

## 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 60 of the Electricity Regulations (Northern Ireland) 2007 (the **Regulations**).

In respect of the public electricity supply licence granted, under Article 10(1)(c) 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 60 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) 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 I hereto;
  - (b) 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 IV of the licence document) as they exist prior to the modifications herein becoming effective; and
  - (c) 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 II hereto.

- 2 Paragraph 3 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.
- 3 Neither the modifications referred to in paragraph 1, nor their coming into effect, shall constitute a relevant change in law.

Dated this 3<sup>rd</sup> day of July 2007

Dermot MacCann

**Northern Ireland Authority for Utility Regulation**

**Appendix I**

**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 52, 57, 58, 59, 66 and 67 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 Conditions 1 and 41 of Chapter 3, as if the provisions of Conditions 1 and 41 of Chapter 3 were set out in (and applicable only to) each Condition in Chapters 1 and 3.
- 9 In Conditions A, B, C and D, unless the context otherwise requires:

**“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.

**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 Transfer of Licence

1 The Licensee shall comply with the requirements of Conditions B and D so as to enable NIE Energy Limited (as the person to whom it is proposed that the Licence be transferred under the Directive Regulations) rather than itself (if such transfer occurs) to:

- (a) comply with the SEM and Directive Arrangements (as defined in Condition B) by which NIE Energy Limited will be bound (or is intended to be bound) from the time at which they are effective (or intended to be effective); and
- (b) run-off the arrangements referred to in Condition D for which the Licensee is responsible,

in each case, from such time as the Licence is transferred to NIE Energy Limited.

Proposed Property Arrangement Scheme

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

PPB / TO Interface Agreement

3 Without prejudice to the Authority's ability to designate, as the PTIA under Condition 66 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.

PPB / TSO Interface Agreement

- 4 Without prejudice to the Authority's ability to designate, as the PSIA under Condition 67 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 PSIA with which both proposed parties thereto are content; or
  - (b) a draft of the PSIA including those provisions with which both proposed parties thereto are content, and which highlights those matters in the draft PSIA that remain in dispute between those parties.

Transmission Use of System Agreement (Supply)

- 5 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 with SONI for use of the transmission system by the Supply Business with which both proposed parties thereto are content; or
  - (b) a draft of such an 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.
- 6 The Licensee shall enter into an agreement with SONI for use of the transmission system by the Supply Business in such form as the Authority may designate (having regard to the provisions of any existing agreement for use of the total system, 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.

Transmission Use of System Agreement (PPB)

- 7 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 with SONI for use of the transmission system by the Power Procurement Business with which both proposed parties thereto are content; or
  - (b) a draft of such an 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.
- 8 The Licensee shall enter into an agreement with SONI for use of the transmission system by the Power Procurement Business in such form as the Authority may designate (having regard to the provisions of any existing agreement for use of the total system, 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.

Distribution Use of System Agreement

- 9 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 Transmission Owner's distribution system 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.
- 10 The Licensee shall enter into an agreement for use of the Transmission Owner's distribution system 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.

### Intermediary Agreements

- 11 In respect of each relevant generator, the Licensee shall, by 1 September 2007 (or such later date as the Authority may direct), submit to the Authority (for consideration by the Authority under paragraph 2 of Condition 59 of Chapter 3) either:
- (a) a draft Intermediary Agreement (as referred to in Condition 59 of Chapter 3) with which both of the proposed parties thereto are content; or
  - (b) a draft of such agreement which includes 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.
- 12 In paragraph 11, “**relevant generator**” means each person who holds a licence under Article 10(1)(a) of the Order which contains a licence condition entitled “Intermediary Agreement”.

### System Support Service Agreements (PPB)

- 13 In respect of each of the generation sets that are subject to a cancellable generating unit 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 by which the Power Procurement Business procures the provision to SONI of System Support Services 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 agreement that remain in dispute between those parties.
- 14 In respect of each of the generation sets that are subject to a cancellable generating unit agreement, the Licensee shall enter into an agreement by which the Power Procurement Business procures the provision to SONI of System Support Services in such form as the Authority may designate (having regard to the provisions of the

cancellable generating unit 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.

Payment Security Policy

15 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 of the payment security policy referred to in Condition 65 of Chapter 3 for approval.

Definitions

16 In this Condition:

**“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 the Licence) be to such documents and arrangements as defined (or, if not defined, referred to) in the conditions of the Transmission Owner Licence, as they existed immediately prior to SEM Go-Live.

**Appendix II**

**Chapter 3**

**PART I: GENERAL CONDITIONS**

**Condition 1: Interpretation and construction**

- 1 Unless the contrary intention appears:
  - (a) words and expressions used in the Conditions 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 the Licence comes into force.
- 2 Any word or expression defined for the purposes of any provision of Part II of the Order, the Energy Order or the SEM Order shall, unless the contrary intention appears, have the same meaning when used in the Conditions or in the Schedules below.
- 3 In the Conditions and the Schedules unless the context otherwise requires:

**affiliate** in relation to the Licensee or any subsidiary of any holding company of the Licensee means any holding company or subsidiary of that person or any subsidiary of a holding company of that person.

**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 electricity** means any person (other than the Licensee in its

<b>operator</b>	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 to or from Northern Ireland across an interconnector or who has made an application for use of an interconnector which has not been refused
<b>Authority</b>	means the Northern Ireland Authority for Utility Regulation.
<b>cancel</b>	in relation to the Authority, means the exercise of its cancellation powers.
<b>cancellable generating unit agreement</b>	means a generating unit agreement which may be the subject of a cancellation direction, being the generating unit agreements specified in Annex 4 of this Licence.
<b>cancellation direction</b>	means a direction issued by the Authority to cancel a cancellable generating unit agreement.
<b>cancellation powers</b>	means the powers of the Authority to direct any party to a cancellable generating unit agreement to terminate that agreement upon such date or the happening of such event as shall be specified in the notice containing the direction.
<b>Charges for the Supply of Electricity</b>	means, as between an Electricity Supplier and a Customer, charges made by the Electricity Supplier in respect of the supply of electricity to that Customer.
<b>Contract</b>	means a contract for the supply of electricity made between the Licensee and a Customer but does not include a Deemed Contract.
<b>Customer</b>	means any person supplied or requiring to be supplied with electricity by the Licensee (including any affiliate

or related undertaking of the Licensee) or, where the context requires, by any other Electricity Supplier at any premises in Northern Ireland, but shall not include any authorised electricity operator in its capacity as such.

**Deemed Contract**

means, as between the Licensee and a Customer, a contract for the supply of electricity deemed to have been made under paragraph 3 of Schedule 6 to the Order.

**Department**

means the Department of Enterprise Trade and Investment formerly known as the Department of Economic Development.

**designated**

in relation to any agreement, arrangement, code, notice, proposal 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 the Licence or otherwise, but so that an agreement, arrangement, code, notice, proposal 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 Regulations**

means the Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 2005 and/or the Electricity Regulations (Northern Ireland) 2007.

**Distribution Code**

has the meaning given to it in the Transmission Owner Licence.

**distribution system**

means all electric lines owned and/or operated by any person for the purpose of the distribution of electricity

to Customers, including any electrical plant and meters which are used in connection with electricity distribution and any other electric lines which the Authority may specify as forming part of the distribution system, but excluding lines forming part of the transmission system or any interconnector.

<b>Domestic Customer</b>	means a customer supplied, or requiring to be supplied, with electricity at Domestic Premises.
<b>Domestic Premises</b>	has the meaning given in, and is to be interpreted in accordance with, Condition 25.
<b>Electricity Supplier</b>	means any person authorised by a licence under Article 10(1)(c) of the Order to supply electricity.
<b>emissions</b>	means the discharge of substances into the air.
<b>Energy Order</b>	means the Energy (Northern Ireland) Order 2003.
<b>General Consumer Council</b>	means the General Consumer Council for Northern Ireland.
<b>generating unit agreement</b>	means a power purchase agreement between a generator and the Power Procurement Business in respect of a generation set or combination of generation sets.
<b>generation licence</b>	means a licence granted under Article 10(1)(a) of the Order.
<b>generation set</b>	means any plant or apparatus for the production of electricity.
<b>generator</b>	means a person authorised by a licence granted under Article 10(1)(a) of the Order.
<b>Grid Code</b>	has the meaning given to it in 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 the electric lines and electrical plant and meters used for conveying electricity only directly to or from a substation or converter station on the Island of Ireland into or out of the Island of Ireland.
<b>Island of Ireland</b>	means Northern Ireland and the Republic of Ireland.
<b>Last Resort Supply Direction</b>	means a direction given by the Authority to the Licensee that specifies or describes the premises to be supplied with electricity in accordance with Condition 22.
<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 the person identified as such in the Grant and Terms of this Licence, or any person to whom the Licence may subsequently be assigned or transferred in accordance with the Order, the Energy Order, the SEM Order, the Directive Regulations, or the Licence and (where the context so requires) shall include any business in respect of which the Licensee is a successor company.
<b>Market Operator</b>	means the person authorised, from time to time, under the Northern Ireland Market Operator Licence in its capacity as the holder of that licence.
<b>metering equipment</b>	includes any meter and any associated equipment which materially affects the operation of that meter.

<b>modification</b>	includes addition, omission, amendment and substitution, and cognate expressions shall be construed accordingly.
<b>Non-Domestic Customer</b>	means a customer supplied, or requiring to be supplied, with electricity at Non-Domestic Premises.
<b>Non-Domestic Premises</b>	has the meaning given in, and is to be interpreted in accordance with, Condition 25.
<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 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.
<b>Northern Ireland Market Operator Licence</b>	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.
<b>notice</b>	means (unless otherwise specified) notice given either in writing or by electronic data transfer.
<b>Order</b>	means the Electricity (Northern Ireland) Order 1992.
<b>Power Business Procurement</b>	means the business of the Licensee when it is acting in the discharge of the obligations stated or referred to in

Part IV of this Licence.

<b>power purchase agreement</b>	means a contract for the provision to the Licensee or any other authorised electricity operator of the whole or any part of the available capacity and/or the sale or other disposal to the Licensee or any other authorised electricity operator of the whole or any part of the output of a generation set or combination of generation sets.
<b>power station agreement</b>	means an agreement made with effect from 1 April 1992 between a generator and the predecessor company, in relation to matters concerning a generating station and designated for the purposes of the generation licences granted to the successor companies.
<b>predecessor company</b>	means Northern Ireland Electricity plc (a body corporate registered in Northern Ireland under company number NI026041).
<b>PSO Agreement</b>	means the agreement of that title designated as such by the Authority, as it may from time to time be modified in accordance with its terms.
<b>related undertaking</b>	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.
<b>relevant exempt self supplier</b>	means a relevant exempt self supplier within the meaning of the Electricity (Class Exemptions from the requirement for a Licence) Order (Northern Ireland) 1992.
<b>relevant supplier</b>	means a licensed electricity supplier or a relevant exempt self supplier.

<b>representation</b>	includes any objection or any other proposal made in writing.
<b>SEM Go-Live</b>	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.
<b>SEM Order</b>	means the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.
<b>Single Electricity Market</b>	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 it 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>Supply Business</b>	means the business of the Licensee in the supply of electricity pursuant to the Licence.
<b>Transmission Owner</b>	means the person authorised, from time to time, under the Transmission Owner Licence in its capacity as the holder of that licence.
<b>Transmission Owner Licence</b>	means the licence granted, under Article 10(1)(b) of the Order, to Northern Ireland Electricity plc (a body corporate registered in Northern Ireland under company

number NI026041) on 31 March 1992.

<b>transmission system</b>	has the meaning given in the Transmission Owner Licence.
<b>Transmission System Operator</b>	means the person authorised, from time to time, under the Transmission System Operator Licence in its capacity as the holder of that licence.
<b>Transmission System Operator Licence</b>	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.
<b>undertaking</b>	bears the meaning ascribed to it by Article 267 of the Companies (Northern Ireland) Order 1986.
<b>unmetered supply</b>	means a supply of electricity to premises which is not, for the purpose of calculating the charges for electricity supplied to the Customer at such premises, measured by metering equipment.

4 Unless otherwise specified:

- (a) any reference to a numbered Part is a reference to the Part bearing that number in this Licence;
- (b) any reference to a numbered Condition, or Annex or to a numbered Schedule is respectively a reference to the Condition or Annex or the Schedule bearing that number in this Licence;
- (c) any reference to **the Conditions** in relation 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 the 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 thereof.
- 6 Where any obligation of the Licensee is expressed to require performance within a specified time limit that obligation shall continue to be binding and enforceable after that time limit if the Licensee fails to perform that obligation within that time limit (but without prejudice to all rights and remedies available against the Licensee by reason of the Licensee’s failure to perform within the time limit).
- 7 The provisions of section 24 of the Interpretation Act (Northern Ireland) 1954 shall apply for the purpose of the delivery or service of any document, direction or notice to be delivered or served pursuant to the Licence, and directions issued by the Authority pursuant to any Condition shall be delivered or served as aforesaid.
- 8 Each relevant legal instrument shall, if the condition (whether of the Licence or any licence held by the predecessor company) under which it was issued is modified at SEM Go-Live, continue to have effect under any corresponding provision of Chapter 2 as modified, as if it had been made under that corresponding provision.
- 9 For the purposes of paragraphs 8 and 10 a “**relevant legal instrument**” means any direction, consent, approval, determination, designation or other instrument issued by the Authority or the Department, prior to SEM Go-Live, in accordance with a condition:
- (a) in Chapter 2, including any instrument issued:
    - (i) to another holder of the Licence, from whom the Licence was subsequently transferred or assigned to the Licensee;
    - (ii) before the conversion of the Licence to a supply licence under Article 10(1)(c) of the Order;

- (b) of any licence held by the predecessor company.
- 10 For the purposes of paragraph 8 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: Not Used**



**Condition 3: Compliance with the Grid Code and Distribution Code**

1. The Licensee shall comply with the provisions of the Grid Code and the Distribution Code insofar as applicable to it.
2. The Authority may:
  - (a) following consultation with the Transmission System Operator, issue directions relieving the Licensee of its obligation under paragraph 1 above in respect of such parts of the Grid Code and to such extent as may be specified in those directions; and
  - (b) following consultation with the Transmission Owner, issue directions relieving the Licensee of its obligation under paragraph 1 above in respect of such parts of the Distribution Code and to such extent as may be specified in those directions.
3. The Authority shall be entitled, in order to implement the requisite arrangements referred to in Condition 60, to issue directions to the Transmission System Operator requiring it to revise the Grid Code in such manner and with effect from such date as may be specified in the directions, provided that such revisions shall not affect the rights and obligations of any party to:
  - (a) a power purchase agreement which is not a cancellable generating unit agreement; or
  - (b) a cancellable generating unit agreement, which 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 person.

**Condition 4: The Market Registration Framework Agreement**

1. The Licensee shall become a party to, and shall thereafter comply with the obligations applicable to it under, the Market Registration Framework Agreement.
2. In this Condition:

**Market Registration Framework Agreement** shall have the meaning given to it from time to time in the Transmission Owner Licence.

**Condition 5: Not Used**

**Condition 6: 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 7: Not Used**

**Condition 8: Not Used**

**Condition 9: 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 10: Provision of information to the Authority**

- 1 Subject to paragraphs 2 and 3, 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 as it may require for the purpose of performing:
  - (a) any 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 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 required 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 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.
- 5 In paragraphs 1 to 4, **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.
- 6 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 supply of electricity authorised by this licence) which the Authority proposes to publish pursuant to Article 7 of the Energy Order.



7 In this Condition:

**enforcement matter**

means any matter in respect of which any function of the Authority under Article 42 of the Energy Order is or may be exercisable.

**Condition 11: Payment of fees**

- 1 The Licensee shall, at the times stated hereunder, pay to the Authority 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 Authority an initial fee of £308,000.
- 3 In respect of the year beginning on 1 April 1993 and in each subsequent year, the Licensee shall pay to the Authority a fee which is the aggregate of the following amounts:
  - (a) an amount which is a proportion, as determined by the Authority, 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 and the Directive Regulations in relation to the holders of licences granted under Article 10(1) 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 and 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 issued under Article 10(1)(c) of the Order; and

- (d) the difference (being a positive or a 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; and
  - (ii) the amount which that fee would have been in respect of that year:
    - (A) had the amount comprised therein under sub-paragraph (a) been calculated by reference to the total costs of the Authority in connection with the functions referred to in sub-paragraph (a) and the proportion thereof actually attributable to the Licensee,
    - (B) had the amount comprised therein under sub-paragraph (b) been calculated by reference to the total costs of the General Consumer Council in connection with the functions referred to in sub-paragraph (b) and the proportion thereof actually attributable to the Licensee,

(such total costs being apportioned 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 Authority within one month of the Authority giving notice to the Licensee of its amount, provided that notice is given within six 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 licence fee for that year paid by the Licensee which is attributable to the Authority's estimate of its costs in accordance with paragraph 3(a), and the estimate of the General Consumer Council or the Authority (as appropriate) of the General Consumer Council's costs 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 fee relates.

**Condition 12: Not Used**

**Condition 13: Not Used**

**Condition 14: Prohibition of discrimination in supply**

- 1 This Condition applies where the Licensee (taken together with its affiliates and related undertakings) is in a dominant position in a market for the supply of electricity to Customers.
- 2 Where this Condition applies the Licensee shall not supply or offer to supply electricity to Customers in any market in which it is dominant on terms which are predatory.
- 3 Where this Condition applies but subject to paragraph 4, the Licensee (taken together with its affiliates and related undertakings) shall not, in supplying or offering terms for the supply of electricity to Customers in any market in which it is dominant:
  - (a) show undue preference to any person (or class of persons) within such market;
  - (b) exercise undue discrimination between any persons (or classes of person) within such market; or
  - (c) set terms which are unduly onerous.
- 4 Nothing in paragraph 3 shall prohibit the Licensee, within any area or class of Customers (the **relevant area or class**) in respect of which there is established competition in the supply of electricity, from supplying or offering to supply electricity on terms which are reasonably necessary to meet that competition, save that the Licensee (taken together with its affiliates and related undertakings) shall not, in supplying or offering terms for the supply of electricity:
  - (a) show undue preference to any persons (or class of persons) or exercise undue discrimination between any persons (or classes of person) within the relevant area or class of Customers; or
  - (b) set terms in respect of any person (or class of persons) in a market in which the Licensee is dominant, save such persons who are within the relevant area or class of Customers, which are unduly onerous.
- 5 For the purposes of this Condition, terms are unduly onerous if the revenue from the supply of electricity to Customers on those terms:

- (a) significantly exceeds the costs of that supply; and
  - (b) exceeds such costs to a significantly greater degree than the revenue from supply to all other Customers of the Licensee (and of its affiliates and related undertakings) within the same market exceeds the costs of supply to those Customers.
- 6 For the purposes of this Condition, a market may be defined by reference to a geographical area, or to a class of Customer or both.
- 7 In determining, for the purposes of this Condition, whether any persons constitute a class of person, due regard shall be had to the circumstances of supply to such persons including (without limitation) volumes, load factors, conditions of interruptibility, location of premises being supplied and date and duration of the Contract or Deemed Contract.
- 8 For the purposes of this Condition, the Authority shall determine any question as to:
- (a) whether any area or class of Customers constitutes a market for the supply of electricity;
  - (b) whether the Licensee (taken together with its affiliates and related undertakings) is dominant in any market for the supply of electricity;
  - (c) whether there is established competition in respect of the supply of electricity in any area or to any class of Customers; and
  - (d) whether any terms are predatory, having due regard to whether such terms:
    - (i) incorporate charges which do not reasonably cover the avoidable costs incurred in consequences of supplying the Customers in question; and
    - (ii) are intended or are likely to restrict, distort or prevent competition in the supply of electricity.
- 9 The Authority may, on the application of the Licensee, and following such consultation (if any) as the Authority may consider appropriate, issue directions relieving the Licensee of its obligations under this Condition in respect of such of the Licensee's arrangements



or agreements as are specified in the direction and to such extent and subject to such conditions as may be specified in the direction.

10 In this Condition:

**terms** means all the terms on which a supply of electricity is offered or provided, including terms as to price, which significantly affect the evaluation of that supply.

**Condition 15: Duration of discrimination conditions**

- 1 Condition 14 shall cease to have effect (in whole or in part, as the case may be) if the Licensee makes a disapplication request in accordance with this Condition and:
  - (a) the Authority agrees in writing to that request; or
  - (b) the application of Condition 14 (in whole or in part) is terminated by notice given by the Licensee in accordance with paragraph 3 or 4 of this Condition.
  
- 2 A disapplication request pursuant to this Condition may be made by the Licensee only where the Authority has notified it, in accordance with paragraph 8 of Condition 14, of its determination that the Licensee is dominant in a specified market, and any such request shall:
  - (a) be made in writing to the Authority;
  - (b) specify whether the request relates to the whole of Condition 14 or any part or parts thereof; and
  - (c) state the date (the **disapplication date**) from which the Licensee wishes the specified provisions of Condition 14 to cease to have effect, which date shall be not earlier than 12 months after the date on which the request is made.
  
- 3 If the Authority has not by the date which is six months prior to the disapplication date made a reference to the Competition Commission (under Article 15 of the Order) relating to the modification of Condition 14, the Licensee may give to the Authority a notice in writing terminating the application of such of the provisions of Condition 14 as are specified in the disapplication request with effect from the disapplication date or from any later date specified in the notice.
  
- 4 If the Competition Commission reports on a reference made by the Authority relating to the modification of Condition 14 and does not conclude that the disapplication of any of the provisions of that Condition (being provisions specified in the disapplication request) would or may be expected to operate against the public interest, the Licensee may within 30 days of the publication of the report under Article 16 of the Order give to the Authority notice in writing terminating the application of such provisions with effect



**Condition 16: Duty to offer terms for meter provision**

- 1 The Licensee shall on application made by any person:
  - (a) offer to enter into an agreement for the provision of any relevant metering equipment whether, at the discretion of the Licensee, by way of sale, hire or loan; and
  - (b) where the terms offered are acceptable to the person making the application, sell, hire or loan the relevant metering equipment in accordance with such terms.
- 2 In making an offer to enter into an agreement in accordance with paragraph 1, the Licensee shall set out:
  - (a) the date by which the terms of the agreement shall be fulfilled (time being of the essence unless otherwise agreed between the parties);
  - (b) the charges to be paid to the Licensee; and
  - (c) such other detailed terms as are or may be appropriate for the purpose of the agreement.
- 3 The Licensee shall offer terms for agreements in accordance with paragraph 1 as soon as practicable after the receipt by the Licensee of an application containing all such information as it may reasonably require for the purpose of formulating the terms of the offer.
- 4 The Licensee shall not be obliged pursuant to this Condition to offer to enter or to enter into any agreement if to do so would be likely to cause the Licensee to be in breach of regulations made under Article 32 of the Order, provided that it has taken all reasonable steps to prevent such breach from occurring.
- 5 The Authority may, on the application of the Licensee, issue a direction relieving the Licensee of its obligations under paragraph 1 in respect of such relevant metering equipment and subject to such terms and conditions as may be specified in the direction.
- 6 The Licensee shall not enter into an agreement with any person for the provision of an electricity meter at any premises (whatever the nature of that agreement) which is

intended or is likely to restrict, distort or prevent competition in the supply of electricity.

7 In this Condition:

**relevant metering equipment**

means metering equipment owned by the Licensee and sited at any premises to which a supply of electricity is being or is required to be given by an Electricity Supplier other than the Licensee.

**Condition 17: Procedures for the detection and prevention of theft, damage and meter interference**

- 1 The Licensee shall (and shall ensure that its agents) take all reasonable steps to detect and prevent:
  - (a) the theft of electricity at premises which are supplied by it;
  - (b) damage to any electrical plant, electric line or electricity meter through which such premises are supplied; and
  - (c) interference with any electricity meter through which such premises are supplied.
  
- 2 The Licensee shall, as soon as is reasonably practicable, inform the owner of the relevant electrical plant, electric lines or meter of any incident where it has reason to believe:
  - (a) there has been damage to any electrical plant, electric line or meter; or
  - (b) there has been interference with any meter to alter its register or prevent it from duly registering the quantity of electricity supplied.
  
- 3 Where the Licensee has reason to believe that any incident reported to the owner in accordance with paragraph 2 has been caused by the criminal act of any person it shall, on complying with the requirement of that paragraph, provide the owner with such information as is reasonably required for the purposes of investigating the incident and resolving any safety concerns arising out of it.
  
- 4 The Licensee shall inform the owner of its policy in relation to incidents of the type referred to at paragraph 3, and in particular of the circumstances in which it requires the Transmission Owner to remedy such incidents by the use of:
  - (a) the substitution of alternative meters;
  - (b) the provision of prepayment meters; and
  - (c) the discontinuation of supply to the premises at which the incident occurred.

**Condition 18: 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 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 Customer, does not exceed 10 watts except where otherwise agreed with the Customer.

**Condition 19: Provision of Information to Transmission System Operator and Market Operator**

1. The Licensee shall furnish to:
  - (a) the Transmission System Operator; and
  - (b) the Market Operator,

in such manner and at such times as may be required, such information as each of them may reasonably require and which the Authority deems necessary for the purpose of complying with their respective obligations in relation to any authorised business or activity.

2. The information provided under paragraph 1 shall be furnished in accordance with directions issued by the Authority from time to time.



**Condition 20: Not Used**

**Condition 21: The PSO Agreement**

- 1 The Licensee shall enter into, and at all times remain a party to, the PSO Agreement in its capacity as an Electricity Supplier.

**Condition 22: Supplier of Last Resort**

- 1 The Authority may give a Last Resort Supply Direction to the Licensee if it considers that:
  - (a) circumstances have arisen that would entitle it to revoke the electricity supply licence of an Electricity Supplier other than the Licensee (for this Condition only, the **other supplier**); and
  - (b) the Licensee could comply with the Last Resort Supply Direction without significantly prejudicing its ability:
    - (i) to continue to supply electricity to its Customers' premises; and
    - (ii) to fulfil its contractual obligations for the supply of electricity.
- 2 The Last Resort Supply Direction will:
  - (a) have effect on and from the date on which and the time at which the other supplier's electricity supply licence is revoked; and
  - (b) stop having effect on and from a date, specified in the Last Resort Supply Direction, that is up to six months after the date on which the direction has effect.
- 3 The Licensee shall, subject to paragraph 4, comply with a Last Resort Supply Direction.
- 4 The Licensee is not required to comply with a Last Resort Supply Direction in respect of premises to which it would not be required to supply electricity because of either of the exceptions set out in sub-paragraphs 4(a) and (b) of Condition 26.
- 5 Within a reasonable period of time after receiving a Last Resort Supply Direction, the Licensee must send a copy of a notice to each of the premises specified or described in the Last Resort Supply Direction to inform the Customer:
  - (a) that the other supplier stopped supplying electricity to his premises with effect on and from the date on which the Last Resort Supply Direction had effect;
  - (b) that the Licensee began to supply electricity to his premises with effect on and from the date on which the Last Resort Supply Direction had effect;

- (c) that the Licensee is supplying electricity to the Customer's premises under a Deemed Contract;
  - (d) that the Customer may enter into a Contract with the Licensee or any other Electricity Supplier under which electricity will be supplied to his premises; and
  - (e) of the Charges for the Supply of Electricity that the Licensee may charge the Customer while supplying him under the Last Resort Supply Direction.
- 6 The Licensee's Charges for the Supply of Electricity to the premises specified or described in the Last Resort Supply Direction must not exceed an amount that may be expected, in total, approximately to equal the Licensee's reasonable costs of supply (including, where appropriate, the costs of purchasing electricity at short notice) and a reasonable profit.
- 7 If the Licensee purchases electricity to comply with a Last Resort Supply Direction, it must take all reasonable steps to do so as economically as possible in all the circumstances of the case.
- 8 The Licensee shall, so far as is reasonably practicable, give the Authority at least five days' notice of any increase in the Charges for the Supply of Electricity to premises to be supplied with electricity by it in accordance with a Last Resort Supply Direction.
- 9 Where, within five days of the receipt by the Authority of the notice referred to in paragraph 8, the Authority determines that the charges proposed by the Licensee would be likely to cause hardship to Domestic Customers, it may issue a direction to the Licensee requiring it to ensure that its Charges for the Supply of Electricity do not exceed those specified in the direction as being appropriate in order to avoid or mitigate such hardship.
- 10 The Licensee shall comply with any direction issued by the Authority under paragraph 9, but shall not be required by that direction to set its Charges for the Supply of Electricity at a level less than that applicable to the supply by it under Deemed Contracts of comparable Domestic Premises otherwise than in accordance with a Last Resort Supply Direction.

**Condition 23: Claims for Last Resort Supply Payments**

1. If the Licensee has received the Authority's consent under paragraph 5, it may make a claim for a Last Resort Supply Payment under condition 33 of the Transmission Owner Licence.
2. The Licensee must not make a claim for a Last Resort Supply Payment if it has waived its ability to do so by notice given to the Authority before the Authority gave it a Last Resort Supply Direction.
3. If the Licensee intends to make a claim for a Last Resort Supply Payment, it must:
  - (a) give notice to the Authority of its claim; and
  - (b) give the Authority a calculation of the amount claimed with information to support that calculation,  
  
within six months after the date on which the Last Resort Supply Direction to which the claim relates stops having effect.
4. The total amount of the Last Resort Supply Payment (for this Condition only, **the relevant amount**) to be claimed by the Licensee must not exceed the amount by which:
  - (a) the total costs (including interest on working capital) reasonably incurred by the Licensee in supplying electricity to premises pursuant to the Last Resort Supply Direction and a reasonable profit,  
  
are greater than:
  - (b) the total amounts recovered by the Licensee through Charges for the Supply of Electricity to premises under the Last Resort Supply Direction (after taking all reasonable steps to recover such charges).
5. If the Authority considers it appropriate in all the circumstances of the case for the Licensee to make the claim notified to it in accordance with paragraph 3, the Authority will give its consent in writing to the Licensee.
6. Within three months after it has been notified of the claim in accordance with paragraph

- 3, the Authority may determine that an amount other than the one calculated by the Licensee is a more accurate calculation of the relevant amount.
7. If the Authority makes a determination under paragraph 6, the amount specified by it must be treated as the relevant amount for the purpose of paragraph 8.
  8. A claim by the Licensee for a Last Resort Supply Payment from the Transmission Owner must specify:
    - (a) the relevant amount to be paid by the Transmission Owner; and
    - (b) whether payment is to be made by quarterly or monthly instalments.
  9. A claim will lapse if the Licensee does not make it within six months after the Authority has given its consent under paragraph 5.
  10. In this Condition:

**Last Resort Supply Payment** means a sum of money payable to the Licensee to compensate for any additional costs it incurs in complying with a Last Resort Supply Direction.

**Condition 24: Standards of Performance**

- 1 The Licensee shall conduct the Supply Business in the manner which it reasonably considers to be best calculated to achieve any standards of overall performance or standards of performance in connection with the promotion of the efficient use of electricity by Customers that may be determined by the Authority pursuant to Articles 43 and 44 respectively of the Order.

**Condition 25: Classification of Premises**

General Rule

1. For the purposes of this Licence:
  - (a) a Domestic Premises is any premises at which a supply of electricity is taken wholly or mainly for a domestic purpose; and
  - (b) any other premises shall be treated as a Non-Domestic Premises,except to the extent otherwise provided by paragraph 2.

Exceptions to the General Rule

2. A premises that would otherwise be a Domestic Premises shall be treated as a Non-Domestic Premises if it is a premises of a type (a **relevant premises**) described at one or more of paragraphs 3, 4 and 5 below.

Accommodation services, Landlords etc.

3. A premises is a relevant premises if:
  - (a) the person who has entered into a Contract with the Licensee for the supply of electricity to those premises is a person who has entered or will enter into an agreement with any other person for the provision of a residential or any other accommodation service at the premises, and
  - (b) the terms of the agreement referred to in sub-paragraph (a) are commercial in nature and include a charge for the supply of electricity to the premises (whether such charge is express or implied).

Change of Use

4. A premises is a relevant premises if the Customer at that premises has begun to take a supply of electricity wholly or mainly for a domestic purpose only subsequent to:
  - (a) the Licensee entering into a Contract with that Customer for those premises to be supplied with electricity as Non-Domestic Premises; or



- (b) a Deemed Contract for the supply of electricity to Non-Domestic Premises has commenced in relation to those premises,

in which case the premises shall be treated as a Non-Domestic Premises until the Contract or the Deemed Contract (as the case may be) comes to an end.

Multi-Site Contracts

- 5. A premises is a relevant premises during any period in which it is supplied with electricity under a Multi-Site Contract.

- 6. For the purposes of paragraph 5, a **Multi-Site Contract** is a Contract for the supply of electricity to:

- (a) one or more Non-Domestic Premises; and
- (b) one or more premises at which electricity is taken wholly or mainly for a domestic purpose, but which are occupied for a purpose ancillary to that for which any of the Non-Domestic Premises that are supplied under the Contract is occupied,

and where all of those premises are owned or occupied by:

- (c) the same person or body of persons, whether corporate or unincorporate; or
- (d) an undertaking (the **principal undertaking**) and an affiliate of that principal undertaking, or any other undertaking in which the principal undertaking has a participating interest (as defined by Article 268 of the Companies (Northern Ireland) Order 1986).

**Part II: CUSTOMER RELATED CONDITIONS**

**Condition 26: Duty to Offer Terms**

- 1 Where the Licensee supplies, or offers to supply, electricity to Domestic Premises, it must, within a reasonable period of time after receiving a request from a Domestic Customer for a supply of electricity to Domestic Premises, offer to enter into a Contract with that Customer.
- 2 If the Domestic Customer accepts the terms of the Contract offered to him under paragraph 1, the Licensee must supply electricity in accordance with that Contract.
- 3 A Contract must:
  - (a) be in writing; and
  - (b) include all the terms and conditions for the supply of electricity as provided for in Condition 27.
- 4 The Licensee is not required to comply with the obligations set out in paragraphs 1 or 2 in any of the following circumstances:
  - (a) supplying electricity to the Domestic Premises would put the Licensee in breach of regulations made under Article 32 of the Order, provided that it has taken all reasonable steps to prevent such breach from occurring;
  - (b) it is not reasonable in all the circumstances of the case for the Licensee to supply electricity to the Domestic Premises, provided that, if it is already supplying electricity to the premises, it has given at least seven working days' notice of its intention to stop doing so; or
  - (c) the Licensee requires the Domestic Customer to pay a reasonable Security Deposit and he does not do so.

5 In this Condition:

**Security Deposit** means a deposit of money paid by a Customer as security for the payment of charges for the supply of

electricity by the Licensee to the premises at which he is (or is to be) supplied, and may include a sum as security the provision of metering equipment.

**Condition 27: Terms and Conditions of Electricity Supply Contracts**

- 1 The Licensee shall ensure that any Contract it enters, or offers to enter, into with a Customer for a supply of electricity contains provisions which are in clear and comprehensible language and which incorporate all relevant information so as to enable the Customer or potential Customer to understand the terms under which the supply of electricity is, or is to be, made.
- 2 The Licensee shall ensure that any Contract it enters into with a Customer for a supply of electricity provides that the Contract will terminate automatically from the date that a Last Resort Supply Direction, given to another Electricity Supplier, takes effect in relation to the premises supplied under that Contract.
- 3 The Licensee shall determine standard terms and conditions for the supply of electricity to Domestic Customers and may determine different standard terms and conditions for different cases or classes of cases or for different areas. The Licensee shall not enter, or offer to enter, into a Contract for the supply of electricity with a Domestic Customer otherwise than on its standard terms and conditions.
- 4 The Licensee shall ensure that each set of standard terms and conditions it determines for Domestic Customers shall be fair (as between the Licensee and each Domestic Customer) and shall, as a minimum, include the following:
  - (a) the identity and address of the Licensee and any other appropriate contact details;
  - (b) the services to be provided, the service quality levels offered by the Licensee (which may be subject to the approval of the Authority pursuant to Condition 29) and the date for the commencement of the electricity supply under the Contract;
  - (c) the duration of the Contract, the conditions for renewal and for termination of the Contract (including any requirement, which must be approved in advance by the Authority, for the Customer to pay charges arising due to the termination of the Contract) and any services provided thereunder and the existence of any right of cancellation or termination of the Contract;
  - (d) (if offered by the Licensee) the types of maintenance service offered under the Contract;

- (e) a right for the Customer to withdraw from and cancel the Contract:
  - (i) where a supply of electricity has at any time previously been taken at the premises, within seven working days of entering into the Contract; and
  - (ii) where a supply of electricity has not previously been taken at the premises, within seven working days of entering into the Contract, or any time up to seven working days prior to the premises being connected to a distribution system, whichever is the later;
- (f) a right for the Customer to terminate the Contract where the Licensee proposes a variation to the terms and conditions of the Contract and the Customer does not wish to accept such new terms and conditions;
- (g) the tariffs, charges and other payments required to be paid by the Customer, in a manner that enables the Customer to identify each particular tariff, charge or payment, including without limitation any payment which is or has the effect of being a payment by way of security for the payment of charges for the supply of electricity;
- (h) the means by which up to date information on all applicable tariffs, charges and other payments (including any discounts and promotions) for the supply of electricity and for any other services which are to be provided under the Contract:
  - (i) can be promptly obtained by the Customer; and
  - (ii) will be communicated to the Customer in writing by the Licensee;
- (i) the compensation and the refund arrangements which will apply if contracted service quality levels are not met (which may be subject to the approval of the Authority pursuant to Condition 29);
- (j) details of how the Customer may initiate the Licensee's complaint handling procedure (as established under Condition 33); and
- (k) details of how the Customer can contact, and the relevant address and telephone number of, the General Consumer Council for further help and advice.

- 5 Before entering into or concluding a Contract with any Domestic Customer, the Licensee shall give the Customer a written copy of the full terms and conditions of the Contract, including without limitation all the information referred to in paragraph 4.
- 6 The Licensee shall notify each Domestic Customer it supplies with electricity pursuant to the Licence of:
  - (a) any proposed variation to the terms of the Contract the Licensee has entered into with that Customer, together with the Customer's right (as included in the Contract in accordance with paragraph 4) to terminate the Contract before the proposed variation is due to take effect, at least 21 days in advance of the date the variation is due to take effect; and
  - (b) any actual variation that subsequently does take effect in respect of the charges for the supply of electricity, within 28 days of the date the variation takes effect.
- 7 The Licensee shall, on the request of a Domestic Customer and without charge, send to that Customer a copy of the then current set or sets of standard terms and conditions (as determined in accordance with this Condition) that are applicable to the request (including, for the avoidance of doubt, the applicable charges and tariffs relating to each such set).
- 8 The Licensee shall ensure that its standard terms and conditions provide Domestic Customers with a choice of payment methods, including as a minimum making payment:
  - (a) in arrears (at such frequency as is set out in the terms and conditions);
  - (b) by direct debit (at such frequency as is set out in the terms and conditions); and
  - (c) by prepayment meter.
- 9 Any difference in the charges for supply of electricity according to the choice of payment method shall be calculated by the Licensee on a reasonable basis to reflect the costs to the Licensee of such different payment methods.
- 10 The Licensee shall not impose on, or request from, a Domestic Customer any charge or payment for the purpose of enabling that Customer to exercise or preventing him from exercising (as the case may be) his right to receive a supply of electricity from his

Electricity Supplier of choice.

**Condition 28: Deemed Contracts**

- 1 The Licensee shall ensure that each of its Deemed Contracts provides that it will terminate automatically in the event that a Last Resort Supply Direction is given to another Electricity Supplier in relation to the premises supplied under that Deemed Contract.
- 2 Subject to paragraph 4, the Licensee must take all reasonable steps to ensure that the terms of each of its Deemed Contracts are not unduly onerous.
- 3 For the purposes of paragraph 2, the terms of a Deemed Contract shall be unduly onerous for any class of Domestic Customers, or for any class of Non-Domestic Customers, only if the revenue derived from supplying electricity to the premises of the relevant class of customers on those terms:
  - (a) significantly exceeds the Licensee's costs of supplying electricity to those premises; and
  - (b) exceeds such costs of supplying electricity by significantly more than the Licensee's revenue exceeds its costs of supplying electricity to the premises of the generality of its Domestic Customers or, as the case may be, to the premises of the generality of its Non-Domestic Customers (in each case excluding from the calculation premises supplied under a Last Resort Supply Direction).
- 4 Where a Customer is being supplied by the Licensee with electricity under a Deemed Contract as a result of a Last Resort Supply Direction being issued in relation to his premises, paragraph 2 shall not apply until that direction stops having effect.
- 5 The Licensee shall ensure that each of its Deemed Contracts shall provide that, where a Customer intends his premises to be supplied with electricity under a Contract agreed with the Licensee or any other Electricity Supplier, the Deemed Contract will continue to have effect until the Licensee or the other Electricity Supplier, as appropriate, begins to supply electricity to the premises under such a Contract.
- 6 If the Licensee supplies electricity to a Customer under a Deemed Contract, the Licensee may not demand of the Customer any sum of money or other compensation (whether financial or otherwise) solely because the Deemed Contract is terminated (by whatever



means).

- 7 If the Licensee supplies electricity to a Customer's premises under a Deemed Contract, it must take all reasonable steps to provide that Customer with a notice:
  - (a) setting out the principal terms of the Deemed Contract (being all of those terms which may reasonably be considered significantly to affect the evaluation by the Customer of the Deemed Contract);
  - (b) informing the Customer that contractual terms for the supply of electricity which may be different from the terms of Deemed Contracts may be available from the Licensee and of how further information about such terms may be obtained.
- 8 If any person requests a copy of a Deemed Contract that the Licensee has available, the Licensee must provide it to that person within a reasonable period of time after receiving the request.
- 9 In determining the number of kilowatt hours of electricity that are to be treated as supplied to or taken at premises under a Deemed Contract, the Licensee must act reasonably and take into account available electricity consumption data for the premises and any other relevant factor.

**Condition 29: Approval of the Authority to the Licensee's Arrangements**

- 1 The Licensee shall, within 28 days of any notice from the Authority requiring it to do so, provide to the Authority full details of the arrangements which it has in place in respect of any of the matters set out in paragraph 3 and referred to in that notice.
- 2 If the Authority, within three months of the Licensee providing such details to the Authority, by notice in writing to the Licensee requires the Licensee to make any modifications to those arrangements, the Licensee shall, as soon as is practicable but in any event within 60 days of the date of the notice, modify such arrangements accordingly.
- 3 The matters referred to in paragraph 1 are:
  - (a) the service quality levels offered by the Licensee to Domestic Customers under and in accordance with any Contract for the supply of electricity to such Customers; and
  - (b) the compensation and refund arrangements which are to apply where the Licensee is unable to meet such contracted service quality levels.

**Condition 30: Code of Practice on payment of bills**

- 1 This Condition shall apply where the Licensee supplies, or offers to supply, electricity to Domestic Premises.
- 2 The Licensee shall, by SEM Go-Live (or such later date as the Authority may direct), prepare a Code of Practice concerning the payment of electricity bills by Customers occupying Domestic Premises, and setting out the procedures and guidance it will adopt for the assistance of such Customers who, through misfortune or inability to cope with credit terms, may have difficulty in paying such bills.
- 3 The Code of Practice shall set out the Licensee's method and procedures for:
  - (a) identifying Customers in such difficulty (**Customers in difficulties**);
  - (b) providing appropriate information as to how Customers in difficulties might be able to reduce their future bills by the efficient use of electricity;
  - (c) making arrangements, which take into account the Customers' ability to comply with such arrangements, to enable Customers in difficulties to pay the charges accrued for the supply of electricity in installments;
  - (d) detecting failures by Customers in difficulties to comply with the arrangements entered into by them for paying for the charges accrued for the supply of electricity in installments;
  - (e) ascertaining the ability of such Customers to comply with such arrangements; and
  - (f) providing, or procuring the provision of, a prepayment meter (where safe and practicable to do so) for Customers who have failed to comply with such arrangements; and .
    - (a) calibrating any prepayment meter so provided so as to take into account the Customer's ability to pay any of the charges due from the Customer under such arrangements in addition to the other charges lawfully being recovered through the prepayment meter.

- 4 In formulating the Code of Practice the Licensee shall have particular regard to adopting methods and procedures that have the purpose of avoiding, in so far as reasonable and practicable, the disconnection of premises occupied by Customers in difficulties.
- 5 The Licensee shall as soon as practicable following the preparation of the Code of Practice or any revision made to it, send to the Authority, the General Consumer Council, such other bona fide customer advice organisations as may from time to time be agreed with the Authority and, at the request of any Customer, any recognised professional advisor of that Customer, a copy of the Code of Practice or such revision in the form approved by the Authority.
- 6 The Licensee shall, within three months after the Code of Practice has been put in place, establish procedures for monitoring its general operation of the arrangements set out in the Code of Practice and compliance therewith, which shall be submitted to the Authority for its approval.
- 7 **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 services provided for assisting Customers having difficulty in paying their bills.

**Condition 31: Code of Practice on services for vulnerable persons**

Application

- 1 This Condition shall apply where the Licensee supplies, or offers to supply, electricity to Domestic Premises.

Vulnerable Persons

- 2 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

- 3 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 electrical appliances and meters (including prepayment meters) and repositioning meters;
- (b) providing special means of identifying officers authorised by the Licensee; and
- (c) giving advice on the use of electricity.

- 4 The arrangements shall, in the case of any of the Licensee's Domestic Customers 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 the 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

- 5 The Code of Practice shall set out the Licensee's arrangements for the provision, on request and free of charge, in relation to the Licensee's Domestic Customers who, to the knowledge or reasonable belief of the Licensee:
- (a) are blind or partially sighted, of:
    - (i) details of the meter readings and charges in respect of the supply of electricity as set out in any bill; and
    - (ii) details of the arrangements for making enquiries or complaints about bills or the services provided by the Licensee,  
  
as 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 bills or the services provided by the Licensee.
- 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 referred to in this Condition.

**Condition 32: Code of Practice on the efficient use of electricity**

- 1 This Condition shall apply where the Licensee supplies, or offers to supply, electricity to Domestic Premises.
- 2 The Licensee shall, by SEM Go-Live (or such later date as the Authority may direct), prepare a Code of Practice setting out the ways in which the Licensee will make available to Customers such guidance on the efficient use of electricity as will, in the opinion of the Licensee, enable them to make informed judgements on measures to improve the efficiency with which they use the electricity supplied to them. Such Code of Practice shall include, but shall not be limited to:
  - (a) the preparation, and making available free of charge to any Customer who requests it, of a statement, in a form approved by the Authority, setting out information and advice for the guidance of Customers in the efficient use of electricity supplied to them;
  - (b) the creation and maintenance within the Licensee's organisation of sources from which Customers may obtain further information about the efficient use of electricity supplied to them, including the maintenance of a telephone information service; and
  - (c) the preparation, and making available free of charge to any Customer who requests it, of a statement or statements of sources (to the extent that the Licensee is aware of the same) outside the Licensee's organisation from which Customers may obtain additional information or assistance about measures to improve the efficiency with which they use the electricity supplied to them such statement or statements to include basic information which is publicly available on financial assistance towards the costs of such measures available from Central or Local Government or through bodies in receipt of financial support from Government in connection with measures to promote the efficiency of energy use.
- 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 efficient use of electricity.

**Condition 33: Code of Practice on complaint handling**

- 1 This Condition shall apply where the Licensee supplies, or offers to supply, electricity to Domestic Premises.
- 2 The Licensee shall, by SEM Go-Live (or such later date as the Authority may direct), prepare a Code of Practice establishing a transparent, simple and inexpensive procedure to be operated by the Licensee for handling complaints from Customers about the manner in which the Licensee conducts the Supply Business.
- 3 The complaints procedure established and operated by the Licensee in accordance with this Condition shall as a minimum:
  - (a) specify the periods within which it is intended that different descriptions of complaint should be processed and resolved;
  - (b) be made available to all Domestic Consumers without charge;
  - (c) facilitate the fair and prompt settlement of complaints and disputes; and
  - (d) provide, where required by the Authority under Condition 29 or otherwise warranted for a system of making a reimbursement and/or compensation payment to complainants.
- 4 **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 34: Code of Practice on services for prepayment meter Customers**

- 1 This Condition shall apply where the Licensee supplies, or offer to supply, electricity to Domestic Premises.
- 2 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.
- 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 35: 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 30, 31, 32, 33 and 34 (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 each Code to the Authority for its approval.
- 4 If, within 30 days from the day the Licensee first submitted a Code to the Authority for its approval, the Authority notifies the Licensee that it considers that the Code does not meet the requirements of the 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 any Code and the manner in which it has been operated, with a view to determining whether any modification should be made to that 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 this Licence.
- 8 The Licensee shall:
  - (a) as soon as practicable following the preparation of each 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 during normal opening hours by members of the public at each of the Licensee's premises which are open to Customers in the normal course of the Licensee's business;
- (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 any 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 30, 31, 32, 33, 34 and this Condition to such an extent as may be specified in those directions and subject to such terms and conditions as the Authority thinks fit.

**Condition 36: Report on Performance**

- 1 The Licensee shall keep a record of its general operation of the arrangements mentioned in Conditions 30, 31, 32, 33 and 34 and, if the Authority so directs in writing, of its operation in particular cases specified, or of a description specified, by it.
- 2 The Licensee shall also keep a statistical record of its performance in relation to the provision of electricity supply services to Domestic Customers including services related to:
  - (a) the ascertainment of quantities of electricity supplied and the recovery of electricity charges; and
  - (b) the making of visits to Customers' premises and the response made to enquiries.
- 3 As soon as is reasonably practicable after 31 December in each year, the Licensee shall submit to the Authority and General Consumer Council a report dealing with the matters mentioned in this Condition which shall include a comparison of the Licensee's performance against any established standards in relation to that year and shall:
  - (a) make public the report so submitted in such manner as will in the reasonable opinion of the Licensee secure adequate publicity for it; and
  - (b) send a copy of it free of charge to any person requesting one

except that, in performing the obligations under paragraphs (a) and (b), the Licensee shall exclude from the report such information as appears to it to be necessary or expedient to ensure that, save where they consent, individual Customers referred to therein cannot readily be identified.
- 4 The report shall be presented, so far as is reasonably practicable, in a standard format determined by the Authority.

**Condition 37: 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 six 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 38: Information given to Customers**

- 1 The Licensee shall keep each of its Customers (save insofar as he receives an unmetered supply) informed of the amount of electricity which, since he was last informed, its records show as having been consumed by that Customer:
  - (a) according to the meter through which he is supplied; or
  - (b) where no meter reading is available, according to the estimate of the Licensee.
- 2 The Licensee shall use all reasonable endeavours to take an actual meter reading in respect of each of its Customers (save insofar as he receives an unmetered supply) on at least an annual basis.
- 3 The Licensee shall:
  - (a) provide the information required by this Condition in such detail and in such format as the Licensee has determined in consultation with the General Consumer Council; and
  - (b) keep each of its Customers informed:
    - (i) that the General Consumer Council can assist in resolving complaints which the Licensee has not resolved to the Customer's satisfaction; and
    - (ii) of the contact address and telephone number of the General Consumer Council.
- 4 The Licensee may discharge its duties under paragraphs 1, 2 and 3 by providing the relevant information on or with each bill or statement given to a Customer in respect of charges for the supply of electricity, and annually to each Customer to whom no such bills or statements are rendered.
- 5 Where the Licensee provides a bill showing an estimated current meter reading, the Licensee shall provide the Customer with details of how the Customer can:
  - (a) read his own meter (to be known as a self-read); and
  - (b) register the self read with the Licensee, in order for the Licensee to send the

Customer a bill reflecting the self read.

**Condition 39: Security and safety of supplies**

- 1 The Licensee shall make arrangements to keep each of its Customers informed of the postal address and telephone number of an enquiry service established and operated for the purposes of receiving reports from any person about any matter or incident that:
  - (a) causes danger or requires urgent attention, or is likely to cause danger or require urgent attention, in relation to the supply or distribution of electricity; or
  - (b) affects or is likely to affect the maintenance of the security, availability and quality of service of any distribution system through which the relevant Customer is supplied with electricity.
  
- 2 The enquiry service referred to at paragraph 1 must be such a service as shall:
  - (a) be provided without charge to the Customer;
  - (b) be available to receive and process telephone reports and enquiries at all times on every day of each year; and
  - (c) be operational no later than such date as the Authority may specify.
  
- 3 The Licensee may discharge the duty imposed by paragraph 1 by providing the requisite information to each of its Customers:
  - (a) on the occasion of the Customer first commencing to take a supply from the Licensee; and
  - (b) either:
    - (i) where bills or statements in respect of charges for the supply of electricity are rendered to the Customer, on a quarterly basis (it being sufficient that the information is included on or with any bill or statement); or
    - (ii) where no bills or statements in respect of charges for the supply of electricity are rendered to the Customer, on an annual basis

and by publishing such information in such manner as will in the opinion of the Licensee secure adequate publicity for it.



- 4 The Licensee shall, in so far as is practicable, take steps to inform each of its Customers of any change to the address or telephone number of the service referred to at paragraph 1 prior to such change becoming effective.

**Condition 40: Marketing of Electricity to Domestic Customers**

- 1 This Condition shall apply, from the date of the direction, where the Authority has directed that it shall apply to the Licensee. This Condition applies to the selling methods and marketing activities of the Licensee in respect of the supply or proposed supply of electricity to Domestic Customers.
- 2 The Licensee shall (and shall procure that its agents or sub-contractors shall):
  - (a) establish appropriate procedures for the selection of persons employed or engaged in roles the principal duties of which involve oral communications with Domestic Customers for the purpose of selling to such Customers the Licensee's services in respect of the supply of electricity;
  - (b) take all reasonable steps to ensure that the each such person is sufficiently trained so as to have a sufficient understanding of:
    - (i) the electricity supply market in Northern Ireland;
    - (ii) the terms and condition of the Licensee's Contracts available for Domestic Customers; and
    - (iii) matters relating to the efficient use of electricity (in order to provide energy efficiency advice to consumers including details of other organisations that may be able to assist the consumer on such matters),so that any advice given to Domestic Customers by such persons is not misleading; and
  - (c) take all reasonable steps to ensure that a Domestic Customer is:
    - (i) made aware or will readily understand that he has entered, or is about to enter, into a Contract with the Licensee for the supply of electricity to the Customer's premises;
    - (ii) where the Customer is to receive a supply of electricity for the first time at the premises, made aware or will readily understand that he should take appropriate action to ensure that he is able to continue the use of his

existing fuel source (if any) until the commencement of the supply of electricity; and

- (iii) take all reasonable steps to ensure that any unsolicited contact made on behalf of the Licensee with any Domestic Customer takes place at a reasonable time of the day.

3 Where the Licensee enters into a Contract with a Domestic Customer in the course of:

- (a) a visit to that Customer's premises by a representative of the Licensee; or
- (b) a conversation in a place to which the public have access,

the Licensee shall use its reasonable endeavours to contact the Customer between 1 to 14 days after the Contract has been entered into to confirm that the Customer understands that he has entered into the Contract and is content to have done so but that the supply of electricity will not commence until the supply start date notified, or to be notified, to him.

4 If in the course of, or in response to, the Licensee's contact in accordance with paragraph 3 the Domestic Customer indicates that he is not content to have entered into the Contract and wishes to cancel the Contract, the Licensee shall use all reasonable endeavours to ensure that the Contract is cancelled and that the Licensee does not commence the supply of electricity to the Customer's premises.

5 In this Condition:

**marketing activities** means any activities of the Licensee that are directed at or incidental to identifying and communicating with Domestic Customers for the purpose of promoting the Licensee's electricity supply contracts to them, and includes entering into contracts with such Customers.

**Representative** means any person directly or indirectly authorised to represent the Licensee in its dealings with Domestic Customers.

**Part III: SPECIAL CONDITIONS**

**Condition 41: Additional Definitions**

1 In Parts III and IV, unless the contrary intention appears:

<b>accountable interest</b>	has the meaning given to it in paragraph 7 of Condition 44.
<b>CHP</b>	means combined heat and power.
<b>CHP generation</b>	means the generation of electricity solely by CHP generation sets.
<b>CHP Generation Business</b>	means any business of the Licensee or of any affiliate or related undertaking of the Licensee in CHP generation.
<b>CHP generation set</b>	means a generation set used for the simultaneous generation of usable heat and power in a single process at high efficiency.
<b>Distribution Business</b>	has the meaning given to it in the Transmission Owner Licence.
<b>electricity purchase contract</b>	shall include any contract or arrangement under which provision is made for the making or receipt of payments by reference to the difference between: <ul style="list-style-type: none"><li>(a) an amount specified or ascertainable under the terms of such contract or arrangement; and</li><li>(b) the price at which electricity is sold or purchased under the Single Electricity Market Trading and Settlement Code, or</li></ul>

any component of such price

and **electricity sale contract** shall be construed accordingly.

**Generation Business**

means the authorised business of the Licensee or any affiliate or related undertaking of the Licensee in the generation of electricity or the provision of System Support Services, being a business involving own-generation sets or in which there is an accountable interest in generation sets, but shall not include any CHP Generation Business.

**high efficiency**

means achieving a year round total energy efficiency which would normally be in excess of 70% calculated on the basis of net calorific value.

**Operator**

means, in relation to any generation set, the authorised electricity operator or any person for the time being responsible (under contract or otherwise) for the generation or sale of electricity from such plant.

**own-generation set**

means any generation set the majority of the beneficial ownership of which is vested in the Licensee or an affiliate or related undertaking of the Licensee (other than by virtue only of the ownership of the Licensee or any affiliate or related undertaking of the Licensee or the interest of the lessor under a relevant lease) or in respect of which the Licensee or an affiliate or related undertaking of the Licensee is the operator, and references to own-generation sets of an authorised electricity operator shall be construed as if the references herein to the Licensee were replaced by

references to that authorised electricity operator.

**protected information**

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 or an affiliate or related undertaking of the Licensee).

**Related Supply Business**

means the business of any affiliate or related undertaking of the Licensee in the supply of electricity pursuant to a licence under Article 10(1)(c) of the Order.

**Separate Business**

means each of the Supply Business, the Power Procurement Business and the Generation Business (if any) 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.

**System Support Services**

has the meaning given to it in the Transmission System Operator Licence.

**Transmission Owner Business**

has the meaning given to it in the Transmission

Owner Licence.

**Condition 42: Availability of Resources and Undertakings**

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 each Separate Business; and
  - (b) comply with its obligations under the Order, the Energy Order, the SEM Order, the Directive Regulations and the 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 of each 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 Supply Business and the Power Procurement Business 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 Supply Business and Power Procurement Business 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 Supply Business and/or Power Procurement Business."
  - (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 Supply Business and/or Power Procurement Business 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 the 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 holding company (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, the Directive Regulations 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.

#### Undertaking of Ultimate Controller

9 The Licensee shall within seven days after the date when these modifications became 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 the 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 Condition 10. 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.

10 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 9;
  - (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.
12. 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 9 is not in place in respect of 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 10 in respect of such an undertaking.
13. In this Condition, unless the context otherwise requires:

**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 43: 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 10, 42, 48 and 62 of the Licence; and
  - (b) that the making of a distribution of [*sum*] 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 44: Restriction on own-generation and gas pipeline capacity**

- 1 The Licensee shall procure that the Generation Business of the Licensee is held as a Separate Business by or through a wholly-owned subsidiary of the Licensee.
- 2 The Licensee shall ensure that the sum of the amounts in megawatts (calculated as provided under paragraphs 5 and 6) represented by the declared net capacity of the own-generation sets in Northern Ireland of the Licensee and any affiliate and any related undertaking of the Licensee, and the appropriate share of the declared net capacity of generation sets in Northern Ireland in which the Licensee and any affiliate and any related undertaking of the Licensee has an accountable interest, shall not exceed:
  - (a) in the case of non-fossil generation sets, 5 MW or such greater amount as the Authority shall from time to time specify in directions issued to the Licensee for the purposes of this Condition;
  - (b) in the case of CHP generation sets, 50 MW;
  - (c) in the case of diesel generation sets, 50MW; and
  - (d) in the case of any other generation sets and except in the permitted circumstances or where the Licensee is complying with a direction given to it under Article 58 of the Order or any other emergency legislation, zero MW.

Before exercising its cancellation powers, the Authority shall consider whether or not to increase the limit provided for in sub-paragraph (a).

- 3 Paragraph 2 shall cease to have effect from the date the Licensee:
  - (a) ceases to be an affiliate or related undertaking of the holder of the Northern Ireland Market Operator Licence; and
  - (b) ceases to be an affiliate or related undertaking of the holder of the Transmission System Operator Licence.
- 4 Paragraph 2 shall not apply to mobile generation sets which are either own-generation sets in Northern Ireland of the Licensee or mobile generation sets in which the Licensee has an accountable interest in Northern Ireland where such mobile generation sets are

used solely for the purposes of the Transmission Owner Business or the Distribution Business.

- 5 Where the Licensee is in breach of paragraph 2 by reason of the acquisition of own-generation sets or an accountable interest in other generation sets in consequence of the occurrence of a specified event affecting the operator or any third party, the Licensee shall forthwith notify the Authority for the purpose of applying to the Authority for retroactive directions under sub-paragraph 2(a).
- 6 For the purpose of calculating the limit under paragraph 2, and subject to paragraph 7, there shall be attributed to the Licensee:
  - (a) the whole of the declared net capacity represented by own-generation sets; and
  - (b) the appropriate share (namely the share representing the Licensee's economic interest therein) of the declared net capacity of generation sets in which it has an accountable interest, ascertained in such manner as the Licensee, with the approval of the Authority, may determine.
- 7 Where the Authority is satisfied that by virtue of the Licensee's economic interest (ascertained in such manner as the Authority may determine) therein:
  - (a) generation sets in which the Licensee has only an accountable interest should more properly be treated as own-generation sets;
  - (b) own-generation sets should more properly be treated as sets in which the Licensee only has an accountable interest;
  - (c) own-generation sets, or generation sets in which the Licensee has an accountable interest, should not be treated as falling in either category; or
  - (d) generation sets not declared as sets in which the Licensee has an accountable interest, should be treated as generation sets in which the Licensee has an accountable interest;

the Authority may issue directions to that effect.

8 For the purposes of this Condition, and subject to paragraphs 7, 9 and 12, the Licensee shall have an accountable interest in a generation set in circumstances where (such generation set not being an own-generation set of the Licensee):

- (a) the operator is a related undertaking of the Licensee or any affiliate of the Licensee; or
- (b) the Licensee or any affiliate of the Licensee is in partnership with or is party to any arrangement for sharing profits or cost-savings or any joint venture with the operator or with any third party with regard to the operator; or
- (c) the Licensee or any affiliate of the Licensee has (directly or indirectly):
  - (i) any beneficial share holding interest in the operator; or
  - (ii) any beneficial underlying interest in the generation set; or
  - (iii) provided or agreed to provide finance to the operator otherwise than on arm's length terms; or
  - (iv) provided or agreed to provide, or has determined or is responsible for determining the price (or other terms affecting the financial value) of, the fuel used in the generation sets;

other than by virtue only of the ownership of the Licensee or any affiliate or related undertaking of the Licensee of any land forming part of the land bank.

9 The Licensee shall not be deemed to have an accountable interest in a generation set where:

- (a) the Licensee's interest arises wholly under the terms of a power purchase agreement, an agreement for the provision of System Support Services, the Single Electricity Market Trading and Settlement Code, or under any electricity purchase or sale contract; or
- (b) the Licensee's interest arises solely by virtue of arrangements for the sharing with the operator of any generation set of the risks associated with changes in the price of fuel used by the generation set.



- 10 The Licensee shall, on each such occasion as it provides to the Authority separate accounts for the Generation Business pursuant to Condition 47 and at any other time upon request of the Authority, provide to the Authority a statement:
- (a) confirming compliance with paragraphs 1, 2 and 5 as at the date of the statement and throughout the period since the last such statement; and
  - (b) identifying (in such detail and with such supporting documents or information as the Authority may require) the amount of capacity in megawatts represented by the declared net capacity of own-generation sets attributable to the Licensee and the appropriate share of the Licensee in the declared net capacity of generation sets in which the Licensee has an accountable interest, as at the date of the statement.
- 11 Where the Authority is satisfied that the basis of calculation used by the Licensee is not in conformity with paragraphs 6 and 7, the Authority may issue directions specifying an alternative basis of calculation, and the basis of calculation by the Licensee shall be adjusted accordingly with effect from the date of issue of the directions or such other date as may be specified in the directions.
- 12 In relation to gas pipelines:
- (a) except as provided in sub-paragraph (b), this Condition (except for paragraph 3) shall at all times apply mutatis mutandis to gas pipelines as it applies to generation sets other than non-fossil generation sets, and as if for references to the or any amount of capacity or declared net capacity of any own-generation set or generation set in which the Licensee is permitted to have an accountable interest there were substituted references to any capacity of a gas pipeline; and
  - (b) the Licensee shall be permitted to hold its interest under the gas conversion agreement and shall exercise any rights which it shall have under Schedule 3, Clause 5.6 (BG Option) of the gas conversion agreement in accordance with such directions as the Authority shall from time to time issue to it. In this sub-paragraph, references to agreements are to those agreements in the forms in which they shall have been entered into.

- 13 Before the Department authorises the Licensee to operate or otherwise deal with a generating station in the permitted circumstances, or, having made such an authorisation, modifies it, the terms of such authorisation or modification shall first be made available to each generator and Electricity Supplier, and the Department shall take into consideration any representations timeously made by any such person.
- 14 Where the Department has authorised the Licensee to operate or otherwise deal with a generating station in the permitted circumstances, the Licensee shall not unduly discriminate between:
- (a) itself or any of its affiliates or related undertakings (including in its capacity as the operator of the generating station to which the authorisation relates); and
  - (b) any other person or class or classes of persons.

15 In this Condition:

<b>declared net capacity</b>	means in relation to a generation set, the highest generation of electricity, at the main alternator terminals, which can be maintained for an indefinite period of time without causing damage to the plant less so much of that capacity as is consumed by the plant.
<b>land bank</b>	has the meaning given in the Transmission Owner Licence.
<b>mobile generation set</b>	means any generation set which is not affixed to land or to a building so as to be part of such land or building.
<b>natural gas</b>	means any gas derived from natural strata.
<b>non-fossil generation set</b>	means a generation set which is (or may be) fuelled or driven otherwise than by a fossil fuel or natural gas.
<b>permitted circumstances</b>	means where the shares in the successor company owning a generating station have not been disposed of by the Department before 2 April 1992 and the

Department has authorised the Licensee to operate or otherwise deal with that generating station and for so long as the Licensee acts in accordance with the conditions of that authorization.

**specified event**

means any such event as is described in sub-paragraph (1)(f) of Schedule 2, but for this purpose as if references to the Licensee were replaced by references to the operator or third party in question, or any revocation of any generation licence.

**underlying interest**

in relation to any generation set means any interest arising by reason of the Licensee or affiliate or any related undertaking of the Licensee or affiliate (whether alone or with others):

- (a) holding or being entitled to acquire an interest in the land on which the generation set, or any part thereof, is built;
- (b) being in partnership with or party to any arrangement for sharing of profits or cost-savings or any joint venture with any person holding or entitled to acquire an interest in the land on which the generation set, or any part thereof, is built;
- (c) owning any electrical plant situated on or operated as a unit with the generation set (and for such purpose, any electrical plant or equipment to the possession of which the Licensee, affiliate or related undertaking is entitled under any agreement for hire, hire purchase, conditional sale or loan shall be deemed to be owned by such person) provided

always that such electrical plant shall not be deemed to be operated as a unit with any generation set by reason only of connections with any other system for the transmission or distribution of electricity or with metering required pursuant to (and as defined in) the Grid Code; or

- (d) having obtained any consent under Article 39 of the Order required for the construction or extension of the generation set or any part thereof;

in any such case other than by virtue only of having a beneficial interest in the interest of the lessor under a relevant lease.

**Condition 45: Prohibited activities and ring-fencing**

- 1 The Licensee shall not, and shall procure that any affiliate or related undertaking of the Licensee shall not, purchase or otherwise acquire for value any electricity which has been or is to be generated by any own-generation set or generation set in which the Licensee has an accountable interest (whether or not located in Northern Ireland) except with the prior written consent of the Authority and in accordance with any conditions of that consent, provided that the Authority's consent shall not be required in relation to the purchase or acquisition for value of electricity generated principally by CHP generation sets or generated by diesel generation sets. This paragraph does not apply to any business as an Electricity Supplier of any affiliate or related undertaking of the Licensee.
- 2 No Core Business of the Licensee shall be held by or carried on through any affiliate or related undertaking of the Licensee.
- 3 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.
- 4 Save as provided by paragraphs 6 and 7, the Licensee shall not conduct any business or carry on any activity other than those falling within the definition of Core Businesses.
- 5 The Licensee shall not without the written consent of the Authority acquire shares in any affiliate or related undertaking except:
  - (a) shares in any body corporate which was a subsidiary of the predecessor company on 8 February 1998;
  - (b) shares acquired in a body corporate to satisfy the obligation imposed by paragraph 6;
  - (c) shares in a body corporate which conducts business in accordance with a licence granted under Article 10(1)(c) of the Order; 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 the Licence.
- 6 Notwithstanding paragraph 4, the Licensee may continue to conduct any business or carry on any activity otherwise prohibited by paragraph 4 which the predecessor company

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.

7 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 4;
- (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 the 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 4;
- (d) the Licensee from carrying on any business or conducting any activity otherwise prohibited by paragraph 4 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.

8 In this Condition:

**Core Business** means the Power Procurement Business or the Supply Business.

**diesel generation set**

means a generation set which is fuelled by 35 second gas oil.

**Condition 46: Obligation on economic purchasing**

- 1 Subject to Condition 52 and paragraph 6 of this Condition, the provisions of paragraph 2 shall apply separately in relation to purchases of electricity from the following sources:
  - (a) qualifying renewable generation;
  - (b) generation from any source other than qualifying renewable generation.
  
- 2 In respect of each category referred to in paragraph 1 above, and subject to paragraph 4, the Licensee shall:
  - (a) itself purchase;
  - (b) procure any affiliate of the Licensee to purchase; and
  - (c) insofar as it is able through the exercise of voting rights or otherwise to do so, procure any related undertaking of the Licensee or any defined undertaking to purchase,  
  
electricity at the best effective price reasonably obtainable having regard to the sources available.
  
- 3 In determining the effective price at which electricity is purchased by the Licensee or any affiliate or related undertaking of the Licensee or any defined undertaking, regard shall be had to any payments made or received or to be made or received for the grant of or pursuant to any electricity purchase contract.
  
- 4 In the discharge of its obligations under paragraph 2, the Licensee may additionally have regard to any considerations liable to affect its ability and that of any affiliate or related undertaking of the Licensee to discharge its obligations under this Condition in the future, including the future security, reliability and diversity of sources of electricity available for purchase.
  
- 5 In this Condition (and subject to paragraph 6) references to qualifying renewable generation shall refer to generation from capacity of that description which:
  - (a) was contracted by the predecessor company or any defined undertaking under



arrangements of the kind mentioned in Article 35(1)(a) of the Order entered into prior to the relevant date; or

(b) is available to be contracted under arrangements to be produced to the Authority in satisfaction of an obligation imposed on the predecessor company or the Licensee by order made under Article 35 of the Order after the relevant date.

6 Notwithstanding that generation may previously have been contracted as being qualifying renewable generation, it shall cease to be so treated to the extent that:

(a) the Licensee (or any affiliate or related undertaking of the Licensee or any defined undertaking) enjoys contractual freedom to vary or discontinue its obligation to purchase such generation; and

(b) capacity from which qualifying renewable generation is otherwise contracted by the Licensee or any affiliate or related undertaking of the Licensee or any defined undertaking is equal to or exceeds the aggregate capacity specified in any orders previously made under Article 35 of the Order and continuing in force, as being required to be available to the predecessor company or the Licensee at that time or in respect of any future period covered by such orders.

7 Paragraphs 2, 3 and 4 shall apply mutatis mutandis where the Licensee (or any affiliate or related undertaking of the Licensee) exercises a discretion or (by agreement or otherwise) varies the terms of an existing agreement (whether or not entered into prior to the relevant date) in such a manner as to alter the effective price under such agreement.

8 The Licensee shall not be in breach of this Condition by reason only of performing a must-take obligation to purchase electricity.

9 This Condition shall have effect from the date specified for its coming into force in a direction issued to the Licensee by the Authority for the purposes of this Condition. The date so specified shall not be earlier than the date of the direction or the date upon which the Authority shall first have exercised its cancellation powers.

10 In this Condition:

<b>defined undertaking</b>	means any entity through which the Licensee enters into arrangements of the kind mentioned in Article 35(1)(a) of the Order.
<b>must-take obligation</b>	an agreement which imposes an obligation on the Licensee to make a payment to another party to the agreement in the event that the Licensee does not purchase electricity (or a minimum quantity of electricity) under the agreement shall be deemed to be an agreement under which the Licensee has a must-take obligation to purchase electricity and any quantity of electricity purchased by the Licensee pursuant to the agreement shall be deemed to have been purchased in performance of a must-take obligation to purchase electricity if the Licensee would have been obliged to make a payment to another party to the agreement had it not purchased such quantity of electricity.
<b>purchase</b>	includes the acquisition of electricity from sources falling to be treated as own-generation for the purpose of Condition 44, and the purchase of electricity under electricity purchase contracts.
<b>relevant date</b>	means 31 March 1992.

**Condition 47: Separate Accounts for Separate Businesses**

- 1 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; and
  - (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; and

- (d) facilitate the completion of the Auditor's report referred to in sub-paragraph (c) the accounting statements referred to in sub-paragraph (b) 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.

4 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 3(b) 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.

5 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.

6 Accounting statements in respect of a financial year prepared under sub-paragraph 3(b) 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;

- (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.

7 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 48: Prohibition of Cross-Subsidies and of Discrimination**

- 1 Subject to paragraphs 2 and 3, 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 the Licence shall be regarded as a cross-subsidy for the purposes of this paragraph 1.
- 3 The Licensee shall not, and shall procure that no affiliate or related undertaking of the Licensee shall, supply or sell or offer to supply or sell electricity (including under any electricity sale contract) to any one purchaser or person seeking to become a purchaser on terms as to price or on other terms affecting the financial value of the supply which are materially more or less favourable than those on which it supplies or sells or offers to supply or sell electricity (including under any electricity sale contract) to comparable purchasers. For these purposes, due regard shall be had to the circumstances of supply or sale to such purchasers including (without limitation) volumes, voltages, load factors, conditions of interruptibility, location and number of premises being supplied and date and duration of the agreement. This paragraph shall not apply to any business as an Electricity Supplier of any affiliate or related undertaking of the Licensee and it shall not apply by reason of any supply or sale or offer to supply or sell electricity generated by CHP generation sets or renewable electricity made by the Licensee or of any affiliate or related undertaking of the Licensee or any sale made by the Power Procurement Business pursuant to a direction issued by the Authority requiring the Power Procurement Business to offer to sell electricity to licensed suppliers, in such quantity and on such terms (including terms as to price) as the Authority shall specify in the directions.
- 4 For the purposes of paragraph 3, a purchaser shall be treated as a single purchaser notwithstanding that the premises at which a supply of electricity is given to him may be located in more than one place.

**Condition 49: Restriction on use of certain information**

- 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.
- 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.
- 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 or 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.

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.

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



- (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.

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.

**authorised recipient** 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.

**business person** 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>competent authority</b>	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.
<b>control</b>	has the meaning attributed to it by section 416 of the Income and Corporation Taxes Act 1988.

**Condition 50: Independence of the Transmission Owner and Distribution Businesses**

1. The Licensee shall co-operate with the Transmission Owner, to the extent that such co-operation is reasonably required, to ensure that the Transmission Owner is able to fulfil its obligations under Condition 12 of the Transmission Owner Licence.

**Condition 51: Separation of Businesses**

- 1 This Condition applies where any affiliate or related undertaking of the Licensee carries on a Related Supply Business.
- 2 The Licensee shall make arrangements in accordance with paragraph 4 to secure, save as required pursuant to any legislative or regulatory requirement, as provided for by the Licence, or as permitted pursuant to arrangements or agreements approved in writing by the Authority, the full managerial and operational independence of its Regulated Businesses from the Related Supply Business.
- 3 The arrangements referred to in paragraph 2 shall be subject to the approval of the Authority, who may from time to time direct the Licensee to take such reasonable steps or desist from such action as the Authority considers appropriate to secure compliance with the arrangements referred to in paragraph 2.
- 4 The Licensee shall:
  - (a) nominate an officer of adequate seniority to monitor compliance with the provisions of this Condition and Condition 49 (who shall not be a member of the board of the Licensee or any affiliate or related undertaking of the Licensee) who will report at regular intervals to the Authority;
  - (b) without prejudice to Condition 49, not disclose, and shall procure that any employees (whether part-time or full-time) or officers (and require that any agents or consultants of each Regulated Business) shall not disclose, any information relating to a Regulated Business to the Related Supply Business which could give the Related Supply Business any unfair commercial advantage from its possession of such information, other than information which:
    - (i) a Regulated Business is required to disclose pursuant to any legislative or regulatory requirement;
    - (ii) is in or enters the public domain (other than as a result of a breach by the Licensee or any affiliate or related undertaking of the Licensee of its obligations under this Condition); or
    - (iii) may be disclosed pursuant to arrangements or agreements approved in writing by the Authority;

- (c) take measures to prevent (so far as the Licensee can so require) any person who is engaged by or was previously engaged by a Regulated Business from being engaged by the Related Supply Business until the expiry of:
  - (i) a period of three months; or
  - (ii) such shorter period as the Authority, having due regard to considerations of seniority and involvement in commercially sensitive activities, may permit in respect of any person or class of persons;
- (d) establish and maintain an up-to-date register of all persons engaged by each Regulated Business, confirming that the provisions of sub-paragraphs (b) and (c) have been complied with in respect of each person;
- (e) not enter into any contracts with the Related Supply Business other than on an arm's length basis on normal commercial terms;
- (f) not, save as required pursuant to any legislative or regulatory requirement, as provided for by this Licence, or as may be permitted pursuant to arrangements or agreements approved in writing by the Authority, permit the Related Supply Business to use any assets of (or obtained from) a Regulated Business, for any purpose whatsoever;
- (g) not permit the Related Supply Business to use a name, brand or trade name associated with a Regulated Business in the Related Supply Business' name, brand, trade name or advertising; and
- (h) prepare for approval by the Authority, and comply with, a code of conduct on ring-fencing provisions in relation to the transfer and movement of employees (either full-time or part-time) between the Licensee and the Related Supply Business.

5 The Licensee shall be taken to have complied with paragraph 1 where it complies with:

- (a) the arrangements as approved by the Authority; and
- (b) any direction issued by the Authority under paragraph 3.

6 In this Condition:

<b>Asset</b>	<p style="text-align: right;"><u>Appendix II</u></p> <p>includes (without limitation) any premises, offices, information systems, software, hardware, electronic systems, billing systems, equipment, materials, resources, intellectual property, telephone numbers or lines, mobile telephones, e-mail systems or addresses, websites and computer servers.</p>
<b>Regulated Business</b>	<p>means the Generation Business, the Power Procurement Business or the Supply Business.</p>

**Condition 52: Single Electricity Market Trading and Settlement Code**

- 1 The Licensee shall become a party to the Single Electricity Market Trading and Settlement Code, and shall at all times remain a party to and comply with the Code, insofar as it is applicable to the Licensee in its capacity as an Electricity Supplier.
- 2 The Licensee shall, in accordance with the provisions of the Single Electricity Market Trading and Settlement Code, register the Error Supplier Unit for Northern Ireland.
- 3 In this Condition:

**Error Supplier Unit** has the meaning given to it in the Single Electricity Market Trading and Settlement Code.

**Condition 53: Small Renewable Spill Arrangements**

- 1 The Licensee shall establish arrangements for small renewable generating units to facilitate the achievement of the objective set out in paragraph 2 (the “**relevant objective**”).
- 2 The relevant objective is to facilitate the promotion by the Authority of renewable generation in Northern Ireland by providing arrangements whereby the Licensee purchases renewable spill and the associated benefits from small renewable generating units under a tariff.
- 3 The Licensee shall, in connection with the establishment of the arrangements referred to in paragraph 1 above, prepare a pro forma renewable spill agreement, which shall be furnished to the Authority for its approval, and may be amended from time to time subject to the Authority's approval.
- 4 The pro forma renewable spill agreement shall include:
  - (a) provisions governing eligibility to enter into a renewable spill agreement;
  - (b) provisions about calculating the quantity of small renewable spill and associated benefits;
  - (c) information requirements including the nature of the information, its format and where and when it must be given and to whom;
  - (d) provisions about payments for the renewable source electricity and associated benefits and related obligations;
  - (e) remedies for non-compliance;
  - (f) termination arrangements; and
  - (g) provisions for there to be referred to the Authority for determination such matters arising under the small renewable spill agreement and the small renewable spill tariff as may be specified in them.
- 5 On application made by any person, 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 a renewable



spill agreement with such person which shall be substantially the same as the approved pro forma renewable spill agreement.

- 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 being:
    - (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 Supply Business; or
    - (iii) in breach of any of the Conditions of the Licence; or
    - (iv) in breach of the Grid Code; or
  - (b) if to do so would cause the Licensee to be in breach of the Distribution Code or if the person making the application does not undertake to be bound by such parts of the Distribution Code and of the Grid 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.
- 7 The Licensee shall not, subject to paragraph 10, enter into any agreements or arrangements for the purposes of the relevant objective except under a renewable spill agreement being substantially the same as the approved pro forma renewable spill agreement.
- 8 Upon the application of any person wishing to question the terms of an agreement offered pursuant to paragraph 5 above, or upon the application of the Licensee, the Authority may, pursuant to Article 11(3)(c) of the Order, 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.
- 9 Insofar as any person entitled to an offer under this Condition 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.
- 10 The tariff paid by the Licensee under a renewable spill agreement and associated terms

shall be set by the Licensee with the approval of the Authority. The tariff price is to be set in accordance with the following principles:

- (a) the price shall be less than the prevailing market price paid for electricity from renewable sources and associated benefits in Northern Ireland; and
- (b) that part of the price representing payment for electricity and generating capacity may be above the prevailing market price in Northern Ireland for electricity that is not electricity from renewable sources.

11 The Licensee shall (subject to paragraph 12) give or send a copy of the pro forma renewable spill agreement to any person requesting the same.

12 The Licensee may make a charge for any copy given or sent pursuant to paragraph 11 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.

13 This Condition shall cease to have effect if the Authority delivers to the Licensee a notice given for the purposes of this paragraph, such notice to take effect from the date stated in the notice.

14 In this Condition:

**associated benefits** means embedded benefits and green benefits;

**embedded benefits** means benefits available by virtue of a generating unit being connected to a distribution system, including rebates, payments and avoided costs and any instruments associated with such benefits;

**green benefits** means benefits available by virtue of a generating unit using non-fossil or carbon emission saving fuels or waste to generate electricity, including payments, rebates and avoided costs, and any instrument associated with such benefits, including renewables obligation certificates which are or will become available in Northern Ireland and levy exemption

certificates under Schedule 6 of the Finance Act 2000;

**same site**

includes sites immediately adjoining each other and sites separated from each other only by road, railway or water course or by another site owned by the person, or any affiliate of the person, that owns the separated sites;

**small renewable  
generating unit**

means a non-fossil fuel generation set (as defined in Condition 44) located in Northern Ireland and that whether taken alone or together with other generating sets on the same site has a maximum export capacity to a transmission system or a distribution system of 100 kW; and

**small renewable spill**

means electricity that is generated from small renewable generating units and that is of a class or type and satisfies such other eligibility criteria as may be specified by the Licensee for the purposes of this Condition with the approval of the Authority from time to time.

**Condition 54: Recovery of the NIE Energy Supply Amount**

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

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

(b) an obligation on the Transmission Owner to make payments each month to the Licensee 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 the Licensee to the Transmission Owner).

2 Where the relevant monthly payment in respect of the NIE Energy Supply Amount is a negative number, the Licensee shall pay the relevant amount to the Transmission Owner in accordance with the agreement referred to in paragraph 1.

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

4 In this Condition, unless the context otherwise requires:

**NIE Energy Supply Amount** means the amount determined as such in accordance with Annex 1.

**relevant year** has the meaning given to that expression in Annex 1.

**Condition 55: Supply Charges Restriction**

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

## ANNEX 1 – Determination of the NIE Energy Supply Amount

### Restriction on NIE Supply Amount

1. The NIE Energy Supply Amount applicable from time to time shall be the amount determined as such by the Licensee, provided that in setting such amount, the Licensee shall use its best endeavours to ensure that, in any relevant year, the regulated NIE Energy supply revenue does not exceed the maximum allowed NIE Energy supply revenue (or, where the maximum allowed NIE Energy supply revenue is a negative figure, the Licensee will use its best endeavours to ensure that, in the relevant year, it pays that amount to the Transmission Owner under the agreement referred to in Condition 54).

### Maximum NIE Energy Supply Revenue

2. The maximum allowed NIE Energy supply revenue, in respect of any relevant year (t), shall be calculated as follows:

$$M_{\text{Supply}t} = \text{NFFO}_t + D_t + K_t$$

Where:

$M_{\text{Supply}t}$  means the maximum allowed NIE Energy supply revenue under the agreement referred to in paragraph Condition 54 in respect of relevant year t.

$\text{NFFO}_t$  means the Excess NIE Energy (Supply) Costs for the relevant year t.

$D_t$  means any other costs agreed with the Authority for the relevant year t.

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

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

where  $R_{t-1}$  is the revenue actually recovered under the agreement referred to in Condition 54 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.

Excess NIE Energy (Supply) Costs

3. The Excess NIE Energy (Supply) Cost, in respect of a relevant year  $t$ , means, subject to approval by the Authority of the manner of its calculation, the difference (whether a positive or negative number) between:

(a) where the Department has made one or more orders under Article 35(1) of the Order that are applicable to the Licensee: the costs incurred by the Licensee in that relevant year in acquiring:

(i) the availability of an aggregate amount of generating capacity from non-fossil fuel generating sets which is not more than the amount specified in those orders; and

(ii) the output from such capacity;

and

(b) the revenues that would have been derived by the Licensee had the Licensee sold the availability and output referred to in sub-paragraph (a) under the Single Electricity Market Trading and Settlement Code, based on the published capacity tariff and the outturn system marginal price.

Miscellaneous

4. Restriction of NIE Energy Supply Amount: adjustments

(a) If, in respect of any relevant year, the regulated NIE Energy supply revenue exceeds the maximum allowed NIE Energy supply 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 NIE Energy Supply Amount unless it has demonstrated to the reasonable satisfaction of the Authority that the regulated NIE Energy supply revenue would not be likely to exceed the maximum allowed NIE Energy supply 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 NIE Energy supply revenue has exceeded the maximum allowed NIE Energy supply 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 the NIE Energy Supply Amount such that the regulated NIE Energy supply revenue would not be likely, in the judgment of the Authority, to exceed the maximum allowed NIE Energy supply revenue in that next following relevant year.

(c) In this paragraph:

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

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

5. Information to be provided to the Authority

(a) Where any change is intended to be made in the NIE Energy Supply Amount, the Licensee shall not later than the time referred to in paragraph 5(b) provide the Authority with:

(i) a written forecast of the maximum allowed NIE Energy supply 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 NIE Energy supply 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 5(f) in respect of relevant year  $t-1$  has been furnished by the Licensee to the Authority before the time referred to in paragraph 5(b).



- (b) The relevant time referred to in paragraph 5(a) is 14 days prior to the notification of the changes to the NIE Energy Supply Amount to the Transmission Owner under the agreement referred to in Condition 54.
- (c) If within 3 months of the commencement of any relevant year t the Licensee has not provided the aforementioned forecasts pursuant to paragraph 5(a) for the purpose of such changes as are referred to in paragraph 5(a), the Licensee shall forthwith provide the Authority with a written forecast of the maximum allowed NIE Energy supply 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 5(a) or 5(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 4 are likely to be applicable in consequence of the regulated NIE Energy supply 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 NIE Energy supply 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 5(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 5(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 47; 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 5(f) shall be the following:
  - (i) the regulated NIE Energy supply revenue;
  - (ii) the maximum allowed NIE Energy supply revenue;
  - (iii) the Excess NIE Energy (Supply) Costs; and
  - (iv) such other items as shall be specified in directions issued by the Authority from time to time for the purposes of this Annex.

6. 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 6(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 6(d) or paragraph 6(e).
- (b) A disapplication request pursuant to paragraph 6(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 6(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 6 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 6 may be served in respect of a specified geographic area.

Definitions

7. For the purposes of this Annex:

**Average Specified Rate** 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.

**Excess NIE Energy (Supply) Costs** means, in respect of each relevant year, the amount calculated as such in accordance with paragraph 3.

**maximum allowed NIE Energy supply revenue** means the amount calculated as such in accordance with paragraph 2.

**regulated NIE Energy supply revenue** means the revenue (measured on an accruals basis) derived by the Licensee under the agreement referred to in Condition 54 (after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived).

**relevant year** means a financial year of the Licensee.

**ANNEX 2 – Supply Charge Restriction Conditions**

1. **Definitions**

1.1 In this Annex:

**“average charge per unit supplied”**

means, in respect of each relevant year, the regulated supply revenue in that relevant year divided by the quantity supplied in that relevant year;

**“average specified rate”**

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;

**“distribution services”**

means all services provided as part of the Distribution Business other than excluded services (as “excluded services” is defined in condition 42 of the Transmission Owner Licence);

**“Energy Saving Trust”**

means the trust of that name appointed by Government whose work includes approving and overseeing energy efficiency schemes on behalf of the Authority;

**“excluded services”**

means those services which in accordance with the principles set out in paragraph 8 fall to be treated as excluded services;

**“first relevant year”**

means the financial year commencing on 1 April 2000;

**“maximum average charge per unit supplied”**

means the charge calculated in accordance with paragraph 2;

**“metered”**

means, in relation to any quantity supplied, as measured by metering required pursuant to and defined in the Grid Code or (where no such meter is installed) as otherwise reasonably calculated;

**“1 MW Premises”**

means any premises other than premises supplied by the Licensee at which the average of the maximum monthly demands in the three months of highest system maximum demand in any period of twelve

	consecutive months commencing on or after January 1999 exceeds one megawatt or one equivalent megawatt;
<b>“supply charge restriction conditions”</b>	means the provisions of this Annex as from time to time modified or replaced in accordance therewith or pursuant to the Order, the Energy Order, the SEM Order or the Directive Regulations;
<b>“quantity supplied”</b>	means, in respect of each relevant year, the aggregate quantity of units supplied to supply customers by the Licensee in that relevant year metered at grid supply points;
<b>“regulated supply revenue”</b>	means the revenue (measured on an accruals basis) derived from supply charges, after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived;
<b>“relevant period”</b>	means the period from 1 April 2000 to 31 March 2007;
<b>“relevant year”</b>	means a financial year commencing on or after 1 April 2000;
<b>“relevant year t”</b>	means that relevant year for the purposes of which any calculation falls to be made; <b>“relevant year t – 1”</b> means the relevant year preceding relevant year t or, in respect of the period prior to 1 April 2000 the period of 12 calendar months commencing on 1 April 1999, and similar expressions shall be construed accordingly;
<b>“renewable energy”</b>	means electricity generated from non-fossil fuel generating stations;
<b>“renewables obligation”</b>	means an obligation imposed on electricity suppliers in connection with the supply of electricity from renewable sources by any order made under Article 52 of the Energy Order;
<b>“renewables obligation administration costs”</b>	means: <ul style="list-style-type: none"><li>(a) in the relevant year 2005/6, £50,000;</li><li>(b) for each subsequent relevant year t, the renewables obligation administration costs for the year t-1 multiplied by</li></ul>

$(RPI_t/RPI_{t-1})$ ;

<b>“renewable purchase obligation”</b>	means a level of renewable energy purchasing that the Supply Business must achieve in order to comply with its statutory obligation;
<b>“RPI<sub>t</sub>”</b>	means the Retail Prices Index published or determined with respect to March in the relevant year t; and
<b>“RPI<sub>t-1</sub>”</b>	means the Retail Prices Index published or determined with respect to March in the relevant year immediately preceding the relevant year t;
<b>“supply”</b>	excludes supply outside the Licensee's authorised supply area, standby, top-up and any other supplies or sales of electricity to persons other than supply customers; “supplied” and similar expressions shall be construed accordingly;
<b>“supply charges”</b>	means all charges (including any element of such charges as reflects amounts paid, or to be paid, by the Licensee for distribution services and transmission services, and any element of such charges as comprises standing charges) made in respect of electricity supplied to supply customers other than charges for the provision of excluded services;
<b>“supply customer”</b>	means a person who receives a supply of electricity from the Licensee at 1MW premises;
<b>“supply contract”</b>	includes deemed supply contracts created pursuant to a former tariff customer scheme;
<b>“transmission services”</b>	means all services provided as part of the Transmission Owner Business other than excluded services (as “excluded services” is defined in condition 42 of the Transmission Owner Licence);
<b>“unit”</b>	means a kilowatt hour.

2. **Restriction of supply charges: basic formula**

The Licensee shall in setting its supply charges use its best endeavours to ensure that in any relevant year the average charge per unit supplied shall not exceed the maximum average charge per unit supplied. The maximum average charge per unit supplied shall be calculated in accordance with the following formula:

$$M_{St} = G_t + U_t + S_t + K_{St} + J_t + E_t - D_t$$

where:

$M_{St}$  means the maximum average charge per unit supplied in respect of relevant year t.

$G_t$  means the unit costs incurred in the purchase of electricity in pence per unit supplied in relevant year t, derived by:

- (a) aggregating the amounts payable by the Supply Business to any person (including without limitation energy (SMP) charges, capacity charges, imperfections charges, currency exposure costs, market operator charges, contracts for differences and associated costs, de minimis generation export arrangement costs, NFFO generation purchases, and amounts payable to the “Eco Energy Tariff Trust Fund”) for the purchase of electricity (measured on an accruals basis) in respect of relevant year t (excluding any purchases made for purposes other than supply to supply customers, and excluding Excess NIE Energy Supply Costs as defined under Annex 1),

subtracting

revenue in respect of relevant year t (measured on an accruals basis) derived by the Supply Business from the Single Electricity Market Trading and Settlement Code and from the settlement payments or receipts under any contracts for differences entered into by the Supply Business, after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived; and

- (b) dividing the resulting amount by the quantity supplied in relevant year t.

$U_t$  means the allowed transmission and distribution cost in pence per unit supplied in relevant year t, derived by:

- (i) aggregating the charges made against the Supply Business (measured on an accruals basis) in respect of relevant year t: (A) by the Transmission Owner Business or the Distribution Business, including in respect of transmission services, distribution services, and (as approved by the Authority) other services (B) by the Transmission System Operator;
- (ii) attributing a proportion of such aggregate charges to supply customers in a manner approved by the Authority; and
- (iii) dividing the resulting amount by the quantity supplied in relevant year t.



$S_t$  means the allowed charge in pence per unit supplied to supply customers at 1 MW premises in relevant year  $t$ , which is derived from the following formula:

$$S_t = ((P_f + P_c * C_t) * P_{1t} + (V_t + W_t) * P_{RPIt} + PP_t) / Q_{st}$$

where:

$P_{1t}$  means an amount derived from the following formula:

$$P_{1t} = (1 + (rpi_t - X) / 100) * P_{1t-1}$$

but, in relation to the first relevant year,  $P_{1t-1}$  shall be equal to 1;

and, in each relevant year commencing on or before 1 April 2001,  $X$  shall equal 2, and in each relevant year commencing on or after 1 April 2002,  $X$  shall equal 3;

$P_{RPIt}$  means an amount derived from the following formula:

$$P_{RPIt} = (1 + (rpi_t) / 100) * P_{RPI(t-1)}$$

but, in relation to the first relevant year,  $P_{RPI(t-1)}$  shall be equal to 1;

$rpi_t$  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 relevant year  $t$  and that published or determined with respect to the immediately preceding October;

$C_t$  means the number of supply customers as of 31<sup>st</sup> March in relevant year  $t$  who are supplied by the Licensee at 1MW premises determined in such manner as the Authority shall specify from time to time by notice to the Licensee;

$Q_{st}$  means the quantity supplied in relevant year  $t$ ;

$P_f$  means £16.697 million subject to such adjustment as the Authority may reasonably determine to reflect (A) changes in the pension costs of the Supply Business, and (B) the amounts apportioned or allocated to the Supply Business in respect of the fees paid by the Licensee under Condition 11.

$P_c$  means £13.3623, less such amount relating to the net effect of the reduction in the Supply Business's costs due to the transfer of common services to the Transmission Owner as reasonably determined by the Authority;

$$V_t = N_{Vt} \times £480$$

$N_{Vt}$  means, in relevant year  $t$ , the number of new electrically powered vehicles sold in Northern Ireland and which have been certified, in a way approved by the Energy Saving Trust, to have been purchased during relevant year  $t-1$ .

$$W_t = £100 \times N_{E7t}$$

$N_{E7t}$  means the number, agreed with the Energy Saving Trust, of premises within the authorised supply area that are both (i) supplied under a domestic Economy 7 supply contract (“**Home Energy Heating**”), and (ii) have had cavity wall insulation installed during relevant year t-1;

$PP_t$  means  $NPP(agg)_t$  plus the sum of the values of  $PP_{mt}$  for each of the 12 months of relevant year t;

where:

$NPP(agg)_t$  means one-fifteenth of the aggregate cost above £250,000 to the Licensee of providing and installing additional new prepayment meters pursuant to paragraph 4.1, such cost aggregated up to the end of relevant year t (representing the depreciation cost in relevant year t of such additional new prepayment meters);

$PP_{mt} = NPP_{mt} \times SR_{mt} \times R_t$

$NPP_{mt}$  means, in month m of relevant year t, the number of new prepayment meters (as defined in paragraph 4) in use at the month end;

$SR_{mt}$  means, in each month m of relevant year t, £1.50;

$R_t$  means, for the relevant year 2000/2001, 0.5 and, for the relevant year 2001/2002, 0.3, and, for all other relevant years, zero;

$K_{St}$  means a correction factor in pence per unit supplied (whether a positive or negative value) to be applied to the average charge per unit supplied in relevant year t derived using the following formula:

$$K_{St} = ((Q_{St-1} * M_{St-1} - R_{St-1}) / Q_{St}) (1 + I_t / 100)$$

where:

$Q_{St-1}$  means the quantity supplied in relevant year t-1;

$M_{St-1}$  means the maximum average charge per unit supplied in relevant year t-1;

$R_{St-1}$  means the regulated supply revenue in relevant year t-1;

$Q_{St}$  means the quantity supplied in relevant year t; and

$I_t$  means the average specified rate in respect of relevant year t,

except that in relevant year t ending 31 March 2009  $K_{St}$  shall be as submitted by the Licensee to the Authority and approved by the Authority (with such adjustments as the Authority reasonably considers appropriate in the circumstances) and calculated as the sum of the amounts resulting from the application of the following: (a) the formula above being applied (in place of t-1) to the period from SEM Go Live to 31 March 2008; and (b) the  $K_{St}$  factor, under Schedule 6 of NIE plc's combined transmission and public electricity supply licence in effect as at 1 June 2007, applied (in place of t-1) to the period from 1 April 2007 up to SEM Go Live.

- $J_t$  means an amount derived by the sum of:
- (a) the buyout price (for one kilowatt hour) for the renewables obligation as published for relevant year  $t$  multiplied by the percentage (in the form  $0.xx$  where  $0.01$  represents  $1\%$ ) established as the renewables purchase obligation for relevant year  $t$ ; and
  - (b) the renewables obligation administration costs for relevant year  $t$  divided by the quantity supplied;
- $D_t$  means in respect of the Licensee's costs in meeting its renewables obligation, in any relevant year in which the Authority and the Licensee have agreed a mechanism to reflect a sharing of any savings in such costs between the Licensee and its customers, the portion of the savings so agreed for the purposes of  $D_t$  divided by the quantity supplied in relevant year  $t$ , or, if there is no such agreed mechanism,  $D_t$  shall be zero.
- $E_t$  means:
- (a) any reasonable costs incurred by the Supply Business in complying with the requirements imposed on the Licensee under legislation and other legal requirements through which Directive 2003/54/EC is implemented, whether before or after the coming into effect of this Annex, as reasonably determined by the Authority, and to the extent not recovered under another part of the Licence or any other licence; plus
  - (b) any reasonable costs incurred by the Supply Business in complying with the requirements imposed on the Licensee under the arrangements for 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), whether before or after the coming into effect of this Annex, as reasonably determined by the Authority, and to the extent not recovered under another part of the Licence or under any other licence.

### 3. **Restriction of supply charges: adjustments**

- 3.1 If, in respect of any relevant year the average charge per unit supplied exceeds the maximum average charge per unit supplied 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 supply charges unless it has demonstrated to the reasonable satisfaction of the Authority that the average charge per unit supplied would not be likely to exceed the maximum average charge per unit supplied in that next following relevant year.
- 3.2 If, in respect of any 3 successive relevant years excluding the first relevant year, the sum of the amounts by which the average charge per unit supplied has exceeded the maximum average charge per unit supplied 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 charges such that the average charge per unit supplied would not be likely, in the judgment of the Authority, to exceed the maximum average charge per unit supplied in that next following relevant year.
- 3.3 In this paragraph:
- “permitted one-year means in respect of any relevant year 4 per

**percentage** cent of the maximum average charge per unit supplied for that relevant year; and

**“permitted 3-year percentage”** means in respect of any three successive relevant years 5 per cent of the maximum average charge per unit supplied for the second of those relevant years.

4. **Pre-payment meters**

4.1 During the relevant period, the Licensee shall install 175,000 new prepayment meters in its authorised supply area. To the extent that there is demand for further new prepayment meters from the Licensee’s customers, the Licensee shall install such further new prepayment meters. The additional cost of such additional new prepayment meters:

- (a) shall be borne by the Licensee up to a maximum of £250,000; and
- (b) above £250,000, the Licensee shall be entitled to recover the depreciation cost of new prepayment meters through its supply charges (in accordance with the term ‘NPP(agg)<sub>t</sub>’ under paragraph 2),

and the Licensee shall be entitled to include the net book value of the new prepayment meters in the Licensee’s regulatory asset base and, on the establishment of a single supplier of metering services, the remaining net book value at the date of transfer shall be transferred to it.

4.2 In the period commencing 1 April 2005, the Licensee shall offer customers who have a new prepayment meter installed at their premises the opportunity to sign up for a time of day contract. The Licensee shall carry out such marketing activity as is necessary to adequately publicise such contracts, and shall notify the Authority in advance of the proposed marketing activity (and any material changes thereto).

4.3 In this paragraph:

**“new prepayment meter”** means a prepayment meter (also known as a keypad meter) installed in a customer’s premises on or after 1 April 2000;

**“time of day contract”** means a supply contract that provides for a per unit rate that differs for electricity consumption metered at different times of the day, and that provides, in particular, for the three banded rates (in descending order of price) peak, day time and night time.

5. **Energy Efficiency Investments**

5.1 The Licensee shall implement, during the relevant period, such energy efficiency schemes as are necessary to achieve present value lifetime energy savings of £16 million for its customers.

5.2 In the event that the Energy Saving Trust notifies the Authority that the energy efficiency schemes implemented during the relevant period do not achieve present value lifetime energy savings of £16 million for the Licensee’s customers, the Authority may, taking into account any representations by the Licensee including

on the level of present value lifetime energy savings achieved and/or the cause of any expected savings not achieved, by notice direct that the Licensee's allowed revenue (as determined by the Authority) for the period commencing 1 April 2007 be reduced by an amount up to a maximum of the difference between £16 million and the present value lifetime energy savings achieved by the Licensee's energy efficiency schemes, as determined by the Energy Saving Trust and approved by the Authority.

- 5.3 The Licensee shall submit to the Energy Saving Trust a written proposal for each scheme to be implemented under the provisions of this Paragraph 5 in a form approved by the Energy Saving Trust.
- 5.4 For each scheme approved by the Energy Saving Trust under subparagraph 5.1, the Licensee shall report to the Energy Saving Trust, on the period up to and including 31 March 2003 (and, thereafter, for the period up to 31 March of each subsequent year during the relevant period), in a form approved by and at such time as may be required by the Energy Saving Trust, on the energy savings provided by the measures installed during the relevant period under that energy efficiency scheme. The report shall cover a minimum of 5% of homes in which measures implemented under the relevant scheme have been installed, provided that in the case of energy efficiency schemes offering compact fluorescent lamps, the Licensee will report to the Energy Saving Trust on a 1% sample of homes in which the measures have been installed.
- 5.5 On completion of each energy efficiency scheme, the Licensee shall submit to the Energy Saving Trust a completion spreadsheet and post-implementation report in a form approved by the Energy Saving Trust.
- 5.6 The Licensee shall fund research at a cost of £150,000 on the targeting and implementation of energy efficiency schemes in Northern Ireland.
- 5.7 The Licensee shall prepare and submit a procedure to the Authority on provision of reasonable assistance by the Licensee to proposed local community supply schemes.
- 5.8 In this paragraph:

**“energy efficiency schemes”** means any scheme approved as such by the Energy Saving Trust.

**“present value lifetime energy savings”** means, in respect of each energy efficiency scheme, such savings as may be determined by the Energy Saving Trust in accordance with the Energy Efficiency Framework Document as updated March 2005 and as further updated from time to time, exclusive of customer contribution, as being a lifetime saving attributable to that scheme, expressed in present value terms at the time that scheme is implemented.

## 6. Renewable Energy

- 6.1 The Licensee shall use its best endeavours to ensure that, for the 12 months to 31 March 2005, the Licensee purchases (and as far as practicable sells under the Eco-tariff Scheme) at least 25 GWh of renewable energy, and that, in the course of its Supply Business, it shall, in the 12 months ending 31 March 2005, purchase at least 7.5MW of renewable capacity.

6.2 The Licensee shall use its best endeavours to ensure that, for the 12 months ending 31 March 2005, at least 6 GWh out of the 25 GWh of renewable energy referred to in paragraph 6.1 above, shall be supplied to domestic customers.

6.3 The provisions of subparagraph 6.1 are in addition to any renewable purchase obligation which may apply to the Licensee.

6.4 The Licensee shall use its best endeavours to implement by 31 March 2007 such measures in premises within its authorised area as are necessary to achieve the micro renewables target in respect of each micro renewables technology. If the Licensee does not achieve the micro renewables target for any micro renewables technology, the Authority may, taking into account any representations by the Licensee, direct that the Licensee's allowed revenue (as determined by the Authority) for the period commencing 1 April 2007 be reduced by an amount determined by the Authority, such amount not to exceed the amount calculated by multiplying:

- (i) the number by which the Licensee fell short of achieving the micro renewables target for that micro renewables technology; by
- (ii) £250

6.5 In this paragraph:

- “Eco-tariff Scheme”** means a supply contract under which customers contract to receive an electricity supply that includes renewable energy;
- “renewable capacity”** means renewable energy generating capacity.
- “micro renewables target”** means with respect to each micro renewables technology such target number as the Authority may specify in a direction issued prior to 31 January 2005, so that the aggregate of such target numbers is 1,000, but so that the Licensee may in meeting a target number substitute one micro renewables technology for another;
- “micro renewables technology”** means each of the following:
- (a) operational small scale non-fossil fuel generating stations; and
  - (b) domestic generators that simultaneously generate usable heat and power,
- and in each case which were not operational on 1 March 2005.

**7. Information to be provided to the Authority in connection with the supply charge restriction conditions**

7.1 Where any change is intended to be made in supply charges regulated under paragraph 2, the Licensee shall not later than the time referred to in paragraph 7.2 provide the Authority with:

- (a) a written forecast of the maximum average charge per unit supplied, 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  $t + 1$ ;
  - (b) a written estimate of the maximum average charge per unit supplied, 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 7.6 in respect of relevant year  $t-1$  has been furnished by the Licensee to the Authority before the time referred to in paragraph 7.2.
- 7.2 The relevant time referred to in paragraph 7.1 shall be not later than 14 days prior to the date of publication of such charges.
- 7.3 If within 3 months of the commencement of any relevant year  $t$  the Licensee has not provided the aforementioned forecasts pursuant to paragraph 7.1 for the purpose of such changes in charges as are referred to in paragraph 7.1, the Licensee shall forthwith provide the Authority with a written forecast of the maximum average charge per unit supplied (together with its components) in respect of relevant year  $t$ .
- 7.4 The Authority may issue directions providing that any forecast or estimate provided in accordance with paragraph 7.1 or 7.3 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.
- 7.5 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 average charge per unit supplied 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  $K_{S_t}$  calculated in accordance with the formula set out in paragraph 2 to be applied in calculating the maximum average charge per unit supplied in respect of relevant year  $t$ .
- 7.6 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 7.8.
- 7.7 The statement referred to in the preceding paragraph shall be:
- (a) accompanied by a report from the Auditors that in their opinion:
    - (i) such statement fairly presents each of the specified items referred to in paragraph 7.8 in accordance with the requirements of the supply charge restriction conditions; and
    - (ii) 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 respect of each of the relevant Separate Businesses in accordance with Condition 47; and

- (b) 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:
  - (i) there is no amount included in such statement and the relevant calculations under paragraph 2 which is other than
    - (aa) bona fide consideration for electricity supplied to supply customers in the course of the Supply Business; or
    - (bb) an amount permitted under the supply charge restriction conditions to be so included;
  - (ii) no service has been treated as an excluded service which was not properly so treated and no amount included in the revenues in respect thereof represents other than bona fide consideration for the provision of the excluded service to which it relates; and
  - (iii) all amounts which should properly be taken into account for the purposes of the supply charge restriction conditions have been taken into account.

7.8 The specified items to be contained in the statement referred to in paragraph 7.6 shall be the following:

- (a) the quantity supplied;
- (b) the average charge per unit supplied;
- (c) the Supply Business' unit costs incurred in the purchase of electricity, being  $G_t$  calculated as provided under paragraph 2;
- (d) the allowed charge for supply per unit, being  $S_t$  calculated as provided under paragraph 2;
- (e) the allowed transmission and distribution cost per unit, being  $U_t$  calculated as provided under paragraph 2;
- (f) the revenue derived from excluded services (showing separately the revenue from each category of excluded service) as provided for in paragraph 8.2; 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.

8. **Excluded services for the purposes of the Supply Business**

8.1 Subject to paragraph 8.3, a service provided as part of the Supply Business may be treated as an excluded service insofar as it consists of the provision of services for the specific benefit of customers requesting the same and not made available as a normal part of the Supply Business.

8.2 The Licensee shall following the end of each relevant year furnish the Authority, as being one of the specified items to be included in the statement referred to in paragraph 8.6, details specifying separately the nature of all services provided as part of the Supply 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.

- 8.3 Where the Authority is satisfied that in the light of the principles set out in paragraph 8.1 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, and the service or services specified in the directions shall cease to be treated as excluded services from the date of issue of the directions or such other date (being not earlier than the commencement of the relevant year to which the statement last furnished to the Authority pursuant to paragraph 7.6 prior to issue of such directions related, unless such statement or the accompanying report or certificate referred to in paragraph 7.7 or any earlier such statement, report or certificate was incorrect or misleading in any material respect) as may be specified in the directions.

9. **Duration of supply charge restriction conditions**

- 9.1 If by the date 4 months after SEM Go-Live (or such later date as may be agreed by the Licensee and the Authority) (the "**Disapplication Date**") the Authority has not made a reference to the Competition Commission under Article 15 of the Order so framed as to at least require the Competition Commission to investigate and report on the question of whether this Annex (or any part or parts thereof) operates or may be expected to operate against the public interest, then with effect from the Disapplication Date paragraph 2 shall be amended to read:

“The Licensee shall in setting its supply charges use its best endeavours to ensure that in any relevant year the average charge per unit supplied shall not exceed such amount as the Licensee determines is reasonable in all the circumstances.”

**PART IV: SPECIAL CONDITIONS APPLICABLE TO NIE POWER  
PROCUREMENT BUSINESS**

**Condition 56: Power Procurement**

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

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

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

- (a) defining the term Opportunity Cost;
  - (b) making provision, in respect of the calculation by the Licensee and electricity generators of the Opportunity Cost of specified cost-items, for the treatment of:
    - (i) the costs of fuel used by generators in the generation of electricity;
    - (ii) the value to be attributed to credits issued under the Emissions Trading Scheme established by the European Commission;
    - (iii) variable operational and maintenance costs;
    - (iv) start-up and no load costs; and
    - (v) any other costs attributable to the generation of electricity; and
  - (c) setting out such other principles of good market behaviour as, in the opinion of the Authority, should be observed by the Licensee and electricity generators in carrying out the activity to which paragraph 1 refers.
- 6 The Licensee shall, in carrying out the activity to which paragraph 1 refers, act so as to ensure its compliance with the requirements of the Bidding Code of Practice.
- 7 The Authority may issue directions to the Licensee for the purpose of securing that the Licensee, in carrying out the activity to which paragraph 1 refers, complies with the requirements of this Condition and of the Bidding Code of Practice, and the Licensee shall comply with any such directions.
- 8 The Licensee shall retain each set of Commercial Offer Data, and all of its supporting data relevant to the calculation of the price component of that Commercial Offer Data, for a period of at least four years commencing on the date on which the Commercial Offer Data is submitted to the Single Market Operation Business.
- 9 The Licensee shall, if requested to do so by the Authority, provide the Authority with:
- (a) a reasoned explanation of its calculations in relation to any Commercial Offer Data; and

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

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

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

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

Bidding Code of Practice.

<b>Schedule Production Cost</b>	has the meaning given to it in the Single Electricity Market Trading and Settlement Code, as it may be amended from time to time.
<b>Short Run Marginal Cost</b>	means certain costs attributable to the ownership, operation and maintenance of a generation set, as calculated in accordance with paragraph 3 of this Condition.
<b>Single Market Operation Business</b>	has the meaning given to it in the market operator licence for Northern Ireland.
<b>Trading Day</b>	has the meaning given to it in the Single Electricity Market Trading and Settlement Code, as it may be amended from time to time.

**Condition 58: Trading and Settlement Code**

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

2 In this Condition:

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

**Condition 59: Intermediary Agreements**

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



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

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

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

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

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

8 In this Condition:

**Relevant Electricity**

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

**Generators**

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

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

- 1 When the Authority shall have determined that the requisite arrangements have been developed and that they satisfy the requirements of paragraph 3, it shall be entitled to exercise the powers specified in paragraph 4, provided that the procedural requirements of paragraph 6 have been followed.
2. The requisite arrangements are arrangements which, if implemented by means of the making of modifications of the Supply Competition Code, the Grid Code and the Northern Ireland Fuel Security Code, or otherwise implemented (in whole or in part) under or by virtue of the powers contained in the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007, would facilitate an increase in competition in the generation of electricity available for supply in Northern Ireland or the supply of electricity in Northern Ireland for the benefit of consumers of electricity in Northern Ireland in respect of the prices charged and the other terms of supply, the continuity of supply and the quality of the electricity supply services provided.
3. The requirements of this paragraph are:
  - (A) that there is available for immediate establishment an electricity trading system by which (except as provided in paragraph 7) the power procurement manager and all licence holders will be bound and which, in the opinion of the Authority, will:
    - (i) constitute proper and adequate arrangements for the trading of electricity and the calculation and settlement of payments due for the provision of available generating capacity and the delivery or supply of electricity;
    - (ii) ensure that adequate arrangements are in place for the provision by 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 Condition 1 of this Licence contains a definition of that term, have the meaning given to that term in that condition; and
  - (b) where Condition 1 of this Licence does not contain a definition of that term, shall mean the Power Procurement Business.
- Land Bank Business** has the meaning given to that expression in the transmission licence granted to Northern Ireland Electricity plc on 31 March 1992;
- relevant documentation** means the documentation and other obligations referred to in sub paragraph (a) of paragraph 6;
- relevant generator** means a generator and/or a person granted a licence pursuant to section 14(1)(a) of the Electricity Regulation Act 1999 to engage in the generation of electricity;
- relevant steps** means the steps referred to in sub paragraph (a) of paragraph 6;
- 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.

**Condition 61: Independence of the Power Procurement Business**

General Duty

- 1 The Licensee shall:
  - (a) unless it has already done so prior to this Condition coming into force, establish; and
  - (b) at all times thereafter maintain,  
  
the full managerial and operational independence of the Power Procurement Business from any Associated Business, save that nothing in this Condition shall prevent any director of a relevant holding company from being a director of an Associated Business.
  
- 2 Without limiting:
  - (a) the ability of the Authority to require revisions to the Compliance Plan pursuant to paragraph 6 to ensure its compliance with this Condition (including paragraph 1); or
  - (b) the obligation of the Licensee to review the Compliance Plan in accordance with paragraph 8 to ensure its compliance with this Condition (including paragraph 1),  
  
the Licensee shall be taken to have complied with paragraph 1 where it complies with paragraphs 3 and 5.

Specific Duties

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

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

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

Compliance Plan

- 4 The Licensee shall, no later than 3 months after the date on which this paragraph becomes effective, prepare and submit to the Authority for its approval a compliance plan setting out the practices, procedures, systems and rules of conduct which the Licensee has adopted, or intends to adopt, together with the timescales for adoption, to ensure its compliance with this Condition.
- 5 The Licensee shall comply with its approved compliance plan (the **Compliance Plan**) and shall from time to time publish the up-to-date Compliance Plan on its website.
- 6 The Authority may:
- (a) within 30 days of the Licensee submitting an initial or revised Compliance Plan; and
  - (b) following any review of the Compliance Plan that the Authority may conduct from time to time,
- notify the Licensee that, in its opinion, the Compliance Plan is not, or is no longer, sufficient for the purposes of the Licensee's compliance with this Condition, and require such revisions to be made to the Compliance Plan as are in the Authority's opinion necessary or expedient in order for it to be sufficient for the purposes of ensuring the Licensee's compliance or continued compliance with this Condition.
- 7 Where the Licensee receives a notification in accordance with paragraph 6, it shall within 30 days revise the Compliance Plan in such manner and to such extent as will reflect the Authority's requirements.
- 8 The Licensee shall at least once every year during which this Condition is in force review the Compliance Plan so as to ensure:
- (a) its continued compliance with its obligations under this Condition; and
  - (b) that the information set out in the Compliance Plan continues to be accurate in all material respects.
- 9 Where the Licensee revises the Compliance Plan, either in accordance with paragraph 7 or following a review conducted by it in accordance with paragraph 8, it shall submit the revised Compliance Plan to the Authority for its approval.

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

Compliance Manager

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

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

Undertakings

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



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

Definition

20 In this Condition:

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

**Condition 62: New Electricity Purchase Contracts**

- 1 The Licensee shall not, in the course of carrying out the activities of the Power Procurement Business:
  - (a) enter into any power purchase agreement involving the sale by it of electricity other than under the Single Electricity Market Trading and Settlement Code;
  - (b) subject to paragraph 2, enter into any power purchase agreement involving the acquisition by it of electricity; or
  - (c) subject to paragraph 2, enter into any other form of electricity purchase or electricity sale contract at any time, or having effect at any time, after 1 April 2012.
  
- 2 Sub-paragraphs 1(b) and (c) shall not apply in respect of any contract entered into by the Licensee:
  - (a) with the prior written approval of the Authority;
  - (b) in accordance with any permission or requirement by virtue of any other condition of this Licence; or
  - (c) in the exercise or fulfilment of any of its rights or obligations, or otherwise for the purpose of managing its contractual position, under any contract binding on it at the date at which this Condition comes into force.

**Condition 63: Undue Discrimination and Undue Preference**

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

**Condition 64: Disposal of Relevant Assets**

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

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

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

6 In this Condition:

**disposal**

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

**relevant asset**

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

**Condition 65: Payment Security Policy**

1 The Licensee shall develop, and may from time to time amend, a payment security policy describing its security cover and debt recovery procedures in respect of:

- (a) power procurement energy sales revenue;
- (b) power procurement PSO revenue; and
- (c) revenue received from provision of System Support Services,

including details of what is to be considered reasonable recovery costs and reasonable interest for the purposes of calculating uncollected revenue.

2 The Licensee shall submit the payment security policy and any amendments thereto to the Authority for its approval.

3 In this Condition:

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

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

**Condition 66: PPB / TO Interface Agreement**

General Duty

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



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

Review of the Arrangements

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

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

Revision of the Arrangements

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

Publication of the Arrangements

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

**Condition 67: PPB / TSO Interface Agreement**

General Duty

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

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

Review of the Arrangements

- 6 Without prejudice to paragraph 5, 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 PSIA 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 Transmission System Operator, send to the Authority:

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

Revision of the Arrangements

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

Publication of the Arrangements

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

**Condition 68: [Undirected Contracts and Directed Contracts]**

**Condition 69: Recovery of the PPB Amount**

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

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

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

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

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

4 In this Condition, unless the context otherwise requires:

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

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

**Condition 70: Obligation on Economic Purchasing by Power Procurement Business**

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

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

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

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

8 In this Condition:

- |                                 |  |
|---------------------------------|--|
| <b>buy-out agreement</b>        | means the contract entitled "Availability payment buy-out contract" dated 6 December 2000 between the Licensee and Premier Power Limited.  |
| <b>contract</b>                 | includes the purchase of electricity under power purchase agreements and electricity purchase contracts.   |
| <b>gas conversion agreement</b> | means the agreement entitled "Agreement in respect of the Conversion to Gas Firing of Ballylumford Power Station" dated 1 April 1992 between the Licensee and Ballylumford Power Limited and shall include any contract entered into or to be entered into resulting from the Licensee's exercise of its rights under Schedule 3, Clause 5.6 |

(BG Option) thereof.

**re-powering agreement**

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



**ANNEX 3 – DETERMINATION OF THE PPB AMOUNT**1. Definitions

## 1.1 In this Annex:

<b>“allowed change of law costs”</b>	means an amount determined as such by the Authority in accordance with paragraph 7.1;
<b>“allowed change of law revenues”</b>	means an amount determined as such by the Authority in accordance with paragraph 7.1;
<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>“eleventh relevant year”</b>	means the relevant year commencing 1 <sup>st</sup> April 2002;
<b>“excess cost of the Rathlin purchase tariff”</b>	means, subject to the approval of the Authority, the total cost of payments by the power procurement manager for the purchase of energy from generators on Rathlin island less an amount which equals the total energy cost of generating the same output (as generated from the capacity of Rathlin generators) from fossil fuel generating sets under contract with the power procurement manager under the cancellable generating unit agreements (or under any other contract for electricity from fossil fuel generating sets entered into by the power procurement manager but excluding Rathlin generator contracts).
<b>“excluded power procurement costs”</b>	has the meaning ascribed to it in paragraph 5.1;
<b>“fuel security period”</b>	means a Security Period as defined in paragraph 2 of Part 1 of the Northern Ireland Fuel Security Code as that period may be extended for the purposes of this Annex with the approval of the Authority;
<b>“fossil fuel”</b>	means natural gas, coal, coal products, peat, lignite, crude liquid petroleum or petroleum products;
<b>“fossil fuel generating set”</b>	means a generating set which is (or may be) fuelled or driven by a fossil fuel;

<b>“maximum regulated PPB PSO revenue”</b>	means the maximum allowed revenue calculated in accordance with the formula in paragraph 2;
<b>“metered”</b>	means, in relation to any quantity sold, 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>“non PSO revenue”</b>	means the revenue (measured on an accruals basis) derived by the power procurement business from sales of electricity under the SEM, from the sale of system support services to the Transmission System Operator and from the settlement payments or receipts under any Contracts for Differences entered into by the power procurement business , after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived;
<b>“notified value”</b>	means, in respect of each of the financial years ending on or before 31st March 1997, in relation to any term, such value as the Department ascribed to that term in a written notice given to the Licensee dated 27th November 1992 and as shown in Schedule 10 of the T&PES Licence, and in respect of each financial year thereafter, such value ascribed to that term that schedule;
<b>“power procurement manager”</b>	means the Power Procurement Business;
<b>“PPB Amount”</b>	means the amount calculated in accordance with paragraph 2;
<b>“PPB Amount restriction conditions”</b>	means this Annex 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>“period of force majeure”</b>	means a period during which any generator shall have been relieved from liability for breach of, or been entitled to suspend performance of its obligations under any power purchase agreement and in respect of which the Authority shall agree that the consequences thereof shall qualify for the purposes of paragraph 2, as that period may be extended for the purposes of this Annex with the approval of the Authority;
<b>“power procurement PSO</b>	means the revenue (measured on an

<b>revenue”</b>	accruals basis) derived by the power procurement business under the agreement referred to in paragraph 1 of Condition 69 after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived;
<b>“quantity sold”</b>	means the aggregate quantity of units sold in the relevant year t under the Single Electricity Market Trading and Settlement Code;
<b>“relevant year”</b>	means a financial year commencing on or after 1 April 1992;
<b>“relevant year t”</b>	means that relevant year for the purposes of which any calculation falls to be made; “relevant year t - 1” means the relevant year preceding relevant year t or, in respect of the period prior to 1 April 1992, the period of 12 calendar months commencing on 1 April 1991; and similar expressions shall be construed accordingly;
<b>“sold”</b>	means sold or otherwise disposed of by the power procurement manager, and cognate expressions shall be construed accordingly;
<b>“T&amp;PES Licence”</b>	NIE plc’s combined transmission and public electricity supply licence in effect as at 1 June 2007;
<b>“uncollected PPB revenue”</b>	means any amount owed to the Licensee in respect of power procurement PSO revenue or non PSO revenue, which amount remains unpaid 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 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 the payment security policy);
<b>“Varied Ballylumford Agreements”</b>	means (i) the buy-out agreement, and (ii) the generating unit agreements for generation sets nos. 4 and 6 at Ballylumford power station, and the power station agreement, each as modified by the re-powering agreement;

2. **Restriction of the PPB Amount: basic formula**

The Licensee shall in setting the PPB Amount use its best endeavours to ensure that in any relevant year the power procurement PSO revenue shall not exceed the maximum regulated PPB PSO revenue calculated in accordance with the following formula:

$$M_{PPBt} = A_t + B_t + C_t + D_t - NPR_t + K_{Bt}$$

where:

$M_{PPBt}$  means the maximum regulated PPB PSO revenue in relevant year t.

$A_t$  means the actual power purchase costs incurred in the purchase of electricity in relevant year t derived by:

- (a) aggregating amounts payable by the power procurement manager to any person in relevant year t (measured on an accruals basis) for:
  - (i) the provision to the power procurement manager of the total available capacity of contracted generation sets and the purchase of electricity and excluding the excess cost of the Rathlin purchase tariff;
  - (ii) the provision or use of any interconnector;
  - (iii) the early termination or amendment of any power purchase agreement;
  - (iv) holding stocks of fuel or other materials for the purposes of generation of electricity; and
  - (v) the provision of any other services approved by the Authority for the purpose of this paragraph;
- (b) deducting the excluded power procurement costs (to the extent that those costs are included in sub-paragraph (a)) and the allowed change of law costs for relevant year t;
- (c) adding the net amount (whether a positive or a negative number) payable or receivable (as the case may be and measured on an accruals basis) by the power procurement manager in relevant year t in respect of electricity purchase or sale contracts and other contracts designed to enable the power procurement manager to hedge fuel price or exchange rate risks;
- (d) no longer used.
- (e) no longer used.

$B_t$  means the target  $B_t$  revenue entitlement in relevant year t as calculated for the relevant year under the form of Schedule 5A of the T&PES Licence, uplifted by an amount equal to the increase in the pension costs of the Power Procurement Business as reasonably approved by the Authority;

$C_t$  means an amount equal to the Minimum  $C_{At}$  revenue entitlement plus the total expected  $C_{Bt}$  entitlement that the Power Procurement Business would

have expected to earn in relevant year t under the form of Schedule 5A of the T&PES Licence, (where t is determined to be the relevant year 2007/08 and the revenue is expressed in pounds), had the Single Electricity Market and modifications to the T&PES Licence in relation to the Single Electricity Market not been introduced;

$D_t$  means:

- (a) the allowed charge in relevant year t for excluded power procurement costs and changes of law calculated as the aggregate of the excluded power procurement costs plus the allowed change of law revenues, plus
- (b) any reasonable costs incurred by the Power Procurement Business in complying with the requirements imposed on the Licensee under legislation and other legal requirements through which Directive 2003/54/EC is implemented, whether before or after the coming into effect of this Annex, as reasonably determined by the Authority, to the extent not recovered under another part of this Licence or (except to the extent the Transmission Owner is recovering amounts in relation to payments due to the Licensee of the PPB Amount) under the Transmission Owner Licence, plus
- (c) any reasonable costs incurred by the Power Procurement Business in complying with the requirements imposed on the Licensee under the arrangements for 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), whether before or after the coming into effect of this Annex, as reasonably determined by the Authority, to the extent not recovered under another part of this Licence or (except to the extent the Transmission Owner is recovering amounts in relation to payments due to the Licensee of the PPB Amount) under the Transmission Owner Licence, plus
- (d) any other amounts, not included in the revenues under the Transmission Owner Licence or another Annex of this Licence, requested by the Licensee and approved by the Authority whether prior to or after the coming into effect of this Annex;

$NPR_t$  means the non PSO revenue in relevant year t:

$K_{Bt}$  means a correction factor (whether a positive or negative value) to be applied to the maximum regulated PPB PSO revenue in relevant year t derived using the following formula:

$$K_{Bt} = [M_{PPBt-1} - R_{PPBt-1}](1 + I_t/100)$$

(but in relation to the first relevant year,  $K_{Bt}$  shall be equal to zero);

where:

$M_{PPBt-1}$  means the maximum regulated PPB PSO revenue in relevant year t-1;

$R_{PPBt-1}$  means the power procurement PSO revenue in relevant year t-1;

$I_t$  means the average specified rate,

except that in relevant year  $t$  ending 31 March 2009,  $K_{Bt}$  shall be as submitted by the Licensee to the Authority and approved by the Authority (with such adjustments as the Authority reasonably considers appropriate in the circumstances) and calculated as the sum of the amounts resulting from the application of the following: (a) the formula above being applied (in place of  $t-1$ ) to the period from SEM Go-Live to 31 March 2008; and (b) the  $K_{Bt}$  factor under Schedule 5A and the  $K_{PSOt}$  factor under Schedule 5C of the T&PES Licence, both applied (in place of  $t-1$ ) to the period from 1 April 2007 up to SEM Go Live.

### 3. **Restriction of the PPB Amount: adjustments**

3.1 If, in respect of any relevant year the power procurement PSO revenue exceeds the maximum regulated PPB 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 PPB Amount unless it has demonstrated to the reasonable satisfaction of the Authority that the power procurement PSO revenue would not be likely to exceed the maximum regulated PPB PSO revenue in that next following relevant year.

3.2 If, in respect of any 3 successive relevant years excluding the eleventh relevant year, the sum of the amounts by which the power procurement PSO revenue has exceeded the maximum regulated PPB 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 PPB Amount such that the power procurement PSO revenue would not be likely, in the judgment of the Authority, to exceed the maximum regulated PPB PSO revenue in that next following relevant year.

3.3 In this paragraph:

“permitted one-year percentage”

means 4 per cent of the maximum regulated PPB PSO revenue; and

“permitted 3-year percentage”

means 5 per cent of the maximum regulated PPB PSO revenue in the second of the relevant years.

### 4. **Information to be provided to the Authority in connection with the PPB Amount restriction conditions**

4.1 Where any change is intended to be made in the PPB Amount regulated under paragraph 2, the Licensee shall not later than the time referred to in paragraph 4.2 provide the Authority with:

(a) a written forecast of the maximum regulated PPB 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  $t + 1$ ;

(b) a written estimate of the maximum regulated PPB 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 4.6 in respect of relevant year  $t-1$  has been furnished by the Licensee to the Authority before the time referred to in paragraph 4.2.

- 4.2 The relevant time referred to in paragraph 4.1 shall be 14 days prior to the date of publication of such charges.
- 4.3 If within 3 months of the commencement of any relevant year t the Licensee has not provided the aforementioned forecasts pursuant to paragraph 4.1 for the purpose of such changes in charges as are referred to in paragraph 4.1, the Licensee shall forthwith provide the Authority with a written forecast of the maximum regulated PPB PSO revenue (together with its components) in respect of relevant year t.
- 4.4 The Authority may issue directions providing that any forecast or estimate provided in accordance with paragraph 4.1 or 4.3 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.
- 4.5 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 power procurement PPB PSO 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  $K_{Bt}$  calculated in accordance with the formula set out in paragraph 2 to be applied in calculating the maximum regulated PPB PSO revenue in respect of relevant year t.
- 4.6 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 4.8.
- 4.7 The statement referred to in the preceding paragraph shall be:
- (a) accompanied by a report from the Auditors that in their opinion:
    - (i) such statement fairly presents each of the specified items referred to in paragraph 4.8 in accordance with the requirements of the PPB Amount restriction conditions; and
    - (ii) 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 respect of each of the relevant Separate Businesses in accordance with this Licence or (in relation to items relating to the period prior to SEM Go Live) the T&PES Licence; and
  - (b) 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:
    - (i) there is no amount included in its calculations under paragraph 2 which represents other than
      - (aa) bona fide consideration for electricity sold; or

- (bb) an amount permitted under the PPB Amount restriction conditions to be so included;
  - (ii) there is no amount included in its calculations of excluded power procurement costs under paragraph 5 which represents other than an amount permitted under the PPB Amount restriction conditions to be so included; and
  - (iii) all amounts which should properly be taken into account for the purposes of the PPB Amount restriction conditions have been taken into account.
- 4.8 The specified items to be contained in the statement referred to in paragraph 4.6 shall be the following:
- (a) the quantity sold;
  - (b) the power procurement PSO revenue;
  - (c) the Power Procurement Business's costs incurred in the purchase of electricity, calculated as provided under paragraph 2 (showing separately each component thereof);
  - (d) the allowed power procurement charge, being  $B_t$  calculated as provided under paragraph 2;
  - (e) the allowed power procurement entitlement, being  $C_t$  calculated as provided under paragraph 2;
  - (f) the excluded power procurement costs referred to at paragraph 5 (showing separately each category of excluded cost);
  - (g)  $NPR_t$  calculated as provided under paragraph 2, showing separately each component thereof;
  - (h) such other items as shall be specified in directions issued by the Authority from time to time for the purposes of this Annex.

5. **Excluded power procurement costs**

- 5.1 Subject to paragraph 5.2, the following costs and revenues of the power procurement manager (whether a positive or negative amount) shall be treated as excluded power procurement costs in relevant year  $t$  (and, in the case of (xii) and (xiii) below, such costs shall be so treated for each year in which the buy-out agreement continues to be in force):
- (i) the cost incurred in the purchase of electricity during fuel security periods and periods of force majeure in relevant year  $t$  calculated in accordance with the definition of  $A_t$  and with a basis for attributing costs between different periods of the year approved by the Authority;
  - (ii) the Licensee's allowed power procurement related security costs, being any cost incurred by the power procurement manager 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 Transmission Owner's allowed related security costs; or



- (b) any payment of the kind referred to in sub-paragraph (ii) above;
- (iii) payments made by the power procurement manager to generators in consideration of their compliance with any directions made to them in relation to stocks of fuel and other materials under Article 37 of the Order;
- (iv) amounts paid or payable to generators by way of compensation for any damage, costs, losses and expenses suffered or incurred by them as a result of complying or attempting to comply (in either case acting as reasonable and prudent operators) with any request or instruction from the transmission system operator pursuant to OC2.6.1(c)(ii), OC2.6.1(c)(iii), OC2.6.2(c)(ii), OC2.6.2(f)(ii), OC2.6.2(f)(iii), OC2.6.2(c)(iii), OC2.6.6.4, OC7.4.6.6, SDC2B.1.9 and SDC2.4.2.9 of the Grid Code (and the corresponding provisions of any replacement of the Grid Code), including:
  - (a) physical damage to or operational deterioration of any generation set or other plant;
  - (b) increased costs of operation or maintenance of the generation set or other plant;
  - (c) costs and claims of contractors; and
  - (d) loss or diminution of any payments to which the generators would have been entitled for the provision of available capacity (including reductions and/or increased rebates thereof) in relation to any such compliance at any time prior to 31 March 1997,to the extent that the Authority is satisfied that:
  - (aa) the compensation in question shall have had deducted from it any payment which the Licensee shall have received or have been entitled to receive from any generator whose act or omission was responsible for the request or instruction in question from the grid operator, in relation to such act or omission;
  - (bb) it was necessary for the transmission system operator to have made the request or instruction in question in order to protect or maintain the security and stability of the system; and
  - (cc) the Licensee, acting reasonably and prudently, could not have avoided the threat in question to the security and stability of the system;
- (v) no longer used;
- (vi) no longer used;
- (vii) amounts that become uncollected PPB revenue in relevant year t less any amount or part of an amount treated as uncollected PPB revenue in respect of a preceding relevant year that has been paid to the Licensee in the relevant year t;

- (viii) no longer used;
- (ix) the following amounts:
  - (a) any amount which shall be payable by the power procurement manager to any generator or relevant supplier in compensation for the costs of complying with a request made by the Authority under paragraph 10 of Condition 20 (as amended or supplemented) of any generation licence and paragraph 9 of Condition 5 (as amended or supplemented) of any licence granted under Article 10(2) of the Order (as the case may be);
  - (b) the reasonable direct costs of the Licensee in complying with a request made by the Authority under paragraph 10 of Condition 60; and
  - (c) such amount as shall have been paid to the Authority in reimbursement of its costs and expenses incurred or to be incurred in developing the requisite arrangements provided for in Condition 7 of Part III of the T&PES Licence (or successor Condition);
- (x) any other costs or revenues of the Power Procurement Business which:
  - (a) were not taken into account in setting  $B_t$  (as defined in paragraph 2);
  - (b) in the case of costs, those which cannot reasonably be controlled by the power procurement manager; and
  - (c) the Authority shall determine, upon an application to it by the Licensee, shall be included for the purposes of this paragraph; and
- (xi) no longer used;
- (xii) an amount equal to the cost of servicing the buy-out agreement (being the contract entitled “Availability payment buy-out contract” dated 6 December 2000 between the Licensee and Premier Power Limited) in relevant year t;
- (xiii) Without limitation to paragraph (xii), any additional costs which are incurred under the buy-out agreement by reason of any Increase in Tax (as such term is defined in the buy-out agreement);
- (xiv) The applicable Breakage Charges and applicable reimbursable costs (as such items are defined in the re-powering agreement) incurred as a result of the re-powering agreement;
- (xv) Charges in respect of generating units contracted to the power procurement manager for Transmission Use of System.

5.2 No cost incurred or revenues received by the power procurement manager shall be included in more than one of the categories in sub-paragraphs (i) to (xv) of paragraph 5.1.

6. **Duration of PPB Amount restriction conditions**

- 6.1 If by the date 4 months after SEM Go-Live (or such later date as may be agreed by the Licensee and the Authority) (the “**Disapplication Date**”) the Authority has not made a reference to the Competition Commission under Article 15 of the Order so framed as to at least require the Competition Commission to investigate and report on the question of whether this Annex (or any part or parts thereof) operates or may be expected to operate against the public interest, then with effect from the Disapplication Date paragraph 2 shall be amended to read:

“The Licensee shall in setting the PPB Amount use its best endeavours to ensure that in any relevant year the power procurement PSO revenue shall not exceed such amount as the Licensee determines is reasonable in all the circumstances.”

7. **Change of Law**

- 7.1 Where it appears to the power procurement manager 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 Power Procurement Business, the power procurement manager 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:

- (a) allowed change of law costs in calculating  $A_t$  for relevant year  $t$  and each succeeding relevant year in accordance with paragraph 2; and
- (b) allowed change of law revenues in calculating  $D_t$  for relevant year  $t$  and each succeeding relevant year in accordance with paragraph 2.

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 sub-paragraphs (a) and (b) above, the Authority shall have regard, where relevant, to:

- (a) its intentions in relation to the development and implementation of the requisite arrangements provided for in Condition 7 of Part III of the T&PES Licence (or successor Condition);
- (b) the period over which the Licensee shall incur costs by reason of the relevant change of law;
- (c) 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
- (d) the other circumstances of the case.

- 7.2 A notice given to the Authority by the power procurement manager pursuant to paragraph 7.1 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 power procurement manager wishes any change in such elements to take effect.

- 7.3 In this paragraph:

“**environment**” has the meaning ascribed to it in the Environmental Protection Act 1990;

- “harm to the environment”** means actual or potential adverse effects on the environment or living organisms (including man), and shall include changes in climatic conditions or other natural physical systems or functions in the world or any part thereof, and shall also include harm as that expression is defined in the Environmental Protection Act 1990;
- “legal requirement”** means, in relation to a relevant person, any of the following:
- (a) any enactment to the extent that it applies to the relevant person;
  - (b) any regulation made by the Council or the Commission of the European Communities to the extent that it applies to the relevant person or a decision taken by the said Commission which is binding on the relevant person 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 that is 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 18 of Part II of the T&PES Licence or successor paragraph) or the Department;
- “relevant change of law”** means any of the following:
- (a) the application to the power procurement manager of any legal requirement which did not previously so apply or the change of any legal requirement relating to the Power Procurement Business (including any such legal requirement ceasing to apply, being withdrawn or not being renewed);
  - (b) a change of the United Kingdom Plan, as it applies to Northern Ireland, for the reduction of emissions, made by the Secretary of State on 20 December 1990 pursuant to section 3(5) of the Environmental Protection Act 1990 (as it shall have been amended, supplemented or replaced from time to time); and
  - (c) the application to any generator of any legal requirement which did not previously so apply or the change of any legal requirement

relating to that generator (including any such legal requirement ceasing to apply, being withdrawn or not being renewed) which has the effect of increasing the cost of electricity purchased by the power procurement manager,

other than in relation to:

- (i) corporation tax (or any other tax of a similar nature replacing corporation tax on profits or gains); or
- (ii) Value Added Tax (save to the extent that the generator is not entitled to credit for the same as input tax under section 14 of the Value Added Tax Act 1983);

save to the extent that the rate, incidence or basis of or other provisions applicable to such tax differ as between one case and another, by reason of considerations or matters relating to harm to the environment so as to result in the imposition of tax or costs at a greater level or higher amount, as between one case and another, than would otherwise be the case.

For the above purposes, a tax shall be treated as charged, levied, imposed or payable in relation to or because of considerations or matters relating to harm to the environment, or differences as between one case and another shall be treated as applying by reason of considerations or matters relating to harm to the environment, if in all the circumstances it may reasonably be considered that considerations or matters relating to harm to the environment were a material factor in relation to the charging, levying or imposition or making provision for payment of such tax or the making of provision for such difference;

“relevant person” means a generator or the Licensee; and

“tax” means any tax, duty, impost or levy of any nature whatsoever and wherever and whenever charged, levied or imposed.

8. **Modification of Generating Unit Agreements, Power Station Agreements and/or the Grid Code**

8.1 No longer used.

8.2 No longer used.

8.3 No longer used.

9. **Purpose of PPB Amount Restriction Condition**

It is acknowledged that the purpose of this Annex 3 is to ensure that, subject to the conditions contained in paragraphs 1 to 8, and having regard to other sources of revenue available to the Licensee (and the costs to be recovered therefrom), the Licensee is and shall at all times be able to recover, the aggregate payments made by the Licensee from time to time under the Varied Ballylumford Agreements in the manner described in a letter from the Authority to the predecessor company dated 27 July 2000.

**ANNEX 4 - CANCELLABLE GENERATING UNIT AGREEMENTS**

<u>Cancellable Generating Unit Agreement</u>	<u>Earliest Cancellation Date</u>
Agreement dated 1 April 1992 between Belfast West Power Limited and the power procurement manager in respect of generation set no. 1 at Belfast West power station	1 November 1996
Agreement dated 1 April 1992 between Belfast West Power Limited and the power procurement manager in respect of generation set no. 2 at Belfast West power station	1 November 1996
Agreement dated 1 April 1992 between Belfast West Power Limited and the power procurement manager in respect of generation set no. 3 at Belfast West power station	1 November 1996
Agreement dated 1 April 1992 between Belfast West Power Limited and the power procurement manager in respect of generation set no. 4 at Belfast West power station	1 April 2001
Agreement dated 1 April 1992 between Belfast West Power Limited and the power procurement manager in respect of generation set no. 5 at Belfast West power station	1 April 2001

Agreement dated 1 April 1992 between  
Coolkeeragh Power Limited and the  
power procurement manager in respect  
of generation set no. 3 at  
Coolkeeragh power station

31 March 2002

Agreement dated 1 April 1992 between  
Coolkeeragh Power Limited and the  
power procurement manager in respect  
of generation set no. 4 at  
Coolkeeragh power station

31 March 2002

Agreement dated 1 April 1992 between  
Coolkeeragh Power Limited and the  
power procurement manager in respect  
of generation set no. 6 at  
Coolkeeragh power station

31 March 2003

Agreement dated 1 April 1992 between  
Coolkeeragh Power Limited and the  
power procurement manager in respect  
of generation set no. 7 at  
Coolkeeragh power station

31 March 2004

Cancellable Generating Unit Agreement

Earliest Cancellation Date

Agreement dated 1 April 1992 between  
Coolkeeragh Power Limited and the  
power procurement manager in respect  
of generation set no. 8 at  
Coolkeeragh power station

1 November 2010

Agreement dated 1 April 1992 between

1 November 2010



Kilroot Power Limited and the  
power procurement manager in respect  
of generation set no. 1 at Kilroot  
power station

Agreement dated 1 April 1992 between  
Kilroot Power Limited and the  
power procurement manager in respect  
of generation set no. 2 at Kilroot  
power station

1 November 2010

Agreement dated 1 April 1992 between  
Kilroot Power Limited and the  
power procurement manager in respect  
of gas turbine generation set no. 1  
at Kilroot power station

1 November 2010

Agreement dated 1 April 1992 between  
Kilroot Power Limited and the  
power procurement manager in respect  
of gas turbine generation set no. 2  
at Kilroot power station

1 November 2010

Agreement dated 1 April 1992 between  
Ballylumford Power Limited and the  
power procurement manager in respect  
of generation set no. 1 at Ballylumford  
power station

1 November 2010

Agreement dated 1 April 1992 between  
Ballylumford Power Limited and the  
power procurement manager in respect  
of generation set no. 2 at Ballylumford  
power station

1 November 2010

Agreement dated 1 April 1992 between Ballylumford Power Limited and the power procurement manager in respect of generation set no. 3 at Ballylumford power station

1 November 2010

Agreement dated 1 April 1992 between Ballylumford Power Limited and the power procurement manager in respect of the of generation set no. 4 at Ballylumford power station

1 November 2010 at all times prior to the amendment of that agreement in accordance with Clause 3.4 of re-powering agreement and, thereafter, 1 April 2012

Agreement dated 1 April 1992 between Ballylumford Power Limited and the power procurement manager in respect of generation set no. 5 at Ballylumford power station

ceases to have effect whenever the cancellable generating unit agreement for set no. 5 is terminated under clause 3.5 of the re-powering agreement

Agreement dated 1 April 1992 between Ballylumford Power Limited and the power procurement manager in respect of generation set no. 6 at Ballylumford power station

1 November 2010 at all times prior to the amendment of that agreement in accordance with Clause 3.3 of the re-powering agreement and, thereafter, 1 April 2012

Agreement dated 1 April 1992 between Ballylumford Power Limited and the power procurement manager in respect of gas turbine generation set no. 1 at Ballylumford power station

1 November 2010

Agreement dated 1 April 1992 between Ballylumford Power Limited and the

1 November 2010

power procurement manager in respect  
of gas turbine generation set no. 2  
at Ballylumford power station