

**ELECTRICITY INTERCONNECTOR OPERATOR
LICENCE**

DRAFT FOR CONSULTATION

CER 09/178

Draft for Consultation

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PART I TERMS OF THE LICENCE

1. The Commission for Energy Regulation (hereinafter referred to as "**the Commission**"), in exercise of the powers conferred by Section 14(1)(i) of the Electricity Regulation Act, 1999 (as amended) (hereinafter referred to as "**the Act**"), hereby grants to **[Company Name]** (hereinafter referred to as "**the Licensee**") a licence to transport electricity across and maintain the Interconnector identified in Schedule 1 subject:
 - (a) to the Conditions set out in Part II – Section A; and
 - (b) to the Conditions set out in Part II – Section B;together hereinafter referred to as "**the Conditions**".
2. The Conditions are subject to modification or amendment in accordance with their terms or with Sections 14(3), 14(6)(a), 14(6)(b) or 19 of the Act. The licence hereby granted (hereinafter referred to as "**this Licence**") is further subject to the terms as to revocation specified in Schedule 2.
3. This Licence shall come into force on **[Date]** and, unless revoked in accordance with the provisions of Schedule 2, shall continue in full force and effect until determined by not less than 25 years' notice in writing given by the Commission to the Licensee, such notice not to be served earlier than the 25th anniversary of the date on which this licence comes into force.

Sealed with the common seal of the Commission for Energy Regulation on **DATE**.

Commissioner

Member of staff of the Commission

Part II – Section A: The Standard Conditions

Condition 1 Interpretation and Construction

1. Unless the contrary intention appears:
 - (a) words and expressions used in the Conditions or the Schedule shall be construed as if they were in an enactment and the Interpretation Acts, 1937 to 2005 applied to them; and
 - (b) references to an enactment shall include subordinate legislation and, in both cases, any statutory modification or re-enactment thereof after the date when this Licence comes into force.
2. Any word or expression defined for the purposes of any provision of the Act or the Regulations shall, unless otherwise defined herein, have the same meaning when used in the Conditions or in the Schedule.
3. In the Conditions and in the Schedule, unless otherwise specified or the context otherwise requires:

“Act” refers to the Electricity Regulation Act 1999, as amended;

"Affiliate" in relation to the Licensee or any Subsidiary of a Holding Company of the Licensee, means any Holding Company of the Licensee or any Subsidiary of the Licensee or any Subsidiary of a Holding Company of the Licensee;

“Ancillary Services” has the meaning given in the Grid Code;

“Distribution System Operator” means the Board in its capacity as operator of the distribution system licensed pursuant to Section 14(1)(g) of the Act;

"Grid Code" means the Grid Code prepared by EirGrid (acting as Transmission System Operator) pursuant to Section 33 of the Act and approved by the Commission, as from time to time revised, amended, supplemented or replaced by EirGrid with the approval or at the instance of the Commission;

"Holding Company"	means a holding company within the meaning of the Companies Acts, 1963 to 2006;
"Interconnector"	means equipment used to link the electricity system of the State to electricity systems outside of the State;
"Interconnector Business"	means the business of the Licensee as authorised by this Licence;
"Interconnector Licence"	means a licence granted under Section 14(1)(i) of the Act;
"Licensee"	means Company Name ;
"Metering Code"	means the code of that name prepared by the Distribution System Operator and approved by the Commission, as from time to time revised, amended, supplemented or replaced with the approval of or at the instance of the Commission.
"modification"	includes addition, deletion, amendment and substitution; and cognate expressions shall be construed accordingly;
"Participating Interest"	has the meaning given to that term in Regulation 35 of the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. 201 of 1992);
"Related Undertaking"	means any undertaking having a Participating Interest in the Licensee or any undertaking in which the Licensee has a Participating Interest;
"representation"	includes any objection or any other proposal made in writing;

"Separate Business" means the business or businesses of the Licensee, whether carried out directly or by an Affiliate or Related Undertaking of the Licensee, other than the Interconnector Business;

"Subsidiary" has the meaning given in the Companies Acts, 1963 to 2006;

"SEM Trading and Settlement Code" means the Trading and Settlement Code developed pursuant to Section 9 of the Act, as from time to time revised, amended supplemented or replaced with the approval or at the instance of the Commission;

"Transmission System" means the system of electric lines comprising wholly or mainly of high voltage lines and electric plant and which is used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another or to or from any Interconnector or to final customers, and (in the case of the transmission system in the State shall include any Interconnector owned by the Transmission System Operator);

"Transmission System Operator" means the person licensed to operate the Transmission System under Section 14(1)(e) of the Act..

4. Unless otherwise specified:

(a) any reference to a numbered Condition is a reference to the Condition bearing that number in this Licence;

(b) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the Condition or Schedule in which the reference occurs; and

(c) without prejudice to any provision which restricts such variation, supplement or replacement, any reference to any agreement, licence (other than this Licence), code or other instrument shall include a reference to such agreement, licence, code or other instrument as varied, supplemented or replaced from time to time.

5. The heading or title of any Part, Condition, 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 4 (Service of Notices) of the Act shall apply for the purposes of the delivery or service of any document, direction or notice to be delivered or served pursuant to this Licence and directions issued by the Commission pursuant to any Condition shall be delivered or served as aforesaid.

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Condition 2 Separation of Accounts

1. For the purposes of this Condition, the Licensee's financial year shall be determined as follows:
 - (a) The Licensee's first financial year shall run from (and including) the date of the grant of this Licence up to (and including) the last day of the Licensee's accounting period, provided that if the period between the date of the grant of this Licence and the last day of the Licensee's accounting period is three calendar months or less, then the Licensee's first financial year shall run from (and including) the date of the grant of this Licence up to (and including) the last day of the Licensee's next accounting period.
 - (b) Each subsequent financial year shall run from the day immediately following the last day of the preceding accounting period up to (and including) the last day of the accounting period.
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 the Interconnector Business and showing the financial affairs of the Interconnector Business.
3. The Licensee shall in respect of the Interconnector Business:
 - (a) keep or cause to be kept such accounting records in accordance with the Companies Acts, 1963 to 2006, in respect of the Interconnector Business as would be required to be kept in respect of the Interconnector Business if it were carried on by a separate company, and, where appropriate, consolidated accounts for other, non-licensed activities, so that the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to, the Interconnector 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 of the Licensee; and
 - (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 the Interconnector Business and in appropriate detail any transactions with a value of €100,000 or more which the Licensee has conducted with any of its Affiliates or Related Undertakings, and the amounts of any

revenue, cost, asset, liability, reserve or provision, which has been either:

- (A) charged from or to any other business together with a description of the basis of that charge; or
 - (B) determined by apportionment or allocation between the Interconnector Business and any other business together with a description of the basis of the apportionment or allocation; and
- (ii) the first 6 months of the second financial year of the Licensee and the first 6 months 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 (with the exception of interim accounts prepared in accordance with paragraph 3(b)(ii) of this Condition) in respect of a financial year, a report by the Auditors and addressed to the Commission 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 Interconnector Business; and
- (d) deliver to the Commission 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).
4. (a) The Licensee shall not in relation to the accounting statements in respect of a financial year change the bases of charge, apportionment or allocation referred to in sub-paragraph (b)(i) of paragraph 3 from those applied in respect of the previous financial year, unless the Commission 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 Commission shall have given its prior written approval to the change in such bases. The Licensee shall comply with any directions issued for the purposes of this Condition.
- (b) Where, in relation to the accounting statements in respect of a financial year, the Licensee has changed such bases of charge, apportionment or allocation from those adopted for the immediately preceding financial year, the Licensee shall, if so

directed in directions issued by the Commission for the purposes of this Condition, in addition to preparing accounting statements on those bases which it has adopted, prepare such accounting statements on the bases which applied in respect of the immediately preceding financial year.

5. Accounting statements in respect of a financial year prepared under sub-paragraph (b)(i) of paragraph 3 shall, so far as reasonably practicable and unless otherwise approved by the Commission having regard to the purposes of this Condition:
 - (a) have the same content and format (in relation to the Interconnector Business) as the annual accounts of the Licensee (and any Affiliate or Related Undertaking of the Licensee) prepared under the Companies Acts, 1963 to 2006, and conform to the best commercial accounting practices including Statements of Accounting Practice and Financial Reporting Standards currently in force; and
 - (b) state the accounting policies adopted; and
 - (c) (with the exception of the part of such statements which show separately the amounts charged, apportioned or allocated and describe the bases of charge or apportionment or allocation respectively), be published with the annual accounts of the Licensee.
6. Whatever the basis on which the accounting statements prepared under sub-paragraph (b)(i) of paragraph 3 are prepared, the Licensee shall prepare accounting statements in respect of the same period in accordance with such guidelines as are reasonable and appropriate for the purposes of this Condition as the Commission may, from time to time, notify to the Licensee. The Licensee shall deliver the same, together with an Auditor's report prepared in relation to the accounting statements in the form referred to in sub-paragraph (c) of paragraph 3, to the Commission within the time limits referred to in sub-paragraph (d) of paragraph 3 and shall (with the exception of the part of such statements which shows separately the amounts charged, apportioned or allocated and describes the basis of charge or apportionment or allocation respectively) publish the same with the annual accounts of the Licensee.
7. The guidelines notified by the Commission to the Licensee under paragraph 6 may:
 - (a) specify the form and content of accounting statements, including information on specified types of revenue, cost, asset or liability and information on the revenues, costs, assets and liabilities attributable to specified activities;

- (b) require any reconciliation that may be required with the annual accounts of the Licensee prepared under the Companies Acts, 1963 to 2006;
 - (c) specify the accounting principles and the bases of valuation to be used in preparing current cost accounting statements; and
 - (d) specify the nature of the report by the Auditors required to be given in respect of accounting statements.
8. References in this Condition to costs or liabilities of, or reasonably attributable to, the Interconnector Business shall be construed as excluding taxation and capital liabilities which do not relate principally to the Interconnector Business and interest thereon; and references to any accounting statement shall be construed accordingly.

9. In this Condition:

"accounting period"

means the period for which the Licensee prepares annual accounts under the Companies Acts, 1963 to 2006, provided that if the Licensee is not required to prepare annual accounts under the Companies Acts, 1963 to 2006, or is not a company within the meaning of the Companies Acts, 1963 to 2006, then the accounting period shall run from (and including) the 1 January up to (and including) the following 31 December.

Condition 3 Provision of Information to the Commission

1. The Licensee shall furnish to the Commission, in such manner and at such times as the Commission may require, such information and shall procure and furnish to it such reports as the Commission may consider necessary in the light of the Conditions or as it may require for the purpose of performing the functions assigned or transferred to it by or under the Act.
2. Without prejudice to the generality of paragraph 1, the Commission may call for the furnishing of accounting information which is more extensive than or differs from that required to be prepared and supplied to the Commission under Condition 2.
3. The power of the Commission to call for information under paragraph 1 is without prejudice to the power of the Commission to call for information under or pursuant to any other Condition of this Licence or under or pursuant to the Act or any other enactment.
4. In this Condition, "**information**" shall include any books, documents, records, accounts, estimates, returns or reports (whether or not prepared specifically at the request of the Commission) of any description and in any format specified by the Commission.

Condition 4 Compliance with Laws and Directions

1. The Licensee shall comply with the Act, Statutory Instrument Numbers 445 of 2000 and 60 of 2005, the Conditions of this Licence and all relevant EU and Irish laws.
2. The Licensee shall comply with any directions or determinations made by the Commission pursuant to Sections 23, 24, and 25 of the Act and with any court orders made pursuant to Section 26 of the Act.
3. Any costs associated with compliance with such directions, determinations and court orders shall be the responsibility of the Licensee.

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Condition 5 Payment of Levy

1. The Licensee shall pay to the Commission any amounts specified in, or determined under, a Levy Order, in accordance with the provisions of such Levy Order.
2. In this Condition:

"Levy Order" means an Order made by the Commission under paragraph 16 of the Schedule 1 to the Act.

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Condition 6 Compliance with Codes

1. The Licensee shall at all times comply with the provisions of the Grid Code, Distribution Code and Metering Code, from time to time in force, insofar as applicable to it.
2. The Licensee shall be party to, and shall comply with the SEM Trading and Settlement Code insofar as applicable to it.

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Condition 7 Public Service Obligation

1. The Licensee shall comply with any public service obligation imposed on it by the Commission pursuant to Section 39 (Public Service Obligations) of the Act.

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Condition 8 Security Arrangements

1. Where requested by the Commission, the Licensee shall co-operate with the Commission in strategic contingency planning during periods when the Commission deems necessary for reasons of security of supply.

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Condition 9 Provision of Information to the Transmission System Operator or Distribution System Operator

1. The Licensee shall furnish to the Transmission System Operator or the Distribution System Operator, information concerning the operation and technical specifications of the Licensee's Interconnector in such manner and at such times as may reasonably:
 - (a) be required for the Transmission System Operator or Distribution System Operator to enable it to comply with its obligations under its own licence or applicable industry codes; or
 - (b) be specified in directions issued from time to time by the Commission to the Licensee for the purpose of sub-paragraph (a) above, having taken into consideration any representations made to the Commission by the Licensee and the Transmission System Operator or the Distribution System Operator, and in accordance with any conditions contained in such directions.
2. The Licensee shall be entitled to refuse to provide an item of information on the grounds that its disclosure would seriously and prejudicially affect the commercial interests of the Licensee unless and until the Commission, by notice in writing given to the Licensee, directs it to provide that item of information on the grounds that provision thereof is necessary or expedient for the purpose mentioned in subparagraph 1(a).
3. This condition shall not require the Licensee to produce any documents or give any information which it could not be compelled to produce or give in evidence in civil proceedings before the court.
4. Sub-paragraph 1(a) shall not apply if the Transmission System Operator or Distribution System Operator has not established, whether in pursuance of a licence condition or otherwise, effective arrangements designed to secure that information provided in pursuance of this condition is not communicated, directly or indirectly, to any electricity generator or electricity supplier.

Condition 10 Central Dispatch and Interconnector Transfers

1. The Licensee shall submit all interconnector transfers to central dispatch in accordance with the SEM Trading and Settlement Code where central dispatch is required by the Grid Code.
2. The Licensee shall at such times and in such manner as may be provided under the Grid Code provide the Transmission System Operator with all information reasonably required by it to enable it to operate the system of central dispatch.
3. The Licensee shall co-operate with the Transmission System Operator with the aim of facilitating the Transmission System Operator in the fulfilment of its obligations under Condition 8 of its licence.

4. In this Condition:

"available" in relation to an interconnector transfer means an interconnector transfer which is available in accordance with the Grid Code;

"central dispatch" means the process of scheduling and issuing direct instructions for dispatch of available generation units and interconnector transfers by the Transmission System Operator;

"interconnector transfer" means the flow of electricity across the Licensee's Interconnector.

Condition 11 Ancillary Services

1. The Licensee shall from time to time, if requested by the Transmission System Operator and in accordance with the provisions of the Grid Code facilitate the provision of Ancillary Services from any Interconnector of the Licensee which the Interconnector unit is capable of providing.
2. Upon the application of the Transmission System Operator wishing to question the terms offered by the Licensee pursuant to paragraph 1, the Commission shall settle any terms of the agreement in dispute between the Transmission System Operator and the Licensee in such manner as appears to the Commission to be reasonable.
3. If the Transmission System Operator wishes to proceed on the basis of the terms as settled by the Commission, the Licensee shall forthwith enter into and implement such agreement in accordance with its terms.

Condition 12 Environment

1. The Licensee shall comply with all applicable European Union and Irish Environmental Laws whether in force at the date hereof or in the future.
2. The Licensee shall, not later than such date as the Commission may specify and in consultation with the Commission, prepare and from time to time modify a written policy setting out the manner in which the Licensee proposes to comply with its duties and obligations under all applicable European Union and Irish Environmental Laws.
3. The Licensee shall report annually to the Commission on its environmental performance in such form and at such times as the Commission may specify.
4. The Commission may at any time modify or vary the terms or conditions contained in this Licence in order to reflect obligations imposed by any International, national or European Union Environmental Laws.
5. For the purposes of this Licence, "**Environmental Laws**" means those laws which are from time to time in force whose purpose is the protection of the environment including the protection of human health, flora, fauna and the eco-systems on which they depend, and for the avoidance of doubt shall include but shall not be limited to the Environment Protection Agency Acts 1992 and 2003, the Waste Management Act 1996 and all relevant legislation relating to the assessment of environmental impacts, and the protection of air, land, the environment and water.

Condition 13 Assignment of Licence and Transfer of Interconnector Business

1. The Licensee shall not, without the prior written consent of the Commission, assign this Licence.
2. The Licensee shall not, without the prior written consent of the Commission, transfer to another person (the "**transferee**") all or any part of the Interconnector Business carried out under this Licence.
3. Any consent of the Commission to any assignment of this Licence or transfer of the Interconnector Business of the Licensee shall be subject to the Commission being satisfied that the assignee or transferee, as the case may be, will have the technical and financial capability to comply with the Conditions of this Licence and, in the case of a transfer only, the transferee being granted an Interconnector Licence, and may be subject to compliance by the assignee or transferee, as the case may be, with any other matters determined by the Commission to be necessary, including the modification of this Licence where deemed necessary by the Commission.
4. Nothing in this Condition shall prevent the Licensee transferring its Interconnector Business to an assignee where the Commission has consented to such assignment provided that such transfer is effected as soon as practicable after such consent has been given.

Condition 14 Change in Control of the Licensee

1. The Licensee shall notify the Commission of a change in control of the Licensee as soon as is practicable after such a change in control occurs.

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Condition 15 Capacity Utilisation

1. The Licensee shall make available the maximum capacity of the Licensee's Interconnector, in compliance with safety standards of secure network operation.
2. The Licensee shall implement and publish on its website open, transparent and non-discriminatory capacity allocation mechanisms.
3. The Licensee shall develop procedures on the primary market to facilitate the secondary trade of capacity between primary capacity holders and any person seeking to acquire capacity rights from such primary capacity holders. The Licensee will recognise the transfer of primary capacity rights where notified by users of the Licensee's Interconnector. The Licensee shall take all reasonable steps to allow and facilitate capacity rights to be freely tradable in a secondary market.
4. When the Licensee concludes new contracts or renegotiates existing contracts, these contracts shall take into account the following principles:
 - (a) the Licensee shall offer unused capacity on the primary market,
 - (b) users of the Licensee's Interconnector who wish to re-sell their unused contracted capacity on the secondary market shall be entitled to do so.
5. The Licensee shall publish on its website detailed and current information regarding the services it offers and the relevant conditions applied, together with the technical information necessary for users of the Interconnector to gain access to the Licensee's Interconnector.
6. For the services offered by the Licensee, the Licensee shall publish on its website current information on technical, contracted and available capacities for the Licensee's Interconnector on a numerical basis, on a regular and rolling basis and in a user-friendly standardised manner.
7. Where the Licensee considers that for reasons of confidentiality the Licensee should not have to publish the information required to be published by paragraphs 5 and 6 of this Licence condition, the Licensee may seek the consent of the Commission to limit the publication of such information.
8. The Licensee shall, as requested by the Commission, submit its congestion management methods to the Commission for evaluation.
9. In this condition:

“capacity”

means the capacity, expressed in MW, to which the user of the Licensee's Interconnector is

entitled in accordance with the provisions of the agreement for access to the Licensee's Interconnector;

"contractual congestion"

means a situation where the level of firm capacity equals or exceeds the technical capacity of the Licensee's Interconnector, that is, where all technical capacity of the Licensee's technical capacity of the Licensee's Interconnector is contracted as firm;

"firm capacity"

means that portion of the technical capacity of the Licensee's Interconnector which the Licensee has committed to make available to a person pursuant to a binding contract;

"primary market"

means the market of the capacity traded directly by the Licensee; and

"secondary market"

means the market of the capacity traded otherwise than on the primary market.

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Condition 16 Dispute Resolution

1. Upon the application of any person who is, or claims to be, a person to whom the Licensee is obliged to make an offer of access to the Interconnector and who wishes to dispute the making of an offer, the terms offered, the proposed charge or otherwise, including tariffs or non-price terms and conditions of access offered to that person in respect of access to the Licensee's Interconnector (including a refusal by the Licensee to offer access on the grounds that insufficient capacity is available), the Commission may, pursuant to section 34A(5) of the Act, settle any terms of the agreement in dispute between the Licensee and that person or persons (as the case may be) in such manner as it appears to the Commission to be reasonable and the Licensee shall comply with and be bound by any such determination.

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Part II – Section B: Revenue and Third Party Access

Condition 17 Use of Revenues

1. The Licensee shall use any revenues which it receives from the allocation of Interconnector capacity only for one or more of the purposes listed in subparagraphs 2(a) and 2(b) below.
2. The Licensee shall prepare and submit to the Commission an annual revenue statement ('use of revenues statement'), in such form as the Commission may from time to time direct. This use of revenues statement must set out how revenues which the Licensee has received from the allocation of Interconnector capacity have been used for one or more of the following purposes:
 - (a) guaranteeing the actual availability of the allocated capacity; and/or
 - (b) investment in maintaining or increasing interconnection capacities;
3. If the revenues cannot be efficiently used for the purposes set out in 2(a) and/or 2(b), they may be used, subject to the approval of the Commission, up to a maximum amount to be decided by the Commission, as income to be taken into account by the Commission when approving the methodology for calculating network tariffs, and/or in assessing whether tariffs should be modified.
4. The first use of revenues statement submitted under this Licence condition shall be submitted to the Commission within 12 months from the date of issue of this Licence to the Licensee, and thereafter annually, from the date that the first use of revenues statement is submitted to the Commission. The first use of revenues statement shall cover the period from the date of issue of this Licence to the date specified in the use of revenues statement (such period being no longer than 12 months). Each subsequent use of revenues statement shall cover the same 12 month period as covered by the Licensee's annual accounts.

Condition 18 Access to the Licensee's Interconnector

1. The Licensee shall offer access to the Interconnector and enter into agreements for capacity with any person on a non-discriminatory, objective and transparent basis in accordance with Section 34A of the Act.
2. The Licensee shall comply with any directions given to it by the Commission, from time to time, pursuant to Section 34A of the Act.
3. Non-price terms and conditions of access shall be transparent, objective and non-discriminatory.
4. The Licensee shall submit a charging methodology and any subsequent modification to the charging methodology to the Commission for approval.
5. Prior to submitting the charging methodology to the Commission for approval the Licensee shall:
 - (a) take all reasonable steps to ensure that all persons who may have a direct interest in the access arrangement are consulted and allow them a period of not less than 28 days within which to make written representations; and
 - (b) furnish to the Commission a report setting out:
 - (i) the terms originally proposed in the charging methodology;
 - (ii) the representations, if any, made by interested persons; and
 - (iii) any change in the charging methodology intended as a consequence of such representations.
 - (iv) how the proposed charging methodology meets the congestion management guidelines set out in the Regulation (EC) No. 1228/2003 of the European Parliament and the Council on the conditions for access to the network for cross-border exchanges in electricity, or any re-enactment thereof.
6. The Licensee shall publish and make available on the Licensee's web-site the charging methodology.
7. The Licensee shall review its charging methodology at least once in each calendar year or upon request of the Commission and propose such modifications to the charging methodology as may be requisite for the purpose of ensuring that the charging methodology better achieves the goals of non-discrimination, objectivity and transparency.

8. Prior to submitting modified charging methodology to the Commission for approval the Licensee shall:
 - (a) take all reasonable steps to ensure that all persons who may have a direct interest in the charging methodology are consulted and allow them a period of not less than 28 days within which to make written representations; and
 - (b) furnish to the Commission a report setting out:
 - (i) the original modification proposals;
 - (ii) the representations, if any, made by interested persons;
 - (iii) any change in the modification proposals intended as a consequence of such representations;
 - (iv) how the intended modification better achieves the goals of non-discrimination, objectivity and transparency; and
 - (v) confirmation that the proposed modification meets the congestion management guidelines set out in Regulation (EC) No. 1228/2003 of the European Parliament and of the Council of 26 June 2003 on the conditions for access to the network for cross-border exchanges in electricity, or any re-enactment thereof.
 - (v) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect.
9. Where the Licensee's Interconnector either:
 - (a) forms part of an integrated Transmission System and the tariffs and/or the tariff or charging methodology that applies to access to the Licensee's Interconnector have been established or approved by a regulatory authority and those tariffs and/or the tariff or charging methodology meets the goals of non-discrimination, objectivity and transparency and meets the congestion management guidelines set out in Regulation (EC) No. 1228/2003 of the European Parliament and of the Council of 26 June 2003, on the conditions for access to the network for cross-border exchanges in electricity, or any re-enactment thereof; or
 - (b) does not form part of an integrated Transmission System and the tariffs and/or the tariff or charging methodology that applies to access to the Licensee's Interconnector have been established or approved by a regulatory authority and those tariffs and/or the tariff or charging methodology meets the goals of non-discrimination, objectivity and transparency meets the congestion

management guidelines set out in Regulation (EC) No. 1228/2003 of the European Parliament and of the Council of 26 June 2003 on the conditions for access to the network for cross-border exchanges in electricity, or any re-enactment thereof;

the Commission may issue a notice to the Licensee that the establishment or approval by that regulatory authority meets the requirements of this Licence condition. Such notice will constitute approval of charging methodology for the purposes of this Licence condition.

10. A notice issued under paragraph 8 will expire on the earlier of:
 - (a) the date, if any, provided for expiry in the notice, or
 - (b) the withdrawal of the notice by the Commission, such withdrawal being effective from the date specified by the Commission, such date being not less than four months after the Commission has informed the Licensee that the notice will be withdrawn.
11. Where the Commission has issued a notice to the Licensee under paragraph 8 and the tariffs, and/or tariff or charging methodology that have or has been established or approved by the regulatory authority have or has been modified, or is or are to be modified, the Licensee shall furnish the Commission with a report setting out:
 - (a) the terms originally proposed for the modification;
 - (b) the representations, if any, made by any interested person to the Licensee;
 - (c) any change in the terms of the modification intended in consequence of the representations;
 - (d) how the intended modification better achieves the relevant charging methodology objectives; and
 - (e) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect.
12. Where the Commission has issued a notice to the Licensee under paragraph 9, until that notice expires or is withdrawn by the Commission, paragraphs 4, 5, 7 and 8 of this condition do not apply to the Licensee.
13. The Licensee shall not be in breach of this condition where there is a lack of capacity in respect of which to grant access to the Licensee's Interconnector.

14. Where the Licensee refuses access on the grounds that it lacks the necessary capacity, duly substantiated reasons for such refusal, demonstrating that it is either not economic or not technically feasible to provide the capacity, must be given to both the person seeking access and to the Commission within 28 days of a refusal.
15. Where the Licensee refuses access on the grounds that it lacks the necessary capacity and the person seeking access so requests, the Licensee shall provide relevant information on measures that would be required to provide that capacity. The Licensee may impose a reasonable charge upon a person who requests such information. Such charge should be equivalent to the Licensee's reasonable costs of meeting the request but shall not exceed the maximum amount specified in any direction issued by the Commission for the purposes of this condition.
16. Where the Licensee considers that for reasons of confidentiality the Licensee should not have to provide particular items of information to the person seeking access under paragraphs 14 or 15, the Licensee may seek the consent of the Commission to limit the provision of information to that person.
17. A dispute arising from refusal of access on the grounds of lack of necessary capacity will be resolved in accordance with Condition 1617.
18. The Licensee shall keep and maintain records for at least seven years, or the length of any concluded contract plus seven years (whichever is the longer in each case), detailing all access terms and conditions offered to any person (whether or not access is in fact granted or utilised) including details of the charges or tariffs and non-price terms and conditions of access offered.
19. In this Condition:

“charging methodology”

means the methodology for applying for, determining access to and charging for the reservation and use of capacity on the Interconnector.

Condition 19 Application of Licence Conditions 17 and 18

1. In accordance with this Licence condition, Licence conditions 17 and 18 (“the relevant conditions”) may:
 - (a) not have effect in this Licence;
 - (b) be suspended from operation in this Licence;
 - (c) be brought into operation, (where the licence condition did not have effect) or back into operation (where the licence condition was suspended from operation), in this Licence.
2. On the application of the Licensee in accordance with paragraph 3, the Commission may (either before, at the same time, or after this Licence has been granted to the Licensee) issue an exemption notice providing that any or all of the relevant conditions may not have effect or are suspended from operation, or (where the licence has not yet been granted) will not be in effect or will be suspended from operation, where the Commission is satisfied that the requirements of paragraph 6 are met.
3. A Licensee may make a request in writing to the Commission for the Commission to issue an exemption notice such that any or all of the relevant conditions do not have effect or are suspended from operation. The request shall specify the relevant conditions to which the request relates and must set out all relevant information that would allow the Commission to determine whether such an exemption notice should be issued given the matters of which the Commission must be satisfied before issuing an exemption order, as set out in paragraph 6.
4. An exemption notice shall be in writing and may be expressed:
 - (a) so as to have effect for an indefinite period or for a period specified in, or determined under the exemption;
 - (b) unconditionally or subject to such conditions as the Commission considers appropriate;
 - (c) so as to have effect in relation to the whole or any part of, as the case may be:
 - (i) the capacity of the new interconnector;
 - (ii) the significant increase in the capacity of the Licensee’s interconnector.
5. An exemption order issued under paragraph 2 may be revoked in accordance with its provisions.
6. The requirements of this paragraph are that –

- (a) the investment in the Licensee's Interconnector enhances competition in electricity supply;
 - (b) the level of risk attached to the investment is such that the investment would not take place unless an exemption order was issued under paragraph 2 of this condition;
 - (c) the Licensee's Interconnector will be owned by a natural or legal person which is separate at least in terms of its legal form from the relevant system operators to whose systems that infrastructure will be connected;
 - (d) charges will be levied on users of the Licensee's Interconnector;
 - (e) since the partial market opening referred to in Article 19 of Directive 96/92/EC, no part of the capital or operating costs of the Licensee's Interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the Licensee's Interconnector; and
 - (f) having any or all of the relevant conditions under consideration not in effect, or suspended from operation, is not detrimental to competition or the effective functioning of the internal electricity market, or the efficient functioning of the regulated system to which the Licensee's Interconnector is linked.
7. An application made under paragraph 3 may relate to a new interconnector or to a part of an Interconnector in so far as that part represents a significant increase of capacity to that Interconnector.

8. In this Licence condition:

“new interconnector”

means an Interconnector not completed by 4 August 2003

Condition 20 Application of Licence Conditions

1. In accordance with this Licence condition, any Licence condition may be suspended from operation in this Licence as may be determined by the Commission following consultation with the Licensee.

Draft for Consultation

SCHEDULE 1 Interconnectors to which this Licence Applies

This Licence applies to the transportation of electricity across and maintenance of the following Interconnectors: -

Interconnector	Address	Authorisation Ref No.
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- 1.
- 2.

Draft for Consultation

SCHEDULE 2

Right of the Commission to Revoke this Licence

1. The Commission may at any time revoke this Licence by not less than 30 days' notice in writing to the Licensee:
 - (a) if the Licensee agrees in writing with the Commission that this Licence should be revoked;
 - (b) if any amount payable under a Levy Order is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Commission has given the Licensee notice in writing that the payment is overdue. Provided that no such notice shall be given earlier than the 16th day after the day on which the amount payable became due;
 - (c) if the Licensee fails to comply with a direction under Section 24 of the Act, a determination under Section 25 of the Act or an order under Section 26 of the Act and which (in respect of any of these cases) has been made in respect of a contravention or apprehended contravention of any of the Conditions of this Licence and (in respect of any of these cases) such failure is not rectified to the satisfaction of the Commission within three months, or such other period as the Commission may determine, after the Commission has given notice of such failure to the Licensee. Provided that in respect of a direction under Section 24 of the Act, no such notice shall be given by the Commission before the expiration of the period within which representations or objections under Section 24 of the Act could be made questioning a direction under Section 24 of the Act or before the proceedings relating to any such representations or objections are finally determined;
 - (d) if the Licensee fails to comply with any order made by the Minister under Sections 39 or 40 of the Act;
 - (e) if the Licensee:
 - (i) is unable to pay its debts (within the meaning of Section 214 of the Companies Act, 1963) or if it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Commission); or
 - (ii) has a receiver or an examiner within the meaning of Section 1 of the Companies (Amendment) Act, 1990, of the whole or any material part of its assets or undertaking appointed; or

- (iii) passes any resolution for winding up other than a resolution previously approved in writing by the Commission; or
 - (iv) becomes subject to an order for winding up by a court of competent jurisdiction; or
 - (v) is dissolved, declared bankrupt or being of unsound mind;
- (f) if:
- (i) there is a change in the control of the Licensee; and
 - (ii) the Commission is satisfied that the new shareholder (together with the other companies in its group), does not have adequate technical, financial or managerial strength, taking into account the size of its shareholding in the Licensee; and
 - (iii) the Commission serves notice on the Licensee stating that the Commission proposes to revoke this Licence in pursuance of this paragraph unless such further change in control of the Licensee as is specified in the notice takes place within the period of three months beginning with the date of service of the notice; and
 - (iv) that further change does not take place within that period;
- (g) if the Licensee fails to notify the Commission as soon as practicable thereafter that a change in the control of the Licensee shall have occurred;
- (h) if the Licensee ceases to carry on the Interconnector Business for a period of 6 months except where the Commission is satisfied that this has occurred as a result of events beyond the reasonable control of the Licensee in which case the Commission shall substitute such longer period as it, in its sole discretion, considers reasonable in all the circumstances; or
- (i) if the Licensee has not commenced carrying on the Interconnector Business within 6 months of the date this Licence comes into force or the date when the Interconnector successfully comes into commercial operation, whichever is the later, except where the Commission is satisfied that this has occurred as a result of events beyond the reasonable control of the Licensee in which case the Commission shall substitute such longer period as it, in its sole discretion, considers reasonable in all the circumstances.

2.
 - (a) For the purposes of paragraph 1(e)(i) of this Schedule, Section 214 of the Companies Act, 1963 shall have effect as if for “£1,000” there was substituted “€50,000” or such higher figure as the Commission may from time to time determine by notice in writing to the Licensee.
 - (b) There is a change in the control of the Licensee for the purposes of paragraphs 1(f) and (g) of this Schedule whenever a person has control of the Licensee who did not have control of the Licensee when this Licence was granted.

Draft for Consultation