

### Description of Definition changes in Licence

The changes to the statutes in both jurisdictions will enlarge the scope of the SEM such that it will include NEMO activities within the definition of market operator. Therefore it is assumed that the entity “**Single Market Operation Business**”, which is specified in the “Terms” of the licence, must include NEMO activities in the I-SEM world. In the current MO licence the “**Single Market Operation Business**” is designed to include the MO activities of both MO licence holders and it uses the entity “**Market Operation Activity**” to describe those activities which relate to one Licensee only. In order to include NEMO activities and to maintain this separation between joint and separate licensee activities a number of new definitions have been ~~created~~invented:

which means the NEMO activity for the licensee only

which means the joint business excluding NEMO (that is the same as “**Single Market Operation Business**” is now.

In addition two existing definitions have had to be changed:

“**Single Market Operation Business**” to make it clear that this includes the NEMO activity for both jurisdictions

“**Market Operation Activity**” to make it clear that this excludes the NEMO activity

**PART 1 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)(j) of the Electricity Regulation Act 1999 (hereinafter referred to as "the Act"), as inserted by Section 12 of the Electricity Regulation (Amendment) (Single Electricity Market) Act 2007, hereby grants to EirGrid plc (hereinafter referred to as "the Licensee") a licence (hereinafter referred to as "this Licence") to undertake in the Republic of Ireland the role of single market operator of the Single Electricity Market subject to the Conditions (hereinafter referred to as "the Conditions") set out in Part 2, such role to be undertaken (where required by this Licence) in conjunction with the holder of the licence granted under Article 10(1)(d) of the Electricity (Northern Ireland) Order 1992 in Northern Ireland ("the Northern Ireland Market Operator Licensee") with the objective that, so far as is required by this Licence, the Licensee will, with the Northern Ireland Market Operator Licensee, undertake the Single Market Operation Business.
- 2 The Conditions are subject to modification or amendment in accordance with Sections 14(3), 14(6), 14A and 19 of the Act. The Licence hereby granted is further subject to the terms as to revocation specified in the Schedule to this Licence.
- 3 This Licence shall come into force on (insert date) {•} and, unless revoked in accordance with the provisions of the Schedule, shall continue in full force and effect until determined by notice in writing given by the Commission to the Licensee.

Sealed with the common seal of the Commission for Energy Regulation on [date as applicable]

~~2007~~

Commissioner

Member of Staff of the Commission

## **PART 2 CONDITIONS OF THE LICENCE**

### Part A

#### Condition A. Transition Condition

##### General Requirement

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

##### Requirement to Co-operate

- 2) Without prejudice to paragraphs 1 and 3, the Licensee shall cooperate with electricity undertakings and Northern Ireland authorised electricity operators (and with the Department of Communications, Energy & Natural Resources, the Commission and such other persons as the Commission may direct) and shall take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to enable:
  - a) electricity undertakings to comply with their statutory or licence obligations to give full and timely effect to the revised SEM arrangements, so that such electricity undertakings are able to comply with them from the time at which they are effective (or intended to be effective);
  - b) electricity undertakings to comply with any directions by the Commission under a provision of their licences equivalent to paragraph 4; and
  - c) Northern Ireland authorised electricity operators to comply with their statutory or licence obligations to prepare for the coming into effect of the revised SEM arrangements,and in the event of any dispute between the Licensee and such other person as to whether a particular step, or thing, is reasonable, the Licensee or such other person may refer the matter to the Commission for determination (which determination shall be final for the purposes of this paragraph).

##### Requirements to Comply with Directions

- 3) Without prejudice to paragraphs 1 and 2, the Licensee shall take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary

or expedient in order to comply with any direction made from time to time by the Commission in accordance with paragraph 4 (and shall by so doing be taken to have complied with such direction).

- 4) The Commission may issue directions to the Licensee setting out the steps (including without limitation those referred to in paragraph 5) to be taken (or procured) by the Licensee which are, in the Commission's reasonable opinion, appropriate in order to give full and timely effect to the revised SEM arrangements, so that the Licensee is able to comply with them from the time at which they are effective (or intended to be effective).
- 5) The directions made by the Commission under paragraph 4 (with which the Licensee is, in accordance with paragraph 3, required to take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to comply) may include requirements regarding the following steps:
  - a) to secure or facilitate the amendment or establishment of any of the core industry documents; and
  - b) to effect the novation of (or other transfer of rights and obligations under) any of the core industry documents from the Licensee or an electricity undertaking to the Licensee or an electricity undertaking.
- 6) The Commission may, at any time, by a further direction in accordance with paragraph 4 (in order to give (or continue to give) full and timely effect to the revised SEM arrangements amend or cancel any direction (or part thereof) previously made under paragraph 4.
- 7) The Commission may not make a direction under paragraph 4 until it has undertaken such period of prior consultation with the Licensee (and such other persons as the Commission deems appropriate) as is reasonable in the circumstances. No direction made under paragraph 4 shall be effective until a copy is served on the Licensee.

#### Requirement not to Frustrate

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

#### Potential Conflict

- 9) If the Licensee is aware of any conflict between its compliance with the provisions of this Condition or any direction under paragraph 4 and its compliance with any other

Condition of the Licence, the Licensee shall promptly inform the Commission of such conflict.

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

#### Information

- 11) The Licensee shall provide to the Commission, in such manner and at such times as the Commission may reasonably require, such information and shall procure and furnish to it such reports as the Commission may reasonably require or deem necessary or appropriate to enable the Commission to monitor the Licensee's compliance with the requirements of this Condition, including (without limitation):
  - a) information as to the Licensee's readiness concerning the revised SEM arrangements; and
  - b) status reports concerning those matters referred to in sub-paragraph (d) of the definition of the revised SEM arrangements, and drafts of any legal documents by which such matters are to be achieved.
- 12) If the Licensee is aware (or should reasonably be aware) of any matter or circumstance which it considers will (or which the Licensee should reasonably consider likely to) hinder or frustrate the giving of full and timely effect to the revised SEM arrangements, the Licensee shall promptly inform the Commission of such matter or circumstance.

#### Further requirements

- 13) Without prejudice to the generality of the foregoing provisions, the Licensee shall:
  - a) take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to secure the co-ordinated and effective commencement and implementation of, and operations under the Single Electricity Market Trading and Settlement Code in light of its modification or amendment (or intended modification or amendment) under or by virtue of the revised SEM arrangements (including the development, testing, trialling and start-up of the systems, processes and procedures employed in such implementation and employed by electricity undertakings and others in connection with such operations); and

- b) carry out a review of the regulatory documents in order to identify any changes which may in the Licensee's opinion be necessary or expedient in light of the revised SEM arrangements (the "identified changes") and provide a report (by such date as the Commission may direct) on the outcome of that review and on the action which the Licensee proposes to give effect to the identified changes.

#### Coming into Effect and Cessation of Effect

- 14) The provisions of this Condition (other than those of this paragraph and of paragraphs 15 and 16 which shall come into immediate effect) shall come into effect on such day, and subject to such transitional arrangements, as the Commission may by direction appoint. Different days may be so appointed for different provisions and for different purposes.
- 15) This Condition shall cease to have effect on 31 December 2018, without prejudice to the continuing enforceability of any right or obligation (including any requirement to comply with a direction of the Commission issued prior to that date) which may have accrued or otherwise fallen due for performance prior to that date.

#### Definitions

- 16) In this Condition, unless the context otherwise requires:

"core industry documents"

means those documents relating to the revised SEM arrangements which may from time to time be designated, by direction of the Commission, as such for the purposes of this Condition;

"Northern Ireland authorised electricity operators"

has the meaning given to the term "authorised electricity operator" in the Northern Ireland Market Operator Licence;

“regulatory documents”

means those codes, agreements and other documents which the Licensee is required to prepare, be party to or have in effect (or with which the Licensee is required to comply) under or by virtue of this Licence or the Act, including without prejudice to the generality, the Market Operator Agreement; and

## **Section B Enduring 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 Act 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 either before or after the date when this Licence comes into force.

1 Any word or expression defined for the purposes of any provision of the Act or the Internal Market Regulations shall, unless otherwise defined herein, have the same meaning when used in the Conditions or in the Schedule.

2 In the Conditions and in the Schedule, unless otherwise specified or the context otherwise requires:

"**Act**" refers to the Electricity Regulation Act 1999;

"**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;

"**Authority**" means the Northern Ireland Authority for Utility Regulation established under Article 3 of the Energy (Northern Ireland) Order 2003, as amended by Article 3 of the Water and Sewerage Services (Northern Ireland) Order 2006;

"**Board**" means the Electricity Supply Board;

"**CACM Regulation**" means Commission Regulation (EU) 2015/1222 of 24 July 2015, establishing a Guideline on Capacity Allocation and Congestion Management;

"**Distribution Code**" means the Distribution Code prepared by the Board pursuant to Section 33 (Preparation of grid code and distribution code) of the Act, and approved by the Commission, as from time to time revised, amended, supplemented or replaced with the approval or at the instance of the Commission;

"**distribution system**" means all electric lines of the Board which the Board may, with the approval of the Commission, specify as being part of the Board's distribution system, and includes any electric plant, transformers and switchgear of the Board which is used for conveying electricity to final customers;

"**EirGrid plc**" means the company formed under Regulation 34 of S.I. 445 of 2000;

"**Ex-Ante Markets**" means the day-ahead and intraday markets for the trading of wholesale



electricity in the Single Electricity Market ~~prior to the relevant Gate Closure;~~

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

"**final customers**" means customers who purchase electricity for their own consumption;

~~"**Gate Closure**" has the meaning set out in the Single Electricity Market Trading and Settlement Code, Part B;~~

"**Grid Code**" means the Grid Code prepared by the Transmission System Operator pursuant to Section 33 (Preparation of grid code and distribution code) of the Act and approved by the Commission, as from time to time revised, amended, supplemented or replaced;

"**holding company**" means a holding company within the meaning of the Companies Acts;

"**Interconnector**" means for the purposes of this Licence, equipment used to link the transmission system to electricity systems outside of the Island of Ireland, and (for the avoidance of doubt) does not include the North/South Circuits;

"**Internal Market Regulations**" means S.I. 445 of 2000 and the European Communities (Internal Market in Electricity) Regulations 2005 (S.I. 60 of 2005);

"**Island of Ireland**" means the Republic of Ireland and Northern Ireland;

"**Licensee**" means EirGrid plc, in its capacity as Republic of Ireland Market Operator for the Single Electricity Market;

"**Market Operation Activity**" means the business of the Licensee as provided for in this Licence, including the activity provided for in Condition 3B, but excluding the **NEMO Activity**;

"**Market Operator Agreement**" has the meaning given to that expression in Condition 2;

"**Market System Development Plan**" means the plan required to be prepared by the Licensee in accordance with Condition 4 of this Licence;

"**Metering Code**" means the metering code prepared by the Board 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;

"**Nominated Electricity Market Operator (or NEMO) Activity**" means the activities of the Licensee in performing the activities required of a Nominated Electricity Market Operator for performance of day-ahead and intraday market coupling under the CACM Regulation and the corresponding activities in relation to the interim intraday market coupling pending the development of the enduring arrangements under the CACM Regulation.

"**NEMO Business**" means the NEMO Activity of the Licensee together with the Northern Ireland NEMO Activity;

"**North/South Circuits**" means the electric lines and electrical plant and meters used for conveying electricity directly to or from a substation or convertor station within the Republic of Ireland directly to or from a substation or convertor station within Northern Ireland (and not for

conveying electricity elsewhere);

**"Northern Ireland Market Operator Licence"** means the licence granted, under Article 10(1)(d) of the Electricity (Northern Ireland) Order 1992, to SONI;

**"Northern Ireland Market Operator Licensee"** means SONI and/or any other company or person which may from time to time be authorised to undertake the role of market operator of the Single Electricity Market by a licence granted under Article 10(1)(d) of the Electricity (Northern Ireland) Order 1992;

**"Northern Ireland NEMO Activity"** has the meaning given to the expression "NEMO Activity" in the Northern Ireland Market Operator Licence;

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

**"Northern Ireland System Operator Licence"** means the licence granted under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 to SONI on [●] 2007 or a licence subsequently granted under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992;

**"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;

**"Republic of Ireland Market Operator"** means EirGrid plc and/or any other company or person which may from time to time be authorised to undertake in the Republic of Ireland the role of single market operator of the Single Electricity Market by a licence granted under Section 14 (1)(j) of the Act;

**"representation"** includes any objection or any other proposal made in writing;

**"revised SEM arrangements"** means:

- (a) any modifications made (or which the Commission has formally indicated are likely to be made) to the Licence, or to the Licences of any electricity undertaking, for the purpose (in each case) of implementing the high level design set out in the document entitled, "Integrated Single Electricity Market (I-SEM); SEM Committee Decision on High Level Design", with reference SEM-14-085a and published on 17 September 2014;
- (b) the conditions of the Transmission System Operator Licence and the Licence;
- (c) the terms imposed in any exemption granted pursuant to section 14(2F) of the Act that reflect a modification referred to in sub-paragraph (a); and
- (d) the matters that the Licensee knows (or should reasonably know) are envisaged by the modifications and conditions referred to in subparagraphs (a) and (b) (including, without

limitation, the establishment, amendment or termination of, or the transfer of rights and obligations under, core industry documents); including, without prejudice to the generality, any of the provisions or matters described above by which the Licensee is bound (or intended to be bound);

"**SEM Go-Live**" means the time and date designated as such by the Commission for the purposes of the Single Electricity Market;

"**Separate Business**" means any business or businesses of the Licensee, whether carried out directly or by an affiliate or related undertaking of the Licensee, other than the SMO & NEMO Business;

"**S.I. 445 of 2000**" means the European Communities (Internal Market in Electricity) Regulations 2000;

"**Single Electricity Market**" means the single wholesale electricity market for the Island of Ireland implemented in the Republic of Ireland pursuant to the Act and the Single Market Regulations;

"**Single Electricity Market Trading and Settlement Code**" means the Trading and Settlement Code provided for in Regulation 4 of the Single Market Regulations, as from time to time revised, amended, supplemented or replaced;

"**Single Electricity Market Trading and Settlement System**" means the hardware, software and processes operated by or on behalf of the Licensee and/or the Northern Ireland Market Operator Licensee for the operation of the trading of electricity in the Single Electricity Market and ~~the settlement~~ arrangements described in Condition 3 of financial obligations in respect thereof;

"**Single Market Operation Business**" means the Market Operation Activity taken together with the equivalent activity of the Northern Ireland Market Operator Licensee;

"**SMO & NEMO Business**" means the Single Market Operation Business and the NEMO Business taken together;

"**Single Market Regulations**" means the Electricity Regulation Act 1999 (Single Electricity Market) Regulations 2007;

"**SONI**" means SONI Limited, a company incorporated in Northern Ireland under company number NI 038715;

"**subsidiary**" has the meaning given in the Companies Acts;

"**System Operator Agreement**" means the agreement of that name established pursuant to the license held by the Transmission System Operator;

"**transmission system**" means the system of electric lines comprising wholly or mainly the Board's high voltage lines and electric plant and which is used for conveying electricity from a

generating station to a substation, from one generating station to another, from one substation to another or to or from any Interconnector or to final customers (including such part of the North/South Circuits as is owned by the Board) (but shall not include any such lines which the Board may, with the approval of the Commission, specify as being part of the distribution system), and shall include any Interconnector owned by the Board;

**"Transmission System Operation Business"** means the business of the Transmission System Operator as operator of the transmission system;

**"Transmission System Operator"** means the Licensee in its capacity as the licensed transmission system operator;

**"Transmission System Operator Licence"** means the licence granted to the Licensee in its capacity as the licensed transmission system operator under Section 14(1)(e) of the Act;

**"Transmission System Owner"** means the Board as owner of the transmission system, licensed pursuant to Section 14(1)(f) of the Act.

4. Unless otherwise specified:

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

(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, Section, 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.

8. Where any Condition of this Licence requires the Licensee to act "in conjunction with the Northern Ireland Market Operator Licensee" in the fulfilment of an obligation, the Licensee shall:

(a) to the extent the Licensee is reasonably capable of fulfilling that obligation without the assistance of the Northern Ireland Market Operator Licensee, be obliged to fulfil that obligation and shall use all reasonable endeavours to work together with the Northern Ireland Market Operator Licensee in so doing;

(b) to the extent the Licensee is not reasonably capable of fulfilling that obligation without the assistance of the Northern Ireland Market Operator Licensee:

(i) ensure that the Market Operator Agreement requires the Northern Ireland Market Operator Licensee to provide the assistance in question, and, where it does not, seek to amend the Market Operator Agreement so that it does; and

(ii) exercise all rights available to the Licensee (including under the Market Operator Agreement) in order to obtain the assistance in question; and

(iii) on obtaining the assistance in question, be obliged to fulfil that obligation and shall use all reasonable endeavors to work together with the Northern Ireland Market Operator Licensee in so doing; and

(c) to the extent the Northern Ireland Market Operator Licensee is obliged (by the laws or licence obligations applicable to it) to act in conjunction with the Licensee in the fulfilment of an equivalent obligation, be obliged to provide such assistance as the Northern Ireland Market Operator Licensee reasonably requests in order to enable it to fulfil that obligation.

9. The provisions of this Licence which relate to the NEMO Activity and / or the NEMO Business shall be understood as relating thereto (a) only in respect of the period during which Condition 3A is in effect in whole or in part (without prejudice to the continuing enforceability of any right or obligation which may have accrued or otherwise fallen due for performance prior to such Condition ceasing to have effect) and 9b) subject to any transitional provision which the Commission may by direction make in light of the coming into effect of that Condition.

**Condition 2 Market Operator Agreement**

1. The Licensee shall enter into, comply with and, in conjunction with the Northern Ireland Market Operator Licensee, at all times maintain in force, an agreement (the "**Market Operator Agreement**") which:
  - (a) insofar as any matter is within the control of the Northern Ireland Market Operator Licensee and affects the ability of the Licensee to carry on the Market Operation Activity and / or the NEMO Activity, ensures that such matter is carried out in a manner such that the Licensee is capable, on a continuing basis, of carrying on the Market Operation Activity and / or the NEMO Activity (as appropriate);
  - (b) insofar as any matter is within the control of the Licensee in carrying on the Market Operation Activity and / or the NEMO Activity and affects the ability of the Northern Ireland Market Operator Licensee to carry on the Northern Ireland Market Operation Activity and / or the Northern Ireland NEMO Activity, ensures that such matter is carried out in a manner such that the Northern Ireland Market Operator Licensee is capable, on a continuing basis, of carrying on the Northern Ireland Market Operation Activity and / or the Northern Ireland NEMO Activity; and
  - (c) is designed to facilitate achievement of the following objectives:
    - (i) the efficient discharge by the Licensee of the obligations imposed upon it by this Licence and by the Northern Ireland Market Operator Licensee of the obligations imposed upon it by the Northern Ireland Market Operator Licence; and
    - (ii) the development and administration of the SMO & NEMO Business in a financially secure, economical, efficient and coordinated manner.
2. Without prejudice to any other Condition in this Licence, the Licensee shall perform its obligations under the Market Operator Agreement in a manner that facilitates the carrying out of the SMO & NEMO Business in conjunction with the Northern Ireland Market Operator Licensee.
3. The Licensee shall, in conjunction with the Northern Ireland Market Operator Licensee, periodically review (including at the request of the Commission) the Market Operator Agreement and its implementation.

4. Save as provided for in paragraphs 5 and 6 below, the Licensee shall procure that the Market Operator Agreement is not amended otherwise than by mutual consent of both parties thereto. Where a proposed amendment may have a material impact on the business of any electricity undertaking or on the operation of the Single Electricity Market, the Licensee shall consult with electricity undertakings and give due consideration to any representations received.
5. The Licensee shall ensure that the Market Operator Agreement allows either party to the Market Operator Agreement to (without restriction) refer to the Commission any proposed amendment to the Market Operator Agreement that the other party thereto disputes where the dispute remains outstanding for more than 30 days after either party serves a notice on the other that refers to this paragraph. Where a proposed amendment is referred to the Commission in accordance with the provision of the Market Operator Agreement included in order to meet the requirements of this paragraph, the Licensee shall comply with (and, in conjunction with the Northern Ireland Market Operator Licensee, amend the Market Operator Agreement to conform to) that amendment to the extent it is approved by the Commission.
6. In addition to the matters specified in paragraph 5, the Market Operator Agreement may provide for there to be referred to the Commission for determination (subject to the Commission accepting such referral) such additional matters arising under the Market Operator Agreement as may be specified in the Market Operator Agreement.
7. The Licensee shall, in conjunction with the Northern Ireland Market Operator Licensee, report annually to the Commission on the operation of the Market Operator Agreement to the extent relevant to the functions, rights and obligations of the Licensee.
8. Where, and to the extent, required by the Commission, the Licensee shall publish and make available the Market Operator Agreement on the web-site for the Single Market Operation Business and on the web-site for the NEMO Business.
9. The provisions of this Condition inserted (or, as the case may be, removed) by virtue of decision of the Commission dated [#] shall come into (or, as the case may be, continue to have) effect on (or, as the case may be, until) such day, and subject to such



transitional arrangements, as the Commission may by direction appoint. Different days may be so appointed for different provisions and for different purposes.

10. In this Condition:

**“Northern Ireland Market Operation Activity”** has the meaning given to the expression “Market Operation Activity” in the Northern Ireland Market Operation Licence.

**Condition 3 Market System and the Single Electricity Market Trading and Settlement Code**

1. The Licensee shall enter into and, in conjunction with the Northern Ireland Market Operator Licensee, at all times administer and maintain in force, the Single Electricity Market Trading and Settlement Code, being a document which:
  - (a) sets out the terms of the trading and settlement arrangements described in paragraph 3;
  - (b) is designed to facilitate achievement of the objectives set out in paragraph 4; and
  - (c) contains modification procedures which provide (subject to any amendment under paragraph (e) below) that any and all modifications to the Single Electricity Market Trading and Settlement Code (but not, necessarily, to the Agreed Procedures) must be subject to the prior approval of the Commission and which enable the Commission to propose modifications to the Single Electricity Market Trading and Settlement Code,and the Licensee shall be taken to have complied with this paragraph to the extent that it:
  - (d) adopts, on the date of such designation, as the Single Electricity Market Trading and Settlement Code the document designated as such by the Commission for the purposes of this Condition;
  - (e) adopts, on the date of any such direction, such amendments to the Single Electricity Market Trading and Settlement Code (including amendments to the modification procedures described at paragraph (c) above) as the Commission may (following consultation (whether before or after the coming into effect of this paragraph (e)) with such persons as it considers appropriate) direct from time to time in view of the revised SEM arrangements (provided that no such direction(s) may be issued by the Commission after 31 December 2018); and
  - (f) (on an on-going basis from SEM Go-Live) reviews and proposes such modifications to that document (in accordance with the modification provisions therein) as would be necessary to ensure that that document meets the requirements of this paragraph 1.

2. The Licensee shall comply with the Single Electricity Market Trading and Settlement Code insofar as applicable to it as the holder of a licence granted under Section 14(1)(j) of the Act.
3. The trading and settlement arrangements referred to in paragraph 1(a) are arrangements which (a) set out rules and procedures for the sale and purchase of wholesale electricity in the Single Electricity Market other than in the Ex-Ante Markets and the Capacity Market and (b) sets out the settlement arrangements for the Capacity Market.
4. The objectives referred to in paragraph 1(b) are:
  - (a) to facilitate the efficient discharge by the Licensee of the obligations imposed on it by this Licence and to facilitate the efficient discharge by the Northern Ireland Market Operator Licensee of the obligations imposed on it by the Northern Ireland Market Operator Licence;
  - (b) to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner;
  - (c) to facilitate the participation of electricity undertakings engaged in the generation, supply or sale of electricity in the trading arrangements under the Single Electricity Market;
  - (d) to promote competition in the Single Electricity Market;
  - (e) to provide transparency in the operation of the Single Electricity Market;
  - (f) to ensure no undue discrimination between persons who are parties to the Single Electricity Market Trading and Settlement Code; and
  - (g) through the development of the Single Electricity Market, to promote the short-term and long-term interests of consumers of electricity with respect to price, quality, reliability, and security of supply of electricity.
5. The Licensee shall provide and operate the Single Electricity Market Trading and Settlement System in accordance with the Single Electricity Market Trading and Settlement Code and in accordance with this Licence and any requirements which the Commission may impose on the Licensee.
6. The Licensee shall, in conjunction with the Northern Ireland Market Operator Licensee, ensure that persons who are a party to the Single Electricity Market Trading and Settlement Code or who wish to become a party to the Single Electricity Market Trading and Settlement Code have, to the extent that is reasonably practicable, a single point of

- contact when interfacing with the Single Market Operation Business.
7. The Licensee shall provide to the Commission such information as the Commission may request concerning the Single Electricity Market Trading and Settlement System or any aspect of its operation.
  8. The Licensee shall, in conjunction with the Northern Ireland Market Operator Licensee and with effect from SEM Go-Live, establish and maintain a web-site for the Single Market Operation Business.
  9. The Licensee shall, where required by the Commission, publish the Single Electricity Market Trading and Settlement Code on the web-site for the Single Market Operation Business.
  10. The provisions of this Condition inserted (or, as the case may be, removed) by virtue of decision of the Commission dated [#] shall come into (or, as the case may be, continue to have) effect on (or, as the case may be, until) such day, and subject to such transitional arrangements, as the Commission may by direction appoint. Different days may be so appointed for different provisions and for different purposes.
  11. In this Condition: "**Agreed Procedures**" means the detailed procedures that form part of the Single Electricity Market Trading and Settlement Code, but which are subsidiary to the main provisions of the Single Electricity Market Trading and Settlement Code, as (subject thereto) such expression is defined in the Single Electricity Market Trading and Settlement Code; "**Capacity Market**" has the meaning given to that expression in the Transmission System Operator Licence; and "**Capacity Market Code**" has the meaning given to that expression in the Transmission System Operator Licence.

Condition 3A Nominated Electricity Market Operator (NEMO)

1. The purpose of this Condition is to make provision in relation to the duties of the Licensee in its capacity as holder of the Designation.
2. The Licensee shall, at all times during which the Designation is in effect:
  - (a) fulfill its obligations as NEMO as provided for in the CACM Regulation;
  - (b) maintain compliance with the requirements of Article 6 of the CACM Regulation;
  - (c) ensure that it satisfies the conditions attached to the Designation; and
  - (d) comply with the provisions of the ~~NEMO~~ Exchange Rules.
3. Within three months of the coming into effect of this Condition the Licensee shall in conjunction with the Northern Ireland Market Operator Licensee prepare and submit to the Commission for approval a set of rules, to be known and referred to as the ~~NEMO~~ Exchange Rules, setting out the terms on which it will carry out the NEMO Activity. The ~~NEMO~~ Exchange Rules shall, subject to any directions in respect of same issued by the Commission under paragraph 5 of this Condition, be consistent with the requirements of (a) the CACM Regulation and the Electricity Market Regulation with respect to the operation of the Ex-Ante Markets and (b) the Single Electricity Market Trading and Settlement Code (provided that any such directions shall themselves be consistent with the requirements specified at (a) above).
4. Where the Licensee wishes to amend the ~~NEMO~~ Exchange Rules it shall submit the proposed amendments to the Commission for approval prior to their coming into effect. Any such amendment shall be consistent with the provisions of paragraph 3.
5. The Commission may from time to time give directions to the Licensee in respect of:
  - (a) the matters it wishes to see specified in the ~~NEMO~~ Exchange Rules; and

- (b) the review and revision by the Licensee from time to time of the ~~NEMO~~ Exchange Rules,

and the Licensee shall comply with directions given by the Commission under this paragraph.

6. The Licensee shall at all times charge in respect of its NEMO Activity in accordance with its NEMO Statement of Charges and with the requirements of the CACM Regulation. The Commission shall specify from time to time by direction the form of the NEMO Statement of Charges, which shall include a price list.
7. The Licensee shall obtain the Commission's prior approval to the NEMO Statement of Charges. In the event that the Commission considers there to be sufficient competition for NEMO services in the Single Electricity Market, it may issue a direction removing the foregoing requirement for such period of time as it specifies and in any case, until such time as it issues a further direction to re-apply such requirement.
8. The Licensee shall, in conjunction with the Northern Ireland Market Operator Licensee establish and maintain a web-site for the NEMO Business. The Licensee shall publish the approved ~~NEMO~~ Exchange Rules and the NEMO Statement of Charges on the web-site for the NEMO Business.
9. The Licensee shall, in conjunction with the Northern Ireland Market Operator Licensee, ensure that the persons who receive or wish to receive NEMO services from the Licensee have, to the extent reasonably practicable, a single point of contact when interfacing with the NEMO Business.

#### Coming into, Cessation of Effect

10. The provisions of this Condition (other than those of this paragraph and of paragraphs 11 and 12 which shall come into immediate effect) shall come into effect on such day, and subject to such transitional arrangements as the Commission may by direction appoint. Different days may be so appointed for different provisions and for different purposes.
11. This Condition shall cease to have effect immediately upon the revocation of the

Designation by the Commission without prejudice to the continuing enforceability of any right or obligation which may have accrued or otherwise fallen due for performance prior to that date.

## Definitions

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

**“Designation”** means the designation of the Licensee by the Commission (which took effect at 12:00am on 3 October 2015) as NEMO for single day-ahead and intraday coupling in the Republic of Ireland as amended and/or replaced from time to time;

**“Electricity Market Regulation”** means Regulation (EC) 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity;

**“NEMO”** has the meaning ascribed to it by the CACM Regulation; and

**“NEMO Statement of Charges”** means a list of the charges to be applied by the Licensee in respect of its NEMO Activity.

### **Condition 3B Agent of Last Resort**

1. The Licensee shall in conjunction with the Northern Ireland Market Operator Licensee provide Agent of Last Resort (“AoLR”) services in accordance with the objective set out in paragraph 2 and the scope set out in paragraph 3.
2. The objective referred to in paragraph 1 is to facilitate the participation of eligible generators in the Ex-Ante Markets.
3. The scope of the services referred to in paragraph 1 shall be the putting in place and maintenance of the necessary arrangements to facilitate the trading of energy by eligible generators in the Ex-Ante Markets.
4. In providing AoLR services, the Licensee shall not undertake any energy trading on its own behalf and shall not assume any market risks.
5. The Licensee shall ensure that the necessary arrangements are in force such that all eligible generators can use the AoLR services upon payment of the charges set out in the AoLR statement of charges.
6. The Licensee shall in conjunction with the Northern Ireland Market Operator Licensee prepare and submit to the Commission for approval the form of the AoLR Contract.
7. The Licensee shall publish and make available on the web-site for the Single Market Operation Business a notice which shall include the form of AoLR Contract (as approved by the Commission) and the AoLR Procedures.
8. The Licensee shall review the scope and operation of AoLR services from time to time and in any event at least once a year. If following such review, the Licensee wishes to propose amendments to the AoLR Contract, it shall consult with such parties as it reasonably believes could be affected by such amendments and thereafter seek the approval of the Commission to such proposed amendments. The amended AoLR Contract (once approved) shall come into effect on the date as determined by the Commission.



9. Following the review of its activities under paragraph 8, the Licensee shall prepare an annual report (in respect of the preceding year) and submit it to the Commission. The report shall be published on the web-site for the Single Market Operation Business.
10. The Licensee shall develop, administer and maintain the AoLR Procedures. Such procedures shall include a modification process that includes consultation by the Licensee ~~with AoLR Participants and any parties that propose to become AoLR Participants.~~

#### Coming into Effect

11. The provisions of this Condition (other than those of this paragraph and of paragraph 12 which shall come into immediate effect) shall come into effect on such day, and subject to such transitional arrangements as the Commission may by direction appoint. Different days may be so appointed for different provisions and for different purposes.

#### Definitions

12. In this Condition:

**“AoLR Contract”** means the terms and conditions of the agreement to be entered into between the Licensee and each AoLR Participant for the provision of AoLR services, which exclude the AoLR Procedures as amended from time to time;

**“AoLR Procedures”** mean the operational processes or procedures to be followed by the Licensee and/or the AoLR Participant when providing or receiving (as the case may be) AoLR services;

**“AoLR Participant”** means any eligible generator that utilizes AoLR services provided by the Licensee;

**“De Minimis Threshold”** has the meaning set out in of the Single Electricity Market Trading and Settlement Code, Part B;

**“eligible generator”** means: (a) any Generator Unit with a rated capacity lower than the

De Minimis Threshold or (b) any Generator Unit producing energy from renewable sources as that term is defined in Article 2 of Directive 2009/28/EC;

**“Generator Unit”** has the meaning set out in the Single Electricity Market Trading and Settlement Code, Part B.

**Condition 4 Market System Development Plan**

1. Where required by the Commission, and within such timeframe as the Commission may reasonably request, ~~the Licensee shall in conjunction with the Northern Ireland Market Operator Licensee, prepare and submit to the Commission for approval a plan, to be known and referred to as the Market System Development Plan, for the development of the Single Electricity Market Trading and Settlement System over the following two calendar years.~~
2. The Licensee shall in conjunction with the Northern Ireland Market Operator Licensee, revise the Market System Development Plan at least annually in order that the information set out in the Market System Development Plan continues to be accurate in all material respects and shall submit all revisions to the Commission for approval.
3. The Licensee shall:
  - (i) engage in a public consultation process, including any other form of consultation that the Commission may direct, before submitting the Market System Development Plan to the Commission for approval; and
  - (ii) report in writing to the Commission on the results of that process not later than when submitting the Market System Development Plan to the Commission for approval.
4. Where, and to the extent, required by the Commission, the Licensee shall amend the Market System Development Plan and shall submit such amended plan to the Commission for approval.
5. Where, and to the extent, required by the Commission, the Licensee shall publish and make available the Market System Development Plan on the web-site for the Single Market Operation Business ~~and on the web-site for the NEMO Business.~~
6. The Commission may from time to time give directions to the Licensee in respect of:
  - (i) the matters to be specified in the Market System Development Plan; and
  - (ii) the review and revision by the Licensee from time to time of the Market System Development Plan,

and the Licensee shall comply with directions given by the Commission under this paragraph.

**Condition 5 Procurement of Assets and Services**

1. Subject to paragraphs 2 and 3, the Licensee shall procure such assets and services as may be necessary and appropriate to enable the Licensee to discharge its obligations under the Act, the Single Market Regulations, this Licence, the CACM Regulation and the Single Electricity Market Trading and Settlement Code.
2. In procuring assets and services pursuant to paragraph 1, the Licensee shall (where appropriate) do so jointly with the Northern Ireland Market Operator Licensee.
3. In procuring assets and services pursuant to paragraph 1, the Licensee shall follow a procurement strategy designed to facilitate (to the extent within the Licensee's control in undertaking the SMO & NEMO Business) achievement of the objectives set out in paragraph 4, and which, to the extent that a procurement decision (whether alone or when considered with other procurement decisions) will have a material impact on the costs to be incurred by a class of electricity undertakings, includes the prior consultation by the Licensee with such class of electricity undertakings.
4. The objectives referred to in paragraph 3 are insofar as the procurement of the Single Electricity Market Trading and Settlement System (and/or the manner in which such procurement is undertaken) can achieve the same:
  - (a) ensuring that the Single Electricity Market is developed and, at all times, administered in a financially secure, economical, efficient and coordinated manner;
  - (b) minimising (in aggregate) (i) where the Licensee is aware of such costs, the overall cost of the development, implementation and operation of the hardware, software and processes which electricity undertakings require in order to participate in the Single Electricity Market; and (ii) the overall costs of the development, implementation and operation of the Single Electricity Market Trading and Settlement System; and
  - (c) facilitating the participation of electricity undertakings in the Single Electricity Market in a manner that does not unduly disadvantage any person or class or classes of persons when compared with any other person or class or classes of persons.
5. Any provision of assets or services:

- (a) to the Licensee by any affiliate or related undertaking of the Licensee; or
- (b) by the Licensee to any affiliate or related undertaking of the Licensee,

shall be on arms-length terms.

6. Any provision of assets or services of a material nature by the Market Operation Activity and / or the NEMO Activity to any Separate Business of the Licensee, or by any Separate Business of the Licensee to the Market Operation Activity and /or the NEMO Activity shall (insofar as possible given that they are a single legal entity) be undertaken on arms-length terms (or such other specific terms as agreed in advance in writing by the Commission); and:

- (a) where such Separate Business is the Transmission System Operation Business, the cost of such provision shall be apportioned between the Market Operation Activity, and / or the NEMO Activity (as appropriate), and the Transmission System Operation Business at cost; and
  - (b) where such Separate Business is not the Transmission System Operation Business, the cost of such provision shall be apportioned between the Market Operation Activity, and / or the NEMO Activity (as appropriate) and such Separate Business at a commercial rate.
7. Any question arising as to materiality shall be determined by the Commission for the purposes of this Condition.

**Condition 6 Relevant Market Assets**

- 1 Where required by the Commission, and within such time frame as the Commission may reasonably require, the Licensee shall, in conjunction with the Northern Ireland Market Operator Licensee, prepare and maintain a register of all relevant market assets in a form as specified by the Commission from time to time, and identifying those relevant market assets of which the Licensee and Northern Ireland Market Operator Licensee are both owners. The Licensee shall provide the Commission with such a register within such time frame as the Commission may direct and shall provide the Commission with an updated version of such a register annually.
- 2 The Licensee shall not dispose of, or relinquish operational control over, any relevant market asset if the disposal or relinquishment of control would adversely affect its ability or the ability of Northern Ireland Market Operator Licensee to discharge their respective obligations under any applicable laws or regulation, or the carrying on of activities authorised or required by this Licence or the licence held by Northern Ireland Market Operator Licensee, and any question arising under this Condition shall be determined by the Commission.
- 3 The Licensee shall not dispose of, or relinquish operational control over, any relevant market asset if the disposal or relinquishment of control would adversely affect the ability of the Transmission System Operator or Northern Ireland System Operator to discharge their respective obligations under any applicable law or regulation, or the carrying on of activities authorised or required by the licence to operate the transmission system held by the Transmission System Operator or the licence to participate in the transmission of electricity held by Northern Ireland System Operator, and any question arising under this Condition shall be determined by the Commission.
- 4 The Commission shall issue directions from time to time requiring the Licensee to give prior written notification to the Commission of proposed disposals of relevant market assets of a specified description and these directions may include a direction that certain categories of such disposals may not take place until either the Commission has expressly agreed to them or a specified time period has elapsed.
- 5 Where a relevant market asset is owned jointly with the Northern Ireland Market Operator Licensee, references in this Condition to the disposal of that relevant market asset shall be read as references to the disposal of the Licensee's interest in that relevant market asset.
- 6 In this Condition:



**"disposal"** includes any sale, assignment, gift, lease, licence, transfer, mortgage, charge, restriction on use (whether physical or legal), or the grant of any other encumbrance or the permitting of any encumbrance to subsist or any other disposition to a third party and "dispose" shall be construed accordingly;

**"relevant market asset"** means:

- a) any material Single Electricity Market Trading and Settlement System equipment used by the Licensee in the discharge of its functions under this Licence; and
- (b) any legal or beneficial interest which can be considered material in land and/or premises upon which any of the foregoing is situate and/or used by the Licensee in the discharge of its functions under this Licence;

**"relinquishment of operational control"** includes entering into any agreement or arrangement whereby operational control of a relevant market asset (or relevant market assets) is not, or ceases to be, under the sole management of the Licensee or of the Licensee and the Northern Ireland Market Operator Licensee.

7. Any question arising as to materiality shall be determined by the Commission for the purposes of this Condition

**Condition 7 Additional Use or Disposal of Relevant Market Assets**

1. If any or all of the relevant market assets are being used or disposed of, or if any or all of the relevant market assets are proposed to be used or disposed of by the Licensee (or any Separate Business of the Licensee) for interests other than or in addition to discharging the functions of the SMO & NEMO Business, the Licensee shall, as soon as is practicable after the date of issue of this Licence, notify the Commission in writing of same and provide the Commission with such information as the Commission may require in relation to such usage or disposal.
2. The Commission shall issue directions from time to time requiring the Licensee to give prior written notification to the Commission of proposed additional uses or disposals of relevant market assets of a specified description and these directions may include a direction that certain categories of such disposals may not take place until either the Commission has expressly agreed to them or a specified time period has elapsed.

3. In this Condition:

**"disposal"** has the meaning as defined in Condition 6 and "disposed" shall be construed accordingly;

**"relevant market assets"** has the meaning as defined in Condition 6.

4. Any question arising as to materiality shall be determined by the Commission for the purposes of this Condition.

**Condition 8 System Operator Agreement**

The Licensee shall, no later than 1 October 2007, accede to and comply with the System Operator Agreement insofar as applicable to the Licensee in its capacity as the holder of a licence granted under Section 14(1)(j) of the Act

**Condition 9 Duty of Non-Discrimination**

- 1 In respect of the Market Operation Activity and the NEMO Activity, the Licensee shall not discriminate unduly between persons or classes of persons, or between system users or classes of system users, particularly in favour of its subsidiaries, associated or affiliated undertakings, joint ventures or shareholders.
- 2 The Licensee shall establish a compliance programme on the measures taken to ensure that discriminatory conduct by it or its employees is prevented, which shall include specific obligations imposed on its employees to prevent discrimination.
- 3 The Licensee shall report to the Commission at intervals of not more than one year, in such form as the Commission determines, specifying the measures taken and the level of compliance in relation to paragraph 2. The report shall be published by the Licensee in such manner as shall be determined by the Commission.

**Condition 10 Performance of the Single Market Operation Business**

1. The Licensee shall, in conjunction with the Northern Ireland Market Operator Licensee, no later than SEM Go-Live, submit to the Commission for approval a report setting out the performance criteria against which the performance of the Single Electricity Market Trading and Settlement System may be measured.
2. The performance criteria submitted in accordance with paragraph 1 shall, subject to such amendments as the Commission may direct on first approving such criteria and subject to paragraph 4, constitute the "**Performance Criteria**" for the purposes of this Condition.
3. The Commission may periodically:
  - (a) review the Performance Criteria (undertaking such consultation as it considers appropriate); or
  - (b) require the Licensee, in conjunction with the Northern Ireland Market Operator Licensee, to review the Performance Criteria in consultation with electricity undertakings, and following any such review send to the Commission:
    - (i) a report on the outcome of such review;
    - (ii) any revisions which the Licensee proposes to make to the Performance Criteria (having regard to the outcome of the review); and
    - (iii) any written representations or objections from any electricity undertakings arising during the consultation process and subsequently maintained.
4. The Commission may, following any review undertaken in accordance with paragraph 3, issue directions requiring the Licensee to revise the Performance Criteria in such manner as may be specified in the directions, and the Licensee shall forthwith comply with any such directions.
5. The Licensee shall, in conjunction with the Northern Ireland Market Operator Licensee, conduct the Single Market Operation Business in the manner that it reasonably considers best calculated to achieve the Performance Criteria.

6. The Licensee shall, in conjunction with the Northern Ireland Market Operator Licensee, report annually to the Commission on the performance of the Single Electricity Market Trading and Settlement System against the Performance Criteria.
7. The Licensee shall, in conjunction with the Northern Ireland Market Operator Licensee, on a monthly basis or at such other intervals as the Commission may reasonably request, submit to the Commission a report, setting out in reasonable detail, information about the level of compliance with their obligations under the Single Electricity Market Trading and Settlement Code achieved by the parties thereto.
8. Where required by the Commission, the Licensee shall publish the Performance Criteria, and the report on the Performance Criteria referred to in paragraph 6, on the web-site for the Single Market Operation Business.

**Condition 11 Prohibited Activities**

- 1 The Licensee shall not, and shall procure that any affiliate or related undertaking of the Licensee shall not, on behalf of the Licensee, engage in the generation, distribution or supply of electricity on the Island of Ireland.
- 2 The Licensee shall notify the Commission of any interests the Licensee has in any other electricity undertaking forthwith, outside of the Island of Ireland, directly or indirectly acquired. The Licensee shall provide not less than two months prior written notification to the Commission of interests in any other electricity undertakings that the Licensee intends to, directly or indirectly, acquire.
- 3 The Licensee's provision of services in accordance with Condition 3B shall not be considered to be in contravention of the requirements of paragraph 1.

**Condition 12 Restriction on Use of Certain Information**

1. The Licensee shall preserve the confidentiality of commercially sensitive information held and/or obtained by it in carrying on the SMO & NEMO Business.
2. The Licensee shall prevent information about its own activities which may be commercially advantageous being disclosed in a discriminatory manner.
3. The Licensee shall implement such measures and procedures and take all such other steps as it shall reasonably consider and/or shall be specified in directions issued by the Commission from time to time to be necessary for the purpose of securing compliance by the Licensee with its obligations under paragraph 1.
4. The Licensee shall ensure that confidential information is only disclosed to authorised recipients, classes of authorised recipients or authorised advisers.

5. Paragraphs 1, 2 and 4 shall not apply to:

- (a) any confidential information which, before or after it is furnished to the Licensee's employees, is in the public domain; or
- (b) the disclosure of any confidential information:
  - (i) in compliance with the duties of the Licensee under the Act, the Single Market Regulations or any other requirement of a competent authority; or
  - (ii) in compliance with the Conditions granted in this Licence or any document referred to in this Licence with which the Licensee is required by virtue of the Act, the Single Market Regulations or this Licence to comply; or
  - (iii) in compliance with any other requirement of law; or
  - (iv) pursuant to any judicial or other arbitral process or tribunal of competent jurisdiction; or
  - (v) necessary in order to enable the Licensee and Northern Ireland Market Operator Licensee to carry on the SMO & NEMO Business; or



- (c) any confidential information to the extent that the Licensee is expressly permitted or required to disclose that information under the terms of any agreement or arrangement (including the Grid Code, the Distribution Code, the Metering Code and the Single Electricity Market Trading and Settlement Code) with the relevant person to whose affairs such confidential information relates.
- 6. Without prejudice to the other provisions of this Condition, the Licensee shall procure that any additional copies made of the confidential information, whether in hard copy or computerised form, will clearly identify the confidential information as confidential.
- 7. The Licensee shall take all reasonable measures to prevent (so far as the Licensee can so require) any person who is or ceases to be employed by the Licensee, whether that person is or was employed part time or full time in the Market Operation Activity and / or in the NEMO Activity, from disclosing confidential information.
- 8. The Licensee shall take all reasonable steps to ensure that every authorised adviser, consultant, director or member of staff to whom the Licensee discloses confidential information does not:
  - (a) use that confidential information for any purpose other than that for which it was provided; and
  - (b) disclose that confidential information otherwise than in accordance with the provisions of this Condition, such authorised adviser, consultant, director or member of staff of the Licensee having first been duly authorised by the Licensee to disclose the confidential information.
- 9. This Condition is without prejudice to the duties at law of the Licensee towards outside persons.
- 10. In this Condition:

"authorised adviser" means such professional advisers of the Licensee, engaged and acting in that capacity, as require access to any confidential information;

"authorised recipient" means, in relation to any confidential information, any employee who, before the confidential information had been divulged to him by the Licensee, had

been informed of the nature and effect of this Condition and who requires access to such confidential information for the proper performance of his duties as an employee of the Licensee in the course of permitted activities;

"confidential information" means any commercially sensitive information held and/or obtained by the Licensee in the discharge of its functions as market operator under the Act, the Market Operator Agreement and this Licence (which shall include information in relation to the NEMO Activity);

"commercially sensitive means any matter the disclosure of which would information" materially prejudice the interests of any person;

"permitted activities" means any activities directly connected with the discharge by the Licensee of its functions as market operator pursuant to this Licence (which shall include activities in relation to the NEMO Activity).

**Condition 13 Separate Accounts for Separate Businesses**

1. Notwithstanding that either the Market Operation Activity or the NEMO Activity is carried on by EirGrid plc through a separate legal entity to which the Companies Acts apply, the Licensee shall prepare accounts in respect of the Market Operation Activity and separately in respect of the NEMO Activity in accordance with the requirements of the Companies Acts and shall deliver to the Commission a copy of the audited accounts so prepared as soon as reasonably practicable, and in any event no later than three months after the end of the period to which the accounts relate.
2. For the purposes of paragraph 1, the financial years of the Market Operation Activity in respect of which the Licensee shall prepare accounts shall be determined as follows:
  - (a) the first financial year shall run from (and including) SEM Go-Live up to (and including) 31 December 2007; and
  - (b) each subsequent financial year shall run from (and including) 1 January up to (and including) the following 31 December.
- 2A. For the purposes of paragraph 1, the financial years of the NEMO Activity shall be determined as follows:
  - (a) the first financial year shall run from the date on which the Commission directs that the provisions of Condition 3A shall take effect (under paragraph 10 of that Condition) up to (and including) 31 December 2018; and
  - (b) each subsequent financial year shall run from (and including) 1 January up to (and including) the following 31 December.
3. Without prejudice to paragraph 1, the Licensee shall, in its internal accounting, keep or cause to be kept accounts for the Market Operation Activity and separately accounts for the NEMO Activity which when requested from time to time by the Commission, must be delivered to the Commission in the form and at the times specified by the Commission. The accounts shall be in accordance with such regulatory accounting guidelines as may be issued by the Commission from time to time. The accounts shall also be in accordance with any and all directions as are reasonable and appropriate for the purposes of this Condition as the Commission may, from time to time, notify to the Licensee.

4. The regulatory accounting guidelines or directions notified by the Commission to the Licensee under paragraph 3 may, inter alia:
  - (a) specify the form of the accounting statements/records, including but not limited to, profit and loss accounts, balance sheets, recognised gains and losses statements, cash flow statements and statements of the amounts of any revenues, costs, assets, liabilities, reserves or provisions which have been either charged from or to any other business or determined by allocation or apportionment between the Market Operation Activity and separately the NEMO Activity and any other business;
  - (b) specify the nature and content of the accounting statements/records, including information on specified types of revenue, cost, asset or liability and information on the revenues, costs, assets and liabilities attributable to specified activities;
  - (c) require any reconciliation that may be required with the annual accounts of the Licensee prepared under the Companies Acts;
  - (d) specify the accounting principles (including the basis for the allocation of costs) and the bases of valuation to be used in preparing accounting statements/records.
  
5. The Licensee shall not, in relation to the accounting statements in respect of a financial year, change the basis of charge, apportionment or allocation 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 basis in a manner set out in the directions or the Commission gives its prior written approval to the change in such basis.
  
6. The Licensee shall comply with any directions issued by the Commission for the purposes of this Condition.
  
7. Without prejudice to paragraph 1, the Licensee shall, in conjunction with the Northern Ireland Market Operator Licensee, keep or cause to be kept accounts for the Single Market Operation Business and separately for the NEMO Business which when requested from time to time by the Commission, must be delivered to the Commission in the form and at the times specified by the Commission. The accounts shall be in accordance with such regulatory accounting guidelines as may be issued by the Commission from time to time. The accounts shall also be in accordance with any and all directions as are reasonable and appropriate for the purposes of this Condition as the Commission may, from time to time, notify to the Licensee.

8. The regulatory accounting guidelines or directions notified by the Commission to the Licensee under paragraph 7 may, inter alia:
- (a) specify the form of the accounting statements/records, including but not limited to, profit and loss accounts, balance sheets, recognised gains and losses statements, cash flow statements and statements of the amounts of any revenues, costs, assets, liabilities, reserves or provisions which have been either charged from or to any other business or determined by allocation or apportionment between the Single Market Operation Business, the NEMO Business and / or any other business or businesses;
  - (b) specify the nature and content of the accounting statements/records, including information on specified types of revenue, cost, asset or liability and information on the revenues, costs, assets and liabilities attributable to specified activities;
  - (c) specify the accounting principles (including the basis for the allocation of costs) and the bases of valuation to be used in preparing accounting statements/records.

**Condition 14 Prohibition of Subsidies and Cross-subsidies**

- 4 The Licensee shall procure that neither the Market Operation Activity nor the NEMO Activity shall give any subsidy or cross-subsidy (direct or indirect) to any Separate Business of the Licensee and/or any affiliate or related undertaking of the Licensee nor shall there be any subsidy or cross-subsidy (direct or indirect) given between the Market Operation Activity and the NEMO Activity.
- 2 For the purposes of this Condition, the Commission shall determine whether or not subsidisation or cross-subsidisation is taking place. Where the Commission determines that a subsidy or cross-subsidy is taking place, the Commission may issue a direction to that effect and require the cessation of same.
- 3 Nothing which the Licensee is obliged or permitted to do or not do pursuant to this Licence shall be regarded as a subsidy or cross-subsidy for the purposes of this Condition.

**Condition 15 Charges of the Market Operator**

- 1 The provisions of Section 36A (Charges of Market Operator) and Section 36B (Approval by Commission of statement of charges of Market Operator) of the Act shall apply to the Licensee.
- 2 The Licensee shall comply with any directions, decisions or determinations given to it by the Commission, from time to time, pursuant to Section 36A or Section 36B of the Act.
- 3 Where required by the Commission, the Licensee shall publish and make available on the Licensee's web-site the statement of charges in relation to participation in the trading arrangements under the Single Electricity Market approved by the Commission under Section 36B of the Act.

**Condition 16 Provision of Information to the Commission**

- 1 The Licensee shall procure and furnish to the Commission, in such form and at such times as the Commission may require, such information as the Commission may consider relevant in the light of the Conditions of this Licence or as it may require for the purpose of performing the functions assigned or transferred to it by or under the Act or the Internal Market Regulations.
- 2 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 the Internal Market Regulations.
- 3 In this Condition "information" means oral or written and shall include, without limitation, any books, documents, records, accounts (statutory or otherwise), estimates, returns or reports of any description (whether or not in electronic or any other format, or prepared specifically at the request of the Commission) requested by the Commission and any explanations (oral or written) in relation to such information as may be requested by the Commission.
- 4 The information shall be to a level of audit as may be required by the Commission from time to time.
- 5 The Commission may publish any information provided to the Commission under this Licence. In exercising its discretion under this Condition, the Commission shall have regard to the need to protect confidential information.



**Condition 17 Code of Conduct**

- 1 The Licensee shall prepare a code of conduct, for approval by the Commission, which shall apply to every director and to every person employed by the Licensee under a contract of employment.
- 2 The code of conduct shall be consistent with this Licence and, in particular, the requirements in relation to preserving the confidentiality of confidential information.
- 3 The Licensee shall ensure that the code of conduct be included as part of every contract of employment with the Licensee.
- 4 In this Condition: "**confidential information**" has the meaning as defined in Condition 12.

**Condition 18 Compliance with Laws and Directions**

- 1 The Licensee shall comply with the Act, the Internal Market Regulations, the Single Market Regulations, the Market Operator Agreement, the Single Electricity Market Trading and Settlement Code and the Conditions of this Licence and all relevant laws of the European Union.
- 2 The Licensee shall comply with any requirements, directions or determinations made by the Commission pursuant to the Act, the Internal Market Regulations, the Single Market Regulations, the Market Operator Agreement or this Licence.
- 3 Any costs associated with compliance with this Condition shall be the responsibility of the Licensee.
- 4 The Licensee shall monitor and keep a record of its compliance with this Licence.

**Condition 19 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 and also with any direction given to it from time to time by the Commission in pursuance to the Commission's duty under Section 9(5)(a) of the Act to take account of the protection of the environment.
- 2 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 Environmental Protection Agency Act 1992, the Waste Management Act 1996, the Protection of the Environment Act 2003 and all relevant legislation relating to the assessment of environmental impacts, and the protection of air, land and water.

**Condition 20 Health and Safety**

The Licensee shall take all reasonable steps to protect persons and property from injury and damage that may be caused by the Licensee when carrying out the Market Operation Activity and the NEMO Activity.