energy Regulation, specify as forming part of the Republic of Ireland Board’s distribution system and includes any electric plant, transformers and switchgear of the Republic of Ireland Board which is used for conveying electricity to final customers;

**“Republic of Ireland Electricity Act”** means the Republic of Ireland legislation known as the Electricity Regulation Act 1999;

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

**“Republic of Ireland** means electric lines and electrical plant and meters used for conveying electricity only directly to or

<b>“Interconnector”</b>	from a substation or converter station within the Republic of Ireland into or out of the Republic of Ireland, but excluding the North/South Circuits;
<b>“Republic of Ireland Network”</b>	means the Republic of Ireland transmission system and the Republic of Ireland distribution system taken together;
<b>“Republic of Ireland System Operator”</b>	means the person, holding from time to time, the Republic of Ireland System Operator Licence in its capacity as the holder of that licence;
<b>“Republic of Ireland System Operator Licence”</b>	means the licence granted under Section 14 (1) (e) of the Republic of Ireland Electricity Act, to Eirgrid plc (a company formed pursuant to regulation 34 of the Republic of Ireland legislation known as the European Communities (Internal Market in Electricity) Regulations 2000);
<b>“Republic of Ireland transmission system”</b>	means the system of electric lines in the Republic of Ireland comprising wholly or mainly the Republic of Ireland Board’s high voltage lines and electric plant and which is used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another or to or from any Republic of Ireland Interconnector or to final customers (including such part of the North/South Circuits as is owned by the Republic of Ireland Board) (but shall not include any such lines which the Republic of Ireland Board may, with the approval of the Commission for Electricity Regulation, specify as being part of the Republic of Ireland Board’s distribution system), and shall include any Republic of Ireland Interconnector owned by the Republic of Ireland



Board.

- “representation”** includes any objection or other proposal made in writing;
- “SEM Go-Live”** means the time and date designated as such by the Authority (with the consent of the Department) for the purpose of licences granted under the Order, being the commencement date for a number of matters including the Single Electricity Market.
- “SEM Order”** means the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007;
- “Separate Business”** means each of:
- (a) the Transmission Owner Business;
  - (b) the Distribution Business; and
  - (c) the Land Bank Business,
- each taken separately from one another and from any other business of the Licensee or any affiliate or related undertaking of the Licensee, but so that where all or any part of such business is carried on by an affiliate or related undertaking of the Licensee such part of the business as is carried on by that affiliate or related undertaking shall be consolidated with any other such business of the Licensee (and of any other affiliate or related undertaking of the Licensee) so as to form a single Separate Business;
- “Single Electricity Market”** means the single wholesale electricity market for the Island of Ireland, implemented in Northern Ireland pursuant to Section 23 of the Northern Ireland

	(Miscellaneous Provisions) Act 2006;
<b>“Single Electricity Market Trading and Settlement Code”</b>	has the meaning given to that term in the Northern Ireland Market Operator Licence;
<b>“subsidiary”</b>	means a subsidiary within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986;
<b>“successor company”</b>	bears the meaning ascribed to it for the purposes of Part III of the Order;
<b>“total system”</b>	means the transmission system and the Licensee’s distribution system taken together;
<b>“transfer scheme”</b>	means the transfer scheme made under Article 69(1) of the Order approved by the Department (and whether or not it has modified it before approving it);
<b>“Transmission and Distribution Business”</b>	means the Transmission Owner Business and the Distribution Business taken together;
<b>“Transmission and Distribution System Security and Planning Standards”</b>	means the document designated as such by the Authority on or before SEM Go-Live, as modified from time to time in accordance with Condition 19;
<b>“Transmission Connection Agreement”</b>	means an agreement between the Transmission System Operator and any person in respect of connection to the All-Island Transmission Networks at entry or exit points on the transmission system;
<b>“Transmission Interface Arrangements”</b>	means the transmission interface arrangements provided for in Condition 17;
<b>“Transmission Owner Business”</b>	means the business of the Licensee (or of any affiliate or related undertaking of the Licensee) in the planning, development, construction, ownership

and maintenance of the transmission system (to the extent authorised by the Licence, including making the transmission system available for use), and in any other activity ancillary to the ownership of the transmission system, but shall not include any other business of the Licensee or any affiliate or related undertaking of the Licensee (including the Transmission System Operator Business, the Market Operation Activity and the Distribution Business);

**“transmission services”**

means those services outlined in Condition 18;

**“transmission system”**

means the system of electric lines owned by the Licensee and comprising high voltage lines and electrical plant and meters used for conveying electricity from a generating station to a substation, from one generating station to another, and from one substation to another within the Authorised Area (including such part of the North/South Circuits as is owned by the Licensee) (except any such lines which the Authority may approve as being part of the Licensee’s distribution system) and any other electric lines which the Authority may specify as forming part of the transmission system, but shall not include any Interconnector;

**“Transmission System Operator”**

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

**“Transmission System Operator Business”**

has the meaning given to that term in the Transmission System Operator Licence;

**“Transmission System Operator Licence”**

means the licence granted under Article 10(1)(b) of the Order to SONI Limited (a body corporate

registered in Northern Ireland under company number NI038715) on 3 July 2007;

**“Transmission Use of System Agreement”** means an agreement between the Transmission System Operator and an eligible person (as defined in condition 25 of the Transmission System Operator Licence) for use of the All-Island Transmission Networks in respect of generation or supply in Northern Ireland;

**“undertaking”** bears the meaning ascribed to it by Article 267 of the Companies (Northern Ireland) Order 1986;

**“year”** means a period of 12 months commencing on 1st January.

4 Unless otherwise specified:

- (a) any reference to a numbered Part or Schedule is a reference to the Part or Schedule bearing that number herein;
- (b) any reference to a numbered Condition or Annex or to a numbered Schedule is respectively a reference to the Condition, Annex or Schedule bearing that number in the Part in which the reference occurs;
- (c) any reference to “the **Conditions**” in relation to this Licence means the Conditions to which this Licence is subject and references to “**any Conditions**” and to any cognate expression shall be construed accordingly;
- (d) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the Condition, Annex or Schedule in which the reference occurs; and
- (e) (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, Annex, Schedule or paragraph shall not affect the construction hereof.
- 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 24 of the Interpretation Act (Northern Ireland) 1954 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 Authority pursuant to this Licence shall be delivered or served as aforesaid.
- 8
- (a) Each relevant legal instrument shall, if the condition under which it was issued is modified at SEM Go-Live in accordance with Condition A, continue to have effect under any corresponding provision of Chapter 2 as modified, as if it had been made under that corresponding provision.
- (b) For the purposes of paragraphs 8(a) and 8(c) a “**relevant legal instrument**” means any direction, consent, approval, determination or other instrument issued by the Authority or the Department, prior to SEM Go-Live, in accordance with a condition in Chapter 2.
- (c) For the purposes of paragraph 8(a), a “**corresponding provision**” of Chapter 2 shall be any provision which, following its modification at SEM Go-Live in accordance with Condition A, has (notwithstanding that it has been renumbered, moved, deleted and replaced, or otherwise amended in any way) substantially the same purpose and effect as the provision under which a relevant legal instrument was issued.

**Condition 2 Preparation of Accounts**

- 1 The first financial year of the Licensee shall run from 1 April 1992 to 31 March 1993 and thereafter each financial year of the Licensee shall run from 1 April to the following 31 March.
- 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 each Separate Business and showing the financial affairs of each such Separate Business.
- 3 The Licensee shall, in respect of each Separate Business:
  - (a) keep or cause to be kept for the period referred to in Article 230(5)(b) of the Companies (Northern Ireland) Order 1986 and in the manner referred to in that Article, such accounting records in respect of each Separate Business as would by Article 229 of the Companies (Northern Ireland) Order 1986 be required to be kept in respect of each such business if it were carried on by a separate company, so that the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to, each Separate Business are separately identifiable in the books of the Licensee (and any affiliate or related undertaking of the Licensee) from those of any other business; and
  - (b) prepare on a consistent basis from such accounting records in respect of the financial year commencing on 1 April 1992 and each subsequent financial year, accounting statements comprising a profit and loss account, a balance sheet and a cash flow statement, together with notes thereto, and showing separately in respect of each Separate Business and in appropriate detail the amounts of any revenue, cost, asset, liability, reserve or provision which has been either:
    - (i) charged from or to any other business (whether or not a Separate Business) together with a description of the basis of that charge; or
    - (ii) determined by apportionment or allocation between any Separate

Business and any other business (whether or not a Separate Business) together with a description of the basis of the apportionment or allocation;

- (c) procure, under joint obligation with the Authority, in respect of the accounting statements prepared in accordance with this Condition in respect of a financial year, a report by the Auditors and addressed to both the Licensee and the Authority stating whether in their opinion those statements have been properly prepared in accordance with this Condition and give a true and fair view of the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to, the Separate Business to which the statements relate;
- (d) take all appropriate steps within its power to procure a report by the Auditors and addressed to the Authority verifying whether the obligation to avoid discrimination and cross-subsidies, as referred to in paragraph 3 of Article 19 of the Directive, has been respected; and
- (e) facilitate the completion of the Auditor's reports referred to in sub-paragraphs (c) and (d) above and the accounting statements referred to in sub-paragraph (b) above as soon as reasonably practicable and in any event not later than six months after the end of the financial year to which they relate provided that in the case of the account, report and statements which but for this proviso, would have been due on 31 December 1992, they shall instead be due on 31 January 1993.

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- (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) of paragraph 3 from those applied in respect of the previous financial year, unless the Authority shall previously have issued directions for the purposes of this Condition directing the Licensee to change such bases in a manner set out in the directions or the Authority gives its prior written approval to the change in such bases. The Licensee shall comply with any directions issued for the purposes of this Condition.
- (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 Authority for the purposes of this Condition, in addition to preparing accounting statements on those bases which it has adopted, prepare such accounting statements on the bases which applied in respect of the immediately preceding financial year.

- 5 Accounting statements in respect of a financial year prepared under sub-paragraph (b) of paragraph 3 shall, so far as reasonably practicable and unless otherwise approved by the Authority having regard to the purposes of this Condition:
- (a) have the same content and format (in relation to each Separate Business) as the annual accounts of the Licensee (and any affiliate or related undertaking of the Licensee) prepared under Article 234 and, where appropriate, Article 235 of the Companies (Northern Ireland) Order 1986 and conform to the best commercial accounting practices including International Accounting Standards and International Financial Reporting Standards issued by the International Accounting Standards Board and adopted for use in the European Union; and
  - (b) state the accounting policies adopted; and
  - (c) (with the exception of the part of such statements which shows separately the amounts charged, apportioned or allocated and describes the bases of charge or apportionment or allocation respectively), be published with the annual accounts of the Licensee.
- 6 References in this Condition to costs or liabilities of, or reasonably attributable to, any Separate Business shall be construed as excluding taxation, capital liabilities which do not relate principally to a particular Separate Business, and interest thereon; and references to any accounting statement shall be construed accordingly.



**Condition 3 Availability of Resources and Undertaking of Ultimate Controller**

Availability of Resources

- 1 The Licensee shall at all times act in a manner calculated to secure that it has sufficient resources (including, without limitation, management resources, financial resources and financial facilities) to enable it to:
  - (a) carry on the Separate Businesses; and
  - (b) comply with its obligations under the Order, the Energy Order, the SEM Order and this Licence.
  
- 2 The Licensee shall submit a certificate addressed to the Authority, approved by a resolution of the Board of Directors of the Licensee and signed by a director of the Licensee pursuant to that resolution. Such certificate shall be submitted on 30 September 1999 and thereafter on 30 September of each subsequent year. Each certificate shall be in one of the following forms:
  - (a) “After making enquiries, the directors of the Licensee have a reasonable expectation that the Licensee will have available to it, after taking into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid, sufficient financial resources and financial facilities to enable the Licensee to carry on the Separate Businesses for a period of 12 months from the date of this certificate.”
  - (b) “After making enquiries, the directors of the Licensee have a reasonable expectation, subject to the Terms of this certificate, that the Licensee will have available to it, after taking into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid, sufficient financial resources and financial facilities to enable the Licensee to carry on the Separate Businesses for a period of 12 months from the date of this certificate. However, they would like to draw attention to the following factors which may cast doubt on the ability of the Licensee to carry on the Separate Businesses.”

(c) “In the opinion of the directors of the Licensee, the Licensee will not have available to it sufficient financial resources and financial facilities to enable the Licensee to carry on the Separate Businesses for a period of 12 months from the date of this certificate.”

3 The Licensee shall submit to the Authority together with the certificate referred to in paragraph 2 of this condition a statement of the main factors which the directors of the Licensee have taken into account in giving that certificate.

4 The Licensee shall inform the Authority in writing immediately if the directors of the Licensee become aware of any circumstances which cause them no longer to have the reasonable expectation expressed in the then most recent certificate given under paragraph 2.

5 The Licensee shall use its best endeavours to obtain and submit to the Authority with each certificate provided for in paragraph 2 a report prepared by its auditors and addressed to the Authority stating whether or not the auditors are aware of any inconsistencies between, on the one hand, that certificate and the statement submitted with it and, on the other hand, any information which they obtained during their audit work.

Undertaking of ultimate controller

6 The Licensee shall procure from each company or other person which the Licensee knows or reasonably should know is at any time an ultimate controller of the Licensee a legally enforceable undertaking in favour of the Licensee in a form specified by the Authority that the ultimate controller will refrain from any action, and will procure that every subsidiary of the ultimate controller (other than the Licensee and its subsidiaries) will refrain from any action, which would then be likely to cause the Licensee to breach any of its obligations under the Order, the Energy Order, the SEM Order or this Licence. Such undertaking shall be obtained within 7 days after the date when these modifications become effective, or after the person in question becomes an ultimate controller (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 an ultimate controller of the Licensee.

- 7 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 6;
  - (b) inform the Authority immediately in writing if the directors of the Licensee become aware that the undertaking has ceased to be legally enforceable or that its terms have been breached; and
  - (c) comply with any direction from the Authority to enforce any such undertaking.
- 8 The Licensee shall not, save with the written consent of the Authority, enter (directly or indirectly) into any agreement or arrangement with an ultimate controller of the Licensee or any of its subsidiaries (other than subsidiaries of the Licensee) at a time when:
- (a) an undertaking complying with paragraph 6 is not in place in relation to that ultimate controller; or
  - (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 7.
- 9 In this Condition 3, unless the context otherwise required, “ultimate controller” means:
- (a) any holding company of the Licensee, which is not itself a subsidiary of another company; and/or
  - (b) any person who (whether alone or with a person or persons connected with him) is in a position to control, or to exercise influence over, the policy of the Licensee, or any holding company of the Licensee, by virtue of:
    - (i) rights under contractual arrangement to which he is a party or of which his is a beneficiary;
    - (ii) rights of ownership (including rights attached to or deriving from

securities or rights under a trust) which are held by him or of which he is a beneficiary,

but shall exclude any director or employee of a corporate body in his capacity as such and any minister, ministry, department, agency, authority, official or statutory person,

and a person shall be considered to be connected with another person if he is a party to any arrangement regarding the exercise of any such right as are described in paragraph (b) above.

**Condition 3A. Board Independence**

1 Within one year from the date upon which this Condition becomes effective, and at all times thereafter, the Licensee shall:

(a) ensure that its board of directors comprises a majority of independent non-executive directors who are persons of standing who individually possess:

(i) relevant experience and knowledge of the energy industry; or

(ii) relevant experience and knowledge of any other regulated industry; or

(iii) substantial private sector commercial or financial experience gained at board level (or equivalent) in another organisation of comparable size and standing to the Licensee,

provided that at least one independent non-executive director must possess relevant experience and knowledge of the energy industry; and

(b) demonstrate to the satisfaction of the Authority, prior to any appointment from time to time of a board director, that the said appointment will not cause the Licensee to enter into any breach of the requirements contained in subparagraph (a).

2 If at any time the Licensee, by virtue of any person being appointed as, or ceasing to be, a director of the Licensee (for the purposes of this Condition, an “**Event**”), is unable to comply with the requirements of paragraph 1, the Licensee shall take such steps as are necessary to ensure that compliance is achieved as soon as reasonably practicable after that Event and in any case within two months (or such longer period as may be agreed by the Authority) of that Event.

3 In this Condition:

**“independent non-executive director”** means a person who has not been employed by the Licensee, its ultimate controllers or any affiliate or related undertaking of the Licensee within the last five years; and who does not have a material business

relationship with the Licensee, its ultimate controllers or any affiliate or related undertaking of the Licensee.

**“ultimate controller”**

has the meaning given to that expression in Condition 3.

**Condition 4 Restriction on Dividends**

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

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

- (a) that the Licensee is in compliance in all material respects with all the obligations imposed on it by conditions 3, 5, 8, 9, 9A, 13 and 14 of the Licence; and
- (b) that the making of a distribution of [*amount*] on [*date*] will not, either alone or when taken together with other circumstances reasonably foreseeable at the date of this certificate, cause the Licensee to be in breach to a material extent of any of those obligations in the future.”

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

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

**Condition 5 Prohibition of Cross-Subsidies**

- 1 The Licensee shall procure that no Separate Business gives any cross-subsidy to, or receives any cross-subsidy from, any other business of the Licensee or of an affiliate or related undertaking of the Licensee (whether or not a Separate Business).
- 2 Nothing which the Licensee is obliged to do or not do pursuant to this Licence or any other document which grants a licence to the Licensee under the Order shall be regarded as a cross-subsidy for the purposes of this Condition.



**Condition 6 Health and Safety of Employees**

1 The Licensee shall:

- (a) acting jointly and in co-operation with the holders of other licences granted under the Order, consider and discuss matters of mutual concern in respect of the health and safety of persons employed by them; and
- (b) establish and maintain appropriate processes for consultation with representatives of the Licensee's employees in respect of the health and safety of those employees.

**Condition 7 Payment of Fees**

- 1 The Licensee shall, at the times stated hereunder, pay to the Department fees of the amount specified in or determined under the following paragraphs of this Condition.
- 2 Within 30 days after the grant of this Licence, the Licensee shall pay to the Department, £300,000.
- 3 In respect of the year beginning on 1 April 1993, and in each subsequent year, the Licensee shall pay to the Department a fee which is the aggregate of the following amounts:
  - (a) an amount equal to the proportion which the Authority shall determine of the amount estimated by the Authority, according to a method which has previously been disclosed in writing to the Licensee, as likely to be its costs during the year in question in the exercise of its functions under the Order, the Energy Order, the SEM Order or the Directive Regulations in relation to the holders of licences granted under Article 10 of the Order;
  - (b) an amount which is a proportion, as determined by the Authority, of the amount notified to the Authority by the General Consumer Council and approved by the Department as being the General Consumer Council's estimate of its likely costs during the year in question in the exercise of the functions relating to electricity assigned to it by or under the Order, the Energy Order, the SEM Order or the Directive Regulations and any other such functions as it has been or may be required to exercise by the Authority, or, in the event that the Authority shall not have received such notification by 31 July in the year in question, an amount which is the relevant proportion of the Authority's estimate of such likely costs (having regard to any estimate of such costs in any forward work programme published by the General Consumer Council in respect of the year in question);
  - (c) an amount which is a proportion as determined by the Authority of the amount estimated by the Authority (in consultation with the Competition Commission) as having been incurred in the calendar year immediately preceding the 1 April

in question by the Competition Commission in connection with references made to it under Article 15 of the Order with respect to the Licence or any other licence granted under Article 10(1)(b) of the Order; and

- (d) the difference (being a positive or negative amount), if any, between:
  - (i) the amount of the fee paid by the Licensee in respect of the year immediately preceding the 1 April in question less any refund paid to the Licensee in respect of that year under paragraph 4 below; and
  - (ii) the amount which that fee would have been in respect of that year had:
    - (A) the amount comprised therein under sub-paragraph (a) above been calculated by reference to the total costs of the Authority in connection with its functions under the Order, the SEM Order and the Directive Regulations and its functions in relation to electricity under the Energy Order, and the proportion of those costs actually attributable to this Licence; and
    - (B) the amount comprised therein under sub-paragraph (b) above been calculated by reference to the relevant proportion of the total costs of the General Consumer Council in connection with the functions referred to in sub-paragraph (b) above and, where appropriate, the proportion of those costs actually attributable to this Licence,

such total costs being apportioned, in each case, as determined by the Authority according to a method previously disclosed in writing to the Licensee,

and the fee shall be paid by the Licensee to the Department within one month of the Authority giving notice to the Licensee of its amount if that notice is given within 6 months of the beginning of the year in respect of which the fee is payable.

- 4 In respect of the year beginning on 1 April 1998 and for each subsequent year, the Authority may pay the Licensee an amount (“**the refund**”) calculated in accordance

with the method previously disclosed in writing to the Licensee and by reference to the difference between:

- (a) the proportion of the fee for that year paid by the Licensee which is attributable to the Authority's estimate in accordance with paragraph 3(a) and the estimate of the General Consumer Council or the Authority (as appropriate) in accordance with paragraph 3(b); and
- (b) the Authority's reasonable revised estimate of those costs (taking account of any revised estimate of the costs referred to in paragraph 3(b) which is approved by the Department and notified to the Authority by the General Consumer Council),

provided that any such refund shall be paid to the Licensee on or before 31 March in the year to which the licence fee relates.

**Condition 8 Provision of Information to the Authority**

- 1 Subject to paragraphs 6 and 7, the Licensee shall furnish to the Authority, in such manner and at such times as the Authority may require, such information and shall procure and furnish to it such reports, as the Authority may consider necessary in the light of the Conditions or any Schedule or as it may require for the purpose of performing:
  - (a) the functions assigned to it by or under the Order, the Energy Order, the SEM Order or the Directive Regulations; and
  - (b) any functions transferred to it under the Order, the Energy Order, the SEM Order or the Directive Regulations.
  
- 2 The Licensee shall, within 7 days after the date when these modifications become effective or after the person in question becomes an ultimate controller (as the case may be), procure from each person which the Licensee knows (or reasonably should know) is at any time an ultimate controller of the Licensee a legally enforceable undertaking in favour of the Licensee in a form specified by the Authority, which shall provide that that ultimate controller will give to the Licensee, and will procure that each subsidiary of that ultimate controller (other than the Licensee and its subsidiaries) will give to the Licensee, all such information as may be necessary to enable the Licensee to comply fully with paragraph 1 of this Condition. Such undertaking shall remain in force for as long as the Licensee remains the holder of this Licence and the giver of the undertaking remains an ultimate controller of the Licensee.
  
- 3 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 any undertakings pursuant to paragraph 2;
  - (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.
- 4 The Licensee shall not, save with the consent in writing of the Authority, enter (directly or indirectly) into any contract or arrangement with an ultimate controller of the Licensee or any of the subsidiaries of that ultimate controller (other than the subsidiaries of the Licensee) at a time when:
- (a) an undertaking complying with paragraph 2 is not in place in respect of that ultimate controller; or
- (b) there is an unremedied breach of such an undertaking; or
- (c) the Licensee is in breach of the terms of any direction issued by the Authority under paragraph 3 in respect of such an undertaking.
- 5 Without prejudice to the generality of paragraph 1, the Authority may call for the furnishing of accounting information which is more extensive than or differs from that required to be prepared and supplied to the Authority under Condition 3.
- 6 The Licensee may not be required by the Authority to furnish it under this Condition with information for the purpose of the exercise of its functions under Article 7 of the Energy Order.
- 7 The Licensee may not be required by the Authority to furnish it under this Condition with any information in relation to an enforcement matter which the Licensee could not be compelled to produce or give in evidence in civil proceedings in the High Court.
- 8 The power of the Authority to call for information under paragraph 1 is in addition to the power of the Authority to call for information under or pursuant to any other Condition or any Schedule.
- 9 In this Condition:
- “**information**” shall include any documents, accounts, estimates, returns or reports (whether or not prepared specifically at the request of the Authority) of any description specified by the Authority; and

**“ultimate controller”** means:

- (a) any person which is a holding company of the Licensee, and which is not itself a subsidiary of another company; and/or
- (b) any person who (whether alone or with a person or persons connected with him) is in a position to control, or to exercise significant influence over, the policy of the Licensee, or any holding company of the Licensee, by virtue of:
  - (i) rights under contractual arrangements to which he is a party or of which he is a beneficiary;
  - (ii) rights of ownership (including rights attached to or deriving from securities or rights under a trust) which are held by him or of which he is a beneficiary,

but shall exclude any director or employee of a corporate body in his capacity as such and any minister, ministry, department, agency, authority, official or statutory person;

and a person shall be considered to be connected with another person if he is party to any arrangement regarding the exercise of any such rights as are described in paragraph (b) above.

**Condition 9 Disposal of Relevant Assets and Indebtedness**

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 paragraphs 2A and 3, the Licensee shall give to the Authority not less than 2 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.
- 2A Notwithstanding paragraphs 1 and 2, the Licensee may relinquish operational control over the transmission system to the Transmission System Operator in accordance with the Transmission Interface Arrangements.
- 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:

(a) subject to paragraph 7, 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.

#### Indebtedness

5 Without prejudice to paragraphs 1 to 4, the Licensee shall not after the date when these modifications became effective, without the written consent of the Authority after disclosure of all material facts by the Licensee to the Authority:

(a) create, or permit to remain in effect, any mortgage, charge, pledge, lien or other form of security or encumbrance whatsoever, undertake any indebtedness to any other person or enter into any guarantee of any obligation otherwise than:

(i) on an arm's length basis;

(ii) on normal commercial terms;

(iii) for a Permitted Purpose; and

(iv) (if the transaction is within the ambit of paragraph 1) in accordance with paragraphs 3 and 4,

provided that nothing in this Condition shall prevent the Licensee guaranteeing any obligations owed by an affiliate or related undertaking of the Licensee which has been or is to be incurred for a Permitted Purpose;

- (b) transfer, lease, license or lend any sum or sums, asset, right or benefit to any affiliate or related undertaking of the Licensee otherwise than by way of:
  - (i) a dividend or other distribution out of distributable reserves;
  - (ii) repayment of capital;
  - (iii) payment properly due for any goods, services or assets provided on an arm's length basis and on normal commercial terms;
  - (iv) a transfer, lease, licence or loan of any asset, right or benefit on an arm's length basis and on normal commercial terms and made in compliance with the payment requirement referred to in paragraph 6;
  - (v) repayment of any loan or payment of any interest on a loan not prohibited by sub-paragraph (a);
  - (vi) payments for group corporation tax relief or for the surrender of Advance Corporation Tax calculated on a basis not exceeding the value of the benefit received;
  - (vii) a transfer for the purpose of satisfying paragraph 8 of Condition 14;
  - (viii) an acquisition of shares in conformity with paragraph 7 of Condition 14; or
  - (ix) a loan to any affiliate or related undertaking of the Licensee, which is made for a Permitted Purpose,

provided however, that paragraph 7 of Condition 9A shall prevail where that paragraph applies;

- (c) enter into an agreement or incur a commitment incorporating a cross-default obligation;

(d) save for the Northern Ireland Power Project Finance Contract made between European Investment Bank and Northern Ireland Electricity plc on 16 December 1999, continue, or permit to remain in effect, any agreement or commitment incorporating a cross-default obligation subsisting at the date this paragraph 5(d) takes effect, save that the Licensee may permit any cross-default obligation in existence at that date to remain in effect for a period not exceeding twelve months from that date, provided that the cross-default obligation is solely referable to an instrument relating to the provision of a loan or other financial facilities granted prior to that date and the terms on which those facilities have been made available as subsisting on that date are not varied or otherwise made more onerous,

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

6 The payment requirement referred to in paragraph 5(b)(iv) is that the consideration due in respect of the transfer, lease, licence or loan of the asset, good, right or benefit in question is paid in full prior to such transfer, lease, licence or loan unless:

(a) the counter-party to the transaction has, and maintains until payment is made in full, an investment grade credit rating; or

(b) the obligations of the counter-party to the transaction are fully and unconditionally guaranteed throughout the period during which any part of the consideration remains outstanding by a guarantor which has and maintains an investment grade credit rating.

7 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 electricity undertaking liable to be materially affected by the disposal in question.

8 Notwithstanding paragraph 5, the Licensee shall be entitled:

(a) to guarantee the payment obligations of the Power Procurement Business

under the cancellable generating unit agreements; and

- (b) while the Transmission System Operator is an affiliate of the Licensee, enter into such loan arrangements with the Transmission System Operator as the Authority may approve from time to time.

9 In this Condition, unless the context otherwise requires:

**“cancellable generating unit agreement”** has the meaning given to that expression in the NIE Energy Supply Licence.

**“cross-default obligation”** means a term of any agreement or arrangement whereby the Licensee’s liability to pay or repay any debt or other sum arises or is increased or accelerated or could reasonably be expected to be capable of arising, increasing or of being accelerated by reason of a default (howsoever such default may be described or defined) by any person other than the Licensee, unless:

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

**“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.

**“indebtedness”**

means all liabilities now or hereafter due, owing or incurred, whether actual or contingent, whether solely or jointly with any other person and whether as principal or surety, together with any interest accruing thereon and all costs, charges, penalties and expenses incurred in connection therewith.

**“investment grade credit rating”**

has the meaning given to that expression in Condition 9A.

**“relevant asset”**

means:

- (a) any asset for the time being forming part of the total system or any control centre for use in conjunction with the Licensee’s distribution system;
- (b) any interest in an Interconnector;
- (c) any other asset for the time being employed or held for employment by the Licensee in the performance of any obligation under the Order, the Energy Order, the SEM Order or the Licence;
- (d) any asset that, the disposal or relinquishment of operational control by the Licensee of, would adversely affect the ability of: (i) the Transmission System Operator; (ii) the Republic of Ireland System Operator; (ii) the Northern Ireland Market Operator Licensee; and/or (iv) the Republic of Ireland Market Operator Licensee, to comply with their respective

obligations in those capacities under any applicable licence, law or regulation; and

- (e) any legal or beneficial right, title or interest in land upon which any of the foregoing is situate other than an interest in land to which Condition 23 applies.

**“relinquishment of operational control”**

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

**“Republic of Ireland Market Operator Licensee”**

has the meaning given to that expression in the Northern Ireland Market Operator Licence.

**Condition 9A. Financial Gearing and Credit Rating**

1 The Licensee shall, within 14 days of this Condition 9A taking effect and thereafter by 30 June of each year, submit to the Authority a certificate, approved by a resolution of the board of directors of the Licensee and signed by a director of the Licensee pursuant to that resolution, showing the Financial Gearing as at the end of the preceding Financial Year. The Licensee shall provide the Authority with such information to support that certificate as the Authority may request.

2 For the purposes of paragraph 1:

**“Financial Gearing”** means Net Debt as a percentage of the regulatory asset base of the Transmission and Distribution Business such regulatory asset base being equivalent to the value of the term  $CRAB_t$  as calculated in accordance with Annex 2;

**“Net Debt”** means the Licensee’s total borrowings (including bank loans, debt securities, finance leases, hire purchase contracts and non-equity shares) less the Licensee’s cash and cash equivalents.

3 The following paragraphs of this condition shall only apply where the Authority has issued a direction stating that they are to apply, and shall cease to apply on the expiry of any period specified for such purpose in that direction or on the Authority directing that they are no longer to apply.

4 The Licensee shall take all appropriate steps to ensure that the Licensee obtains and thereafter maintains an investment grade credit rating.

5 In this condition, an “investment grade credit rating” means:

- (a) unless sub-paragraph (b) below applies:
  - (i) an issuer rating of not less than BBB- by Standard & Poor’s Ratings Group or any of its subsidiaries;

- (ii) an issuer rating of not less than Baa3 by Moody's Investors Service Inc. or any of its subsidiaries;
    - (iii) an issuer senior unsecured debt rating of not less than BBB- by Fitch Ratings Ltd or any of its subsidiaries; or
    - (iv) an equivalent rating from any other reputable credit rating agency which, in the opinion of the Authority, notified in writing to the Licensee, has comparable standing in both the United Kingdom and the United States of America; or
  - (b) such higher rating as may be specified by those agencies from time to time as the lowest investment grade credit rating.
- 6 Paragraph 7 shall apply if at any time which is not less than 4 months after the Authority has issued the direction referred to in paragraph 3:
- (a) the Licensee does not hold an investment grade credit rating;
  - (b) where the Licensee has a rating with more than one of the rating agencies referred to in paragraph 5, one or more of the ratings held is below those referred to in paragraph 5; or
  - (c) the Licensee has one of the ratings referred to in paragraph 5 and:
    - (i) is on review for possible downgrade; or
    - (ii) the rating outlook of the Licensee as specified by one or more of the credit rating agencies referred to in paragraph 5 has been changed from stable or positive to negative.
- 7 Where paragraph 6 applies, the Licensee may not without the prior written consent of the Authority (following disclosure of all material facts) transfer, lease, license or lend any sum or sums, asset, right or benefit to any affiliate or related undertaking of the Licensee as described or referred to in paragraph 5(b) of Condition 9, otherwise than by way of:
- (a) payment properly due for any goods, services or assets in relation to



commitments entered into prior to the date on which the circumstances described in paragraph 6 arise, and which are provided on an arm's length basis and on normal commercial terms;

- (b) a transfer, lease, licence or loan of any sum or sums, asset, right or benefit on an arm's length basis, on normal commercial terms and where the value of the consideration due in respect of the transaction in question is payable wholly in cash and is paid in full when the transaction is entered into;
- (c) repayment of, or payment of interest on, a loan not prohibited by paragraph 5(a) of Condition 9 and which was contracted prior to the date on which the circumstances in paragraph 6 arise, provided that such payment is not made earlier than the original due date for payment in accordance with its terms; and
- (d) payments for group corporation tax relief or for the surrender of Advance Corporation Tax calculated on a basis not exceeding the value of the benefit received, provided that the payments are not made before the date on which the amounts of tax thereby relieved would otherwise have been due.

**Condition 10 Restriction on Use of Certain Information**

General Restriction

- 1 Where the Licensee, or any affiliate or related undertaking of the Licensee, is in possession of any protected information, the Licensee shall (and shall procure that such affiliate or related undertaking shall) procure:
  - (a) that neither the Licensee nor any other person shall use that protected information for the purpose of obtaining any unfair commercial advantage in relation to any of the Separate Businesses or any other business;
  - (b) that the protected information is not disclosed to any other person except with the prior consent in writing of each person to whose affairs that information relates; and
  - (c) that the protected information in the possession of any Separate Business is not disclosed to any other business of the Licensee except with the prior consent in writing of each person to whose affairs that information relates (provided that, for the purposes of this sub-paragraph, the Transmission Owner Business and the Distribution Business shall constitute a single Separate Business).
- 2 The Licensee's obligation under paragraph 1 to procure any action on the part of an affiliate or related undertaking shall be taken, in relation to any affiliate or related undertaking which has control of the Licensee, as an obligation to use all reasonable endeavours to procure the taking of that action by obtaining (and enforcing) an appropriate contractual undertaking from that affiliate or related undertaking in respect of the protected information.
- 3 The Licensee shall implement such measures and procedures and take all such other steps as may be specified in directions issued by the Authority from time to time for the purposes of this Condition and considered by the Authority to be reasonably necessary for the purpose of securing compliance by the Licensee with its obligations under paragraph 1.

Exceptions

- 4 Sub-paragraphs 1(b) and 1(c) shall not apply to any disclosure of information which is:
- (a) authorised by Article 63(3) or (4) of the Energy Order;
  - (b) made in compliance with the duties of the Licensee, or of any affiliate or related undertaking of the Licensee, in accordance with any:
    - (i) licence granted under the Order (including the Licence);
    - (ii) applicable law (including the Order, the Energy Order, the SEM Order and the Directive Regulations);
    - (iii) requirement of a competent authority;
    - (iv) judicial or arbitral process of a competent jurisdiction; or
    - (v) requirement of a relevant stock exchange, or of the Panel on Takeovers and Mergers;
  - (c) permitted by and made in compliance with any document referred to in this Licence with which the Licensee or any affiliate or related undertaking of the Licensee is required to comply; or
  - (d) necessary in order to enable the Licensee to enter into or give effect to arrangements for the purpose of carrying on any of the Separate Businesses.

Restrictions Regarding Personnel and Advisers

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

Evidence

6 The Licensee shall:

- (a) procure and furnish to the Authority, in such manner and at such times as the Authority may require, such information and reports as the Authority may consider necessary concerning the performance by the Licensee of its obligations under paragraphs 1 and 5 and the effectiveness of the measures, procedures and steps specified in the directions referred to in paragraph 3;
- (b) procure that access to any premises of the Licensee shall be given at any time and from time to time to any nominated person(s) for the purpose of investigating whether the Licensee has performed its obligations under paragraphs 1, 3 and 5, and shall procure that the Licensee and its employees co-operate in any such investigation to the extent requested by the nominated person(s); and
- (c) procure that nominated person(s) shall be entitled to inspect and/or take copies of such records and data of the Licensee as they shall consider to be reasonably necessary for the purpose referred to in sub-paragraph (b) above.

Definitions

7 In this Condition, unless the context otherwise requires:

**“authorised adviser”** means such professional advisers of the Licensee (or of any affiliate or related undertaking of the Licensee), engaged and acting in that capacity, as require access to any protected information;

**“authorised purpose”** means the management and operation of each Separate Business, or, where protected information is disclosed to another business of the Licensee (or of an affiliate or related undertaking of the Licensee) in accordance with paragraph 4, the purpose for which such disclosure was made;

<b>“authorised recipient”</b>	means, in relation to any protected information, any business person who, before the protected information had been divulged to him by the Licensee (or any other business person), had been informed of the nature and effect of this Condition and who requires access to such protected information for the proper performance of his duties as a business person in relation to the pursuit of an authorised purpose;
<b>“business person”</b>	means any employee, subcontractor or agent of the Licensee (or of any affiliate or related undertaking of the Licensee) or any authorised adviser to such persons;
<b>“control”</b>	has the meaning attributed to it by section 416 of the Income and Corporation Taxes Act 1988;
<b>“nominated person(s)”</b>	means the person(s) from time to time nominated by the Authority for the purposes of this Condition by notice to the Licensee;
<b>“protected information”</b>	means any information which is held or obtained by the Licensee (or any affiliate or related undertaking of the Licensee) pursuant to or by virtue of its carrying on of the Separate Businesses, but excluding information which is in, or comes into, the public domain other than as a result of any breach by the Licensee of this Licence (or any other legal obligation of the Licensee).

**Condition 11 Security arrangements**

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

**Condition 12 Independence of the Transmission and Distribution 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 Transmission and Distribution Business from any Associated Business. Nothing in this Condition 12 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 Transmission and Distribution 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;

- (b) it does not hold or acquire shares in a holding company of the Licensee or in any electricity undertaking engaged in the generation or supply of electricity on the Island of Ireland;
- (c) decisions for which it is responsible relating to the operation, maintenance and/or development of the total system (or any part of it) are taken by those persons who are directors of the Licensee or who are employed by, and are engaged in, the operation and management of, the Transmission and Distribution Business (and no others), provided that this paragraph 3(c) shall not prevent a relevant holding company approving the Licensee's capital expenditure budget nor exercising its corporate governance role in relation to the Licensee where it does 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;
- (d) any Associated Business does not use or have access to:
  - (i) premises or parts of premises occupied by persons engaged in the management or operation of the Transmission and Distribution Business, except where access is allowed to electricity undertakings (or a class of electricity undertakings not limited to one or more Associated Businesses) generally, in which case Associated Businesses may be allowed access to the same extent, as further detailed in the Compliance Plan;
  - (ii) systems for the recording, processing or storage of data to which persons engaged in the management or operation of the Transmission and Distribution Business also have access (save to the extent the Authority consents to such use or access);
  - (iii) equipment, facilities or property employed for the management or operation of the Transmission and Distribution Business (save to the extent the Authority consents to such use or access); and
  - (iv) the services of persons who are (whether or not as their principal occupation) engaged in the management or operation of the



Transmission and Distribution Business (save to the extent the Authority consents to such use or access);

- (e) it can and does, in so far as is legally possible:
  - (i) ensure that any director of the Licensee is not at the same time also a director of a company which carries on an Associated Business engaged in the supply or generation of electricity; and
  - (ii) prevent any person who has ceased to be engaged in the management or operation of the Transmission and Distribution Business from being engaged in the activities of any Associated Business that is engaged in the generation or supply of electricity until the expiry of an appropriate time from the date on which he ceased to be engaged by the Transmission and Distribution Business, an appropriate time being:
    - (A) in respect of those previously engaged in management, a period of at least 3 months; and
    - (B) in respect of those previously engaged in operation, a period of 3 months or as otherwise specified in the Compliance Plan; and
- (f) an up-to-date register of all persons engaged by the Transmission and Distribution Business, confirming that the provisions of paragraph (e) have been complied with in respect of each person so engaged, is established.

3A The Licensee shall procure from each relevant holding company a legally enforceable undertaking in favour of the Licensee in a form approved by the Authority that the relevant holding company will not exercise its corporate governance role in relation to the Licensee 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. Such undertaking shall be obtained within 7 days after the date when this paragraph becomes 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.

- 3B The Licensee shall:
- (g) 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 3A;
  - (h) 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
  - (i) comply with any direction from the Authority to enforce any such undertaking.
- 3C 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:
- (j) an undertaking complying with paragraph 3A is not in place in relation to that relevant holding company; or
  - (k) there is an unremedied breach of such undertaking; or
  - (l) the Licensee is in breach of the terms of any direction issued by the Authority under paragraph 3B.
- 3D Where and to the extent that a relevant holding company exercises its corporate governance role in relation to the Licensee, unless that exercise falls within the relevant part of the Compliance Plan permitting such exercise in specified circumstances, the Licensee shall within 3 days of such exercise notify the Authority of that fact and provide such other information regarding such exercise as the Authority may require.
- 3E. Where this paragraph applies, the Licensee shall ensure that in carrying on the Transmission and Distribution Business, it does not, in any of the names, brands, trade names or advertising of the Transmission and Distribution Business, use a name, brand or trade name used by or associated with the Supply Business or the Power Procurement Business.
- 3F Paragraph 3E shall only apply from the date (and to the extent) specified in any

direction issued by the Authority under this paragraph, and the Authority may issue a direction:

- (a) only after having first consulted with the Licensee and with such other persons as in the opinion of the Authority are likely to be affected by the application of paragraph 3E, and having had full regard to any representations or objections made to it in the course of such consultation; and
- (b) subject to such conditions as it may see fit (which may, without limitation, include provisions for the direction ceasing to have effect on the occurrence of specified events).

Compliance Plan

4 The Licensee shall, by no later than SEM Go-Live, prepare and submit to the Authority for its approval a compliance plan setting out the practices, procedures, systems and rules of conduct which the Licensee has adopted, or intends to adopt, together with the timescales for adoption, to ensure its compliance with this Condition.

5 The Licensee shall comply with its approved compliance plan (the “**Compliance Plan**”) and shall 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, on becoming aware of any matter which has (or may have) a material impact on the managerial and/or operational independence of the Transmission and Distribution Business from any Associated Business (and, in any event, 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.
- 10 The Licensee shall ensure that persons engaged in the management and operation of the Transmission and Distribution 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 Transmission and Distribution 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;
  - (d) recommending and advising upon the remedial action which any such investigation has demonstrated to be necessary or desirable, including where necessary revising the Compliance Plan to reflect such recommendation and advice; and
  - (e) reporting, at such frequency as is determined in writing by the Authority, to the directors of the Licensee on his activities during the period covered by the report, the investigations he has conducted and on progress towards implementation of the Compliance Plan.
- 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 such investigations.

Definitions

15 In this Condition, unless the context otherwise requires:

- “Associated Business”** means any business of the Licensee (or of any affiliate or related undertaking of the Licensee) other than a relevant holding company, the Transmission and Distribution Business, the Land Bank Business, the Transmission System Operator Business and the Market Operation Activity.
- “Compliance Manager”** shall have the meaning attributed to that expression in paragraph 11.
- “Compliance Plan”** shall have the meaning attributed to that expression in paragraph 5.
- “relevant holding company”** means each holding company of the Licensee which does not itself generate or supply electricity on the Island of Ireland and which has no holding company that itself generates or supplies electricity on the Island of Ireland (regardless of whether any subsidiaries of such companies undertake such generation or supply).
- “Supply Business”** means any business of any affiliate or related undertaking of the Licensee carrying out activities authorised pursuant to a licence granted under Article

10(1)(c) of the Order.

**Condition 13 Prohibited Activities**

Restrictions on Transmission Owner

- 1 Except with the prior written consent of the Authority and in accordance with any conditions of that consent, the Licensee shall not co-ordinate or direct the flow of electricity onto or over the whole or any part of the transmission system, save to the extent it is permitted to do so under the Transmission Interface Arrangements, or is required to do so by any other Condition of this Licence.

Restriction on Acquisition and Generation of Electricity

- 2 Except with the prior written consent of the Authority and in accordance with any conditions of that consent, the Licensee shall not purchase or otherwise acquire electricity, save to the extent it is necessary to do so in undertaking the Transmission and Distribution Business.
- 3 In paragraph 2, the reference to purchase or other acquisition of electricity shall include entering into or acquiring the benefit of a contract conferring rights or obligations (including rights or obligations by way of option) in relation to or by reference to the sale, purchase or delivery of electricity at any time or the price at which electricity is sold or purchased at any time.
- 4 Except with the prior written consent of the Authority and in accordance with any conditions of that consent, the Licensee shall not generate electricity, save to the extent that it generates electricity from mobile generation sets or the Rathlin Island generation sets solely for the purposes of the Transmission and Distribution Business.
- 5 In this Condition, unless the context otherwise requires:

**“mobile generation sets”** means any generation set which is not affixed to land or to a building so as to be part of such land or building.

**“Rathlin Island generation sets”** means those generation sets located (as of 1 January 2007) on Rathlin Island (or any comparable



generation set replacing such generation sets).

**Condition 14 Ring Fencing**

- 1 No core business of the Licensee shall be held by or carried on through any affiliate or related undertaking of the Licensee.
- 2 The Licensee shall procure that all businesses of the Licensee other than the core businesses shall be held by or through affiliates or related undertakings of the Licensee.
- 3 Save as permitted under paragraphs 5(a) and 8 of Condition 9, the Licensee shall not guarantee the obligations of any subsidiary of the Licensee carrying on a non-core activity.
- 4 Save as permitted under paragraph 5(a) of Condition 9, the Licensee shall not create or permit to subsist any encumbrance in favour of any other person over any asset used or to be used in carrying on any core business to secure any obligation of any other person or of the Licensee in relation to any non-core activity.
- 5 Paragraphs 3 and 4 shall not apply to any guarantees or encumbrances subsisting on 6 March 1992.
- 6 Save as provided by paragraphs 8 and 9, the Licensee shall not conduct any business or carry on any activity other than those falling within the definition of “core businesses”.
- 7 The Licensee shall not without the written consent of the Authority acquire shares in any affiliate or related undertaking after 8 February 1998 except:
  - (a) shares in any body corporate which was a subsidiary of the Licensee on the above date;
  - (b) shares acquired in a body corporate to satisfy the obligation imposed by paragraph 8;
  - (c) shares in a body corporate which conducts business only for a Permitted Purpose (but not a purpose identified in sub-paragraphs (d) to (g) of the definition of Permitted Purpose); or

- (d) shares acquired in order to avoid dilution of a shareholding in a body corporate in which the Licensee holds shares in conformity with this Licence.
- 8 Notwithstanding paragraph 6, the Licensee may continue to conduct any business or carry on any activity otherwise prohibited by paragraph 6 which it was conducting or carrying on as at 8 February 1998 but by such later date as the Authority shall specify to the Licensee in writing, shall transfer any such business or activity to an affiliate or related undertaking or otherwise cease to conduct or carry on any such other business or activity.
- 9 Nothing in this Condition shall prevent:
- (a) any affiliate or related undertaking from conducting any business or carrying on any activity which the Licensee is prohibited from conducting or carrying on by virtue of paragraph 6 above;
  - (b) the Licensee from holding shares as, or performing the supervisory or management functions of, an investor in respect of any body corporate in which it holds an interest consistently with the provisions of this Licence;
  - (c) the Licensee from performing the supervisory or management functions of a holding company in respect of any subsidiary conducting any business or carrying out any activity which the Licensee is prohibited from conducting or carrying out by virtue of paragraph 6 above;
  - (d) the Licensee from carrying on any business or conducting any activity otherwise prohibited by paragraph 6 above to which the Authority has given its consent in writing; or
  - (e) the Licensee from carrying on any business or conducting any activity other than the Separate Businesses provided that the aggregate turnover of all such other businesses or activities does not in any financial year exceed 5% of the aggregate turnover of the Separate Businesses (excluding the turnover on transactions which the Separate Businesses make with each other) in the immediately preceding financial year.
- 10 In this Condition:

<b>“core business”</b>	means the Transmission Owner Business, the Distribution Business and the Land Bank Business.
<b>“encumbrance”</b>	means any mortgage, charge, right of possession, assignment by way of security, right of possession or other form of security interest.
<b>“non-core activity”</b>	means any activity other than that carried on as part of a core business.

**Condition 15 Non-Discrimination**

- 1 The Licensee shall not unduly discriminate as between any persons, or any class or classes of person or persons, or unduly prefer itself (or any affiliate or related undertaking) over any other person or persons, or any class or classes of person or persons, in meeting its obligations under:
  - (a) Condition 17 (Transmission Interface Arrangements);
  - (b) Condition 18 (Obligation to Provide Transmission Services);
  - (c) Condition 19 (System Security and Planning Standards and Operation of the Distribution System);
  - (d) Condition 20 (Obligations in Relation to Offers by the Transmission System Operator); and
  - (e) Condition 30 (Requirement to Offer Terms for Connection to and Use of the Distribution System).

**Condition 16 Single Electricity Market Trading and Settlement Code**

- 1 The Licensee shall accede to the Single Electricity Market Trading and Settlement Code and comply with it in so far as applicable to it in its capacity as the operator of the Licensee's distribution system.

**Condition 17 Transmission Interface Arrangements**

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, arrangements (the "**Transmission Interface Arrangements**") which:
  - (a) set out the terms and arrangements, as between the Licensee and the Transmission System Operator, referred to in paragraph 3;
  - (b) are designed to facilitate the achievement of the aims set out in paragraph 4, in so far as they relate to the transmission system; and
  - (c) set out the matters referred to in paragraph 5.
  
- 2 The Licensee shall be taken to have complied with paragraph 1 by:
  - (a) adopting as the Transmission Interface Arrangements, 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 8, 9 and 10.
  
- 3 For the purposes of this Condition, the terms and arrangements referred to in paragraph 1(a) are those which:
  - (a) are requisite for the enjoyment and discharge of the rights and obligations of:
    - (i) the Licensee in relation to the Transmission Owner Business arising under the Order, the Energy Order, the SEM Order, this Licence, the Grid Code, and such other code or document as may be specified from time to time by the Authority; and
    - (ii) the Transmission System Operator arising under the Order, the Energy Order, the SEM Order, the Transmission System Operator Licence, the

Grid Code, the System Operator Agreement the Single Electricity Market Trading and Settlement Code, any Transmission Connection Agreement, any Transmission Use of System Agreement and such other code or document as may be specified from time to time by the Authority; and

- (b) provide for matters which include:
  - (i) the provision of transmission services by the Licensee;
  - (ii) the technical levels to be complied with by the Transmission System Operator in relation to the transmission services;
  - (iii) the operation, including the configuration, of the transmission system;
  - (iv) matters to enable responses to (and to progress any works necessitated by) applications received for use of the All-Island Transmission Networks and/or new connections (or modifications of existing connections) to the All-Island Transmission Networks (at an entry or exit point on the transmission system or the Republic of Ireland transmission system);
  - (v) the arrangements whereby the transmission system is to be planned, developed and maintained (by the Licensee) and operated (by the Transmission System Operator);
  - (vi) the arrangements, as between the Licensee and the Transmission System Operator, for the planning and development of the transmission system in co-ordination with the other parts of the All-Island Transmission Networks;
  - (vii) planning for outages, including (where appropriate) co-ordination of outages on the transmission system with outages on the Republic of Ireland transmission system;
  - (viii) the exchange of information between the Licensee and the Transmission System Operator;



- (ix) procedures to enable the Licensee or the Transmission System Operator (as the case may be) to produce information about the transmission system in accordance with its respective obligations under the Order, the Energy Order, the SEM Order, this Licence, the Transmission System Operator Licence, and the System Operator Agreement; and
- (x) the payment of monies to or from the Licensee in respect of the services and other matters referred to above.

4 The relevant aims referred to at paragraph 1(b) are:

- (a) the efficient discharge of the obligations imposed on the Licensee and the Transmission System Operator (in their capacities as such) under the Order, the Energy Order, the SEM Order and their respective licences;
- (b) the development, maintenance and operation of the transmission system as part of efficient, economical, co-ordinated, safe, secure and reliable All-Island Transmission Networks;
- (c) effective competition in the generation and supply of electricity on the Island of Ireland; and
- (d) the promotion of good industry practice and efficiency in the implementation and administration of the matters covered by the Transmission Interface Arrangements.

5 The Transmission Interface Arrangements shall provide for any disputes between the parties thereto over revisions to the Transmission Interface Arrangements to be referred to the Authority for determination. In addition, the Transmission Interface Arrangements may provide for there to be referred to the Authority for determination such additional matters arising under the Transmission Interface Arrangements as may be specified in the Transmission Interface Arrangements.

6 The Licensee shall procure that no modifications, amendments or variations are made to the Transmission Interface Arrangements without the prior approval of the Authority.

Distribution Interface Arrangements

- 7 The Transmission Interface Arrangements shall also set out (separately from those matters referred to in paragraph 1 and to the extent not catered for in the Grid Code or the Distribution Code) the terms and arrangements for connection of the transmission system to the Licensee's distribution system, and the 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:
- (a) the Licensee in relation to the Distribution Business arising under the Order, the Energy Order, the SEM Order, this Licence and such other code or document as may be specified from time to time by the Authority; and
  - (b) the Transmission System Operator arising under the Order, the Energy Order, the SEM Order, its licence, and such other code or document as may be specified from time to time by the Authority.

Review of the Arrangements

- 8 Without prejudice to paragraph 6, the Licensee shall, in common with the Transmission System Operator, periodically, or at any time on the receipt of a request from the Authority to do so, review the Transmission Interface Arrangements and their implementation to:
- (a) ensure that they meet the requirements of paragraphs 1, 3, 4 and 5; and
  - (b) to consider whether any alternative arrangements would better achieve those requirements.
- 9 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 Transmission Interface Arrangements (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 5).

Revision of the Arrangements

- 10 Revisions to the Transmission Interface Arrangements proposed by the Licensee and sent to the Authority pursuant to sub-paragraph 9(b) shall require the Authority's approval before they may be made.

Publication of the Arrangements

- 11 Where, and to the extent, required to do so by the Authority, the Licensee shall publish the Transmission Interface Arrangements on its website.

Definitions

- 12 In this Condition:

**“System Operator Agreement”** has the meaning given to that expression in the Transmission System Operator Licence.

**Condition 18 Obligation to Provide Transmission Services**

- 1 The Licensee shall, in accordance with the Transmission Interface Arrangements, provide the following transmission services:
  - (a) making available, to the Transmission System Operator, those parts of the transmission system which are intended for the purposes of conveying, or affecting the flow of, electricity so that such parts are capable of doing so and are fit for those purposes;
  - (b) providing a means of enabling the Transmission System Operator to direct the configuration of those parts of the transmission system that are made available to it and, in a manner consistent with such means, giving effect to any such direction from time to time; and
  - (c) providing a means of enabling the Transmission System Operator to obtain information in relation to the transmission system which is needed by the Transmission System Operator to enable it to co-ordinate and direct the flow of electricity onto and over the transmission system and, in a manner consistent with such means, providing such information to the Transmission System Operator.

**Condition 19 System Security and Planning Standards and Operation of the Distribution System**

1 The Licensee shall plan, develop and maintain the total system, and shall operate (including, without limitation and where necessary, coordinating the flow of electricity over) the Licensee's distribution system:

(a) (in each case) in accordance with:

(i) the Transmission and Distribution System Security and Planning Standards and the Transmission Interface Arrangements; and/or

(ii) such other standard of planning and operation as is adopted, from time to time, by the Licensee (with the approval of the Authority and following consultation with those electricity undertakings liable to be materially affected thereby); and

(b) (in the case of the planning and development of the transmission system) with the objective of developing a system for the transmission of electricity in Northern Ireland that takes account of the benefits of efficient, co-ordinated and economical systems for the transmission of electricity on the Island of Ireland,

in each case as appropriate to the purpose under consideration, and in accordance with its role under the Transmission Interface Arrangements, and taking into account the Transmission System Operator's obligations in relation to the transmission system in accordance with the Transmission System Operator Licence and the Licensee's obligations under Article 12(2) of the Order.

2 In order to enable it to comply with its obligation under paragraph 1(b), the Licensee shall, in cooperation with the Transmission System Operator (pursuant to the Transmission Interface Arrangements), consult with the Republic of Ireland System Operator so as to:

(a) inform the Republic of Ireland System Operator of the Licensee's views, from time to time, regarding the planning and development of the transmission

system; and

- (b) establish the Republic of Ireland System Operator's views, from time to time, regarding the planning and development of the Republic of Ireland transmission system.

2A The Licensee shall, not later than such date as the Authority may specify and in consultation with the Authority, prepare and from time to time modify a written policy setting out the manner in which the Licensee proposes to comply, in connection with the maintenance of an efficient, economical and co-ordinated distribution system, with all applicable European Union and United Kingdom environmental laws. Such written policy may be prepared as a constituent part of the statement which the Licensee is required to prepare by paragraph 2(1) of schedule 9 of the Order.

#### Revision of Arrangements

3 The Licensee shall in consultation with electricity undertakings to the extent such persons are liable to be materially affected thereby, periodically (and at any time when requested to do so by the Authority) review the Transmission and Distribution System Security and Planning Standards and their implementation. Insofar as relevant to the transmission system, the Licensee shall undertake such consultation and review in common with the Transmission System Operator. Following any such review, the Licensee shall send to the Authority:

- (a) a report on the outcome of that review;
- (b) any revision which the Licensee proposes to make to the Transmission and Distribution System Security and Planning Standards from time to time (having regard to the outcome of that review); and
- (c) any written representations or objections from the Transmission System Operator, the Republic of Ireland System Operator or electricity undertakings (including any proposals by such persons for revisions to the documents that were not accepted by the Licensee in the course of the review) arising during the consultation process and subsequently maintained.

- 4 Revisions to the Transmission and Distribution System Security and Planning Standards proposed by the Licensee and sent to the Authority pursuant to paragraph 3 shall require the Authority's approval before they may be made.
- 5 Having regard to any written representations or objections referred to in subparagraph 3(c), and following such further consultation (if any) as the Authority may consider appropriate, the Authority may issue directions requiring the Licensee to revise the Transmission and Distribution System Security and Planning Standards in such manner as may be specified in the directions, and the Licensee shall comply with any such directions forthwith.

#### Performance Standards

- 6 The Licensee shall, whenever requested to do so by the Authority, draw up and submit to the Authority for its approval a statement setting out criteria by which performance of the Licensee in maintaining transmission system security may be measured, and by which performance of the Licensee in maintaining distribution system security, availability and quality of service may be measured.
- 7 The Licensee shall within 2 months after the end of each financial year submit to the Authority a report providing details of the performance of the Licensee during the previous financial year against the criteria referred to in paragraph 6.

#### Derogation

- 8 The Authority may from time to time (following consultation with the Licensee, the Transmission System Operator, (to the extent liable to be materially affected thereby) any electricity undertaking and the Republic of Ireland System Operator, and such (if any) other licence holders as the Authority shall consider appropriate) issue directions relieving the Licensee of its obligations under paragraph 1 in respect of such parts of the total system and to such extent as may be specified in the directions.

#### Publication

- 9 The Licensee shall give or send a copy of the Transmission and Distribution System Security and Planning Standards, and of any revision thereto, to the Authority and to

the Republic of Ireland System Operator. The Licensee shall also publish a copy of the document on its website.

- 10 The Licensee shall, subject to paragraph 11, give or send a copy of any of the Transmission and Distribution System Security and Planning Standards to any person requesting it.
- 11 The Licensee may make a charge for any copy given or sent pursuant to paragraph 10 of an amount reflecting the Licensee's reasonable costs of the document which will not exceed any amount specified for the time being for the purposes of this Condition in directions issued from time to time by the Authority.



**Condition 20 Obligations in Relation to Offers by Transmission System Operator**

**Connection**

- 1 On notification by the Transmission System Operator that it has received an application for connection or modification pursuant to condition 25 or 27 of the Transmission System Operator Licence, the Licensee shall (subject to paragraph 4), as soon as reasonably practicable and in accordance with the Transmission Interface Arrangements:
  - (a) where it has all the information it reasonably requires for the purpose of formulating such an offer, offer to enter into (and, where such offer is accepted, enter into) an agreement with the Transmission System Operator on the terms referred to in paragraph 2; or
  - (b) notify the Transmission System Operator of the information the Licensee reasonably requires in order to formulate such an offer.
  
- 2 The terms referred to in paragraph 1(a) shall, in respect of the application for connection or modification in question, make detailed provision regarding:
  - (a) the carrying out of works (if any) on the transmission system as are required to connect the transmission system to any other system for the transmission or distribution of electricity, and for the obtaining of any consents necessary for such purposes;
  - (b) the carrying out of works (if any) on the transmission system in relation to the extension or reinforcement of the total system rendered necessary or appropriate by reason of making the connection or modification to an existing connection and for the obtaining of any consents necessary for such purposes;
  - (c) where the Transmission System Operator requests such meters, the carrying out of works (if any) on the transmission system to install meters that will enable the Transmission System Operator to measure electricity being accepted into the All-Island Transmission Networks at the specified entry point or points or leaving such system at the specified exit point or points;

- (d) the carrying out of works (if any) on the transmission system in relation to the installation of such switchgear or other apparatus (if any) as may be required for the interruption of supply;
- (e) the date by which any works so as to permit access to the All-Island Transmission Networks (including for this purpose any works to reinforce or extend the transmission system) shall be completed and so that, unless otherwise agreed by the Transmission System Operator, a failure to complete such works by such date shall be a material breach of the agreement entitling the Transmission System Operator to rescind the agreement insofar as it relates to the application for connection or modification in question;
- (f) the installation of special metering, telemetry or data processing equipment (if any) for the purpose of enabling any person who is bound to comply with the Grid Code to comply with its obligations in respect to metering thereunder or the performance by the Transmission System Operator of any service in relation to such metering thereunder;
- (g) the charges to be paid to the Licensee in respect of the application for connection or modification in question, and the means by which such charges have been calculated (such calculation to be based on the charging principles established in accordance with Condition 22); and
- (h) such further terms as are or may be appropriate for the purpose of the agreement,

and in formulating such terms, the Licensee shall act in accordance with the Transmission Interface Arrangements, and shall (where appropriate) consult and cooperate with the Republic of Ireland Electricity Board.

Offer of terms - general

- 3 The Licensee shall offer terms for agreements in accordance with paragraphs 1 and 2 as soon as practicable and (save where the Authority consents to a longer period) in any event not more than 2 months after receipt by the Licensee of an application containing all such information as the Licensee may reasonably require for the

purpose of formulating the terms of the offer.

4 The Licensee shall not be obliged to offer to enter into, or to enter into, any agreement pursuant to this Condition, if to do so would involve the Licensee:

- (a) in breach of its duties under Article 12 of the Order;
- (b) in breach of any regulations made under Article 32 of the Order, or any other enactment relating to safety or standards applicable in respect of the Separate Businesses; or
- (c) in breach of the Conditions of this Licence;

and where the Licensee intends, in reliance on this paragraph, not to offer to enter into, or to enter into, an agreement with the Transmission System Operator, the Licensee shall notify the Transmission System Operator of that fact as soon as reasonably practicable and in accordance with the Transmission Interface Arrangements.

Works on the distribution system

5 This Condition shall apply in respect of works required on the Licensee's distribution system (as well as works required on the transmission system) in response to such applications as are referred to in paragraph 1, and accordingly:

- (a) references in paragraph 2 to works on the transmission system, shall apply equally to works on the Licensee's distribution system; and
- (b) the Licensee shall not be obliged to offer to enter into, or to enter into, any agreement concerning works on the Licensee's distribution system pursuant to this Condition, if to do so would involve the Licensee in breach of the Distribution Code.

Definitions

6 In this Condition, unless the context otherwise requires:

**“application for connection** means an application:

**or modification”**

- (a) by a prospective connectee in relation to a connection to the transmission system;
- (b) by an existing connectee in relation to a modification to an existing connection to the transmission system; or
- (c) by the Republic of Ireland System Operator in relation to a connection to the Republic of Ireland Network, or a modification to an existing connection to the Republic of Ireland Network, which (in either case) requires the carrying out of works on the total system.

**Condition 21 Functions of the Authority – Transmission Offers**

Application Disputes

- 1 If, after a period which appears to the Authority to be reasonable for the purpose, the Transmission System Operator has failed to enter into an agreement with any person entitled or claiming to be entitled thereto (an “**applicant**”) pursuant to condition 25 or 27 of the Transmission System Operator Licence and the applicant or the Transmission System Operator applies to the Authority for a determination in accordance with condition 26 or 28 of the Transmission System Operator Licence, the provisions of paragraph 2 shall apply.
- 2 Insofar as an applicant wishes to proceed, and following notification by the Transmission System Operator that such is the case, the Licensee shall, as soon as is reasonably practicable, offer to enter into (and, where such offer is accepted, enter into) an agreement with the Transmission System Operator which fully reflects the terms settled by the Authority in the relevant case pursuant to condition 26 or 28 of the Transmission System Operator Licence.

Amendment Disputes

- 3 Where either party to an agreement for connection applies to the Authority for a determination regarding a proposal to amend an agreement for connection in accordance with condition 26 or 28 of the Transmission System Operator Licence, the provisions of paragraph 4 shall apply.
- 4 Insofar as the Authority notifies the Licensee that the relevant TO agreement should be amended, supplemented or replaced, the Licensee shall, as soon as is reasonably practicable, offer to enter into (and, where such offer is accepted, enter into) an agreement with the Transmission System Operator to amend, supplement or replace the TO agreement as directed.
- 5 In this Condition, unless the context otherwise requires:

- “agreement for connection”** means:
- (a) a Transmission Connection Agreement; or
  - (b) an agreement (or part of an agreement) between the Transmission System Operator and the Republic of Ireland System Operator entered into pursuant to condition 27 or 28 of the Transmission System Operator Licence;
- “application for connection”** means an application to the Transmission System Operator by:
- (a) a connectee or prospective connectee pursuant to condition 25 of the Transmission System Operator Licence; or
  - (b) the Republic of Ireland System Operator pursuant to condition 27 of the Transmission System Operator Licence;
- “TO agreement”** means, in respect of each agreement for connection, the agreement (if any) entered into by the Licensee pursuant to Condition 20 or paragraph 2 in relation to that agreement for connection.

**Condition 22 Transmission Charging Statement**

Statement of Charges

- 1 The Licensee shall, as soon as practicable after this Condition comes into effect (and, in any event, not later than such date as the Authority may direct) prepare (and obtain the Authority's approval to) a statement (or statements) setting out the basis upon which charges will be made to the Transmission System Operator:
  - (a) for the transmission services; and
  - (b) in relation to the works referred to in Condition 20.
- 2 A statement prepared under paragraph 1 shall be in such form and contain such detail as shall be necessary to enable the Transmission System Operator to make a reasonable estimate of the charges to which it would become liable for the provision of such services, including such of the information set out in paragraph 3 as is required by such paragraph to be included.

Connections

- 3 Except to the extent that the Authority may otherwise direct, the statement referred to in paragraph 1(b) shall include:
  - (a) a schedule listing those items (including the carrying out of works and the provision and installation of electric lines or electrical plant or meters) of significant cost liable to be required for the purpose of connection (at entry or exit points) to the transmission system for which site specific charges may be made or levied and including (where practicable) indicative charges for each such item and (in other cases) an explanation of the methods by which and the principles on which such charges will be calculated;
  - (b) the methods by which and the principles on which connection charges will be made in circumstances where the electric lines or electrical plant to be installed are (at the Licensee's discretion) of greater size or capacity than that required for use of system by the person seeking connection;
  - (c) the methods by which and the principles on which any charges (including any

capitalised charge) will be made for maintenance and repair required of electric lines, electrical plant or meters provided and installed for making a connection to the transmission system;

- (d) the methods by which and the principles on which any charges will be made for the provision of special metering or telemetry or data processing equipment by the Licensee for the purposes of enabling any person which is bound to comply with the Grid Code to comply with its obligations in respect of metering thereunder, or for the performance by the Licensee of any service in relation thereto;
- (e) the methods by which and principles on which any charges will be made for disconnection from the transmission system and the removal of electrical plant, electric lines and ancillary maters following disconnection; and
- (f) such other matters as shall be specified in directions issued by the Authority from time to time for the purposes of this Condition.

4 Site specific charges for those items referred to in paragraph 3 shall be set at a level which will enable the Licensee to recover:

- (a) the appropriate proportion of the costs directly or indirectly incurred (or to be incurred) in carrying out the works, extension or reinforcement in question and in providing, installing, maintaining and repairing (and, following disconnection, removing) the electrical lines, electrical plant, meters, special metering, telemetry, data processing equipment or other items in question; and
- (b) a reasonable rate of return on the capital represented by such costs.

Alternative Statement

5 In addition to, and without prejudice to, the Licensee's obligations under paragraph 1, the Licensee shall, upon being required to do so in directions issued by the Authority (and within such period as the Authority may specify), prepare a statement or statements approved by the Authority providing that charges for the matters set out in paragraph 1 will be made on such basis as shall be specified in the directions. Such statement or statements shall be in such form and contain such detail as shall be



necessary to enable the Transmission System Operator to make a reasonable estimate of the charges to which it would become liable for the provision of such services and (without prejudice to the foregoing) including such information as shall be specified in the directions. Each statement prepared in accordance with this paragraph shall, with effect from the date on which it is approved by the Authority or such later date as the Authority shall specify, replace the corresponding statement prepared by the Licensee in accordance with paragraph 1 or, as the case may be, this paragraph (as from time to time revised in accordance with paragraph 6) which is in force at such date and the Licensee shall, with effect from such date make charges in accordance with the statement (as from time to time revised in accordance with paragraph 6) which has replaced such corresponding statement.

Revision of Statements

- 6 The Licensee may periodically revise the information set out in and, with the approval of the Authority, alter the form of the statements prepared in accordance with paragraph 1 or 5 and shall, at least once in every year this Licence is in force, revise such statements in order that the information set out in the statements shall continue to be accurate in all material respects. Each such revision shall require to be approved by the Authority and shall not become effective until approved by the Authority.
- 7 The Licensee shall give or send a copy of the statements prepared in accordance with paragraphs 1 and 5 or (as the case may be) of the latest version of such statements in accordance with paragraph 6 approved by the Authority pursuant to such paragraph to any persons who requests a copy of such statement or statements.
- 8 The Licensee may make a charge for any statement given or sent pursuant to paragraph 7 of an amount reflecting the Licensee's reasonable costs of providing such a statement which shall not exceed the maximum amount specified in directions issued by the Authority from time to time for the purposes of this Condition.

**Condition 23 Land Bank**

- 1 The Licensee shall deal with the land bank and any rights which it may have in relation to the whole or any part of it in accordance with such directions as the Authority shall from time to time issue to it. Such directions may:
  - (a) provide that the Licensee shall not dispose of the whole or any part of the land bank except with the prior written consent of the Authority and in accordance with the conditions (if any) of the consent;
  - (b) provide that the Licensee shall not agree to any assignment or amendment of, or terminate otherwise than in accordance with its terms, any relevant lease without the prior written consent of the Authority and in accordance with the conditions (if any) of the consent;
  - (c) specify:
    - (i) the conditions upon which the Licensee shall deal with any application from any person concerning the unlet land;
    - (ii) the obligations of the Licensee in relation to the maintenance, replacement or repair of any structure on the unlet land;
    - (iii) the steps the Licensee must take in relation to access to and the security of the unlet land; and
    - (iv) the length and other terms and conditions of any subsequent lease;
  - (d) provide that the Licensee shall not appropriate any part of the land bank for its own purposes or the purposes of any affiliate or related undertaking of the Licensee without the prior written consent of the Authority and in accordance with the conditions (if any) of the consent; and
  - (e) contain such other conditions in relation to the way in which the Licensee shall deal with the land bank or any such rights as the Authority shall think fit.

2 Any directions of the kind referred to in paragraph 1 shall be framed so as to ensure that in implementing them in accordance with their terms the Licensee shall neither suffer any financial loss nor secure any financial benefit by reason only of such implementation.

3 Where the amount calculated in accordance with paragraph 4 (the “**Land Bank Amount**”) is positive, the Distribution Business shall account to the Land Bank Business for a sum equal to that amount. Where the Land Bank Amount is negative, the Land Bank Business shall account to the Distribution Business for a sum equal to the absolute value of that amount.

4 The Land Bank Amount shall be calculated, in respect of each relevant year, as follows:

(a) an amount equal to the costs of the Land Bank Business:

(i) in dealing with the land bank in accordance with the directions issued to it by the Authority pursuant to paragraph 1; and

(ii) if and to the extent that no such directions have been issued in relation to any part of the land bank, in dealing with any such part;

less

(b) any amount which the Land Bank Business has received (or is entitled to receive) from any person in connection with the land bank, including any amount in consideration of the grant, or consent to the assignment, of any relevant lease or the disposal of any part of the land bank.

5 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 any third party and

“**dispose**” shall be construed accordingly;

- “**Land Bank Amount**” has the meaning given to that expression in paragraph 3;
- “**initial lease**” means a designated lease granted to one of Ballylumford Power Limited, Belfast West Power Limited, Coolkeeragh Power Limited or Kilroot Power Limited;
- “**relevant year**” has the meaning given to that expression in Annex 1;
- “**subsequent lease**” means a lease of any land forming part of the land bank other than an initial lease; and
- “**unlet land**” means any land forming part of the land bank and which is not subject to a relevant lease.

**Condition 24 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 each of the regulated distribution revenue and the PSO Charges (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. No policy or amendment shall be effective until approved by the Authority.
- 3 In this Condition:

**“regulated distribution revenue”** means the transmission and distribution revenue (as defined in Annex 2) but excluding any revenue to be collected from the Transmission System Operator.

**“PSO Charges”** has the meaning given to that expression in Condition 24A.

**Condition 24A. PSO Agreement**

- 1 The Licensee shall (as part of the Distribution Business) enter into, at all times remain a party to, and comply with the provisions of, the agreement described in paragraph 2 (the “**PSO Agreement**”).
- 2 The PSO Agreement shall be the agreement of that name designated as such by the Authority and designed to secure that the Licensee is entitled to recover the PSO Charges (as from time to time modified) from the relevant persons. The PSO Agreement shall be capable of modification in accordance with its terms.

Setting the PSO Charges

- 3 The PSO Charges applying from time to time shall be set in accordance with Annex 1.

PSO Charge Schedule

- 4 The Licensee shall, as soon as practicable after this Condition shall have come into force and, in any event, not later than such date as the Authority shall specify in directions issued to the Licensee for the purposes of this Condition, and from time to time thereafter, draw up a schedule of the PSO Charges to be payable by relevant persons in accordance with the PSO Agreement from time to time.
- 5 Without prejudice to Annex 1, the schedule of PSO Charges shall:
  - (a) be in a form which shall require to be approved by the Authority; and
  - (b) contain such detail as shall be necessary to enable any relevant person to make a reasonable estimate of the charges to which it would become liable.

Miscellaneous

- 6 In recovering PSO Charges and developing the schedule of PSO Charges, the Licensee shall not discriminate as between any relevant persons or class or classes of relevant persons.
- 7 The Licensee shall give or send a copy of the schedule of PSO Charges (as from time to time revised) to the Authority not later than 14 days before it is to be made

available to any other person. The Licensee shall give or send a copy of the schedule of PSO Charges (as from time to time revised) to any person requesting the same.

- 8 The Licensee shall comply with any directions made by the Authority requiring the Licensee to alter the form of the schedule of PSO Charges in such manner as shall be specified in the directions, or so as to attain such objectives as may be specified in the directions. No such directions may:
- (a) prevent the Licensee from recovering, in each month, an amount equal to the aggregate of the monthly instalments that the Licensee is obliged to pay to NIE Energy (Supply) and NIE Energy (PPB) in respect of the NIE Energy Supply Amount and the PPB Amount in that month; or
  - (b) be designed to reduce the aggregate revenue likely to be received under the PSO Agreement in respect of any relevant year, below the maximum allowed amount referred to in Annex 1 for that relevant year.

Obligations in Respect of the NIE Energy Supply Amount and the PPB Amount

- 9 The Licensee shall enter into, and at all times remain party to, an agreement with NIE Energy (Supply) which provides for:
- (a) notification by NIE Energy (Supply) of its schedule of monthly charges in relation to the NIE Energy Supply Amount for each relevant year, in such amounts each month as NIE Energy (Supply) 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 Licensee to make payments each month to NIE Energy (Supply) of the monthly charge relating to the NIE Energy Supply Amount (or, where the NIE Energy Supply Amount is a negative number, for payment in the relevant month of the monthly charge by NIE Energy (Supply) to the Licensee).
- 10 The Licensee shall enter into, and at all times remain party to, an agreement with NIE Energy (PPB) which provides for:

- (a) notification by NIE Energy (PPB) of its schedule of monthly charges in relation to the PPB Amount for each relevant year, in such amounts each month as NIE Energy (PPB) 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 Licensee to make payments each month to NIE Energy (PPB) of the monthly charges in relation to the PPB Amount (or, where the PPB Amount is a negative number, for payment in the relevant month of the monthly charge by NIE Energy (PPB) to the Licensee).

11 Where the relevant monthly payment in respect of the NIE Energy Supply Amount or the PPB Amount is a positive number, the Licensee shall pay the relevant amount to NIE Energy (Supply) or NIE Energy (PPB) (as appropriate) in accordance with the agreement referred to in paragraph 9 or 10 (as appropriate).

12 The agreements referred to in paragraphs 9 and 10, and any amendment to them, shall require to be approved by the Authority.

Definitions

13 In this Condition, unless the context otherwise requires:

**“NIE Energy Supply Amount”** means the amount determined as such in accordance with annex 1 of the NIE Energy Supply Licence.

**“NIE Energy (Supply)”** means the person authorised, from time to time, under the NIE Energy Supply Licence in its capacity as the holder of that licence, but excluding where it is acting in its capacity as the Power Procurement Business.

**“NIE Energy (PPB)”** means the person authorised, from time to time, under the NIE Energy Supply Licence in its capacity as the holder of that licence, but excluding where it is acting otherwise than in its capacity as the Power Procurement Business.



<b>“PPB Amount”</b>	means the amount determined as such in accordance with annex 3 of the NIE Energy Supply Licence.
<b>“PSO Charges”</b>	means the charges set as such in accordance with paragraph 3.
<b>“relevant persons”</b>	means relevant licensed suppliers and, where directed by the Authority, persons exempt from the requirement to hold a licence under Article 10(1)(c) of the Order.
<b>“relevant year”</b>	has the meaning given to that expression in Annex 1.

**Condition 25 PPB / TO Interface Agreement**

General Duty

- 1 The Licensee shall, in common with the Power Procurement Business, 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 10); 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 paragraph 1(a) are those terms and arrangements between the Licensee and the Power Procurement Business that are requisite for the enjoyment and discharge of the rights and obligations of the Licensee or the Power Procurement Business under this Licence or the NIE Energy Supply 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 Power Procurement Business 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.

- 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 Power Procurement Business, periodically, or at any time on the receipt of a request from the Authority to do so, review the PTIA and its implementation to:

- (a) ensure that it meets 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 Power Procurement Business, send to the Authority:

- (a) a report on the outcome of the review;
- (b) any revisions which the Licensee and the Power Procurement Business 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 Power Procurement Business 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 26 Grid Code**

- 1 The Licensee shall comply with the Grid Code in so far as applicable to it in its capacity as owner and operator of the Licensee's distribution system.
- 2 The Authority may, following consultation with the Transmission System Operator and any other electricity undertakings directly affected thereby, issue directions relieving the Licensee of its obligation under paragraph 1 in respect of such parts of the Grid Code and to such extent and subject to such conditions as may be specified in those directions.

**Condition 27 Distribution Code**

Establishment of the Distribution Code

- 1 Subject to paragraph 13, the Licensee shall prepare and at all times have in force, and shall (subject to paragraph 12) implement and comply with, a Distribution Code:
  - (a) covering all material technical aspects relating to connections to and the operation and use of the distribution system or (insofar as relevant to the operation and use of the distribution system) the operation of electric lines and electrical plant within Northern Ireland connected to the distribution system or any other system in Northern Ireland for the distribution of electricity and (without prejudice to the foregoing) making express provision as to the matters referred to in paragraph 6; and
  - (b) which is designed so as to:
    - (i) permit the development, maintenance and operation of an efficient, co-ordinated and economical system for the distribution of electricity; and
    - (ii) neither prevent nor restrict competition in the generation and supply of electricity in Northern Ireland, or, to the extent that the Distribution Code may have such effect, on the Island of Ireland.

Reviews of the Code

- 2 The Distribution Code in force at the date on which this Condition becomes effective shall be the document approved as such by the Authority. Subsequently, the Licensee shall (in consultation with electricity undertakings, to the extent such persons are liable to be materially affected thereby) periodically review (including upon the request of the Authority) the Distribution Code and its implementation. Following any such review, the Licensee, shall send to the Authority:
  - (a) a report on the outcome of such review;
  - (b) any proposed revisions to the Distribution Code from time to time as the Licensee (having regard to the outcome of such review) reasonably thinks fit

for the achievement of the objectives referred to in paragraph 1(b); and

- (c) any written representations or objections from any electricity undertakings (including any proposals by such persons for revisions to the Distribution Code not accepted by the Licensee in the course of the review) arising during the consultation process and subsequently maintained.

Revision of the Code

- 3 Revisions to the Distribution Code proposed by the Licensee and sent to the Authority pursuant to paragraph 2 shall require the Authority's approval before they may be made.
- 4 Having regard to any written representations or objections referred to in subparagraph 2(c), and following such further consultation (if any) as the Authority may consider appropriate, the Authority may issue directions requiring the Licensee to revise the Distribution Code in such manner as may be specified in the directions, and the Licensee shall forthwith comply with any such directions.
- 5 The Authority shall be entitled, in order to implement the requisite arrangements referred to in condition 58 of the NIE Energy Supply Licence, to issue directions to the Licensee requiring the Licensee to revise the Distribution Code in such manner and with effect from such date as may be specified in the directions, and the Licensee shall comply with any such directions, provided that such revisions shall not affect the rights or obligations of any party to:
  - (a) a power purchase agreement that is not a cancellable generating unit agreement; or
  - (b) a cancellable generating unit agreement that has not, at the relevant time, been the subject of a cancellation direction,under that agreement, beyond what may reasonably be regarded as de minimis in relation to that party.

Content of the Code

- 6 Subject to paragraph 13, the Distribution Code shall include:

- (a) connection conditions specifying the technical, design and operational criteria to be complied with in respect of any connection or proposed connection at an entry or exit point on the distribution system;
- (b) a set of operating codes specifying conditions and procedures under or in accordance with which the Licensee shall operate the distribution system, and under or in accordance with which other persons shall operate their plant and/or systems for the distribution of electricity in relation to the distribution system (including procedures and conditions relating to outages of generation sets and associated power station equipment), insofar as is necessary to protect the security and quality of supply and to ensure the proper and safe operation of the distribution system under both normal and abnormal operating conditions;
- (c) a planning code specifying the requirements for the supply of information by persons connected (or seeking connection) at an entry point or an exit point on the distribution system, in order for the planning and development of the distribution system to be undertaken, and specifying the technical and design criteria and procedures to be applied in the planning and development of the distribution system and to be complied with by other persons connected or seeking connection at an entry point or an exit point on the distribution system in the planning and development of their own plant and systems; and
- (d) insofar as necessary, a metering code setting out requirements and procedures for metering.

Copies of the Code

- 7 The Licensee shall ensure that a copy of the Distribution Code is given or sent to the Authority and the Department and is published on the Licensee's website.
- 8 The Licensee shall (subject to paragraph 9) ensure that a copy of the Distribution Code is given or sent to any person requesting it.
- 9 The Licensee may make a charge for any copy of the Distribution Code given or sent pursuant to paragraph 8 of an amount which will not exceed any amount specified for

the time being for the purposes of this Condition in directions issued from time to time by the Authority.

Non-Discrimination

- 10 In preparing, implementing and complying with the Distribution Code the Licensee shall not:
- (a) unduly discriminate against or unduly prefer any person or class or classes of persons in favour of or as against any other person or class or classes of persons; or
  - (b) restrict or prevent competition in generation or supply on the Island of Ireland.
- 11 The Licensee shall keep and maintain such records concerning its implementation of and compliance with the Distribution Code as are in accordance with such guidelines as the Authority shall from time to time have given to the Licensee and are, in the opinion of the Authority, sufficient to enable the Authority to assess whether the Licensee is performing the obligation imposed upon it under paragraph 10 concerning these matters and the Licensee shall furnish to the Authority such records (or such of these as the Authority may require) in such manner and at such times as the Authority may require.

Derogations

- 12 The Authority may from time to time (following consultation with the Licensee) issue directions relieving the Licensee of its obligations to implement or comply with, or to enforce against any other person any provision of, the Distribution Code in respect of such parts of the distribution system to such extent as may be specified in the directions.

Short Form Distribution Code

- 13 Until such time as the Authority directs otherwise, the Licensee may, in complying with its obligations under paragraphs 1 and 6, rely upon a document that incorporates, by reference, sections of the Grid Code that are relevant to the Distribution Code.

Definitions



14 In this Condition, unless the context otherwise requires:

**“cancellable generating unit agreement”** shall have the meaning given to that term in the NIE Energy Supply Licence.

**“power purchase agreement”** shall have the meaning given to that term in the NIE Energy Supply Licence.

**Condition 28 Market Registration Service and Market Data Service**

- 1 The Licensee shall establish, or procure the establishment of, and subsequently operate and maintain, or procure the subsequent operation and maintenance of:
  - (a) a service to be known as the Market Registration Service; and
  - (b) a service to be known as the Market Data Service.
  
- 2 The Market Registration Service shall fulfil the following functions:
  - (a) the maintenance of a register of technical and other data as is necessary to facilitate supply by any relevant licensed supplier to premises connected to the total system, and to meet the reasonable requirements of relevant licensed suppliers, the Transmission System Operator, the Northern Ireland Market Operator Licensee and the Licensee in respect of such premises for information for settlement purposes, including:
    - (i) allocating and recording a unique meter point registration number for each meter point when it first becomes registered in the register;
    - (ii) the identity of the relevant licensed supplier responsible for the settlement of the electricity supplied to such premises;
    - (iii) such information as is required to enable information relating to the meter point to be submitted to settlement; and
    - (iv) an address of each such premises so far as is reasonably practicable having regard to the nature and source of information provided to the Licensee;
  - (b) the amendment in a timely manner of the register maintained in accordance with paragraph (a) to reflect changes of relevant licensed supplier to any premises and any other information relating to those premises;
  - (c) the provision, in a timely manner of such data referred to in paragraph (a) contained in the register as is reasonably required and requested:

- (i) to any relevant licensed supplier who is registered as the supplier for the premises or who has been provided with the meter point registration number or customer reference number for the purposes of a change of relevant licensed supplier in respect of the premises;
  - (ii) for the purposes of settlement, including to the Transmission System Operator, the Northern Ireland Market Operator Licensee and the Licensee; and
  - (iii) subject to any requirements for consent under the Market Registration Code, to any person identified in the Market Registration Code as entitled to such data for the purpose of facilitating changes of relevant licensed supplier in respect of any premises; and
- (d) the maintenance of, and adequate publicity for, an enquiry service for the provision on request to any customer taking a supply of electricity (promptly and at no extra charge to the customer) of the meter point registration number (or, where that number has not yet been created, the customer reference number) of the meter point for the customer's premises (in the case of unmetered premises, to the extent the Licensee has such information).

3 The Market Data Service shall fulfil the following functions in respect of meter points for premises:

- (a) the collection and verification of data from electricity meters installed to measure flows of electricity to or from any premises with a permanently metered supply;
- (b) the compilation of data measuring the flow of electricity to or from unmetered premises;
- (c) the processing, validation, estimation and substitution of consumption data in respect of flows of electricity to or from any premises ("consumption data");
- (d) the collation and summation of such consumption data as required for settlement purposes;

- (e) the transfer of processed consumption data as is reasonably required and requested:
    - (i) to any relevant licensed supplier who is registered as the supplier for the premises; and
    - (ii) for the purposes of settlement, including to the Transmission System Operator, the Northern Ireland Market Operator Licensee and the Licensee; and
  - (f) the exchange of information between the Licensee and relevant licensed suppliers to meet the reasonable requirements of relevant licensed suppliers and the Licensee in relation to requests by relevant licensed suppliers for relevant fieldwork.
- 4 In the provision of Market Registration Services and Market Data Services, the Licensee shall not discriminate as between any relevant licensed suppliers or any class or classes of relevant licensed suppliers except insofar as the differences in the terms or conditions of such provision:
- (a) reasonably reflect the differences between the circumstances of such provision to one person or class of persons and another; and
  - (b) have been notified to the Authority together with supporting reasons, and the Authority has approved in advance the differences in the terms or conditions or the circumstances in which different terms or conditions may be applied.
- 5 Without prejudice to paragraph 4, the Licensee shall not make charges for the provision of the Market Registration Service and/or the Market Data Service to any relevant licensed supplier which differ from the charges for such provision to any other relevant licensed supplier or class or classes of relevant licensed suppliers except insofar as such differences:
- (a) reasonably reflect material differences in the costs associated with such provision; and
  - (b) have been notified to the Authority together with supporting reasons, and the

Authority has approved in advance the differences in charges or the circumstances in which different charges may be applied.

6 In the provision of Market Registration Services and Market Data Services, the Licensee shall not restrict, distort or prevent competition in the supply of electricity.

7 The Licensee shall be taken to have complied with its obligations under this Condition 28 where it:

(a) prepares (and has approved by the Authority) Market Registration Arrangements in accordance with Condition 29;

(b) complies with its obligations under the Market Registration Arrangements from time to time;

(c) proposes (in accordance with Condition 29) such revisions to the Market Registration Code as are necessary to ensure that the Market Registration Arrangements meet the requirements therefor set out in Condition 29; and

(d) complies with its obligations under paragraphs 4 and 5 of this Condition 28.

8 In this Condition, unless the context otherwise requires:

**“meter point”** includes, in the case of unmetered premises, a meter point for a group of unmetered premises.

**“relevant fieldwork”** means activities of the Licensee relating to a meter point that require the Licensee to perform work at the meter board and which may be requested by a relevant licensed supplier, comprising:

(a) special meter reads for meter points with non-half hourly metering equipment;

(b) installation, reconfiguration, repair, maintenance, inspection and testing, re-programming, removal and replacement of the

electricity meter; and/or

- (c) de-energisation or re-energisation of the meter point.

**“settlement”** includes under the Single Electricity Market Trading and Settlement Code, and the collection of levies, charges and fees generally applicable to participants or classes of participants in the Single Electricity Market.

**“unmetered premises”** means premises with a supply that is not a permanently metered supply.

**Condition 29 Market Registration Arrangements**

- 1 The Licensee shall establish market registration arrangements calculated to facilitate the achievement of the “**relevant objective**”. For the purposes of this Condition 29, the relevant objective is to provide for the terms on which relevant licensed suppliers are provided with and participate in the Market Registration Service and the Market Data Service and to facilitate the fulfilment by the Licensee of its obligations as an appointed Meter Data Provider under the Single Electricity Market Trading and Settlement Code.
- 2 The Licensee shall, in connection with the establishment of the arrangements referred to in paragraph 1, prepare a Market Registration Code and a Market Registration Framework Agreement, each of which shall be furnished to the Authority for its approval.
- 3 The Market Registration Code shall include provisions for the:
  - (a) testing and review of the systems and processes of relevant licensed suppliers with a view to certifying, re-certifying and withdrawing certification of eligibility to participate in the market registration arrangements;
  - (b) grant and withdrawal of dispensations from one or more of the requirements relating to systems and processes referred to in paragraph (a) above;
  - (c) terms for the provision of the Market Registration Service and the Market Data Service in compliance with paragraph 6 of Condition 28;
  - (d) procedures and practices to be followed by relevant licensed suppliers in relation to the matters referred to in paragraphs (a) and (b) above, the Market Registration Service and the Market Data Service;
  - (e) calculation and payment of charges for participation in the market registration arrangements;
  - (f) arrangements for the variation of specified parts of the Market Registration Code following consultation with the Licensee and all relevant licensed suppliers and in compliance with paragraphs 8 to 11 (inclusive);

- (g) referral to the Authority for determination of such matters arising under the market registration arrangements as may be specified therein.
- 4 The Market Registration Framework Agreement shall:
- (a) require compliance with the Market Registration Code; and
  - (b) provide for the accession of new parties to the Market Registration Framework Agreement from time to time, and the means by which those parties can subsequently withdraw from the Market Registration Framework Agreement.
- 5 On application made by any relevant licensed supplier, or any person that has applied for a supply licence under Article 10 of the Order, the Licensee shall, as soon as practicable and (save where the Authority consents to a longer period) in any event not later than 14 days after receipt by the Licensee of the duly completed application, offer to enter into an agreement by which the applicant accedes to the Market Registration Framework Agreement in the form then approved by the Authority.
- 6 The Licensee shall not be obliged pursuant to this Condition to offer to enter or to enter into any agreement:
- (a) if to do so would involve the Licensee:
    - (i) in breach of its duties under Article 12 of the Order; or
    - (ii) in breach of any regulations made under Article 32 of the Order, or any other enactment relating to safety or standards applicable in respect of the Transmission and Distribution Business; or
    - (iii) in breach of the Conditions of this Licence; or
    - (iv) in breach of the Distribution Code; or
  - (b) if the person making the application does not undertake to be bound by such parts of the Distribution Code and of the Grid Code as the Authority shall from time to time specify in directions issued to the Licensee for the purposes of this Condition.



- 7 The Licensee shall not enter into any agreements or arrangements for the purposes of the relevant objective, except in conformity with the approved Market Registration Code and Market Registration Framework Agreement.
- 8 The Licensee shall, in consultation with any relevant licensed supplier liable to be materially affected thereby and such other persons as the Authority shall consider appropriate, review the Market Registration Code and its implementation:
- (a) as the Licensee considers appropriate;
  - (b) upon receipt of a request for such a review made in accordance with the Market Registration Code; or
  - (c) at the request of the Authority.
- 9 Following such review, the Licensee shall send to the Authority:
- (a) a report on the outcome of the review;
  - (b) any revisions which it is proposed to make to the Market Registration Code (having regard to the outcome of the review); and
  - (c) any written representations or objections from relevant licensed suppliers (including any proposals by such operators for revisions to the Market Registration Code not accepted by the Licensee in the course of the review) arising during the consultation process and subsequently maintained.
- 10 Revisions to the Market Registration Code:
- (a) proposed by the Licensee and sent to the Authority pursuant to paragraph 9; or
  - (b) proposed under any arrangements for the variation of specified parts of the Market Registration Code contained in the Market Registration Code,
- shall in each case not take effect unless they have been approved by the Authority.
- 11 The Authority may, following such further consultation (if any) as the Authority may consider appropriate and having regard to any written representation or objection referred to in paragraph 9(c), issue directions requiring the Licensee to revise the

Market Registration Code as may be specified in the directions and the Licensee shall forthwith comply with any such directions.

- 12 Where it appears to the Licensee that there has been or there is going to be a revision of the Market Registration Code under paragraph 11 which has had or is likely to have a material effect on the financial position of the Licensee, the Licensee may require the Authority to determine whether the revision to the Market Registration Code has had or is likely to have such an effect and if so what charge, if any, the Licensee can make under the Market Registration Code to ensure that the financial position and performance of the Licensee is likely, so far as reasonably practicable, to be the same as if the relevant revision had not taken place.
- 13 Where there is a conflict or inconsistency between the terms of the Market Registration Code and the terms of the Single Electricity Market Trading and Settlement Code with the effect that the Licensee is unable to fulfil its obligations as an appointed Meter Data Provider under the Single Electricity Market Trading and Settlement Code, the Licensee shall:
  - (a) propose modifications to the Market Registration Code and/or the Single Electricity Market Trading and Settlement Code (as it considers appropriate, or as directed by the Authority) in order to resolve the conflict or inconsistency; and
  - (b) provided it complies with sub-paragraph (a), be relieved of its obligations under Condition 16 to comply with the Single Electricity Market Trading and Settlement Code to the extent of such conflict or inconsistency until such time as such effect is overcome.
- 14 The Licensee will also (subject to paragraph 15) give or send a copy of the Market Registration Framework Agreement and the Market Registration Code to any person requesting the same.
- 15 The Licensee may make a charge for any copy given or sent pursuant to paragraph 14 of any amount reflecting the Licensee's reasonable costs of the documents which will not exceed any amount specified for the time being for the purposes of this Condition in directions issued from time to time by the Authority.

16 In this Condition:

**“Meter Data Provider”**

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

**Condition 30 Requirement to Offer Terms for Connection to and Use of Distribution System**

Offer of terms for use of distribution system

- 1 On application made by any person, the Licensee shall (subject to paragraph 5) offer to enter into an agreement for use of system:
  - (a) to accept into the Licensee’s distribution system at such entry point or points and in such quantities as may be specified in the application, electricity to be provided by or on behalf of such person; and
  - (b) to deliver such quantities of electricity as are referred to in sub-paragraph (a) above (less any distribution losses) to such exit point or points on the Licensee’s distribution system and to such person or persons as may be specified in the application; and
  - (c) specifying the use of system charges to be paid by the person seeking use of system, such charges (unless manifestly inappropriate) to be referable to the statement prepared in accordance with paragraph 1 (or, as the case may be, paragraph 7) of Condition 32 or any revision thereof and to be in conformity with the requirements of paragraph 3 of that Condition; and
  - (d) containing such further terms as are or may be appropriate for the purposes of the agreement.

In this paragraph references to “**any person**” shall be construed as references to any authorised electricity operator or person who shall have applied for a licence under Article 10 of the Order and whose application has not been withdrawn or rejected.

Offer of terms for connection to the distribution system

- 2 On application made by any person the Licensee shall (subject to paragraph 5) offer to enter into an agreement for connection to the Licensee’s distribution system or for modification to an existing connection, and such offer shall make detailed provision regarding:

- (a) the carrying out of works (if any) required to connect the Licensee's distribution system to any other system for the transmission or distribution of electricity and for the obtaining of any consents necessary for such purposes;
- (b) the carrying out of works (if any) in connection with the extension or reinforcement of the Licensee's distribution system rendered necessary or appropriate by reason of making the connection or modification to an existing connection and for the obtaining of any consents necessary for such purposes;
- (c) the installation of appropriate meters (if any) required to enable the Licensee to measure electricity being accepted into the Licensee's distribution system at the specified entry point or points or leaving such system at the specified exit point or points;
- (d) the installation of such switchgear or other apparatus (if any) as may be required for the interruption of supply;
- (e) the date by which any works required so as to permit access to the Licensee's distribution system (including for this purpose any works to reinforce or extend the Licensee's distribution system) 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 the agreement;
- (f) the connection charges to be paid to the Licensee, such charges (unless manifestly inappropriate):
  - (i) to be presented in such a way as to be referable to the statements prepared in accordance with paragraph 1 (or, as the case may be, paragraph 7) of Condition 32 or any revision thereof; and
  - (ii) to be set in conformity with the requirements of paragraph 4 of Condition 32 and (where relevant) of paragraph 3;
- (g) the installation of special metering, telemetry or data processing equipment (if any) for the purpose of enabling any person who is bound to comply with the Distribution Code to comply with its obligations in respect to metering

thereunder or the performance by the Licensee of any service in relation to such metering thereunder; and

(h) such further matters as are or may be appropriate for the purposes of the agreement.

3 For the purpose of determining an appropriate proportion of the costs directly or indirectly incurred in carrying out works (or in relation to any of the other matters referred to in sub-paragraph (a) of paragraph 4 of Condition 32) under an agreement for making a connection or modification to an existing connection 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 (or of such other matters) whether by reason of the reinforcement or extension of the Licensee's distribution system or the provision of additional entry or exit points on such system or otherwise; and

(b) the ability or likely future ability of the Licensee to recoup a proportion of such costs from third parties.

Offer of terms - general

4 The Licensee shall offer terms for agreements in accordance with paragraphs 1 and 2 as soon as practicable and (save where the Authority consents to a longer period) in any event not more than the period specified in paragraph 6 after receipt by the Licensee of an application containing all such information as the Licensee may reasonably require for the purpose of formulating the terms of the offer.

5 The Licensee shall not be obliged pursuant to this Condition to offer to enter or to enter into any agreement:

(a) if to do so would involve the Licensee:

(i) in breach of its duties under Article 12 of the Order; or

(ii) in breach of any regulations made under Article 32 of the Order or of any other enactment relating to safety or standards applicable in respect

of the Distribution Business; or

(iii) in breach of the Distribution Code; or

(b) if the person making the application does not undertake to be bound by such parts of the Distribution Code and to such extent as the Authority shall from time to time specify in directions issued to the Licensee for the purposes of this Condition.

6 For the purpose of paragraph 4, the period specified shall be:

(a) in the case of persons seeking use of system only, 28 days; and

(b) in the case of persons seeking connection or modification to an existing connection or seeking use of system in conjunction with connection, 3 months.

Connection works on the transmission system

7 This Condition shall apply in respect of works required on the transmission system (as well as works required on the Licensee's distribution system) in response to such applications as are referred to in paragraph 2, and accordingly:

(a) references in paragraph 2 to works on the Licensee's distribution system, shall apply equally to works on the transmission system; and

(b) the Licensee shall not offer to enter into, or enter into, any agreement concerning works on the transmission system pursuant to this Condition, if to do so would involve the Transmission System Operator in breach of the Grid Code.

**Condition 31 Functions of the Authority – Distribution Disputes**

- 1 If, after a period which appears to the Authority 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 a request under Condition 30, the Authority may, pursuant to Article 11(3)(c) of the Order and on the application of that person or the Licensee, settle any terms of the agreement in dispute between the Licensee and that person in such manner as appears to the Authority to be reasonable having (insofar as relevant) regard in particular to the following considerations:
- (a) that such person should pay to the Licensee:
    - (i) in the case of provision of use of system, the use of system charges determined in accordance with paragraph 2 of Condition 32;
    - (ii) in the case of provision of a connection, or a modification to an existing connection, to the Licensee's distribution system, the whole or an appropriate proportion (as determined in accordance with paragraph 3 of Condition 30) of the costs referred to in sub-paragraph (a) of paragraph 4 of Condition 32, 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 involve the Licensee in a breach such as is referred to in paragraph 5 of Condition 30;
  - (c) that any methods by which the Licensee's distribution system is connected to any other system for the transmission or distribution of electricity accord (insofar as applicable to the Licensee) with the Grid Code and with the Distribution Code; and
  - (d) that the terms and conditions of the agreement so settled by the Authority and of any other agreements entered into by the Licensee pursuant to an application under Condition 30 should be, so far as circumstances allow, in as similar a form as is practicable.



- 2 If the person wishes to proceed on the basis of the agreement as settled by the Authority, 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 the Licensee's distribution system, or for use of the Licensee's distribution system, entered into pursuant to Condition 30 or this Condition proposes to vary the contractual terms of such agreement in any manner provided for under such agreement, the Authority may, 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 Authority to be reasonable.

**Condition 32 Basis of Charges for Use of and Connection to the Distribution System**

Preparation of statements on basis of charging

1 The Licensee shall, as soon as practicable after this Condition comes into effect (and, in any event, not later than such date as the Authority shall specify in directions issued to the Licensee for the purposes of this Condition), prepare a statement approved by the Authority setting out the basis upon which charges will be made, as part of the Distribution Business, for:

- (a) use of the Licensee's distribution system;
- (b) connection to the Licensee's distribution system; and
- (c) any other matters for which the Licensee (with the approval of the Authority) levies charges.

Such statement to be in such form and to contain such detail as shall be necessary to enable any person to make a reasonable estimate of the charges to which it would become liable for the provision of such services, and (without prejudice to the foregoing) including such of the information set out in paragraphs 2 and 3 as is required by such paragraphs to be included in the statement.

Use of Licensee's distribution system

2 Except to the extent that the Authority shall otherwise specify, the statement referred to in paragraph 1 shall in respect of use of system include:

- (a) a schedule of charges for transport of electricity under use of system;
- (b) a schedule of adjustment factors to be made (where appropriate) in respect of distribution losses;
- (c) the methods by which and the principles on which charges (if any) for availability of distribution capacity on the Licensee's distribution system will be made;
- (d) a schedule of charges in respect of meter reading, accounting and

administrative charges;

- (e) a schedule of the charges (if any) which may be made for the provision and installation of any meters or electrical plant at entry or exit points, the provision and installation of which is ancillary to the grant of use of system, and for the maintenance of meters or electrical plant; and
- (f) such other matters as shall be specified in directions issued by the Authority from time to time for the purposes of this Condition.

Connection to distribution system

3 The statements referred to in paragraph 1 shall in respect of connections to the Licensee's distribution system include:

- (a) a schedule listing those items (including the carrying out of works and the provision and installation of electric lines or electrical plant or meters) of significant cost liable to be required for the purpose of connection (at entry or exit points) to the Licensee's distribution system for which connection charges may be made or levied and including (where practicable) indicative charges for each such item and (in other cases) an explanation of the methods by which and the principles on which such charges will be calculated;
- (b) the methods by which and the principles on which any charges will be made in respect of extension or reinforcement of the Licensee's distribution system rendered necessary or appropriate by virtue of providing connection to or use of system to any person seeking connection;
- (c) the methods by which and the principles on which connection charges will be made in circumstances where the electric lines or electrical plant to be installed are of greater size or capacity than that required for use of the Licensees' distribution system by the person seeking connection;
- (d) the methods by which and the principles on which any charges (including any capitalised charge) will be made for maintenance and repair required of electric lines, electrical plant or meters provided and installed for making a connection to the Licensee's distribution system;

- (e) the methods by which and the principles on which any charges will be made for the provision of special metering or telemetry or data processing equipment by the Licensee for the purposes of enabling any person which is bound to comply with the Distribution Code to comply with its obligations in respect of metering thereunder, or for the performance by the Licensee of any service in relation thereto;
  - (f) the methods by which and principles on which any charges will be made for disconnection from the Licensee's distribution system and the removal of electrical plant, electric lines and ancillary meters following disconnection; and
  - (g) such other matters as shall be specified in directions issued by the Authority from time to time for the purposes of this Condition.
- 4 Connection charges for those items referred to in paragraph 3 shall be set at a level which will enable the Licensee to recover:
- (a) the appropriate proportion of the costs directly or indirectly incurred in carrying out any works, the extension or reinforcement of the Licensee's distribution system and the provision and installation, maintenance and repair and, following disconnection, removal of any electric lines, electrical plant, meters, special metering, telemetry, data processing equipment or other items; and
  - (b) a reasonable rate of return on the capital represented by such costs.

Preparation of statement on distribution system capacity

- 5 If so requested and subject to paragraphs 6 and 12, the Licensee shall, as soon as practicable and in any event within 28 days (or where the Authority so approves such longer period as the Licensee may reasonably require having regard to the nature and complexity of the request) after the date referred to in paragraph 13, give or send to any person making such request a statement showing present and future circuit capacity, forecast power flows and loading on the part or parts of its distribution

system specified in the request and fault levels for each distribution node covered by the request and containing:

- (a) such further information as shall be reasonably necessary to enable such person to identify and evaluate the opportunities available when connecting to and making use of the part or parts of the Licensee's distribution system specified in the request; and
- (b) if so requested, a commentary prepared by the Licensee indicating its view as to the suitability of the part or parts of the Licensee's distribution system specified in the request for new connections and transport of further quantities of electricity;

provided that the Authority may, upon application of the Licensee, relieve the Licensee from the obligation to prepare any such statement in respect of any period and any part or parts of the Licensee's distribution system specified in directions issued to the Licensee by the Authority from time to time for the purposes of this Condition.

6 Except as provided in sub-paragraphs (a) and (b) below, the Licensee shall include in every statement prepared or (as the case may be) given or sent under paragraph 5 the information required by such paragraph:

- (a) the Licensee may with the prior consent of the Authority omit from any such statement any details as to circuit capacity, power flows, loading or other information, disclosure of which would, in the view of the Authority, seriously and prejudicially affect the commercial interests of the Licensee or any third party.
- (b) the Licensee may omit from any statement given or sent under paragraph 5 any information the disclosure of which would place the Licensee in breach of Condition 10.

Preparation of new statements, circulation and charging

7 In addition to, and without prejudice to, the Licensee's obligations under paragraph 1, the Licensee shall, upon being directed to do so in directions issued by the Authority

from time to time for the purposes of this Condition and within such period as shall be specified in the directions, prepare a statement or statements approved by the Authority providing that charges for use of the Licensee's distribution system and/or for connection to the Licensee's distribution system will be made on such basis as shall be specified in the directions and such statement or statements shall be in such form and contain such detail as shall be necessary to enable any person to make a reasonable estimate of the charges to which it would become liable for the provision of such services and (without prejudice to the foregoing) including such information as shall be specified in the directions. Each statement prepared in accordance with this paragraph shall, with effect from the date on which it is approved by the Authority or such later date as the Authority shall specify, replace the corresponding statement prepared by the Licensee in accordance with paragraph 1 or, as the case may be, this paragraph (as from time to time revised in accordance with paragraph 8) which is in force at such date and the Licensee shall, with effect from such date make charges in accordance with the statement (as from time to time revised in accordance with paragraph 8) which has replaced such corresponding statement.

- 8 The Licensee may periodically revise the information set out in and, with the approval of the Authority, alter the form of the statements prepared in accordance with paragraphs 1 and 7 and shall, at least once in every year this Licence is in force, revise such statements in order that the information set out in the statements shall continue to be accurate in all material respects.
- 9 The Licensee shall send a copy of the statements prepared in accordance with paragraphs 1 and 7 and of each revision of such statements in accordance with paragraph 8 to the Authority. Each such revision shall require to be approved by the Authority and shall not become effective until approved by the Authority.
- 10 The Licensee shall give or send a copy of the statements prepared in accordance with paragraphs 1 and 7 or (as the case may be) of the latest revision of such statements in accordance with paragraph 8 approved by the Authority pursuant to such paragraph to any person who requests a copy of such statement or statements.
- 11 The Licensee may make a charge for any statement given or sent pursuant to paragraph 10 of an amount reflecting the Licensee's reasonable costs of providing

such a statement which shall not exceed the maximum amount specified in directions issued by the Authority from time to time for the purposes of this Condition.

- 12 The Licensee may within 10 days after receipt of the request provide an estimate of its reasonable costs in the preparation of any statement referred to in paragraph 5, and its obligation to provide such statement shall be conditional on the person requesting such statement agreeing to pay the amount estimated or such other amount as the Authority may, upon the application of the Licensee or the person requesting such statement, direct.
- 13 For the purposes of paragraph 5, the date referred to shall be the later of:
  - (a) the date of receipt of the request referred to in paragraph 5; or
  - (b) the date on which the Licensee receives agreement from the person making the request to pay the amount estimated or on which an amount is determined by the Authority (as the case may be) under paragraph 12.

Non-discrimination

- 14 The Licensee shall make charges to all relevant suppliers for the provision of use of its distribution system which are such as to secure that the element for use of its distribution system in the amounts payable for supplies of electricity by customers of relevant electricity undertakings whose maximum monthly demand in the 3 months of the highest maximum demand on the total system in each period of 12 consecutive months does not exceed 1 MW, shall be the same in that period, irrespective of where such customers are located or reside.
- 15 The Licensee shall not, in setting its charges for use of system or connection, restrict, distort or prevent competition in the generation, transmission, distribution or supply of electricity.

**Condition 33 Supplier of Last Resort Payment Claims**

- 1 This Condition sets out the circumstances in which the Licensee shall increase its Charges in order to compensate any electricity supplier (a “**Claimant**”) which claims for losses that it has incurred in complying with a supplier of last resort direction under its licence.

Increase in Charges

- 2 Where the Licensee receives a Last Resort Claim, the Licensee shall:
- (a) increase the Charges in respect of the Relevant Year by such an amount as the Licensee reasonably estimates will secure an increase in revenue from the Charges equal to the Claimed Amount; and
  - (b) pay to the Claimant, as soon as practicable and in quarterly instalments, an amount equal to the additional revenue from the Charges received by the Licensee in respect of the Relevant Year as a result of the increase referred to in sub-paragraph (a) (to the extent such amount does not exceed the Claimed Amount).

- 3 If the amount paid to the Claimant under paragraph 2(b) is less than the Claimed Amount (a “**shortfall**”), the Licensee shall:
- (a) increase the Charges in respect of the Year following the Relevant Year by such an amount as the Licensee reasonably estimates will secure an increase in revenue from the Charges equal to the amount of the shortfall together with 12 months’ interest thereon (the “**Shortfall Amount**”); and
  - (b) pay to the Claimant, as soon as practicable and in quarterly instalments, an amount equal to the additional revenue from the Charges revenue received by the Licensee in respect of such Year as a result of the increase referred to in sub-paragraph (a) (to the extent such amount does not exceed the Shortfall Amount).

Decrease in Charges



- 4 If the additional revenue from the Charges received by the Licensee, in respect of any Year, as a result of the increase referred to in paragraph 2(a) or 3(a) exceeds the Claimed Amount or the Shortfall Amount (respectively), the Licensee shall, in respect of the Year following that Year, decrease the PSO Charges by such an amount as the Licensee reasonably estimates will secure a decrease in revenue from the Charges equal to the amount of such excess together with 12 months' interest thereon.

Statements

- 5 The Licensee shall prepare, in respect of each Year in which it increases or decreases charges in pursuance of paragraph 2, 3 or 4, a statement showing:
- (a) the aggregate amount of its revenue derived from increases in charges in pursuance of paragraph 2;
  - (b) the aggregate amount of its revenue derived from increases in charges in pursuance of paragraph 3;
  - (c) the aggregate amount of the decrease in its revenue resulting from decreases in charges in pursuance of paragraph 4; and
  - (d) in the case of each Last Resort Claim, the aggregate payments to the Claimant made in respect of the Year in question (whenever those payments were made).
- 6 The Licensee shall give the statements referred to in paragraph 5 to the Authority within the first 4 months of the Year following that to which they relate. On giving the statement referred to in paragraph 7(d) to the Authority, the Licensee shall also publish it in such manner as, in the reasonable opinion of the Licensee, will secure adequate publicity for it.

Miscellaneous

- 7 Any question whether any estimate for the purposes of paragraph 2, 3 or 4 is a reasonable one shall be determined by the Authority.
- 8 In calculating the revenue received by the Licensee from the Charges during any period for the purposes of Annex 1, any increase or decrease in revenue attributable to

the Licensee's compliance with this Condition shall be treated as if it had not occurred.

- 9 All references in this Condition to interest shall be references to simple interest charged at the base lending rate of Northern Bank Limited from time to time.

Definitions

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

**“Charges”** means the PSO Charges (as defined in Condition 24A).

**“Claimed Amount”** means, in respect of any Last Resort Claim, the amount set out in the Last Resort Claim, together with interest for the period commencing on the date the Last Resort Claim was received by the Licensee and ending on the date which is 61 days before the start of the Relevant Year (except where such period is of 30 days or less, in which case no interest shall be added).

**“Last Resort Claim”** means a claim for which a Claimant has been given consent by the Authority pursuant to a condition of the Claimant's licence that provides for supplier of last resort payments.

**“Relevant Year”** means, in respect of any Last Resort Claim: (a) where the claim was received by the Licensee at least 60 days before the beginning of a Year, that Year; or (b) where the claim was received by the Licensee less than 60 days before the beginning of a Year, the next Year.

**“Year”** means a period of 12 months beginning with 1 April.

**Condition 34 Standards of performance**

- 1 The Licensee shall conduct the Distribution Business in the manner which it reasonably considers to be best calculated to achieve any standards of overall performance that may be determined by the Authority pursuant to Article 43A of the Order.

**Condition 35 Provision of comments to the Authority on information and advice**

- 1 The Licensee shall, if so requested by the Authority, give reasoned comments on the accuracy and text of any information and advice, so far as relating to the Distribution Business, which the Authority proposes to publish pursuant to Article 7 of the Energy Order.
- 2 The Licensee may not be required by the Authority to furnish it under this Condition with information for the purpose of the exercise of its functions under Article 7 of the Energy Order.
- 3 The Licensee may not be required by the Authority to furnish it under this Condition with any information in relation to an enforcement matter which the Licensee could not be compelled to produce or give in evidence in civil proceedings in the High Court.
- 4 In paragraphs 2 and 3, “**information**” shall include any documents, accounts, estimates, returns or reports (whether or not prepared specifically at the request of the Authority) of any description specified by the Authority.

**Condition 36 Licensee's apparatus on customers' side of meter**

1 This Condition applies where the Licensee installs a second meter or other apparatus for the purpose of ascertaining or regulating the amount of electricity supplied, the period of supply, or any other quantity or time connected with the supply on the customer's side of the meter or meters registering the quantity of the supply to a Domestic Customer.

2 Any second meter or other apparatus installed by the Licensee in the position and for a purpose described in paragraph 1 shall be such that the power consumed by it, when aggregated with the power consumed by any other meter or apparatus installed by the Licensee in the like position and for a like purpose in relation to the Domestic Customer, does not exceed 10 watts except where otherwise agreed with the customer.

3 In this Condition:

**“Domestic Customer”** has the meaning given to that expression in the NIE Energy Supply Licence.

**Condition 37 Provision of services for persons who are of pensionable age or disabled**

Vulnerable Persons

- 1 The Licensee shall, by SEM Go-Live (or such later date as the Authority may direct), prepare a Code of Practice describing the special services available, and any charges made or to be made, to such persons who are of State pensionable age, disabled, blind or deaf.

Pensionable age or Disabled

- 2 The Code of Practice shall set out the Licensee's arrangements for persons occupying domestic premises who are of State pensionable age or disabled, by which special services in the following respects can be made available where appropriate:
  - (a) providing where practicable special controls and adaptors for meters (including prepayment meters) and repositioning meters; and
  - (b) providing special means of identifying officers authorised by the Licensee.
- 3 The arrangements included in the Code of Practice shall, in the case of a person occupying domestic premises who:
  - (a) is of State pensionable age and lives alone or with other persons all of whom are also of State pensionable age or minors; and
  - (b) is in default of his obligation to pay for electricity through misfortune or inability to cope with credit terms for the supply of electricity for domestic use,

provide that Licensee shall not in those circumstances cut off the supply of electricity to those premises during any winter period, that is to say, a period beginning with 1 October in any year and ending with 31 March in the next following year.

Blind/Deaf

- 4 The Code of Practice shall set out the Licensee's arrangements for the provision, on request and free of charge, in relation to persons occupying domestic premises who, to

the knowledge or reasonable belief of the Licensee:

- (a) are blind or partially sighted, of details of the arrangements for making enquiries or complaints about the services provided by the Licensee and relating to them, by telephone or other appropriate means; or
- (b) are deaf or partially hearing, of details of facilities to assist them (if they have the equipment enabling them to take advantage thereof) when making enquiries or complaints about the services provided by the Licensee and relating to them.

5 The Licensee shall comply with the requirements set out in Condition 41, as if they were set out in this Condition.

6 “**Code of Practice**” in this Condition means the Code of Practice from time to time in force which is required to be prepared pursuant to this Condition, in relation to the provision of services for persons described in paragraph 1.

**Condition 38 Complaint handling procedure**

- 1 Subject to the requirements of paragraph 2 below, the Licensee shall, by SEM Go-Live (or such later date as the Authority may direct), prepare a Code of Practice establishing a procedure for handling complaints from customers about the manner in which the Licensee conducts the Distribution Business and any procedure established in accordance with this Condition shall specify the periods within which it is intended that different descriptions of complaint should be processed and resolved.
- 2 The Licensee shall comply with the requirements set out in Condition 41, as if they were set out in this Condition.
- 3 “**Code of Practice**” in this Condition means the Code of Practice from time to time in force which is required to be prepared pursuant to this Condition, in relation to the complaint handling procedure.



**Condition 39 Provision of services for prepayment meter customers**

- 1 Subject to the requirements of paragraph 2 below, the Licensee shall, by SEM Go-Live (or such later date as the Authority may direct), prepare a Code of Practice setting out the services which the Licensee offers to prepayment meter customers. Such Code of Practice shall include, but shall not be limited to:
  - (a) instructions for the operation of the prepayment meter system, including token availability, emergency credit and other such facilities;
  - (b) details of the advantages and disadvantages of prepayment meters, including situations or types of customer for which they are particularly suited or unsuited; and
  - (c) details of any additional charges which may be payable for the use of prepayment meters and the basis on which these charges are calculated.
- 2 The Licensee shall comply with the requirements set out in Condition 41, as if they were set out in this Condition.
- 3 “**Code of Practice**” in this Condition means the Code of Practice from time to time in force which is required to be prepared pursuant to this Condition, in relation to prepayment meter customers.

**Condition 40 Relations with the General Consumer Council**

- 1 The Licensee shall meet with the General Consumer Council whenever requested to do so by it, up to a maximum of 6 times in every year during the period of the Licence.
- 2 Without prejudice to paragraph 1, the Licensee shall meet the General Consumer Council at least once in every year during the period of the Licence.
- 3 In at least one meeting with the General Consumer Council in every year during the period of the Licence, the Licensee shall be represented by one or more directors of the Licensee.

**Condition 41 Preparation, review of and compliance with Codes of Practice**

- 1 This Condition applies to each of the Codes of Practice required to be prepared by the Licensee pursuant to Conditions 37, 38 and 39 (a “Code”).
- 2 The Licensee shall, before submitting a Code to the Authority for its approval, consult the General Consumer Council and shall consider any representations made by it on the Code or the manner in which it is likely to be operated.
- 3 The Licensee shall submit the Code to the Authority for its approval.
- 4 If, within 30 days from the day the Licensee first submitted the Code to the Authority for its approval, the Authority notifies the Licensee that it considers that the Code does not meet the requirements of this Licence the Licensee shall immediately make such changes to the Code as the Authority may require.
- 5 The Licensee shall whenever requested to do so by the Authority review the Code and the manner in which it has been operated, with a view to determining whether any modification should be made to the Code or to the manner of its operation.
- 6 In carrying out any such review the Licensee shall consult the General Consumer Council and shall consider any representations made by it about the Code or the manner in which it is likely to be or has been operated.
- 7 After consulting the General Consumer Council in accordance with paragraph 6, the Licensee shall submit any revision of the Code which it wishes to make to the Authority for its approval and if the Authority approves the revision, the Licensee shall, following receipt of the Authority’s approval in writing, then revise the Code appropriately. If the Authority does not approve the revision, the Licensee shall make further revisions to the Code as the Authority may require, in order to meet the requirements of the Licence.
- 8 The Licensee shall:
  - (a) as soon as practicable following the preparation of the Code or any revision made to it, send to the Authority and the General Consumer Council a copy of the Code or such revision in the form approved by the Authority;

- (b) draw to the attention of its customers the existence of the Code and each substantive revision of it and how they may inspect or obtain a copy of the Code in its latest form;
  - (c) make a copy of the Code available for inspection by members of the public at each of the relevant premises during normal opening hours;
  - (d) give or send free of charge a copy of the Code (as from time to time revised) to any person who requests it; and
  - (e) make available to members of the public, in such form and in such manner as the Authority considers appropriate, information published by the Authority pursuant to Article 7 of the Energy Order.
- 9 No changes may be made to the Code otherwise than in accordance with this Condition.
- 10 Subject to paragraph 12 the Licensee shall ensure, so far as reasonably practicable, that it complies with the terms of and the arrangements or procedures (as the case may be) as are contained in or described by each Code to which this Condition applies or any revision to such Code approved by the Authority.
- 11 The Licensee shall provide the Authority with all assistance reasonably necessary to enable the Authority to monitor the implementation and operation of any Code and this assistance shall include, without limitation, permitting the Authority access to relevant documentation held by the Licensee.
- 12 The Authority may (following consultation with the Licensee) issue directions relieving the Licensee of any of its obligations under Conditions 37, 38 and 39 and this Condition 41 to such an extent as may be specified in those directions and subject to such terms and conditions as the Authority thinks fit.

**Condition 42 Charge Restriction Applicable to the Transmission and Distribution Business**

- 1 The Licensee shall comply with the conditions set out in Annex 2.

## ANNEX 1 – Determination of the PSO Charges

### Restriction on PSO Charges

- 1 The PSO Charges applicable from time to time shall be the charges determined as such by the Licensee, provided that in setting such charges, the Licensee shall use its best endeavours to ensure that, in any relevant year, the regulated PSO revenue does not exceed the maximum allowed PSO revenue (or, where the maximum allowed PSO revenue is a negative figure, the Licensee will use its best endeavours to ensure that, in the relevant year, it pays that amount to relevant persons under the PSO Agreement).

### Maximum PSO Revenue

- 2 The maximum allowed PSO revenue, in respect of any relevant year (t), shall be calculated as follows:

$$M_{PSO_t} = PPB_t + Supply_t + LB_t + D_t + K_t$$

Where:

$M_{PSO_t}$  means the maximum allowed PSO revenue in the relevant year t.

$PPB_t$  means the PPB Amount for the relevant year t.

$Supply_t$  means the NIE Energy Supply Amount for the relevant year t.

$LB_t$  means the Land Bank Amount for the relevant year t.

$D_t$  means the excluded PSO costs (as defined in paragraph 3).

$K_t$  means the correction factor (whether a positive or a negative number) to be derived as follows:

$$K_t = (M_{PSO_{t-1}} - R_{t-1}) * (1 + I_t/100)$$

where  $R_{t-1}$  is the revenue actually derived under the PSO Agreement in the relevant year immediately preceding the relevant year t, and  $I_t$  is the

Average Specified Rate. In relevant year  $t$  ending 31 March 2008,  $K_t$  shall be zero.

Excluded PSO Costs

- 3 Subject to paragraph 4, the following costs and revenues of the Licensee (whether a positive or negative amount) shall be treated as excluded PSO costs in relevant year  $t$ :
- (a) any payments the Licensee makes to electricity suppliers pursuant to the Energy Efficiency programme (including any approved incentive payments) in relevant year  $t$ ;
  - (b) any reasonable costs incurred by the Transmission and Distribution Business in complying with the requirements imposed on the Licensee under legislation and other legal requirements through which Directive 2003/54/EC is implemented to the extent such costs are approved by the Authority (whether such approval is given prior to or after the coming into effect of this Annex) and not recovered under any other part of the Licence;
  - (c) any reasonable costs incurred by the Transmission and Distribution Business in establishing and operating the arrangements to support the Single Electricity Market (being the project described in the Memorandum of Understanding dated 23 August 2004 and made between the Authority and the Commission for Energy Regulation) including in providing those services provided by the Transmission and Distribution Business in its role as common service provider, to the extent such costs are approved by the Authority (whether such approval is given prior to or after the coming into effect of this Annex) and not recovered under any other part of the Licence;
  - (d) any amount that comes to be treated as Uncollected PSO Revenue in relevant year  $t$ , less any amount that is paid to the Licensee in that relevant year in respect of an amount that was previously treated as Uncollected PSO Revenue; and
  - (e) any other amounts not included in  $PPB_t$ ,  $Supply_t$ ,  $LB_t$  requested by the Licensee and approved by the Authority (whether such approval is given prior

to or after the coming into effect of this Annex) in respect of relevant year t.

- 4 No cost incurred or revenues received by the Licensee shall be included in more than one of the categories referred to in paragraph 3, or under both this Annex 1 and Annex 2, and no amounts shall be included in paragraph 3 to the extent that such amounts are recovered under the NIE Energy Supply Licence or otherwise under the Licence or any other licence held by any affiliate or related undertaking of the Licensee.

Miscellaneous

5 Restriction of PSO Charges: adjustments

- (a) If, in respect of any relevant year, the regulated PSO revenue exceeds the maximum allowed PSO revenue by more than the permitted one-year percentage, the Licensee shall furnish an explanation to the Authority and in the next following relevant year the Licensee shall not effect any increase in the PSO Charges unless it has demonstrated to the reasonable satisfaction of the Authority that the regulated PSO revenue would not be likely to exceed the maximum allowed PSO revenue in that next following relevant year.
- (b) If, in respect of any 3 successive relevant years, the sum of the amounts by which the regulated PSO revenue has exceeded the maximum allowed PSO revenue is more than the permitted 3-year percentage, then in the next following relevant year the Licensee shall, if required by the Authority, adjust its PSO Charges such that the regulated PSO revenue would not be likely, in the judgment of the Authority, to exceed the maximum allowed PSO revenue in that next following relevant year.
- (c) In this paragraph:

**“permitted one-year percentage”** means 4 per cent of the maximum allowed PSO revenue; and

**“permitted 3-year percentage”** means 5 per cent of the maximum allowed PSO revenue in the second of the relevant years.



6 Information to be provided to the Authority

- (a) Where any change is intended to be made in the PSO Charges, the Licensee shall not later than the time referred to in paragraph 6(b) provide the Authority with:
  - (i) a written forecast of the maximum allowed PSO revenue, together with its components, in respect of the relevant year  $t$  in which such change is to take effect and in respect of the next following relevant year  $t + 1$ ;
  - (ii) a written estimate of the maximum allowed PSO revenue, together with its components, in respect of the relevant year  $t-1$  immediately preceding the relevant year in which the change is to take effect unless a statement complying with paragraph 6(f) in respect of relevant year  $t-1$  has been furnished by the Licensee to the Authority before the time referred to in paragraph 6(b).
- (b) The relevant time referred to in paragraph 6(a) is 14 days prior to the date of publication of such charges.
- (c) If within 3 months of the commencement of any relevant year  $t$  the Licensee has not provided the aforementioned forecasts pursuant to paragraph 6(a) for the purpose of such changes in charges as are referred to in paragraph 6(a), the Licensee shall forthwith provide the Authority with a written forecast of the maximum allowed PSO revenue (together with its components) in respect of relevant year  $t$ .
- (d) The Authority may issue directions providing that any forecast or estimate provided in accordance with paragraph 6(a) or 6(c) shall be accompanied by such information as regards the assumptions underlying the forecast or estimate as may be necessary to enable the Authority to be satisfied that the forecast or estimate has been properly prepared on a consistent basis and the Licensee shall comply with any such directions.
- (e) Not later than 6 weeks after the commencement of each relevant year  $t$ , the

Licensee shall send to the Authority a statement as to:

- (i) whether or not the provisions of paragraph 5 are likely to be applicable in consequence of the regulated PSO revenue in the preceding relevant year t-1 or the 3 preceding relevant years t-1, t-2 and t-3; and
  - (ii) its best estimate as to the relevant correction factor  $K_t$  calculated in accordance with the formula set out in paragraph 2 to be applied in calculating the maximum allowed PSO revenue in respect of relevant year t.
- (f) Not later than 3 months after the end of each relevant year the Licensee shall send to the Authority a statement, in respect of that relevant year, showing the specified items referred to in paragraph 6(h).
- (g) The statement referred to in the preceding paragraph shall be:
- (i) accompanied by a report from the Auditors that in their opinion:
    - (A) such statement fairly presents each of the specified items referred to in paragraph 6(h) in accordance with this Annex; and
    - (B) the amounts shown in respect of each of those specified items are in accordance with the Licensee's accounting records which have been maintained in accordance with Condition 2; and
  - (ii) certified by a director of the Licensee on behalf of the Licensee that to the best of his knowledge, information and belief having made all reasonable enquiries:
    - (A) there is no amount included in its calculations under paragraph 2 which represents other than an amount permitted to be included under this Annex;
    - (B) all amounts which should properly be taken into account for the purposes of this Annex have been taken into account.
- (h) The specified items to be contained in the statement referred to in paragraph

6(f) shall be the following:

- (i) the regulated PSO revenue;
- (ii) the maximum allowed PSO revenue;
- (iii) the PPB Amount and the NIE Energy Supply Amount;
- (iv) the Land Bank Amount;
- (v) any excluded PSO cost, being  $D_t$  calculated as provided under paragraph 2; and
- (vi) such other items as shall be specified in directions issued by the Authority from time to time for the purposes of this Annex.

7 Duration of Restriction

- (a) This Annex shall apply so long as the Licence continues in force but shall cease to have effect (in whole or in part, as the case may be) if the Licensee delivers to the Authority a disapplication request made in accordance with paragraph 7(b) and:
  - (i) the Authority agrees in writing to the disapplication request; or
  - (ii) their application (in whole or in part) is terminated by notice given by the Licensee in accordance with either paragraph 7(d) or paragraph 7(e).
- (b) A disapplication request pursuant to paragraph 7(a) shall (i) be in writing addressed to the Authority, (ii) specify this Annex (or any part or parts thereof) to which the request relates; and (iii) state the date (being not earlier than the date referred to in paragraph 7(c)) from which the Licensee wishes the Authority to agree that the Annex or specified part or parts thereof shall cease to have effect (hereafter referred to as the disapplication date).
- (c) Save where the Authority agrees otherwise, no disapplication following delivery of a disapplication request pursuant to this paragraph 7 shall have effect earlier than the date which is the later of:

- (i) the date occurring 18 months after delivery of the disapplication request; and
  - (ii) 31 March 2002.
- (d) If the Authority has not made a reference to the Competition Commission under Article 15 of the Order relating to the modification of this Annex before the beginning of 12 months which will end with the disapplication date, the Licensee may deliver written notice to the Authority terminating the application of this Annex (or any part or parts thereof) as are specified in the disapplication request with effect from the disapplication date or a later date.
- (e) If the Competition Commission makes a report on a reference made by the Authority relating to the modification of this Annex (or any part or parts thereof) specified in the disapplication request and such report does not include a conclusion that the cessation of this Annex or the specified part or parts thereof, in whole or in part, operate or may be expected to operate against the public interest, the Licensee may within 30 days after the publication of the report by the Authority in accordance with Article 16 of the Order deliver to it written notice terminating the application of this Annex or the specified part or parts thereof (as applicable) with effect from the disapplication date or a later date.
- (f) A disapplication request or notice served under this paragraph 7 may be served in respect of a specified geographic area.

#### Unit Coverage

- 8 The maximum allowed PSO revenue (or certain parts of the maximum allowed PSO revenue) can potentially be recovered from the quantity entering the total system in the authorised transmission area and from Wheeled Units. The final decision regarding which units in particular the maximum allowed PSO revenue (or certain parts of the maximum allowed PSO revenue) will be recovered from in relevant year t (“unit coverage”) rests with the Authority. In each relevant year t on the decision of the Authority regarding unit coverage of the PSO Charge, the Licensee will then draw up for the relevant year t the schedule of PSO Charges in accordance with Condition

24A in a manner which is consistent with the decision of the Authority regarding unit coverage. If the Licensee draws up for relevant year t the schedule of PSO Charges in accordance with Condition 24A in a manner which is not consistent with the decision of the Authority regarding unit coverage then the Authority's approval under Condition 24A for the form of this schedule will not be granted.

Definitions

9 In this Annex, unless the context otherwise requires:

<b>“Average Specified Rate”</b>	means the arithmetic mean of the daily base rates of Northern Bank Limited (or such other bank as the Authority shall specify from time to time) current from time to time during the period in respect of which the calculation falls to be made.
<b>“Land Bank Amount”</b>	has the meaning given to that expression in Condition 23.
<b>“maximum allowed PSO revenue”</b>	means the amount calculated as such in accordance with paragraph 2.
<b>“NIE Energy Supply Amount”</b>	means the amount determined as such in accordance with annex 1 of the NIE Energy Supply Licence.
<b>“PPB Amount”</b>	means the amount determined as such in accordance with annex 3 of the NIE Energy Supply Licence.
<b>“PSO Agreement”</b>	means the agreement of that name established pursuant to Condition 24A.
<b>“regulated PSO revenue”</b>	means the revenue (measured on an accruals basis) derived under the PSO Agreement (after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived).
<b>“relevant persons”</b>	has the meaning given to that expression in Condition

24A.

**“relevant year”**

means a financial year of the Licensee.

**“Uncollected PSO Revenue”**

means any amount owed to the Licensee under the PSO Agreement, which amount remains unpaid six months after the date it first fell due for payment or which amount the Licensee deems (in accordance with its payment security policy referred to in paragraph 1) to be unrecoverable before the expiry of that six-month period; plus the reasonable recovery costs incurred by the Licensee in respect of such amount and the reasonable interest attributable to such amount (calculated, in both cases, in accordance with such payment security policy).

**“Wheeled Unit”**

means a kilowatt hour of electricity (whether generated inside or outside of Northern Ireland) which enters the total system at any point and is delivered to a place outside Northern Ireland.

**ANNEX 2 – Transmission and Distribution Charge Restriction Condition**

1. **Definitions**

1.1 In this Annex:

<b>“2006 Direction”</b>	means the direction issued by the Authority to the Licensee dated 19 December 2006;
<b>“adjusted quantity transmitted and distributed”</b>	means the regulated quantity transmitted and distributed plus an amount equal to the units consumed on the Licensee’s premises in Northern Ireland (insofar as not already included) plus any wheeled units;
<b>“average specified rate”</b>	means the arithmetic mean of the daily base rates of Northern Bank Limited (or such other bank as the Authority shall specify from time to time) current from time to time during the period in respect of which the calculation falls to be made;
<b>“CAIR<sub>t</sub>”</b>	has the meaning given to that expression in paragraph 2.2;
<b>“Directive 2003/54/EC”</b>	means Directive 2003/54/EC of the European Parliament and Council of 26 June 2003 concerning common rules for the internal market in electricity;
<b>“distribution services”</b>	means all services provided as part of the Distribution Business other than excluded services;
<b>“excluded services”</b>	means those services provided as part of the Transmission and Distribution Business which in accordance with the principles set out in paragraph 5 fall to be treated as excluded services;
<b>“first relevant year”</b>	means the financial year commencing on 1 April 2002;
<b>“maximum core revenue”</b>	means the revenue calculated in accordance with the formula in paragraph 2.2 or 2.3 as the case may be;
<b>“maximum regulated transmission and distribution revenue”</b>	means the aggregate of the maximum core revenue and the Moyle revenue;

<b>“metered”</b>	means in relation to any quantity transmitted and/or distributed, as measured by metering required pursuant to and defined in the Grid Code or (where no such meter is installed) as otherwise reasonably calculated;
<b>“Moyle revenue”</b>	means the revenue which the Licensee is allowed to recover in respect of $CAIR_t$ in accordance with paragraph 2(B) (such revenue being zero where $CAIR_t$ is zero);
<b>“quantity entering the total system”</b>	means the aggregate quantity of units metered on entry to the total system in relevant year t (minus any units consumed by generation sets and imported from the total system);
<b>“regulated quantity transmitted and distributed”</b>	means the aggregate quantity of units transmitted and distributed through the total system in relevant year t metered at grid supply points (excluding (a) any units consumed by generation sets and imported from the total system, and (b) any wheeled units);
<b>“regulated transmission and distribution revenue”</b>	means the revenue (measured on an accruals basis) derived from transmission and distribution charges (including to any Separate Business) in relevant year t, after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived;
<b>“relevant year”</b>	means a financial year commencing on or after 1 April 2002 and ending in each case, on 31 March in the year following its commencement;
<b>“relevant year t”</b>	means that relevant year for the purposes of which any calculation falls to be made, such that relevant year 2003 means the relevant year ending on 31 March 2003: <b>“relevant year t-1”</b> means the relevant year preceding relevant year t or, in respect of the period prior to 1 April 2002, the period of 12 calendar months commencing on 1 April 2001; and similar expressions shall be construed accordingly;
<b>“RPI<sub>t</sub>”</b>	means the Retail Prices Index (1987=100) published or determined with respect to October in relevant year t;
<b>“Sustainable Networks Programme”</b>	means the programme of that name to be established by the Licensee comprising planning and research activities aimed at identifying the



	best options for the operation and development of the transmission and distribution system to accommodate the Government's published sustainability objectives from time to time;
<b>“transmission and distribution charge restriction conditions”</b>	means the paragraphs set out in this Annex 2 as from time to time modified or replaced in accordance therewith or pursuant to Article 14, 17, 17A or 18 of the Order, under the Energy Order, under the SEM Order or under the Directive Regulations;
<b>“transmission and distribution charges”</b>	means all charges for the provision of transmission and distribution services and for wheeling, but excluding charges levied under the PSO Agreement (as defined in Condition 24A);
<b>“transmission and distribution services”</b>	means transmission services and distribution services taken together;
<b>“transmission services”</b>	means all services provided as part of the Transmission Business other than excluded services;
<b>“uncollected T&amp;D revenue”</b>	means any amount owed to the Licensee in respect of regulated transmission and distribution revenue, which amount remains unpaid for six months after the date it first fell due for payment or which amount the Licensee deems (in accordance with the payment security policy) to be unrecoverable before the expiry of that six months period; plus the reasonable recovery costs incurred by the Licensee in respect of such amount and the reasonable interest attributable to such amount (calculated, in both cases, in accordance with the payment security policy);
<b>“unit”</b>	means a kilowatt hour;
<b>“Vulnerable Customer Programme”</b>	means the programme of that name to be established by the Licensee comprising projects specifically targeted at combating fuel poverty by assisting low income households to identify unclaimed social security benefits and facilitate the making of relevant claims to the Social Security Agency;
<b>“wheeled unit”</b>	means a unit (whether generated inside or outside Northern Ireland) which enters the total system at any point and is delivered to a place outside Northern Ireland;

“wheeling” means the transportation of wheeled units on any part of the total system;

## 2. **Restriction of transmission and distribution charges: basic formula**

Without prejudice to paragraph 6 the Licensee shall in setting its transmission and distribution charges use its best endeavours to ensure that in any relevant year the regulated transmission and distribution revenue shall not exceed the maximum regulated transmission and distribution revenue, which shall be the aggregate of:

(A) the maximum core revenue in relevant year t ( $M_{Dt}$ );

Plus

(B)  $CAIR_t$

2.1 where  $CAIR_t$ :

- (i) in respect of relevant years ending prior to SEM Go-Live, has the same meaning as it has in the Moyle Interconnector Collection Agency Agreement in respect of relevant year t; and
- (ii) in respect of the relevant year t in which SEM Go-Live occurs, means an amount submitted by the Licensee to the Authority (following agreement with the Transmission System Operator) and approved by the Authority (subject to such adjustments as the Authority reasonably determines following consultation with the Licensee) based on the meaning such expression has in the Moyle Interconnector Collection Agency Agreement in respect of that relevant year, but reflecting the portion of that relevant year that has expired at SEM Go-Live; and
- (iii) in respect of relevant years commencing after SEM Go-Live, is zero.

2.2 where in each of the relevant years 2003 to 2007 inclusive  $M_{Dt}$  shall be calculated as follows:

$$M_{Dt} = h F_{Dt} + (1-h) V_{Dt} Q_{Dt} + E_{et} N_{Dt} + Y_t + W_{Dt} + NSI_{Dt} + D_t + K_{Dt}$$

where:

h means 0.75.

$F_{Dt}$  means an amount for relevant year t derived using the following formula:

$$F_{Dt} = C_{Dt} * N_{Dt}$$

where:

$$C_{Dt} = C_{Dt-1} (1 + (rpi_t - 5)/100)$$

but, in relation to the first relevant year,  $C_{Dt-1}$  shall have a value equal to £226.472181.

$rpi_t$  means the percentage change (whether a positive or negative value) in the Retail Prices Index between that published or determined with respect to October in the relevant year  $t$  and that published or determined with respect to the immediately preceding October; and

$N_{Dt}$  means the number of customers connected for each relevant year  $t$  as specified in the table immediately below:-

Relevant year ended (t)	$N_{Dt}$ (No. of customers connected)
31 March 2003	716,700
31 March 2004	726,750
31 March 2005	736,900
31 March 2006	747,200
31 March 2007	757,650

$V_{Dt}$  means an amount for relevant year  $t$  derived using the following formula:

$$V_{Dt} = V_{Dt-1} (1 + (rpi_t - 5) / 100)$$

but in relation to the first relevant year,  $V_{Dt-1}$  shall have a value equal to 2.044239 pence.

$Q_{Dt}$  means the regulated quantity transmitted and distributed in relevant year  $t$ .

$E_{et}$  means an allowance in respect of energy efficiency derived using the following formula:

$$E_{et} = E_{et-1} (1 + rpi_t / 100)$$

but, in relation to the first relevant year,  $E_{et-1}$  shall be equal to 489.88 pence and in relation to relevant years from and including third relevant year  $E_{et}$  shall be equal to zero pence.

$Y_t$  means an incentive, in pounds sterling, in respect of energy efficiency in relevant year  $t$  derived using the following formula:

$$Y_t = 0.004415 * Q_{Et} \text{ except in relation to relevant years from and including third relevant year } Y_t \text{ shall be equal to zero.}$$

Where:

$Q_{Et}$  means the amount (in kWh) by which the energy saved in relevant year  $t$ , as a result of expenditure raised under the  $E_{et} N_{Dt}$  term and as certified by the Energy Saving Trust, exceeds the target level of energy savings for that year specified in a direction to be issued by the Authority to the Licensee no later than **[Insert Date]**;

but where the energy saved in the relevant year  $t$  equals or is less than the value specified in the direction,  $Q_{Et}$  shall equal zero, and

and

in any relevant year  $t$ , the sum of  $E_{ct}$ ,  $N_{Dt}$  and  $Y_t$  must not exceed the values as specified in the table immediately below:-

<b>Relevant year ended (t)</b>	<b>Cap on <math>E_{ct} * N_{Dt} + Y_t</math> (in pounds sterling (£))</b>
31 March 2003	£4,100,000
31 March 2004	£4,100,000
31 March 2005	£4,200,000
31 March 2006	£4,200,000
31 March 2007	£4,300,000

$W_{Dt}$  means for each relevant year, an amount not less than zero calculated in accordance with a method notified to the Licensee by the Authority (after consultation with the Licensee and such other persons as the Authority shall consider appropriate), representing amounts which the Authority is satisfied are likely to be equal to the Licensee's costs of wheeling in respect of the relevant year in question;

$NSI_{Dt}$  means the Licensee's regulated revenue entitlement associated with any interconnectors with the Republic of Ireland for each relevant year  $t$ , as specified in the table immediately below:-

<b>Relevant year ended (t)</b>	<b><math>NSI_{Dt}</math> (Regulated revenue entitlement in pounds sterling (£))</b>
31 March 2003	£335,000
31 March 2004	£319,000
31 March 2005	£304,000
31 March 2006	£290,000
31 March 2007	£277,000

$D_t$  means an allowance (in pounds sterling) for excluded transmission and distribution costs in relevant year  $t$  calculated by adding together (whether a positive or negative amount) the following amounts:

- i) the difference between the actual rates incurred by the Transmission and Distribution Business and the allowance for rates assumed in setting the notified values for  $C_{Dt-1}$  and  $V_{Dt-1}$  in this Annex.
- ii) an amount up to £250,000 which represents expenditure under NIE's SMART 1 programme (Sustainable Management of Assets and Renewables Technology) designed to stimulate pilot projects using new technologies that are not yet commercially viable;
- iii) amounts arising out of the refinancing of the Moyle Interconnector as recorded in the document "Summary of Arrangements between Moyle and the Viridian Group" and the letter from the Authority dated 5 June 2003;
- iv) any reasonable costs incurred by the Licensee in complying with the requirements of Condition 27, Part III in the Licence as it existed on 2 July 2007 in respect of the renewable output factor arrangements;
- v) amounts that become uncollected T&D revenue in relevant year t, less any amount or part of an amount treated as uncollected T&D revenue in respect of a preceding relevant year that has been paid to the Licensee in relevant year t;
- vi) amounts arising under the arrangements approved by the Authority which are designed to incentivise investment in Demand Side Management schemes; and
- vii) any other costs which the Authority shall determine, upon an application to it by the Licensee shall be included as excluded transmission and distribution costs.

$K_{Dt}$  means the correction factor (whether a positive or negative value) to be applied to the maximum core revenue in relevant year t which is derived from the following formula:

$$K_{Dt} = (M_{Dt-1} - R_{Dt-1})(1 + I_t/100)$$

(but in relation to the first relevant year,  $K_{Dt}$  shall be equal to - £804,000);

where:

$M_{Dt-1}$  means the maximum core revenue in relevant year t - 1;

$R_{Dt-1}$  means the regulated transmission and distribution revenue (other than the Moyle revenue which is attributable to the financing and other costs associated with the Moyle Interconnector, as referred to in the definition of the term  $CAIR_t$  above) in relevant year t-1; and

$I_t$  means the average specified rate.

2.3 where in relevant year 2008 and in subsequent relevant years  $MD_t$  shall be calculated in accordance with the following formula:

$$MD_t = \min(PC_t, CPA_t) - PPS_t + COL_t + D_t + NSI_t + KD_t$$

where

$\min(PC_t, CPA_t)$  means the lower of the values of  $PC_t$  and  $CPA_t$ .

$PC_t$  means the price capped regulated revenue entitlement in relevant year t in pounds sterling calculated in accordance with the following formula:

$$PC_t = (0.0181 * FQ_t * (RPI_t / RPI_{2005})) + PCA_t$$

where:

$FQ_t$  means the number of forecast units transmitted and distributed in each of the relevant years 2008 to 2012 inclusive as specified in the table immediately below:

$FQ_t$	kWh
FQ2008	8,490,000,000
FQ2009	8,620,000,000
FQ2010	8,750,000,000
FQ2011	8,881,000,000
FQ2012	9,014,000,000

$PCA_t$  means an adjustment (whether a positive or negative amount) within the price capped revenue entitlement in relevant year t calculated in accordance with the following formula:

$$PCA_t = UO_t - FOU_t$$

where:

$UO_t$  means the level of uncontrollable operating costs in relevant year t calculated as the aggregate of the following amounts in pounds sterling:

- (i) amounts paid by the Licensee in respect of rates levied on transmission and distribution assets in accordance with the Valuation (Electricity) Order (Northern Ireland) 2003 or its successor legislation whether under such successor legislation such payments are still characterised as rates or not;

- (ii) amounts incurred by the Licensee in respect of wayleaves;
- (iii) amounts apportioned or allocated to the Transmission and Distribution Business in respect of the fees paid by the Licensee under Condition 7 of this Licence.

**FUO<sub>t</sub>** means the forecast level of uncontrollable operating costs in relevant year t as set out in the table immediately below:

FUO <sub>t</sub>	Pounds sterling
FUO <sub>2008</sub>	£15.917m
FUO <sub>2009</sub>	£17.042m
FUO <sub>2010</sub>	£17.879m
FUO <sub>2011</sub>	£18.730m
FUO <sub>2012</sub>	£19.619m

**CPA<sub>t</sub>** means the composite proposal allowance in relevant year t in pounds sterling calculated in accordance with the following formula

$$CPA_t = CO_t + P_t + UO_t + Ret_t - TA_t + Dep_t + Tax_t + RRF_t$$

where:

**CO<sub>t</sub>** means the allowance for controllable operating costs in relevant year t calculated in accordance with the following formula

$$CO_t = ACO_{t-5} * (RPI_t / RPI_{t-5})$$

where:

**ACO<sub>t-5</sub>** means the level of actual controllable operating costs in relevant year t-5 and in relation to relevant years 2008, 2009 and 2010, ACO<sub>t-5</sub> shall have the values specified in the table immediately below:

Relevant year <sub>t</sub>	ACO <sub>t-5</sub> Pounds sterling
2008	£41.5m
2009	£37.9m
2010	£38.3m

In relation to relevant years 2011 and 2012,  $ACO_{t-5}$  shall be calculated in accordance with the method specified in the 2006 Direction, such method being the same as the calculation that produces the values for  $ACO_{t-5}$  in the table immediately above.

**$P_t$**  means the allowance for pension costs in relevant year t calculated according to the following formula

$$P_t = P_{t-5} * (RPI_t / RPI_{t-5})$$

and in relation to relevant years 2008, 2009 and 2010,  $P_{t-5}$  shall be set equal to the value specified in the table immediately below:

Relevant year <sub>t</sub>	$P_{t-5}$ Pounds sterling
2008	£0
2009	£4.7m
2010	£4.4m

In relation to relevant year t = 2011,  $P_{t-5}$  shall be set equal to the actual cash contributions paid into the relevant pension scheme in relevant year 2006 less an amount equal to (£225,000 \*  $RPI_{2006} / RPI_{2005}$ ).

In relation to relevant year t = 2012,  $P_{t-5}$  shall be set equal to the actual cash contributions paid into the relevant pension scheme in relevant year 2007 less an amount equal to (£225,000 \*  $RPI_{2007} / RPI_{2005}$ ).

**$UO_t$**  means the level of uncontrollable operating costs in relevant year t calculated as defined above.

**$Ret_t$**  means the allowed return in relevant year t calculated in accordance with the following formula:

$$Ret_t = RAB_t * VWACC_t$$

where:

**$RAB_t$**  means the average value of the transmission and distribution regulatory asset base in year t in pounds sterling calculated in accordance with the following formula:

$$RAB_t = 0.5 * (CRAB_{t-1} * RPI_t / RPI_{t-1} + CRAB_t)$$

**$CRAB_t$**  means the closing regulatory asset base in relevant year t and shall be calculated in accordance with the methodology for rolling forward the regulatory asset base set out in the 2006 Direction.



$VWACC_t$  means the vanilla weighted average cost of capital in relevant year t and in relevant years 2008, 2009 and 2010,  $VWACC_t$  shall be set equal to 0.05545.

In relevant years  $t = 2011$  and  $2012$ ,  $VWACC_t$  shall be set equal to the lower of:

- (i) 0.05545; and
- (ii)  $VWACC_{2010}$ ,

where  $VWACC_{2010}$  means the weighted average cost of capital (stated as a decimal number) calculated on the basis of the values for the pre tax return on debt and the post tax return on equity used in determining the regulated revenue entitlement for the Distribution Network Operators (DNOs) in Great Britain for the distribution price control commencing on 1 April 2010. If more than one value is determined for different DNOs, the highest value determined shall be used as the basis for the calculation.  $VWACC$  shall be calculated using the same method as that applied in Ofgem's final proposals (November 2004) for the DNO price control which commenced on 1 April 2005. This assumed a pre tax cost of debt of 4.1%, a post tax cost of equity of 7.5% and gearing of 57.5% ( $VWACC = (4.1\% * 57.5\%) + (7.5\% * 42.5\%) = 5.545\%$ , or 0.05545 stated as a decimal number).

$TA_t$  means an adjustment in respect of the allowed return on transmission assets calculated in accordance with the following formula

$$TA_t = RAB_t * 0.18 * TAF_t$$

where:

$TAF_t$  means the transmission adjustment factor, which for relevant years  $t = 2008, 2009$  and  $2010$  shall be equal to 0.005.

For relevant years  $t = 2011$  and  $2012$ ,  $TAF_t$  shall be calculated according to the following formula

$$TAF_t = PTWACC_t - 0.064$$

where  $PTWACC$  means the pre-tax weighted average cost of capital stated as a decimal number calculated on the basis of the values for the pre tax return on debt and pre tax return on equity used in determining the regulated revenue entitlement for the DNOs in Great Britain for the distribution price control commencing on 1 April 2010.  $PTWACC$  shall be calculated using the same method as that

referred to in Ofgem's final proposals (November 2004) for the DNO price control which commenced on 1 April 2005. This assumed a pre tax cost of debt of 4.1%, a post tax cost of equity of 7.5% (10.7% pre tax) and gearing of 57.5% (PTWACC =  $(4.1\% * 57.5\%) + (10.7\% * 42.5\%) = 6.9\%$  or 0.069 stated as a decimal number).

**Dep<sub>t</sub>** means the allowance for depreciation of the regulatory asset base in year t and calculated according to the following formula

$$\text{Dep}_t = \text{Fdep}_t + \text{Vdep}_t$$

where:

**Fdep<sub>t</sub>** means fixed depreciation and represents depreciation in year t on pre-vesting assets calculated in accordance with the profile determined by the Monopolies and Mergers Commission and recorded in its March 1997 report entitled "Northern Ireland Electricity plc – A report on a reference under Article 15 of the Electricity (Northern Ireland) Order 1992", together with depreciation on network assets acquired pre 2006 and depreciation on non-operational capital expenditure incurred in the period 1994 to 1997, as further specified in the 2006 Direction.

**Vdep<sub>t</sub>** means variable depreciation and represents depreciation on network assets acquired post 2005, and shall be calculated in accordance with the method specified in the 2006 Direction.

**Tax<sub>t</sub>** means an amount in respect of the allowance for tax costs in relevant year t calculated in accordance with the following formula

$$\text{Tax}_t = 0.3/0.7 (\text{Ret}_t + \text{NNC}_t + \text{Dep}_t - \text{Int}_t - \text{CA}_t)$$

where

**NNC<sub>t</sub>** means an amount in respect of non network capital expenditure in relevant year t calculated in accordance with the following formula

$$\text{NNC}_t = \text{ANNC}_{t-5} * (\text{RPI}_t / \text{RPI}_{t-5})$$

where

**ANNC<sub>t-5</sub>** means capital expenditure on non-network assets undertaken by the Transmission and Distribution Business in relevant year t-5 and in relation to relevant years 2008, 2009 and 2010, ANNC<sub>t-5</sub> shall be set equal to the value specified in the table immediately below:

Relevant year <sub>t</sub>	ANNC <sub>t-5</sub> Pounds sterling
2008	£1.0m
2009	£1.8m
2010	£1.6m

Capital expenditure on non-network assets includes: (a) non-operational IT: IT equipment that is either located separately from the network assets or that does not directly relate to the control of network assets (this includes infrastructure and IT applications but excludes operational IT assets); (b) non-operational new assets and replacement of non-operational assets: plant and machinery, tools and equipment, office equipment, land & buildings used for administrative purposes; and (c) non-operational premises: premises used by persons (e.g. stores, depots and offices) and excluding assets (such as substations) which are used for the control of network assets.

**Int<sub>t</sub>** means an amount equal to the interest on the value of the regulatory asset base in relevant year t calculated in accordance with the following formula

$$\text{Int}_t = \text{RAB}_t * 0.575 * 0.067025$$

**CA<sub>t</sub>** means an amount in pounds sterling equal to the level of capital allowances agreed with HM Revenue & Customs in respect of relevant year t calculated in accordance with the Capital Allowances Act 2001 (or successor legislation) and relevant industry agreements or rules.

**RRF<sub>t</sub>** means an amount in relevant year t in respect of the recovery of revenue foregone in prior years as a result of the price cap. RRF<sub>t</sub> shall be set in accordance with the following rule:

If  $\text{CPA}_{t-1}$  is greater than  $\text{PC}_{t-1}$  then

$$\text{RRF}_t = (\text{CPA}_{t-1} - \text{PC}_{t-1}),$$

otherwise

$$\text{RRF}_t = 0$$

For the avoidance of doubt, in relevant year  $t = 2008$ ,  $\text{RRF}_t = 0$ .

**PPS<sub>t</sub>** means the adjustment in relevant year t in respect of the NIE Powerteam Limited profit sharing scheme calculated as follows:

If  $P_t / R_t$  is greater than 0.1 then  $PPS_t = (P_t - 0.05 * R_t)$

If  $P_t / R_t$  is less than or equal to 0.1 then  $PPS_t = 0.5P_t$

But if  $P_t$  is less than 0 then  $PPS_t = 0$

Where  $P_t$  and  $R_t$  mean the operating profit and revenue respectively of NIE Powerteam Limited in relevant year t as stated in the statutory accounts of NIE Powerteam Limited for that year.

The Licensee shall submit to the Authority a copy of the statutory accounts for NIE Powerteam Limited not less than 10 months after the end of each relevant year.

**COL<sub>t</sub>** means the allowance in relevant year t for change of law costs calculated in accordance with paragraph 8 below.

**D<sub>t</sub>** means an allowance in relevant year t for excluded transmission and distribution costs calculated by adding together (whether a positive or negative amount) the following amounts, where not recovered by the Licensee under another element of the transmission and distribution charge restriction conditions or under any other charge restriction conditions:

- (i) an amount up to £727,000 (07/08 prices) which represents expenditure under NIE's SMART 1 programme (Sustainable Management of Assets and Renewables Technology);
- (ii) any reasonable costs incurred by the Licensee in complying with the requirements of Condition 27, Part III in the Licence as it existed on 2 July 2007 in respect of the renewable output factor arrangements;
- (iii) amounts arising under the arrangements approved by the Authority which are designed to incentivise investment in Demand Side Management schemes;
- (iv) amounts arising under the arrangements approved by the Authority which are designed to incentivise efficiency in network capital investments, and which shall be calculated in accordance with the 2006 Direction;
- (v) any reasonable costs incurred by the Transmission and Distribution Business in complying with the requirements imposed on the Licensee under legislation and other legal requirements through which Directive 2003/54/EC is implemented;
- (vi) any reasonable costs incurred by the Transmission and Distribution Business in establishing and operating the arrangements to support the Single Electricity Market (being the project described in the Memorandum of Understanding dated 23 August 2004 and made

between the Authority and the Commission for Energy Regulation in Dublin) including in providing those services provided by the Transmission and Distribution Business in its role as common services provider;

- (vii) an amount not less than zero calculated in accordance with a method notified to the Licensee by the Authority (after consultation with the Licensee and such other persons as the Authority shall consider appropriate), representing amounts which the Authority is satisfied are likely to be equal to the Licensee's costs of wheeling in respect of the relevant year in question; and
- (viii) any other costs which the Authority shall determine, upon an application to it by the Licensee shall be included as excluded transmission and distribution costs.

**NSI<sub>t</sub>** means the Licensee's regulated revenue entitlement associated with any interconnectors with the Republic of Ireland for each relevant year t, as specified in the table immediately below:-

Relevant Year t	NSI <sub>t</sub> (£ sterling)
2008	£138,000 * RPI <sub>2008</sub> /RPI <sub>2006</sub>
2009	£132,000 * RPI <sub>2009</sub> /RPI <sub>2006</sub>
2010	£126,000 * RPI <sub>2010</sub> /RPI <sub>2006</sub>
2011	£120,000 * RPI <sub>2011</sub> /RPI <sub>2006</sub>
2012	£114,000 * RPI <sub>2012</sub> /RPI <sub>2006</sub>

**K<sub>Dt</sub>** means the correction factor (whether a positive or negative value) to be applied to the maximum core revenue in relevant year t which is derived from the following formula:

$$K_{Dt} = (MD_{t-1} - RD_{t-1})(1 + I_t/100)$$

where:

**M<sub>Dt-1</sub>** means the maximum core revenue in relevant year t - 1;

**R<sub>Dt-1</sub>** means the regulated transmission and distribution revenue (other than the Moyle revenue which is attributable to the financing and other costs associated with the Moyle Interconnector, as referred to in the definition of the term CAIR<sub>t</sub> above) in relevant year t-1; and

**I<sub>t</sub>** means the average specified rate.

2.4 The 2006 Direction shall not be capable of being revoked or modified (either by revocation or modification of the 2006 Direction or by the issue of another direction) without the prior written consent of the Licensee.

3. **Restriction of transmission and distribution charges: adjustments**

3.1 If, in respect of any relevant year, the regulated transmission and distribution revenue exceeds the maximum regulated transmission and distribution revenue by more than the permitted one-year percentage, the Licensee shall furnish an explanation to the Authority and in the next following relevant year the Licensee shall not effect any increase in transmission and distribution charges unless it has demonstrated to the reasonable satisfaction of the Authority that the regulated transmission and distribution revenue would not be likely to exceed the maximum regulated transmission and distribution revenue in that next following relevant year.

3.2 If, in respect of any 3 successive relevant years, the sum of the amounts by which the regulated transmission and distribution revenue has exceeded the maximum regulated transmission and distribution revenue is more than the permitted 3-year percentage, then in the next following relevant year the Licensee shall, if required by the Authority, adjust its transmission and distribution charges such that the regulated transmission and distribution revenue would not be likely, in the judgment of the Authority, to exceed the maximum regulated transmission and distribution revenue in that next following relevant year.

3.3 In this paragraph:

“permitted one-year percentage” means 4 per cent of the maximum regulated transmission and distribution revenue; and

“permitted 3-year percentage” means 5 per cent of the maximum regulated transmission and distribution revenue in the second of the relevant years.

4. **Information to be provided to the Authority in connection with the transmission and distribution charge restriction conditions**

4.1 Where any change is intended to be made in transmission and distribution charges regulated under paragraph 2, the Licensee shall not later than 14 days prior to the time of publication of such change provide the Authority with:

(i) a written forecast of the maximum regulated transmission and distribution revenue, together with its components, in respect of the relevant year  $t$  in which such change is to take effect and in respect of the next following relevant year  $t+1$ ;

(ii) a written estimate of the maximum regulated transmission and distribution revenue, together with its components, in respect of the relevant year  $t-1$  immediately preceding the relevant year in which the change is to take effect unless a statement complying with paragraph 4.5 in respect of relevant year  $t-1$  has been furnished by the Licensee to the Authority more than 14 days before the publication of the proposed change.

4.2 If within 3 months of the commencement of any relevant year  $t$  the Licensee has not made any such change in charges as is referred to in paragraph 4.1, the Licensee shall provide the Authority with a written forecast of the maximum

regulated transmission and distribution revenue, together with its components, in respect of relevant year t.

- 4.3 Any forecast or estimate provided in accordance with paragraph 4.1 or 4.2 shall be accompanied by such information as regards the assumptions underlying the forecast or estimate as may be necessary to enable the Authority to be satisfied that the forecast or estimate has been properly prepared on a consistent basis.
- 4.4 Not later than 6 weeks after the commencement of each relevant year t, the Licensee shall send to the Authority a statement as to:
- (a) whether or not the provisions of paragraph 3 are likely to be applicable in consequence of the regulated transmission and distribution revenue in the preceding relevant year t-1 or the 3 preceding relevant years t-1, t-2 and t-3; and
  - (b) its best estimate as to the relevant correction factor  $K_{Dt}$  calculated in accordance with the formula set out in paragraph 2 to be applied in calculating the maximum regulated transmission and distribution revenue in respect of relevant year t.
- 4.5 Not later than 3 months after the end of each relevant year the Licensee shall send to the Authority a statement, in respect of that relevant year, showing the specified items referred to in paragraph 4.7.
- 4.6 The statement referred to in the preceding paragraph shall be:
- (a) accompanied by a report from the Auditors that in their opinion such statement fairly presents each of the specified items referred to in paragraph 4.7 in accordance with the requirements of the transmission and distribution charge restriction conditions and that the amounts shown in respect of each of the specified items are in accordance with the accounting records which have been maintained in accordance with Condition 2; and
  - (b) certified by a director of the Licensee on behalf of the Licensee that to the best of his knowledge, information and belief after having made all reasonable enquiries:
    - (i) there is no amount included in its calculations under paragraph 2 which represents other than bona fide consideration for the provision of transmission and distribution services the revenue from which is regulated under this Annex;
    - (ii) no service has been treated as an excluded service other than a service permitted to be so treated in accordance with paragraph 5;
    - (iii) no amount included in the revenues stated in respect of excluded services represents other than bona fide consideration for the provision of the excluded service to which it relates.
- 4.7 The specified items to be shown in the statement referred to in paragraph 4.5 shall be the following:
- (a) the regulated transmission and distribution revenue;
  - (b) the regulated quantity transmitted and distributed;

- (c) the adjusted quantity transmitted and distributed;
- (d) the quantity entering the total system;
- (e) the revenue derived from excluded services (showing separately the revenue from each category of excluded service) as provided for in paragraph 5.6;
- (f) the details relating to security costs referred to in paragraph 6.4; and
- (g) such other items as shall be specified in directions issued by the Authority from time to time for the purposes of this Annex.

4.8 Where the Authority issues directions under paragraph 5.7, the Licensee shall, if so required by the Authority and within such period as the Authority shall specify, send to the Authority a revised statement in substitution for the Licensee's statement under paragraph 4.5 in respect of the relevant year in question and such revised statement shall give effect to such directions.

5. **Excluded services for purposes of Transmission and Distribution Business**

5.1 There may be treated as excluded services provided by the Transmission and Distribution Business such services in respect of which charges are made which:

- (a) do not fall within paragraph 5.2; and
- (b) may (subject to paragraph 5.7) be determined by the Licensee as falling under one of the principles set out in paragraphs 5.3 to 5.5.

5.2 No service provided as part of the Transmission and Distribution Business shall be treated as an excluded service insofar as it relates to the provision of services remunerated under use of system charges in accordance with Condition 32 including (without prejudice to the foregoing):

- (a) the transport of electricity;
- (b) the carrying out of works for the installation of electric lines or electrical plant (not otherwise payable in the form of connection charges) for the purpose of maintaining or upgrading the Licensee's transmission system and distribution system;
- (c) the carrying out of works or the provision of maintenance or repair or other services for the purpose of enabling the Licensee to comply with Conditions 19, 26 and 27, the Electricity Supply Regulations (Northern Ireland) 1991 as amended by the Electricity Supply (Amendment) Regulations (Northern Ireland) 1993 or any regulations made under Article 32 of the Order or any other enactment relating to safety or standards applicable in respect of the Transmission and Distribution Business; and
- (d) the provision, installation and maintenance of any meters, switchgear or other electrical plant ancillary to the grant of use of system.

5.3 The whole or an appropriate proportion (as the case may be) of the charges of the type described in paragraph 3 of Condition 22 or paragraph 3 of Condition 32 and borne by any person as connection charges in respect of connections made after the grant of this Licence may be treated as excluded services.



- 5.4 There may be treated as an excluded service charges for the relocation of electric lines or electrical plant and the carrying out of works associated therewith pursuant to a statutory obligation (other than under Article 12(2) of the Order) imposed on the Licensee.
- 5.5 There may be treated as an excluded service any service of a type not above referred to which:
- (a) consists in the provision of services for the specific benefit of a third party requesting the same; and
  - (b) is not made available as a normal part of the Transmission and Distribution Business remunerated by use of system charges, including (without prejudice to the foregoing):
    - (i) special metering (including “time of day” metering) to facilitate energy saving programmes for the benefit of customers requesting the same;
    - (ii) prepayment metering equipment;
    - (iii) charges for moving mains, services or meters forming part of the Licensee’s distribution system to accommodate extension, re-design or re-development of any premises on which the same are located or to which they are connected; and
    - (iv) the provision of electric lines and electrical plant (a) insofar as the same are required for the specific purpose of enabling the provision of top-up or standby or (b) to provide a higher degree of security than is required for the purposes of complying with Condition 19.
- 5.6 The Licensee shall following the end of each relevant year furnish to the Authority, as being one of the specified items to be included in the statement referred to in paragraph 4.7, details specifying separately the nature of all services provided as part of the Transmission and Distribution Business and treated as excluded services by the Licensee during the course of such year and stating the revenues derived in respect of each such service so treated.
- 5.7 Where the Authority is satisfied that it is reasonable in all the circumstances that any service treated by the Licensee as being or not being an excluded service should not be so treated, the Authority shall issue directions to that effect. Any such directions may, where a service is directed to be treated as an excluded service, contain such conditions as the Authority shall see fit in relation to the charges which the Licensee may make for such excluded service and the other terms and conditions upon which the Licensee may provide such excluded service. In accordance with the terms of such directions, such service shall cease to be treated as an excluded service with effect from the date of issue of such directions or such earlier date (being not earlier than the commencement of the relevant year to which the statement last furnished to the Authority pursuant to paragraph 4.5 prior to issue of such directions related, unless such statement or the accompanying report or certificate referred to in paragraph 4.6 or any earlier such statement, report or certificate was incorrect or misleading in any material respect) as may be specified in the directions.

6. **Allowances in respect of security costs**

6.1 At any time during a Security Period, the Authority may (having regard to its duties under the Energy Order) by means of directions:

- (a) suspend or modify for the unexpired term of the security period the transmission and distribution charge restriction conditions or any part or parts thereof; or
- (b) introduce for the unexpired term of the security period new transmission and distribution charge restriction conditions

in either case, so as to make such provision as in the opinion or estimation of the Authority is requisite or appropriate to enable the Licensee to recover by means of appropriate equitable increases in the charges made in the course of the Transmission and Distribution Business an amount estimated as being equal to the Licensee's allowed transmission and distribution related security costs during such period, and the Licensee shall comply with the terms of any directions so issued.

6.2 Subject to paragraphs 6.3 and 6.5, the Licensee shall in any relevant year be entitled to recover an aggregate amount equal to the Licensee's allowed transmission and distribution related security costs in that year or (insofar as not previously recovered) any previous year, by means of appropriate equitable increases in the charges made by the Licensee in the course of the Transmission and Distribution Business.

6.3 Paragraph 6.2 shall not apply insofar as such Licensee's allowed transmission and distribution related security costs:

- (a) were otherwise recovered by the Licensee; or
- (b) were taken into account by the Authority in setting charge restriction conditions by means of directions issued under paragraph 6.1.

6.4 The Licensee shall following the end of each relevant year provide to the Authority details in respect of that relevant year of:

- (a) the aggregate amounts charged under paragraph 6.2 on account of the Licensee's allowed transmission and distribution related security costs; and
- (b) the bases and calculations underlying the increases in charges made by the Licensee in the course of the Transmission and Distribution Business under paragraph 6.2.

6.5 Where the Authority is satisfied that the Licensee has recovered amounts in excess of the Licensee's allowed transmission and distribution related security costs, the Authority may issue directions requiring the Licensee to take such steps as may be specified to reimburse customers of the Transmission and Distribution Business for the excess amounts charged to them, and the Licensee shall comply with any directions so issued.

6.6 No amounts charged by the Licensee under this paragraph 6 (whether or not subsequently required to be reimbursed) shall be taken into account for the purpose of applying the transmission and distribution charge restriction provisions of paragraph 2.

6.7 In this paragraph 6:

- “security period”** means a Security Period as defined in paragraph 2 of Part I of the Northern Ireland Fuel Security Code; and
- “Licensee’s allowed transmission and distribution related security costs”** means any cost incurred by the Transmission and Distribution Business and approved by the Authority as being an allowed security cost in accordance with the Northern Ireland Fuel Security Code (as that term is therein defined), but excluding any cost which forms part of:
- (a) the allowed power procurement business related security costs; or
  - (b) the payments to generators in relation to services provided to the power procurement business during security periods.

**Duration of transmission and distribution charge restriction conditions**

- 7.1 The transmission and distribution charge restriction conditions shall apply so long as the Licence continues in force but shall cease to have effect (in whole or in part, as the case may be) if the Licensee delivers to the Authority a disapplication request made in accordance with paragraph 7.2 and:
- (a) the Authority agrees in writing to the disapplication request; or
  - (b) their application (in whole or in part) is terminated by notice given by the Licensee in accordance with either paragraph 7.4 or paragraph 7.5.
- 7.2 A disapplication request pursuant to this paragraph 7 shall (a) be in writing addressed to the Authority, (b) specify the transmission and distribution charge restriction conditions (or any part or parts thereof) to which the request relates and (c) state the date (being not earlier than the date referred to in paragraph 7.3) from which the Licensee wishes the Authority to agree that the specified transmission and distribution charge restriction conditions shall cease to have effect.
- 7.3 Save where the Authority agrees otherwise, no disapplication following delivery of a disapplication request pursuant to this paragraph 7 shall have effect earlier than the date which is the later of:
- (a) the date occurring 18 months after delivery of the disapplication request; and
  - (b) in respect of the charge restriction conditions applied pursuant to paragraph 2.2 of this Annex, 31 March 2007, and in respect of the charge restriction conditions applied pursuant to paragraph 2.3 of this Annex, 31 March 2012.
- 7.4 If the Authority has not made a reference to the Competition Commission under Article 15 of the Order relating to the modification of the transmission and

distribution charge restriction conditions before the beginning of the period of 12 months which will end with the disapplication date, the Licensee may deliver written notice to the Authority terminating the application of such of the transmission and distribution charge restriction conditions (or any part or parts thereof) as are specified in the disapplication request with effect from the disapplication date or a later date.

- 7.5 If the Competition Commission makes a report on a reference made by the Authority relating to the modification of the transmission and distribution charge restriction conditions (or any part or parts thereof) specified in the disapplication request and such report does not include a conclusion that the cessation of such transmission and distribution charge restriction conditions, in whole or in part, operates or may be expected to operate against the public interest, the Licensee may within 30 days after the publication of the report by the Authority in accordance with Article 16 of the Order deliver to it written notice terminating the application of such transmission and distribution charge restriction conditions (or any part or parts thereof) with effect from the disapplication date or a later date.
- 7.6 A disapplication request or notice served under this paragraph 7 may be served in respect of a specified geographic area.

8. **Change of Law**

- 8.1. In relation to the period comprising the five relevant years 2008 – 2012 inclusive, where it appears to the Licensee that there has been, or is likely to be, a relevant change of law which has had or is likely to have a material effect on the financial position and performance of the Transmission and Distribution Business, the Licensee may require the Authority to determine whether the relevant change of law has had or is likely to have such an effect, and if so what amounts, if any, should be treated as allowed change of law revenues in calculating  $COL_t$  for relevant year  $t$  and each succeeding relevant year in accordance with paragraph 2.3 to ensure that the financial position and performance of the Licensee is likely, so far as reasonably practicable, to be the same as if the relevant change of law had not taken place. In determining the matters provided for in the paragraph above, the Authority shall have regard, where relevant, to:
- (a) the period over which the Licensee shall incur costs by reason of the relevant change of law;
  - (b) the incremental costs (including financing costs) which the Licensee has been or will be required to incur as a consequence of the relevant change of law; and
  - (c) the other circumstances of the case.
- 8.2. A notice given to the Authority by the Licensee pursuant to paragraph 8.1 shall contain or be accompanied by all relevant details of the relevant change of law and such other information as the Authority shall require and, unless the Authority shall otherwise consent, shall be given not later than the first day of October immediately preceding the first of the relevant years in respect of which the transmission system operator wishes any change in such elements to take effect.
- 8.4. In this paragraph:

- “legal requirement”** means, in relation to the Licensee, any of the following:
- (a) any enactment to the extent that it applies to the Transmission and Distribution Business;
  - (b) any regulation made by the Council or the Commission of the European Communities to the extent that it applies to the Licensee and impacts on its Transmission and Distribution Business or a decision taken by the said Commission which is binding on the Licensee and impacts on the Transmission and Distribution Business to the extent that it is so binding;
  - (c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within (a) or (b) above to have effect in a way different to that in which it previously had effect;
  - (d) any direction of a competent authority other than, insofar as it applies to the Licensee, the Authority (except in the exercise of its powers under paragraph 4 of Condition 27) or the Department; and

**“relevant change of law”** means the application to the Licensee of any legal requirement which did not previously so apply or the change of any legal requirement relating to the Licensee (including any such legal requirement ceasing to apply, being withdrawn or not being renewed).

9. **Vulnerable customer programme**

Over the period comprising the four relevant years 2007, 2008, 2009 and 2010 the Licensee shall make available funding of no less than £1 million in total to cover the costs of establishing, implementing and running the Vulnerable Customer Programme in those years. By 31 December 2006 the Licensee shall develop and submit to the Authority for its approval, a proposal for the implementation and subsequent evaluation of a number of pilot schemes with the aim of identifying a more comprehensive programme that will make effective use of the available funding. Not less than 3 months after the end of each of the four relevant years the Licensee shall submit to the Authority an annual report in a form to be approved by the Authority on the performance of the programme during the relevant year under report and its proposals for the remainder of the programme.

10. **Sustainable Networks Programme**

Over the period comprising the five relevant years 2008 to 2012 inclusive the Licensee shall make available funding of no less than £1 million in total to cover the costs of establishing implementing and running the Sustainable Networks Programme. By 31 January 2007 the Licensee shall develop and submit to the Authority for its approval, a proposal for a programme that will make effective use of the available funding. Not less than 3 months after the end of each of the five relevant years the Licensee shall submit to the Authority an annual report in a form to be approved by the Authority on the performance of the programme during the year under report and its proposals for the remainder of the programme.

11. **Annual capex reporting**

Not less than 4 months after the end of each relevant year the Licensee shall submit to the Authority an annual report in a form to be approved by the Authority setting out the main elements comprising the network capital expenditure undertaken by the Transmission and Distribution Business in the year under review. Each report shall set out the current five-year plan for the relevant regulatory period, identify the material variations to the plan from the previous year, explain the initiatives that have assisted in optimising the investment decision-making process, the value of  $CRAB_t$  (the closing RAB in the year under report) and identify the notified capex efficiency gains calculated in accordance with the method set out in the 2006 Direction.

12. **Tax report**

Not less than 12 months after the end of each relevant year the Licensee shall submit to the Authority an annual report in a form to be approved by the Authority setting out the Licensee's calculation of the tax capital allowances and the tax computation used in the calculation of  $Tax_t$  for such relevant year together with any retrospective adjustments in respect of previous years.