

DRAFT FOLLOWING SECOND CONSULTATION

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CONDITIONS APPLICABLE TO ELECTRICITY SUPPLY LICENCES

(incorporating conditions for NIE ENERGY and ENERGIA)

CONSULTATION DRAFT

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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 operator means any person (other than the Licensee in its capacity as the holder of the Licence) who holds a licence granted pursuant to Article 10 of the Order or whose activities are

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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

Authority means the Northern Ireland Authority for Utility Regulation.

Charges for the Supply of Electricity 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.

Contract means a contract for the supply of electricity made between the Licensee and a Customer but does not include a Deemed Contract.

Customer 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 Northern Ireland Department of Enterprise Trade and Investment.

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,

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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 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.
Domestic Customer	means a customer supplied, or requiring to be supplied, with electricity at Domestic Premises.
Domestic Premises	has the meaning given in, and is to be interpreted in accordance with, Condition 25.
Electricity Supplier	means any person authorised by a licence granted under Article 10(1)(c) of the Order to supply electricity.
Energy Order	means the Energy (Northern Ireland) Order 2003.
General Consumer Council	means the General Consumer Council for Northern Ireland.
Grid Code	has the meaning given to it in the Transmission System Operator Licence.

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holding company	means a holding company within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986.
interconnector	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.
Island of Ireland	means Northern Ireland and the Republic of Ireland.
Last Resort Supply Direction	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.
Licence	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.
Licensee	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.
Market Operator	means the person authorised, from time to time, under the Northern Ireland Market Operator Licence in its capacity as the holder of that licence.
metering equipment	includes any meter and any associated equipment which materially affects the operation of that meter.
modification	includes addition, omission, amendment and substitution, and cognate expressions shall be construed accordingly.

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Non-Domestic Customer	means a customer supplied, or requiring to be supplied, with electricity at Non-Domestic Premises.
Non-Domestic Premises	has the meaning given in, and is to be interpreted in accordance with, Condition 25.
Northern Ireland Fuel Security Code	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 cooperation 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.
Northern Ireland Market Operator Licence	means the licence granted, under Article 10(1)(d) of the Order, to SONI Limited (a body corporate registered in Northern Ireland under company number NI038715) on [3 July 2007].
notice	means (unless otherwise specified) notice given either in writing or by electronic data transfer.
Order	means the Electricity (Northern Ireland) Order 1992.
PSO Agreement	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.
related undertaking	in relation to any person means any undertaking in which that person has a participating interest as defined by Article 268 of the Companies (Northern Ireland) Order

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	1986.
representation	includes any objection or any other proposal made in writing.
SEM Go-Live	means the time and date designated as such by the Authority (with the consent of the Department) for the purpose of licences granted under the Order, being the commencement date for a number of matters including the Single Electricity Market.
SEM Order	means the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.
Single Electricity Market	means the single wholesale electricity market for the Island of Ireland, implemented in Northern Ireland pursuant to Section 23 of the Northern Ireland (Miscellaneous Provisions) Act 2006.
Single Electricity Market Trading and Settlement Code	has the meaning given to it in the Northern Ireland Market Operator Licence.
subsidiary	means a subsidiary within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986.
successor company	bears the meaning ascribed to it for the purposes of Part III of the Order.
Supply Business	means the business of the Licensee in the supply of electricity pursuant to the Licence.
Transmission Owner	means the person authorised, from time to time, under the Transmission Owner Licence in its capacity as the holder of that licence.
Transmission Owner	means the licence granted, under Article 10(1)(b) of the

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Licence	Order, to Northern Ireland Electricity plc (a body corporate registered in Northern Ireland under company number NI026041) on 31 March 1992.
transmission system	has the meaning given in the Transmission Owner Licence.
Transmission System Operator	means the person authorised, from time to time, under the Transmission System Operator Licence in its capacity as the holder of that licence.
Transmission System Operator Licence	means the licence granted under Article 10(1)(b) of the Order to SONI Limited (a body corporate registered in Northern Ireland under company number NI038715) on [3 July 2007].
undertaking	bears the meaning ascribed to it by Article 267 of the Companies (Northern Ireland) Order 1986.
unmetered supply	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

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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, 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.

Condition 2: Separate Accounts for Separate Businesses

[This Condition will not appear in the licence of NIE Energy - see Condition 47.]

- 1 This Condition shall only apply if the Licensee (or any affiliate or related undertaking of the Licensee) holds a licence (other than the Licence) granted under Article 10 of the Order.
- 2 The first financial year of the Licensee shall run from the date of the grant of the Licence to [*date*] and thereafter each financial year of the Licensee shall run from 1 April to the following 31 March.
- 3 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.
- 4 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;
 - (b) prepare on a consistent basis from such accounting records in respect of:
 - (i) the first financial year and each subsequent financial year, accounting statements comprising a profit and loss account, a balance sheet and a cash flow statement, together with notes thereto, and showing separately in respect of each Separate Business and in appropriate detail the amounts of any revenue, cost, asset, liability, reserve or provision which has been either;
 - (A) charged from or to any other business (whether or not a Separate

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Business) together with a description of the basis of that charge;

(B) 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

(ii) the first six months of the first financial year and of each subsequent financial year, an interim profit and loss account; and

(c) procure, in respect of the accounting statements prepared in accordance with this Condition in respect of a financial year, a report by the Auditors and addressed to 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) deliver to the Authority a copy of the account referred to in sub-paragraph (b)(ii), the Auditors' report referred to in sub-paragraph (c) and the accounting statements referred to in sub-paragraph (b)(i) as soon as reasonably practicable, and in any event not later than three months after the end of the period to which it relates in the case of the account referred to in sub-paragraph (b)(ii), and six months after the end of the financial year to which they relate in the case of the accounting statements and Auditors' report referred to in sub-paragraphs (b)(i) and (c), provided that in the case of the account, report and statements which, but for this proviso, would have been due on [*date*], they shall instead be due on [*date*].

5 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 4(b)(i) 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.

6 Where, in relation to the accounting statements in respect of a financial year, the Licensee

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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.

7 Accounting statements in respect of a financial year prepared under sub-paragraph 4(b)(i) 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 Statements of Accounting Practice issued or adopted by the Accounting Standards Board currently in force; and
- (b) state the accounting policies adopted; and
- (c) (with the exception of the part of such statements which shows separately the amounts charged, apportioned or allocated and describes the bases of charge or apportionment or allocation respectively), be published with the annual accounts of the Licensee.

8 Unless the accounting statements prepared under sub-paragraph 4(b)(i) are prepared on the current cost basis as provided by the alternative accounting rules, the Licensee shall, unless otherwise agreed by the Authority, in addition to preparing those accounting statements under that paragraph, prepare accounting statements for each Separate Business covering the same period, which shall comprise and show separately:

- (a) a profit and loss account, a balance sheet and a cash flow statement, together with notes thereto, which shall:
 - (i) include in respect of current cost assets amounts determined on the current cost basis as provided by the alternative accounting rules; and

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- (ii) show or disclose the information and other matters required by the alternative accounting rules to be shown or disclosed in accounts where the amounts included in respect of assets covered by any items shown in those accounts have been determined on any basis mentioned in paragraph 31 of Section C of Part II of Schedule 4 to the Companies (Northern Ireland) Order 1986;
- (b) in respect of each Separate Business the adjusted amount of any such provision for depreciation as is referred to in paragraph 32(2) of Section C of Part II of Schedule 4 to the Companies (Northern Ireland) Order 1986 and the items shown in the profit and loss account of the Separate Business for the relevant period which are affected by the determination of amounts on the current cost basis as provided by the alternative accounting rules, including the profit (or loss) before taxation; and
- (c) such other current cost information as is referred to in the Handbook as the Authority may require,

and shall deliver the same, together with an Auditors' report prepared in relation to the current cost basis accounting statements in the form referred to in sub-paragraph 4(c), to the Authority within the time limits referred to in sub-paragraph 4(d), and shall (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) publish the same with the annual accounts of the Licensee.

9 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.

10 In this Condition:

alternative accounting rules means the rules set out in Section C of Part II of Schedule 4 to the Companies (Northern Ireland) Order 1986.

current cost accounts means assets of any description mentioned in paragraph 31 of Section C of Part II of Schedule 4

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to the Companies (Northern Ireland) Order 1986.

Generation Business

means the authorised business (if any) of the Licensee or any affiliate or related undertaking of the Licensee in the generation of electricity or in the provision of System Support Services.

Handbook

means the handbook issued or adopted by the Accounting Standards Board or any successor body entitled **Accounting for the effects of changing prices: a Handbook** in its current edition for the time being or in the event that no such handbook shall be in issue such guidance or publication as may be issued in replacement or substitution therefor.

Separate Business

means each of the Supply 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.

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.

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: Modification of Supply Competition Code and cancellation of contracts

[This Condition will not appear in NIE Energy's Supply Licence – see Condition 60 in the PPB Conditions]

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

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

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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;

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

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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

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(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 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).

10. The Licensee's reasonable direct costs of complying with a request made under paragraph 9 (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.

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11. In this Condition:

power procurement manager shall:

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

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

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

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

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

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

Condition 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.

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Condition 7: Compulsory acquisition of land

[Not used in the majority of licences – this Condition will be included in the licence of any licensee in whose existing private electricity supply licence it is currently effective, and may in other cases be added by way of modification agreed with the Authority – see Article 13(1)(b) of the Electricity (Northern Ireland) Order 1992.]

1 All the powers and rights conferred by or under the provisions of Schedule 3 of the Order (compulsory acquisition of land) shall have effect in relation to the Licensee to the extent that they are required to enable the Licensee to supply electricity to the premises specified in Schedule 1.

2 The powers referred to in paragraph 1 shall not apply to land forming part of the land bank.

3 Paragraphs 1 and 2:

(a) shall cease to have effect on *[date]* unless the Authority shall before such date have substituted a later date in directions issued to the Licensee for the purposes of this Condition; and

(b) may be brought into effect after they shall have ceased to have effect on such date as the Authority shall specify in directions issued to the Licensee for the purposes of this Condition.

4 In this Condition:

Land includes any right, easement or other interest in land and any wayleave.

land bank has the meaning given in the Transmission Owner Licence.

Condition 8: Powers to carry out road works etc

[Not used in the majority of licences – this Condition will be included in the licence of any licensee in whose existing private electricity supply licence it is currently effective, and may in other cases be added by way of modification agreed with the Authority – see Article 13(1)(b) of the Electricity (Northern Ireland) Order 1992.]

- 1 The powers and rights conferred by or under the provisions of Schedule 4 of the Order (other powers, etc., of licence holders) shall have effect in relation to the Licensee and may be exercised by the Licensee carrying out works in relation to, or in pursuance of, the installation, inspection, maintenance, adjustment, repair, alteration, replacement and removal of:
 - (a) electric lines which are necessary to enable the Licensee to supply electricity to the premises specified in Schedule 1;
 - (b) electrical plant associated with such lines; and
 - (c) any structures for housing or covering such lines or plant.

- 2 Paragraph 1:
 - (a) shall cease to have effect on *[date]* unless the Authority shall before such date have substituted a later date in directions issued to the Licensee for the purposes of this Condition;
 - (b) may be brought into effect after it shall have ceased to have effect on such date as the Authority shall specify in directions issued to the Licensee for the purposes of this Condition.

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.

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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.

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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 but in any event before [*date*], the Licensee shall pay to the Authority an initial fee of [*amount*].
- 3 In respect of the year beginning on [*date*] 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 coming year in the exercise of its general 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)(c) 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

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- (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 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 [*date*] 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);

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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: Prohibition of cross-subsidies

[This Condition will not appear in the licence of NIE Energy –see Condition 48.]

- 1 This Condition shall only apply if the Licensee (or an affiliate or related undertaking of the Licensee) holds a licence (other than the Licence) granted under Article 10 of the Order.
- 2 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).
- 3 Nothing which the Licensee is obliged to do or not do pursuant to this Licence or any other licence granted to the Licensee under the Order shall be regarded as a cross-subsidy for the purposes of this Condition.
- 4 In this Condition:

Generation Business

means the authorised business (if any) of the Licensee or any affiliate or related undertaking of the Licensee in the generation of electricity or in the provision of System Support Services.

Separate Business

means each of the Supply 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.

Condition 13: Confidential Information and Separation of Businesses

[This Condition will appear in the licence of Viridian Energy Supply Ltd (Energia) only.]

- 1 Subject to paragraph 3, the Licensee shall procure that the Supply Business does not disclose directly or indirectly any commercially sensitive information to any Regulated Business.
- 2 Subject to paragraph 3, and other than in respect of information made available to all Electricity Suppliers or Customers, or of a class of information made available to Electricity Suppliers or Customers on equivalent terms, the Licensee shall procure that the Supply Business does not use, or seek to obtain, directly or indirectly any commercially sensitive information from any Regulated Business.
- 3 Paragraphs 1 and 2 shall not apply to information which:
 - (a) the Licensee is required to disclose pursuant to any legislative or regulatory requirement;
 - (b) is in or enters the public domain, other than as a result of:
 - (i) a breach by the Licensee of its obligations under this Condition; or
 - (ii) disclosure by a subsidiary of the Licensee;
 - (c) may be disclosed pursuant to arrangements or agreements approved in writing by the Authority.
- 4 The Licensee shall not, except insofar as may be required by law or permitted pursuant to arrangements or agreements approved by the Authority, offer to supply electricity to any Customer or enter into a Contract with any Customer where Customer metering or billing information used directly or indirectly in formulating that offer or the terms of that Contract has been obtained from a source other than a permitted source.
- 5 For the purposes of paragraph 4, information shall be treated as obtained from a permitted source where it is:
 - (a) historical metering data provided to the Licensee by the Distribution Business for the purposes of invoicing the relevant Customer for electricity consumed;

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- (b) historical meter reading or billing data provided to the Licensee directly by the relevant Customer;
 - (c) historical meter reading data provided to the Licensee by the Distribution Business with the written consent of the relevant Customer;
 - (d) historical meter reading or billing data provided to the Licensee by a person authorised by the relevant Customer to provide such information;
 - (e) the Licensee's estimate of the electricity consumption of the relevant Customer;
 - (f) metering data which may be made available to all Electricity Suppliers on a non-discriminatory basis from sources authorised by the Authority and notified to all Electricity Suppliers;
 - (g) information from any other source as may be authorised from time to time by the Authority and notified to all Electricity Suppliers.
- 6 The Licensee shall make arrangements in accordance with paragraph 8 to secure the effective separation of the Supply Business from the Regulated Businesses.
- 7 The arrangements referred to in paragraph 8 shall be subject to the approval of the Authority, which 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 those arrangements.
- 8 The Licensee shall:
- (a) nominate an officer of adequate seniority to monitor compliance with the provisions of this paragraph who will report on an annual basis to the Authority and otherwise as required from time to time by the Authority;
 - (b) not, and shall take all reasonable steps to procure that any employees (whether part-time or full-time) or officers of the Licensee (and require that any agents or consultants of the Licensee) do not solicit, disclose or use information obtained directly or indirectly from a Regulated Business that could give the Licensee any unfair commercial advantage from its possession of such information, other than

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information which:

- (i) the Licensee 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) a breach by the Licensee of its obligations under this Condition;
 - (B) disclosure by a subsidiary of the Licensee; or
 - (iii) may be disclosed pursuant to arrangements or agreements approved in writing by the Authority;
- (c) not engage any employee (whether part-time or full-time) who is or has previously been engaged by a Regulated 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 employee or class of employee;
- (d) establish and maintain an up-to-date register of all employees (whether part-time or full-time) of the Licensee confirming that the provisions of sub-paragraphs (b) and (c) have been complied with in respect of each employee of the Licensee;
- (e) not enter into any contracts with a Regulated Business, other than on an arm's length basis on normal commercial terms;
- (f) not use a name, brand or trade name of a Regulated Business in the Licensee's name, brand trade name or advertising; and
- (g) not represent itself as anything other than independent of the Regulated Businesses in all its dealings with existing and potential Customers.

9 For the purposes of this Condition, the Authority shall determine any question as to what is or is not commercially sensitive information or a commercially sensitive activity.

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10 In this Condition:

Distribution Business	has the meaning given to it in the Transmission Owner Licence.
Generation Business	has the meaning given to it in the NIE Supply Licence.
NIE Supply Business	means the business of NIE Energy Limited (a body corporate registered in Northern Ireland under company number NI27394) in the supply of electricity pursuant to the NIE Supply Licence.
NIE Supply Licence	means the licence held, under Article 10(1)(c) of the Order, by NIE Energy Limited (a body corporate registered in Northern Ireland under company number NI27394).
Power Procurement Business	has the meaning given to it in the NIE Supply Licence.
Regulated Business	means the Distribution Business, the Generation Business, the Power Procurement Business, the NIE Supply Business, the Transmission Owner Business or the Transmission System Operator Business.
Transmission Owner Business	has the meaning given to it in the Transmission Owner Licence.
Transmission System Operator Business	has the meaning given to it in the Transmission System Operator Licence.

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

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- (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:

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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 from the disapplication date or any later date specified in the notice.

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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.

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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.

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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: Single Electricity Market Trading and Settlement Code

[This Condition will not appear in the licence of NIE Energy – see Condition 52]

- 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.

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;

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- (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

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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

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- (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).

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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

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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 in the event that a Last Resort Supply Direction is given to another Electricity Supplier 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 class 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

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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

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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

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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

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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.

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- 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.

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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

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- 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 Where this Condition applies, it shall apply in relation to Domestic Customers and Non-Domestic Customers.
- 3 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.
- 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 efficient use of

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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 Where this Condition applies, it shall apply in relation to Domestic Customers and Non-Domestic Customers.
- 3 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.
- 4 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.
- 5 **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 Where this Condition applies it shall apply in relation to Domestic Customers and Non-Domestic Customers.
- 3 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.
- 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 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;

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- (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.

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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

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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 [*date*].

- 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.

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- 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

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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 FOR NIE

Condition 41: Additional Definitions

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

accountable interest	has the meaning given to it in paragraph 7 of Condition 44.
Cancel	in relation to the Authority, means the exercise of its cancellation powers.
cancellable generating unit agreement	means a generating unit agreement which may be the subject of a cancellation direction, being the generating unit agreements specified in Annex [<i>number</i>] of this Licence.
cancellation direction	means a direction issued by the Authority to cancel a cancellable generating unit agreement.
cancellation powers	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.
CHP generation	means the generation of electricity solely by CHP generation sets.
CHP Generation Business	means any business of the Licensee or of any affiliate or related undertaking of the Licensee in CHP generation.
CHP generation set	means a generation set used for the simultaneous generation of usable heat and power in a single process at high efficiency.

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Distribution Business	has the meaning given to it in the Transmission Owner Licence.
electricity purchase contract	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">(a) an amount specified or ascertainable under the terms of such contract or arrangement; and(b) the price at which electricity is sold or purchased under the Single Electricity Market Trading and Settlement Code, or any component of such price and electricity sale contract shall be construed accordingly.
generating unit agreement	means a power purchase agreement between a generator and the Power Procurement Business in respect of a generation set or combination of generation sets.
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.
generation licence	means a licence granted under Article 10(1)(a) of the Order.
generation set	means any plant or apparatus for the production of

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	electricity.
Generator	means a person authorised by a licence granted under Article 10(1)(a) of the Order.
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.
Power Procurement Business	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.
power purchase agreement	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

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	of generation sets.
power station agreement	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.
predecessor company	means Northern Ireland Electricity plc (a body corporate registered in Northern Ireland under company number NI026041).
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

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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

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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

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Licensee has complied with the obligation to procure undertakings pursuant to paragraph 6;

- (b) inform the Authority immediately in writing if the directors of the Licensee become aware that the undertaking has ceased to be legally enforceable or that its terms have been breached; and
- (c) comply with any direction from the Authority to enforce any such undertaking.

8 The Licensee shall not, save with the written consent of the Authority, enter (directly or indirectly) into any agreement or arrangement with an ultimate controller of the Licensee or any of its subsidiaries (other than subsidiaries of the Licensee) at a time when:

- (a) an undertaking complying with paragraph 6 is not in place in relation to that ultimate controller; or
- (b) there is an unremedied breach of such undertaking; or
- (c) the Licensee is in breach of the terms of any direction issued by the Authority under paragraph 7.

9 In this Condition, unless the context otherwise requires, **ultimate controller** means

- (a) any holding company of the Licensee, which is not itself a subsidiary of another company; and/or
- (b) any person who (whether alone or with a person or persons connected with him) is in a position to control, or to exercise 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;

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

Undertaking of the Holding Company

- 10 The Licensee shall by seven days after the date when these modifications became effective procure from the holding company of the Licensee a legally enforceable undertaking in favour of the Licensee in a form already specified by the Authority, which shall provide that the holding company will give to the Licensee, and will procure that each subsidiary of that holding company (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 the holding company of the Licensee.
- 11 The Licensee shall deliver to the Authority evidence (including a copy of such undertaking) that the Licensee has complied with the obligation to procure any undertaking pursuant to paragraph 10.
12. The Licensee shall not, save with the consent in writing of the Authority, enter (directly or indirectly) into any contract or arrangement with the holding company of the Licensee or any of the subsidiaries of the holding company (other than the subsidiaries of the Licensee) at a time when:
 - (a) an undertaking complying with paragraph 10 is not in place; or
 - (b) there is an unremedied breach of such undertaking.

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

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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.

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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.

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- 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.

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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:

declared net capacity 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.

land bank has the meaning given in the Transmission Owner Licence.

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

non-fossil generation set means a generation set which is (or may be) fuelled or driven otherwise than by a fossil fuel or natural gas.

permitted circumstances 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

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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

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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

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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.

Condition 46: Obligation on economic purchasing

1 Subject to Condition 20 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

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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:

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defined undertaking	means any entity through which the Licensee enters into arrangements of the kind mentioned in Article 35(1)(a) of the Order.
must-take obligation	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.
purchase	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.
relevant date	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

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- (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

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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

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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 whether the Licensee has performed its obligations under paragraphs 1, 3 and 5, and shall procure that the Licensee and its employees co-operate in any such investigation to the extent requested by the nominated person(s); and

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- (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.

control has the meaning attributed to it by section 416 of the Income and Corporation Taxes Act 1988.

protected information means any information which is held or obtained by the Licensee (or any affiliate or related undertaking of the

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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).

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.

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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

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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.

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6 In this Condition:

Asset 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.

Regulated Business means the Generation Business, the Power Procurement Business or the Supply Business.

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

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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

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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

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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 agreements referred to in paragraph 1, and any amendment to them, shall require to be approved by the Authority.
4. In this Condition, unless the context otherwise requires:

“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.

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PART IV: SPECIAL CONDITIONS APPLICABLE TO NIE POWER PROCUREMENT

BUSINESS

[Subject to separate consultation.]

ANNEX 1 – Determination of the NIE Energy Supply Amount

Restriction on NIE Supply Amount

1. The NIE Supply Amount applicable from time to time shall be the amount determined as such by the Licensee, provided that:
 - (a) such amount, and any amendment to such amount, must be approved by the Authority before they can be effective; and
 - (b) in setting such amount, the Licensee shall use its best endeavours to ensure that, in any relevant year, the revenue (measured on an accruals basis) derived by the 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) does not exceed the maximum allowed NIE Energy supply revenue determined in accordance with paragraph 2 (or, where such maximum allowed amount is a negative figure, the Licensee will use its best endeavours to ensure that, in the relevant year, it pays that amount to the Transmission Owner under the agreement referred to in Condition 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:

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

Where:

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

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

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derived as follows: $K_t = (M_{t-1} - R_{t-1}) * (1 + I_t / 100)$, 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.

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. Paragraphs 4 and 7 of Schedule 5A and paragraphs 4 and 6 of Schedule 5C to Northern Ireland Electricity plc's combined transmission and public electricity supply licence as in effect at 1 June 2007 shall be incorporated, mutatis mutandis, into (and to the extent applicable to) this Annex 1.

5. For the purposes of this Annex:

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

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ANNEX 2 – Supply Charge Restriction Conditions

[As previously indicated, the conditions from schedule 6 to NIE's existing licence document will be added here with minor amendment. The relevant wording will be published shortly.]