

**Dated**

**2010**

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**SONI**

**(1)**

**and**

**SERVICE PROVIDER**

**(2)**

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**ANCILLARY SERVICES AGREEMENT  
(HARMONISED VERSION)**

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**THIS AGREEMENT** is made the                      day of                      2010

**BETWEEN:**

- (1) **SONI LIMITED**, a limited liability company incorporated under the laws of Northern Ireland with registered number NI 038715 and having its registered office at Castlereagh House, 12 Manse Road, Belfast BT6 9RT (hereinafter called the “**Company**”); and
- (2) **[Name and registered address of the Service Provider]** (hereinafter called the “**Service Provider**”)

**WHEREAS:**

- (A) The Company has responsibility amongst other duties for the operation of the Transmission System under the TSO Licence.
- (B) The Company’s duties include the procurement of Ancillary Services.
- (C) The Company and the Service Provider are party to a letter agreement under which the Service Provider provides system support services to the Company, which terminates immediately prior to HAS Go-Live.
- (D) The Service Provider is now entering into this Agreement with the Company in order to provide the Company with Ancillary Services from the Generating Unit on an all-island harmonisation basis with effect from the date of HAS Go-Live.

**IT IS HEREBY AGREED** as follows:

**1 Definitions and Interpretation**

- 1.1 In this Agreement (including the recitals hereto) except where the context otherwise requires the words and expressions set out in Schedule 1 shall have the meanings ascribed to them therein.
- 1.2 In this Agreement, unless the context requires otherwise, any reference to:
  - 1.2.1 the singular shall include the plural and vice versa;
  - 1.2.2 any gender reference shall be deemed to include references to the masculine, feminine and neuter genders;
  - 1.2.3 this “Agreement” shall mean this Agreement and its Schedules and Appendices;

- 1.2.4 “writing” or “written” shall include all methods of reproducing words in a legible and non-transitory form;
  - 1.2.5 any words importing persons or parties shall include individuals, firms and corporations, joint ventures, trusts, unincorporated associations and organisations, partnerships and any other entity, in each case whether or not having a separate legal personality and any references to persons shall include their legal successors and permitted assignees;
  - 1.2.6 legislation, regulations, Directives, orders, instruments, codes or other enactments shall include any amendments, modifications extensions, replacements or re-enactments thereof then in force.
- 1.3 Unless otherwise specified:
- 1.3.1 any reference in this Agreement to a “Clause” is a reference to a Clause contained in this Agreement;
  - 1.3.2 any reference to a “Schedule” is a reference to a Schedule to this Agreement;
  - 1.3.3 any reference to a “Section” is a reference to a Section to a Schedule to this Agreement;
  - 1.3.4 any reference to an “Appendix” is a reference to an Appendix to the Agreement;
  - 1.3.5 any reference to another agreement or document, or any deed or other instrument (including but not limited to Statute, Statutory Instrument, the Grid Code, the Northern Ireland Fuel Security Code or the Trading and Settlement Code) shall be construed as a reference to that other agreement, or document, deed or other instrument as the same may have been, or may from time to time be, amended, varied, supplemented, substituted or novated;
  - 1.3.6 any reference to a month or year shall be construed as reference to a calendar month or year, as the case may be;
  - 1.3.7 the table of contents and Clause headings are inserted for ease of reference only and shall be ignored for the purpose of the construction of this Agreement;

- 1.3.8 all terms which have been defined in this Agreement shall have their initial letters in capital typescript whenever and wherever they appear in this Agreement; and
- 1.3.9 any reference to “including” shall be construed without limitation.
- 1.4 In the event of inconsistency between the provisions of this Agreement and the Grid Code, the provisions of the Grid Code shall prevail to the extent of such inconsistency unless the contrary intention is explicit.
- 1.5 Where a provision of this Agreement conflicts with the Northern Ireland Fuel Security Code, the provisions of the Northern Ireland Fuel Security Code shall prevail to the extent of the inconsistency or conflict.
- 1.6 If either Party reasonably believes that a conflict exists between any provision of this Agreement and the provisions of the Trading and Settlement Code, it shall notify the other Party of that belief and the Parties shall meet and discuss in good faith whether such a conflict exists, and if so whether amendments should be made to this Agreement to resolve the conflict (and if appropriate the nature of those amendments). If the Parties are in dispute as to whether a conflict exists, whether amendments should be made to this Agreement to resolve the conflict and/or the nature of those amendments, either Party shall be entitled to refer the dispute to the Regulatory Authority for determination (which determination shall be binding on the Parties). For the avoidance of doubt the Parties agree that any amendment to this Agreement to resolve a conflict with the Trading and Settlement Code shall require the prior written approval of the Regulatory Authority.

## **2 Commencement and Duration of Agreement**

### **2.1 Term of Agreement**

- 2.1.1 Subject to Clause 2.3.1, this Agreement shall commence on the date of HAS Go-Live and continue in full force and effect until terminated in accordance with Clause 8 (*Termination*).

### **2.2 Survival of Rights on Termination**

- 2.2.1 Termination of this Agreement shall not affect:

- (i) rights or obligations which may have accrued prior to such termination; or

- (ii) continuing obligations of each of the Parties under this Agreement which are expressed to continue after termination of this Agreement.

## 2.3 Conditions Precedent

- 2.3.1 The Parties' rights and obligations under this Agreement (save for those set out in Clauses 2.3.2 and 2.3.3 and 2.3.4) shall in all respects be conditional on the fulfilment by the Service Provider of its obligations under Clauses 2.3.2 and 2.3.3 and 2.3.4 by not later than the date falling thirty (30) days after the date of this Agreement.
- 2.3.2 The Service Provider shall be a party to the TSC and the Service Provider shall be registered as the Participant (as defined in the TSC) for the Generating Unit under the TSC.
- 2.3.3 The Service Provider shall be a party to a Connection Agreement.
- 2.3.4 The Service Provider shall be a party to a Use of System Agreement with the Company.

## 3 Provision and Purchase of Ancillary Services

### 3.1 Duty to provide Ancillary Services in accordance with the applicable Operating Parameters

- 3.1.1 In consideration of the Company's agreement to pay the Ancillary Services Payments to the Service Provider on the terms and subject to the conditions of this Agreement, the Service Provider shall at all times during the term of, and subject to, this Agreement maintain, repair, fuel and operate the Generating Unit as required by Good Industry Practice and any legal requirements in order to provide the Ancillary Services in accordance with the applicable Operating Parameters.
- 3.1.2 The Service Provider shall reasonably endeavour not to issue or allow to remain outstanding an Availability Notice, a Technical Parameters Notice or an Additional Grid Code Characteristics Notice which declares the Availability, applicable Technical Parameters or additional technical data (respectively) of the Generating Unit at levels or values inferior to those that the Generating Unit could achieve at that time except:

- (i) during periods of Planned Outage, Short Term Planned Maintenance Outage, Forced Outage (each as defined in the Grid Code) or otherwise with the consent of the Company;
- (ii) (where necessary to avoid an imminent risk of injury to persons or material damage to property (including the Generating Unit));
- (iii) where it is not lawful for the Service Provider to operate the Generating Unit;
- (iv) to the extent that the Service Provider is affected by Force Majeure; or
- (v) in the event of a test of the Generating Unit under OC11 of the Grid Code or a System Test under OC10 of the Grid Code,

provided that this Clause 3.1.2 shall not require the Service Provider to declare levels or values better than those specified in Schedule 9.

### 3.2 Compliance with the Grid Code

- 3.2.1 The Service Provider shall, during the term of this Agreement, comply with the Grid Code as it relates to the provision of the Ancillary Services, (including declaring to the Company any inability to comply with the applicable Operating Parameters), subject to any derogations granted to the Service Provider by the Regulatory Authority.

### 3.3 Dispatch Instructions

- 3.3.1 The Service Provider shall, subject to Clause 3.4, comply with the terms of all Dispatch Instructions relating to the Ancillary Services.

### 3.4 TSC

- 3.4.1 Nothing in this Agreement shall prevent the Service Provider from operating the Generating Unit in such a manner so as to comply with its obligations under the TSC.

### 3.5 Planned Maintenance



- 3.5.1 The Service Provider shall, without limitation to its obligations under Clause 3.2, plan its maintenance requirements including outage plans for the Generating Unit in accordance with Good Industry Practice.

## 4 Payment

### 4.1 Payments and Charges for Ancillary Services

- 4.1.1 The rates for calculating Ancillary Services Payments and Ancillary Services Charges are as set out in the Charging Statement.

### 4.2 Payments

- 4.2.1 In consideration of the provision of the Ancillary Service(s) pursuant to this Agreement the Company shall pay the Service Provider the payments (“**Ancillary Service Payments**”) and the Service Provider shall pay the Company the charges (“**Ancillary Services Charges**”) in each case as calculated in accordance with the Schedule(s) relating to the Ancillary Service(s).

- 4.2.2 All amounts payable by the Company under this Agreement are exclusive of any applicable Value Added Tax, sales tax or other lawful taxes or levies applicable by reason of the performance of the Agreement and the Parties agree that an amount equal to any applicable Value Added Tax, sales tax or other lawful taxes or levies lawfully chargeable in respect of the performance of the Agreement shall be payable or repayable, as the case may be, in addition to, at the same time and in the same manner as the amounts to which it relates.

- 4.2.3 The Company shall have the right to settle amounts due to the Service Provider under this Agreement net of amounts due to the Company by the Service Provider under this Agreement. The Company shall have no right to settle amounts due to the Service Provider under this Agreement net of amounts due to the Company by the Service Provider under other agreements.

### 4.3 Billing and Payment Plan

- 4.3.1 The provisions of Schedule 5 shall apply in relation to the billing and payment of Ancillary Services Payments and Ancillary Services Charges.

## **5 Monitoring and Metering**

- 5.1 In order to comply with its obligations contained in the Grid Code the Company may use Metering to ensure that the Service Provider is complying with its obligations to provide the relevant Ancillary Services from the Generating Unit both in accordance with the Grid Code and in accordance with the terms of this Agreement.
- 5.2 The relationship between the Parties with respect to Metering shall be regulated in accordance with the Metering Code.
- 5.3 Without purporting to exhaustively specify the circumstances in which no payments will be made under this Agreement, no payments will be made under this Agreement in respect of an Ancillary Service to be provided from the Generating Unit in relation to any period when the Generating Unit or the Service Provider's Installation at any Connection Site used by that Generating Unit, is prevented from providing that Ancillary Service by reason of a circumstance of a Force Majeure or, the Generating Unit being De-energised or Disconnected for any reason pursuant to the relevant Connection Agreement or Use of System Agreement or in accordance with the provisions set out in Schedules 2 or 3.
- 5.4 Where the Service Provider serves notice to Disconnect the Service Provider's Installation at a Connection Site under the Connection Agreement, the Parties shall discuss the possibility of terms being offered for the continued provision following the date when Disconnection would otherwise have occurred of any Ancillary Service which was being provided by the Service Provider at that Connection Site immediately before service of the notice to Disconnect and for which the Company is unable to find a reasonable alternative.
- 5.5 The Service Provider will accept the data provided by the Metering applicable to the Generating Unit unless it has reasonable grounds for believing that such Metering is defective, in which case the Service Provider shall notify the Company and the Parties will make every effort to resolve the issue and reconcile the payments and/or charges. Any dispute under this Clause 5.5 shall be referable to the Expert.

## **6 Assignment**

- 6.1 The Service Provider shall not assign, novate or otherwise transfer nor purport to assign, novate or otherwise transfer the benefit or burden of this Agreement save in the following circumstances:-

- (a) the Service Provider may assign or charge its benefit under this Agreement in whole or in part by way of security;
- (b) the Service Provider may transfer its rights and obligations under this Agreement, upon the disposal of the whole of the Service Provider's business or undertaking, to the purchaser thereof, provided that the Company or the Distribution System Operator (as the case may be) has consented to the transfer of the Service Provider's rights and obligations under the Connection Agreement; or
- (c) upon disposal of part of the Service Provider's business or undertaking comprising the Service Provider's Installation at one or more Connection Sites the Service Provider may transfer such of its rights and obligations under this Agreement as relate to the Generating Unit and Ancillary Services concerned to the purchaser thereof, provided that the Company or the Distribution System Operator (as the case may be) has consented to the transfer of the Service Provider's rights and obligations under the Connection Agreement relevant to the part of the business or undertaking to be transferred.

6.2 The Company may at any time assign, novate or otherwise transfer all of its rights and obligations under this Agreement to an Affiliate or to another person who by statute becomes legal successor to the Company or, in the event that the Company ceases to be the transmission system operator in Northern Ireland, to the successor transmission system operator in Northern Ireland.

6.3 No assignment, novation or other transfer pursuant to Clause 6.1 or 6.2 shall be effective unless and until the assignor has procured the proposed assignee to covenant directly with the other Party to observe and perform all the terms and conditions of this Agreement, has provided to the other Party a certified copy of the assignment (omitting the consideration and any other commercial terms) and has procured that any guarantee in respect of the assignor's obligations is extended to the proposed assignee or replaced by another providing the other Party with equivalent security.

## **7 Variations**

7.1 This Agreement may not be varied without the prior written approval of the Regulatory Authority provided that the approval of the Regulatory Authority shall not be required in relation to variation of the Operating Parameters set out in Schedule 9. Subject to Regulatory Authority approval being obtained, this Agreement may be varied if made in writing and signed by both Parties (but not otherwise).

7.2 Either Party may at any time give written notice to the other proposing that this Agreement be varied.

7.3 If, after execution of this Agreement, there shall be enacted and brought into force legislation and/or any Directive, rule, regulation, direction, statutory instrument or order of any Competent Authority arising there from, or change in the Grid Code, Metering Code or Trading and Settlement Code providing for:

7.3.1 the further reorganisation of all or part the electricity industry in either Northern Ireland or Ireland, or

7.3.2 the facilitation of the introduction of third party interests to the affairs of such electricity industry or any part of it, or

7.3.3 the amendment or variation of any policy of the Company or the manner in which the Transmission System or Distribution System and any agreements or codes related thereto are organised, or

7.3.4 the imposition of a public service obligation on the Company,

which necessitates a variation to this Agreement, the Parties shall, subject always to Clause 7.1, effect such changes to this Agreement as are reasonably necessary so as to ensure that the operations contemplated by this Agreement shall be conducted in a manner which is consistent with the effect of the new legislation, Directive, rule, regulation, direction, statutory instrument or order, or change in the Grid Code, Metering Code or Trading and Settlement Code and most closely reflect the intentions of the same with effect from the date thereof provided that any such amendment: (i) will be of no greater extent than is required by reason of the new legislation, Directive, rule, regulation, direction, statutory instrument or order, or change in the Grid Code, Metering Code or Trading and Settlement Code; but (ii) shall not deal with the cost implications under this Agreement of any such new legislation, Directive, rule, regulation, direction, statutory instrument or order, or change in the Grid Code, Metering Code or Trading and Settlement Code, which, if any, shall fall to be considered in accordance with the provisions of clause 13 of this Agreement.

7.4 Notwithstanding Clauses 7.1 – 7.3 above, by not later than the first anniversary of the date of this Agreement, the Service Provider shall have the right on one occasion only by notice in writing to the Company to amend the values set out in Schedule 9 in respect of POR and POR Governor Droop Multiplier as it may decide is necessary.

7.5 If any variation proposed under Clause 7.3 has not been agreed by the Parties within one (1) month of its being proposed, then either Party may refer to the Regulatory Authority for determination and the Parties agree to abide by and to effect the Regulatory Authority's determination, if necessary by entering into an agreement supplemental to this Agreement.

## **8 Termination**

8.1 The Company shall be entitled:

8.1.1 without prejudice to the remaining rights and obligations of the Parties under this Agreement, by twelve (12) months' notice in writing to the Service Provider to terminate the Parties' respective obligations relating to the provision of any one or more Ancillary Services; or

8.1.2 by three (3) months' notice in writing to the Service Provider, to terminate this Agreement.

8.2 The Company may by notice in writing to the Service Provider terminate this Agreement forthwith upon:

(i) the Service Provider ceasing to be a signatory to the Trading and Settlement Code otherwise than due to the Trading and Settlement Code being terminated; or

(ii) termination of the Trading and Settlement Code save where the same is replaced with alternative electricity trading arrangements; or

(iii) the Connection Agreement being properly terminated in accordance with its terms; or

(iv) the Use of System Agreement being properly terminated in accordance with its terms; or

(v) revocation or withdrawal of the TSO Licence or any replacement thereof granted to the Company by a Competent Authority; or

(vi) revocation or withdrawal of the Generation Licence or any replacement thereof granted to the Service Provider by a Competent Authority; or

- (vii) the Generating Unit being destroyed or damaged (including by Force Majeure) to such an extent as to be incapable of generating electricity, and it is agreed between the Parties or, determined by an Expert that the Generating Unit is unlikely to be restored to at least seventy five per cent (75%) of the Registered Capacity within 24 months after the date on which the destruction or damage occurred; or
  
- (viii) the Service Provider failing to comply with or failing to operate in conformity with any provisions of this Agreement or the Grid Code where such failure is a material breach of this Agreement or the Grid Code, as the case may be (being one which materially affects the Service Provider's ability to perform its obligations under the Agreement) and, if such failure is capable of remedy but remains unremedied for a reasonable period provided for in this Agreement or, if none is provided for, then twenty (20) Business Days following the date on which the Service Provider is given notice of the default by the Company; or
  
- (ix) in relation to the Service Provider:
  - (a) an order of the High Court being made or an effective resolution passed for its insolvent winding up or dissolution; or
  
  - (b) a receiver (which expression shall if applicable include an examiner within the meaning of Section 1 of the Companies Amendment Act, 1990), administrative receiver or administrator of the whole or any material part of its assets or undertaking being appointed; or
  
  - (c) any scheme of arrangement being entered into (other than for the purpose of a solvent reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Company); or
  
  - (d) inability to pay its debts within the meaning of the Relevant Legislation; or
  
- (x) the Service Provider failing to pay (other than by inadvertent error in transfer of funds which is discovered by the Company, notified to the Service Provider and corrected within two (2) Business Days thereafter) any amount properly due or owing from it pursuant to this Agreement according to its terms and such failure to pay continues unremedied (and not disputed in good faith and upon reasonable

grounds) at the expiry of fifteen (15) Business Days following receipt of written notice from the Company of such failure,

and in any such case in Clause 8.2(ix) within twenty-eight (28) days of appointment of the liquidator, receiver, administrative receiver, administrator nominee or other similar officer, such person has not provided to the Company a guarantee of future performance by the Service Provider of the Agreement in such form and amount as the Company may reasonably require.

8.3 The Service Provider may by notice in writing to the Company terminate this Agreement forthwith upon:

- (i) the Company failing to pay (other than by inadvertent error in funds transmission which is discovered by the Service Provider, notified to the Company and corrected within two (2) Business Days thereafter) any material amount properly due or owing from it pursuant to this Agreement according to its terms and such failure to pay continues unremedied (and not disputed in good faith and upon reasonable grounds) at the expiry of fifteen (15) Business Days following receipt of written notice from the Service Provider of such failure; or
- (ii) the revocation or withdrawal of the TSO Licence or any replacement thereof granted to the Company by a Competent Authority.

8.4 Without prejudice to any other remedy to which either Party may be entitled for breach of this Agreement, this Clause 8 states the only circumstances in which either Party may unilaterally terminate this Agreement.

## **9 Effect of Termination**

9.1 The relevant provisions of this Agreement shall survive expiry or termination of this Agreement to the extent necessary to provide for final billings, adjustments and payments of any payments, charges or other monies due and owing pursuant to this Agreement.

9.2 Termination of this Agreement as a whole or in relation to any individual Ancillary Service or Ancillary Services under Clause 8 (*Termination*) shall not affect any rights or obligations of the Parties which have accrued at the time of such termination or, where applicable, the continuing obligations of the Parties under this Agreement.

## **10. Force Majeure**

10.1 If during any Trading Period, the Generating Unit has a capability of less than its Minimum Generation (as specified in Schedule 9 or as redeclared) owing to Force Majeure the Service Provider shall not be entitled to Ancillary Services Payments in respect of that Trading Period and no Ancillary Services Charges may be claimed or imposed by the Company where the circumstances otherwise giving rise to such Ancillary Services Charges result from Force Majeure.

10.2 As soon as reasonably practicable following the occurrence of Force Majeure:

- (a) either Party (the "Notifying Party") shall notify the other Party of the Force Majeure, identifying the nature of the event and the duration of its effect which the Notifying Party believes to be reasonably likely;
- (b) the Notifying Party shall afford the other Party reasonable facilities for obtaining further information about the event including facilities for site inspection; and
- (c) the Notifying Party shall take, at its own cost, all steps reasonably required to remedy the effects of the Force Majeure.

10.3 Subject to the other provisions of this Clause 10, the Notifying Party shall not be in breach of its obligations under this Agreement for so long as and to the extent that the performance of such obligations continues to be prevented by the relevant event of Force Majeure.

## **11 Limitation of Liability**

11.1 Neither Party nor any of their respective officers, employees or agents shall be liable to the other Party for any losses, damages, claims, liabilities, costs or expenses arising from any breach of this Agreement other than for losses, damages, claims, liabilities, costs or expenses directly resulting from a breach which at the date of this Agreement was reasonably foreseeable as likely to occur in the ordinary course of events from such breach in respect of:

- (a) physical damage being occasioned to the property of the other Party, its officers, employees or agents; or
- (b) the liability of the other Party to any other person for loss in respect of physical damage caused directly to the property of such other person as a result of such



breach (a claim by a third party in respect of that liability hereafter in Clause 11.5 being referred to as a "legal claim"); or

- (c) (in the case of breach by the Service Provider) purchasing or obtaining services where reasonably and necessarily required to replace the Ancillary Services which, at the date of this Agreement, the Parties agree and acknowledge is reasonably foreseeable as likely to occur in the ordinary course of events from such breaches,

provided that the liability of either Party in respect of all such losses, damages, claims, liabilities, costs or expenses shall not exceed the Liability Cap.

11.2 Subject to Clause 11.3 and any provision of this Agreement which provides for payment obligations or an indemnity, neither Party nor any of their respective officers, directors, employees or agents shall in any circumstances whatsoever be liable to the other Party for:

- (a) loss of profit, loss of revenue, loss of use, loss of contract (other than this Agreement) or loss of goodwill; or
- (b) indirect or consequential loss, incidental or special damages (including punitive damages); or
- (c) loss resulting from the liability of the other Party to any other person howsoever and whensoever arising save as provided in Clauses 11.1 and 11.3.

11.3 Nothing in this Agreement shall exclude or limit the liability of one Party "the Party Liable" for death or personal injury to an officer, employee or agent of the other Party, "the Party Not Liable", resulting directly from the negligence of the Party Liable or any of its officers, employees and agents and, the Party Liable shall indemnify and keep indemnified the Party Not Liable, its officers, employees and agents from and against any losses, damages, claims, liabilities, costs or expenses which the Party Not Liable may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liable or the negligence of any of its officers, employees or agents (such claim hereafter in Clause 11.6 being referred to as an "injury claim").

11.4 The rights and remedies provided by this Agreement to the Parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies expressed or implied and provided by common law or statute in respect of the

subject matter of this Agreement, including without limitation any rights either Party may possess in tort which shall include without limitation actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute, and releases the other Party, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein.

11.5 In the event of any legal claim being made by a third party against the Party Not Liable, the Party Liable shall be promptly notified by the Party Not Liable of the legal claim and, the Party Liable may, at its own expense, conduct all negotiations for the settlement of the claim and any litigation that may arise from the claim. The Party Not Liable shall not, unless and until the Party Liable has failed to unconditionally agree in writing to take over the conduct of the negotiations or litigation in respect of the legal claim within ten (10) Business Days of receiving notice from the Party Not Liable requesting it to do so, make any admission which might be prejudicial to the claim. The conduct by the Party Liable of such negotiations or litigation shall be conditional upon the Party Liable having first given to the Party Not Liable such reasonable security as the Party Not Liable shall from time to time notify the Party Liable that it requires to cover the amount ascertained or agreed or estimated, as the case may be, of any losses, damages, claims, liabilities or costs for which the Party Not Liable may become liable in respect of the legal claim. The Party Not Liable shall, at the request of the Party Liable, afford all available assistance for the purpose of contesting the legal claim and shall be paid by the Party Liable (within ten (10) Business Days of the date of its invoice therefor) all reasonable expenses incurred in so doing.

11.6 In the event of any injury claim being made by a third party against the Party Not Liable, the Party Liable shall be promptly notified by the Party Not Liable of the injury claim and, the Party Liable may at its own expense, conduct all negotiations for the settlement of the claim and any litigation that may arise from the claim. The Party Not Liable shall not, unless and until the Party Liable has failed to unconditionally agree in writing to take over the conduct of the negotiations or litigation in respect of the injury claim within ten (10) Business Days of receiving notice from the Party Not Liable requesting it to do so, make any admission which might be prejudicial to the claim. The conduct by the Party Liable of such negotiations or litigation shall be conditional upon the Party Liable having first given to the Party Not Liable such reasonable security as the Party Not Liable shall from time to time notify the Party Liable that it requires to cover the amount ascertained or agreed or estimated, as the case may be of any losses, damages, claims, liabilities, costs or

expenses for which the Party Not Liable may become liable in respect of the injury claim. The Party Not Liable shall, at the request of the Party Liable, afford all available assistance for the purpose of contesting the injury claim and shall be paid by the Party Liable (within ten (10) Business Days of the date of its invoice therefor) all reasonable expenses incurred in so doing.

11.7 Each of the provisions of this Clause 11 shall:

11.7.1 be construed as a separate and severable contract term, and if one or more of such provisions is held to be invalid, unlawful or otherwise unenforceable the other or others of such provisions shall remain in full force and effect and shall continue to bind the Parties; and

11.7.2 survive termination of this Agreement.

11.8 Each of the Parties agrees that the other Party holds the benefit of Clauses 11.1, 11.2 and 11.3 for itself and as trustee and agent for its officers, directors, employees and agents.

11.9 For the avoidance of doubt nothing in this Clause 11 shall prevent or restrict either Party enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Agreement.

11.10 Nothing in this Clause 11 shall exclude or restrict or otherwise prejudice or affect any:

- (a) rights and obligations of either Party which are conferred or created by the Order, the TSO Licence or the Service Provider's Generation Licence, or statutory regulations; or
- (b) rights, powers, duties and obligations of the Regulatory Authority or any other Competent Authority under the Order, any licence granted under the Order or otherwise howsoever.

11.11 Subject to Clause 11.10 and unless expressly provided otherwise in this Agreement, this Clause 11 insofar as it excludes or limits liability shall override any other provisions of this Agreement.

11.12 Each Party hereby acknowledges and agrees that the provisions of this Clause 11 are fair and reasonable having regard to the circumstances as at the date of this Agreement.

## 12 Confidentiality

12.1 Each Party shall treat any and all information and data disclosed to it by the other Party in connection with this Agreement in any form whatsoever, and this Agreement itself, (the "Confidential Information") as confidential and proprietary, shall preserve the secrecy of the Confidential Information and shall not use the Confidential Information for any purpose other than solely in connection with this Agreement.

12.2 For the purposes of this Clause 12, the term Confidential Information shall not include information which:

12.2.1 at the time of disclosure or at any time thereafter is in, or becomes part of, the public domain other than through a breach of the provisions of this Clause 12;

12.2.2 the Party receiving the information can prove that the information was already known to it or was independently acquired or developed by it without being in breach of its obligations under this Clause 12;

12.2.3 became available to the Party receiving the information from another source in a non-confidential manner otherwise than in breach of an obligation of confidentiality; or

12.2.4 is published by or the publication of which is required by a Competent Authority.

12.3 Notwithstanding the provisions of Clause 12.1, Confidential Information may be disclosed by a Party:

12.3.1 to those of the shareholders, owners, directors, officers, employees, agents, consultants, contractors, advisers, investors, proposed assignees, insurers, lenders or bona fide prospective purchasers of all or substantially all of the shares of such Party or its Affiliates who need to know the Confidential Information provided that:

(a) the recipient agrees to keep the Confidential Information confidential on terms no less onerous than contained in this Clause 12; and

(b) the disclosing Party shall be responsible for ensuring that the recipient observes and complies with such obligation to keep the Confidential Information confidential and shall accordingly be responsible for any failure of the recipient to do so;

- 12.3.2 as may be ordered or required by any applicable law or a Competent Authority;
- 12.3.3 as may be required by the regulations of any recognised stock exchange upon which the share capital of the Party (or any parent undertaking of the Party) is or is proposed to be from time to time listed or dealt in, and the Party making the disclosure shall, if reasonably practicable prior to making the disclosure, and in any event as soon as reasonably practicable thereafter, supply the other Party with a copy of such disclosure or statement and details of the persons to whom the Confidential Information is to be, or has been, disclosed. Where a copy of such disclosure or statement has been supplied prior to making the disclosure, the other Party may give comments on that disclosure or statement to the Party proposing to make it. The Party proposing to make the disclosure shall, if reasonably practicable in the time available, consult with the other Party as to any such comments and consider whether the disclosure is to be amended to take into account the comments;
- 12.3.4 as may be permitted by or required to comply with the requirements of the Grid Code or the Trading and Settlement Code;
- 12.3.5 by either Party as may be necessary to comply with any obligation under any licence (or any document referred to therein) granted to it under the Order;
- 12.3.6 (by the Company) to the Other TSO and otherwise as may be necessary to enable the Company to operate the Transmission System and carry out its obligations in relation thereto in accordance with Good Industry Practice (including in relation to the application by any person for connection to the Transmission System), provided that:
- (a) only Confidential Information which is necessary for such purpose is disclosed by the Company; and
  - (b) the Company notifies the recipient in advance of such disclosure that the information is confidential and should not be disclosed by the recipient to third parties;
- 12.3.7 as may be required by a Court, arbitrator or administrative tribunal or an expert in the course of proceedings before it to which the disclosing Party is a party;

12.3.8 as may be agreed in writing by the Parties prior to disclosure by the Party disclosing such Confidential Information; or

12.3.10 (for the avoidance of doubt) in compliance with the requirements of Article 38 of the Order or the provisions of the Northern Ireland Fuel Security Code.

12.4 All information supplied by or on behalf of a Party shall remain the sole and exclusive property of such Party and this Agreement shall not operate to transfer ownership or any interest whatsoever therein, and the other Party shall, if requested by the Party disclosing the information following termination of this Agreement, promptly return to such Party all documents and any copies, extracts, notes or similar materials containing or based in whole on such information.

12.5 With effect from the date of this Agreement both Parties shall adopt procedures within their organisations for ensuring the confidentiality of all information which they are obliged to preserve as confidential under Clause 12.1. Those procedures shall be as follows:

12.5.1 the Confidential Information will be disseminated only to persons who need such information for the purpose of carrying out those functions which they are employed to carry out;

12.5.2 the Confidential Information shall not be used by either Party for the purpose of obtaining for itself or any of its Affiliates or for any other person any contract or arrangement for the supply of electricity to any person without the prior consent of the Party disclosing such Confidential Information;

12.5.3 employees, directors, Affiliates, agents, proposed assignees, bona fide prospective purchasers of all or substantially all of the shares of a Party, consultants and professional advisers of both Parties in receipt of Confidential Information will be made fully aware of the Party's obligations of confidence in relation thereto and the Party will be responsible for any failure by such persons to comply with such obligations as if they were parties to this Agreement; and

12.5.4 any copies of the Confidential Information will, insofar as is reasonably practicable, whether in hard copy or computerised form, clearly identify the Confidential Information as confidential.

12.6 The provisions of this Clause 12 shall continue to bind a Party after termination of this Agreement, in whole or in part, for five (5) years.

12.7 Subject to Clause 12.3, no public announcement or statement regarding the signature, performance or termination of, or otherwise in relation to, the Agreement shall be issued or made by a Party unless the other Party shall have first been furnished with a written copy of the proposed announcement or statement and shall have approved it (such approval not to be unreasonably withheld or delayed).

### **13 Additional Costs**

13.1 Save where expressly provided for otherwise in this Agreement, if:-

- (a) the Service Provider is of the opinion that in order to comply with any change in or amendment to the Grid Code (for the avoidance of doubt excluding the withdrawal of or reduction in the scope of a derogation) or any statutory or regulatory obligation coming into force after the date hereof the Service Provider is obliged to incur additional costs and expenses ("**Costs**") for the purpose of carrying out modifications to the Generating Unit or otherwise for the purposes of changing the manner of operation of the Generating Unit in relation to the provision of any Ancillary Service; or
- (b) the Company is of the opinion that by reason of any change in or amendment to the Grid Code or any statutory or regulatory obligation coming into force after the date hereof the Service Provider is able to make savings in the cost and expense ("**Savings**") of providing any Ancillary Service from the Generating Unit,

then either the Service Provider or the Company (as the case may be) may, by notice in writing notify the other Party, require it to meet in order to discuss the Costs or Savings (as the case may be) and the Company shall give due consideration to those Costs and Savings in setting the Payment Rates in the next revision of the Charging Statement to be approved by the Regulatory Authority and published in accordance with Condition 30 of the TSO Licence.

### **14 Dispute resolution**

14.1 If any dispute or difference arises between the Parties in connection with this Agreement, it shall, subject to any express provision to the contrary, be resolved in accordance with the provisions set out in Schedule 6.

## 15 Miscellaneous

### 15.1 Counterparts

This Agreement may be executed in any number of counterparts and by each Party on a separate counterpart, each of which when executed and delivered shall be an original, but all the counterparts together shall constitute one and the same document.

### 15.2 Entire Agreement

This Agreement contains and expressly refers to the entire agreement between the Parties with respect to its subject matter and expressly excludes any warranty, condition or other undertaking implied at law or by custom and with effect from HAS Go-Live supersedes all previous agreements and understandings between the Parties (other than as provided for in this Agreement) with respect to its subject matter and each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking by the other Party not fully reflected in this Agreement

### 15.3 Severability

If any provision of this Agreement is or becomes invalid, unenforceable or illegal by a judgement or decision of any court of competent jurisdiction or any Competent Authority to which it is subject or by order of the relevant body of the European Union, the same shall be deemed severable and the remainder of this Agreement shall remain in full force and effect. In any such case, the Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid or unenforceable provision in order to give effect, so far as practicable, to the spirit of this Agreement.

### 15.4 Waivers

No delay or forbearance by either Party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair or be construed as a waiver of the right, power, privilege or remedy. For the avoidance of doubt any waiver by either Party of the obligations of the other Party shall be evidenced by an agreement in writing signed by both Parties. A single or partial exercise of any such right, power, privilege or remedy shall not preclude any further exercise thereof or the exercise of any other right, power, privilege or remedy.

### 15.5 Notices



Except for notices to be given pursuant to the Grid Code (as to which, for the avoidance of doubt, the provisions of the Grid Code shall apply) or the Distribution Code (as to which, for the avoidance of doubt, the procedures provided for in the Distribution Code shall apply), any notice given by one Party to the other under this Agreement shall be in writing unless emergency conditions exist reasonably preventing such notice from being given and shall be sent or delivered to the address, and marked for the attention of the person specified in Schedule 7. Either Party may, by notice to the other, given in compliance with this Clause 15.5, change the address or the person to which such notices are to be sent or delivered.

All such written notices shall either be personally delivered or be sent by pre-paid registered post (airmail if overseas) or facsimile transfer. Communication by facsimile shall be confirmed by forwarding a copy of same by pre-paid registered post.

Any notice so delivered, posted or transferred shall be deemed to have been given:

- (a) in the case of personal delivery, when delivered;
- (b) in the case of pre-paid registered post, on the second day following the date of posting (or, if airtailed to or from overseas, on the fifth day following the date of posting); and
- (c) in the case of facsimile transfer on the date of dispatch provided:
  - (i) such date is a Business Day; and
  - (ii) time of dispatch is within the hours of 0900 hours and 1730 at the place of receipt;

otherwise on the next following Business Day.

#### 15.6 Compliance with the Law

The Parties agree that, in performing their respective obligations pursuant to this Agreement, the Company and the Service Provider shall be required to comply with relevant statutes, statutory instruments and the general law. Neither Party shall be liable for any failure to perform its obligations in accordance with this Agreement where to do so would put it in breach of any such statute, statutory instrument or general provision of law.

#### 15.7 Survival

The cancellation, expiry or termination of this Agreement shall not affect any right or obligations which may have accrued prior to such expiry or termination and shall not affect any continuing obligations of either of the Parties under this Agreement including obligations that, by their nature should survive such termination, cancellation or expiry or any other terms of this Agreement by which rights or obligations are expressed to continue after expiry or termination of this Agreement.

#### 15.8 Independent Contractors

The relationship between the Company and the Service Provider shall be that of two independent contracting parties. Each Party shall be solely liable for the payment of all wages, taxes and other costs related to the employment by that Party of persons to meet its obligations under this Agreement.

#### 15.9 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Service Provider and the Company. Neither the Service Provider nor the Company shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or to be an agent or representative of, or to otherwise bind, the other Party.

#### 15.10 No Third Party Beneficiaries

This Agreement is intended solely for the benefit of the Parties to it. Other than as specifically provided in this Agreement, nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person or entity not a party to this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

#### 15.11 Language

Each notification, notice, submission, demand, consent, request or other communication given by one Party to the other under this Agreement shall be in the English language.

### **16 Governing Law and Jurisdictions**

16.1 This Agreement shall be interpreted, construed and governed by the laws of the Jurisdiction.

- 16.2. Subject to the terms of the Dispute Resolution Procedure, resolution of any dispute shall unless the Parties otherwise agree be subject to the [exclusive/non-exclusive]<sup>1</sup> jurisdiction of the courts of the Jurisdiction.
- 16.3 Each Party further agrees that a lawful finding or conclusion of the Regulatory Authority under either Clause 1.6 or Clause 7.5 shall be conclusive and binding upon such Party and may be enforced in the Courts of any jurisdiction.
- 16.4 Each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any proceedings in any court as is referred to in this clause and any claim that any proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any proceedings brought in the courts of the Jurisdiction shall be conclusive and binding upon each Party and may be enforced in the courts of any other jurisdiction.

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<sup>1</sup> Exclusive jurisdiction for NI incorporated companies and non-exclusive for foreign companies.

**IN WITNESS WHEREOF** this Agreement has been executed on the day and year first above written.

**Signed for and on behalf of:-  
SONI Limited**

**Signed for and on behalf of:-  
[Service Provider]**

## SCHEDULE 1

### Definitions

**“Achieved”** means, in relation to POR, SOR or TOR1 the level of POR, SOR or TOR1 provision achieved by the Generating Unit as calculated under paragraphs 3.5, 4.5 and 5.5 respectively of Schedule 2;

**“Affiliate”** means in relation to either Party, any holding company or subsidiary or any subsidiary of a holding company of the relevant Party, in each case within the meaning of Section 1159 of the Companies Act 2006;

**“All Island Transmission Network”** means the Transmission System and the Ireland transmission system taken together;

**“Ancillary Services”** for the purposes of this Agreement means the following

- the provision of POR, SOR, TOR1, TOR2, RR (Synchronised) and RR (De-synchronised) Capability; and
- the provision of Reactive Power Capability (Leading) and Reactive Power Capability (Lagging);

**“Ancillary Services Charges”** has the meaning set out in Clause 4.2.1;

**“Ancillary Services Payments”** has the meaning set out in Clause 4.2.1;

**“Applicable Tolerance”** means, in relation to POR, SOR, or TOR1 the applicable tolerance set out in the Charging Statement used for the purposes of calculating POR Charges, SOR Charges or TOR1 Charges in accordance with paragraphs 3.6, 4.6 or 5.6 respectively of Schedule 2;

**“Automatic Voltage Regulator Status” or “AVR Status”** means the status of the AVR of a Generating Unit, as further defined in paragraph 3.1.3 of Schedule 3;

**“Availability”** has the meaning set out in the Grid Code;

**“Availability Notice”** has the meaning set out in the Grid Code;

**“AVR Factor”** has the meaning given to it in paragraphs 3.2.1(c) and 3.2.2(c) of Schedule 3;

**“Business Day”** means a weekday which is not a public holiday or bank holiday in the Jurisdiction;

**“Capability”** means, in relation to POR, SOR, TOR1, TOR2, RR (Synchronised) or RR (De-synchronised), the capability of the Generating Unit (expressed in MW at the Connection Point) to

provide POR, SOR, TOR1, TOR2, RR (Synchronised) or RR (De-synchronised) to the power system as calculated under paragraphs 3.1, 4.1, 5.1, 6.1, 7.1.1 or 7.1.2 respectively of Schedule 2;

“**CDGU**” means a Centrally Dispatched Generating Unit as defined in the Grid Code;

“**Charge**” means, in relation to POR, SOR or TOR1, a charge in respect of the non-provision of POR, SOR or TOR1 as calculated under paragraphs 3.6, 4.6 or 5.6 respectively of Schedule 2;

“**Charge Period**” means, in relation to POR, SOR or TOR1, a charge period specified in the Charging Statement for the calculation of POR Charges, SOR Charges and TOR1 Charges respectively;

“**Charging Period**” means a period of one calendar month;

“**Charging Statement**” means the Company’s Ancillary Services Statement of Payments and Charges published on the Company’s website;

“**Company**” means SONI Limited and any legal successors in title under any restructuring of SONI Limited;

“**Competent Authority**” means the Regulatory Authority or any local, national or supra-national agency, authority, department, inspectorate, minister, official, Court, tribunal or public or statutory person (whether autonomous or not) of the United Kingdom (or the government thereof) or the European Union which has jurisdiction over a Party on the subject matter of the Agreement;

“**Confidential Information**” has the meaning set out in Clause 12;

“**Connection Agreement**” means the agreement between the Company or the Distribution System Operator and the Service Provider which provides the right for that Service Provider’s Installation to be and remain connected to the Transmission System or the Distribution System;

“**Connection Point**” has the meaning set out in the Grid Code;

“**Connection Site**” has the meaning set out in the Grid Code;

“**Contracted**” means, in relation to POR, SOR, TOR1, TOR2 and RR and in relation to a Trading Period, the maximum value for the response of the Generating Unit determined from the POR HAS Reserve Curve, SOR HAS Reserve Curve, TOR1 HAS Reserve Curve, TOR2 HAS Reserve Curve or RR HAS Reserve Curve respectively by reference to the average exported Output of the Generating Unit (in MW) for that Trading Period;

“**Contracted Maximum**” means, in relation to POR, SOR, TOR1, TOR2 or RR the maximum value of the POR Capability, SOR Capability, TOR1 Capability, TOR2 Capability or RR capability of the

Generating Unit taken from the POR HAS Reserve Curve, SOR HAS Reserve Curve, TOR1 HAS Reserve Curve, TOR2 HAS Reserve Curve or RR HAS Reserve Curve respectively;

**“Contracted Reactive Power (Lagging)”** means the Reactive Power (Lagging) deliverable at the Full Load of the Generating Unit in accordance with the Reactive Power Characteristic Curve and the Operating Parameters of the Generating Unit;

**“Contracted Reactive Power (Leading)”** means the Reactive Power (Leading) deliverable at the Full Load of the Generating Unit in accordance with the Reactive Power Characteristic Curve and the Operating Parameters of the Generating Unit;

**“Conversion Factors”** means the Conversion Factors and the Additional Conversion Factors as defined in the Grid Code;

**“Declared”** means, in relation to POR, SOR, TOR1, TOR2 and RR and in relation to a Trading Period, the lowest value for the capability of the Generating Unit to provide POR, SOR, TOR1, TOR2 and RR during that Trading Period as notified by the Service Provider in accordance with the Grid Code;

**“Declared Automatic Voltage Regulator Status”** means the AVR Status for the Trading Period as notified by the Service Provider under SDC1 of the Grid Code;

**“Declared Maximum”** means, in relation to POR, SOR, TOR1, TOR2 and RR, declared values for POR Capability, SOR Capability, TOR1 Capability, TOR2 Capability or RR Capability as notified under the Grid Code;

**“Declared Reactive Power (Lagging)”** means the capacity of the Generating Unit to provide Reactive Power (Lagging) in a Trading Period as notified by the Service Provider under SDC1 of the Grid Code;

**“Declared Reactive Power (Leading)”** means the capacity of the Generating Unit to provide Reactive Power (Leading) in a Trading Period as notified by the Service Provider under SDC1 of the Grid Code;

**“De-Energise”** has the meaning set out in the Connection Agreement;

**“Default Rate”** means, in respect of any day, the rate which is 2.5 percentage points per annum above the base lending rate from time to time of Bank of Ireland at the close of business on the immediately preceding Business Day;

**“Directive”** means any present or future legislation, statutory instrument, directive, requirement, instruction, order, direction or rule of any Competent Authority binding on either or both of the Company and the Service Provider (but only, if not having the force of law, if compliance with the 4476259.13

Directive is in accordance with the general practice of persons to whom the Directive is addressed) and includes any modification, extension or replacement thereof then in force;

“**Disconnect**” has the meaning set out in the Grid Code and “**Disconnected**” and “**Disconnection**” shall be construed accordingly;

“**Dispatch Instruction**” has the meaning set out in the Grid Code;

“**Dispute Resolution Procedure**” means the procedure set out in Schedule 6;

“**Distribution Code**” means the Distribution Code required to be prepared by the Transmission Owner pursuant to the TO Licence as from time to time revised, amended, supplemented or replaced;

“**Distribution System**” has the meaning set out in the Grid Code;

“**Distribution System Operator**” means the Distribution Network Operator as defined in the Grid Code;

“**EEA**” means the Electricity Arbitration Association;

“**Euro**” or “**€**” means the single currency of participating Member States of the European Union;

“**Event Frequency Threshold**” has the value given to it in the Charging Statement;

“**Event Recorders**” means event recorders as specified in the Metering Code or where not so specified such other metering equipment as may be used to monitor the Frequency of the power system;

“**Expected**” means, in relation to POR, SOR or TOR1, the level of POR, SOR or TOR1 that the Generating Unit is expected to provide as calculated in accordance with paragraphs 3.4, 4.4 and 5.4 respectively of Schedule 2;

“**Expert**” means the person appointed to determine a dispute under this Agreement in accordance with the Dispute Resolution Procedure;

“**Force Majeure**” means any event or circumstance or number of events or circumstances or combination thereof which is beyond the reasonable control of a Party and which could not have been avoided through the use of Good Industry Practice and which results in or causes the failure of the Party to perform any of its obligations under the Agreement and, is limited to the following events:

- (a) acts of terrorists;
- (b) war (whether declared or undeclared), threat of war, act of public enemy, blockade, revolution, riot, insurrection, public demonstration, civil commotion, invasion or armed conflict;



- (c) sabotage or acts of vandalism, criminal damage or the threat of such acts;
- (d) extreme weather or environmental conditions including lightning, earthquake, flood, wind, drought, storm, fire, landslip, accumulation of snow or ice, natural disasters and phenomena including meteorites, the occurrence of pressure waves caused by aircraft or other aerial devices travelling at supersonic speeds, impact by aircraft, volcanic eruption, explosion including nuclear explosion, radioactive or chemical contamination or ionising radiation;
- (e) any change of legislation, governmental order, restraint or Directive without justifiable cause by any relevant governmental authority having the effect of shutting down or reducing the supply of electricity to the Service Provider's Installation or which prohibits (by rendering unlawful) the operation of the Service Provider's Installation and such operation cannot be made lawful by a modification to the Service Provider's Installation or a change in operating practice;
- (f) any strike which is part of a labour dispute of a national character occurring in Northern Ireland or which is part of a national electrical industry strike within Northern Ireland;
- (g) the inability at any time or from time to time of the Transmission System or Distribution System to be capable of lawfully and safely importing electricity from the Service Provider; or
- (h) failure or disruption of the systems for transferring funds between banks in the United Kingdom;

**"Frequency"** has the meaning set out in the Grid Code;

**"Frequency Event"** means an occasion when the power system Frequency falls through the Event Frequency Threshold. The start of the Frequency Event is referred to as time zero (T=0 seconds) and is timed from the Frequency falling through 49.8 Hz. The Frequency Event ends when the Frequency rises back above the Event Frequency Threshold;

**"Generating Unit"** means the generating unit described in Part 1 of Schedule 9;

**"Generating Unit Frequency / Capacity Function"** the decrease in Output of a Generating Unit below its Registered Capacity during a period in which the system frequency is below 49.5 Hz, such decrease being no more than pro rata with any decrease below nominal frequency;

**"Generating Unit Output Delta"** has the meaning given to it in paragraph 3.4.1 of Schedule 2;

**"Generation Licence"** means a licence to generate electricity granted pursuant to the Order;

**“Good Industry Practice”** means the exercise of that degree of skill, diligence, prudence and foresight which would be reasonably and ordinarily expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;

**“Governor Droop”** has the meaning given to it in the Grid Code;

**“Governor Droop Demanded”** means, in relation to POR, SOR or TOR1, the level of provision of POR, SOR or TOR1 expected to be achieved by the Generating Unit governor action calculated in accordance with paragraphs 3.4.3, 4.4.2 and 5.4.2 respectively of Schedule 2;

**“Governor Droop Generating Unit Related Capacity”** means the machine capacity relating to the operation of the Frequency control system of the Generating Unit;

**“Grid Code”** means the Grid Code for Northern Ireland prepared by the Company pursuant to the TSO Licence, and approved by the Regulatory Authority, as from time to time revised, amended, supplemented or replaced with the approval of or at the instance of the Regulatory Authority;

**“HAS Go-Live”** means from 00:00 on 1st February 2010;

**“HAS Reserve Curve”** means in relation to POR, SOR, TOR1, TOR2 and RR, the diagrams set out in Schedule 9;

**“Jurisdiction”** means Northern Ireland;

**“kVA”** means kilovoltamperes;

**“kW”** means kilowatts;

**“Liability Cap”** for the purposes of Clause 11.1, means £100,000 per occurrence and an overall annual cap of £1,000,000 in any period of twelve consecutive calendar months during the term of this Agreement;

**“Metering”** has the meaning given to it in the Metering Code;

**“Metering Code”** means the subset of the Grid Code pertaining to meter reading, meter data processing and meter data communications;

**“Minimum Generation”** has the meaning given to that term in the Grid Code;

**“Nadir Frequency”** has the meaning given to it in paragraph 3.4.1 of Schedule 2;

**“Nadir Frequency Delta”** has the meaning given to it in paragraph 3.4.1 of Schedule 2;

**“Nadir Time”** has the meaning given to it in paragraph 3.4.1 of Schedule 2;

**“Northern Ireland Fuel Security Code”** means the Northern Ireland Fuel Security Code designated by the Department of Enterprise, Trade and Industry as a condition of licences granted under Article 10 of the Order;

**“Operating Parameters”** means the performance and operating specifications of the Generating Unit (certain of which are referred to in the Grid Code as Technical Parameters) for which values are specified, as are more fully set out in Part 2 of Schedule 9, as may be amended from time to time in accordance with this Agreement;

**“Order”** means The Electricity (Northern Ireland) Order 1992

**“Other TSO”** means EirGrid plc in its role as the transmission system operator in Ireland;

**“Output”** has the meaning given to it in the Grid Code;

**“Party”** means, as the context requires, the Company or the Service Provider; and the term “Parties” shall be construed accordingly;

**“Payment Rate”** means: (i) in relation to POR, SOR, TOR1, TOR2, RR (Synchronised) or RR (De-synchronised) the rate (expressed in £/MWh) for the calculation of payments for POR, SOR, TOR1, TOR2, RR (Synchronised) or RR (De-synchronised); and (ii) in relation to Reactive Power Capability (Leading) and Reactive Power Capability (Lagging), the rate (expressed in £/MVarh) for the calculation of payments for Reactive Power Capability (Leading) and Reactive Power Capability (Lagging), in each case, as specified in the Charging Statement;

**“Period”** means, in relation to POR, SOR, TOR1 or TOR2, the period in which POR, SOR, TOR1 or TOR2 is required to be provided as further defined in paragraphs 3.3, 4.3, 5.3 and 6.3 respectively of Schedule 2;

**“Per Unit” or “PU”** means, in relation to any quantity, the ratio of the quantity to its base or reference value;

**“POR Governor Droop Multiplier”** means, in relation to POR, the multiplier calculated in accordance with paragraph 3.4.2 of Schedule 2;

**“POR Governor Droop Multiplier Alpha”** means, in relation to POR, the Operating Parameter set out in Schedule 9;

**“POR Governor Droop Multiplier Beta”** means, in relation to POR, the Operating Parameter set out in Schedule 9;

**“Power Station”** means the power station named in Part 1 of Schedule 9 (including the Generating Unit);

**“Pre-Event Output”** means, in relation to the assessment of POR, SOR and TOR1 performance by a Generating Unit, the average Output of that Generating Unit for the period 60 seconds to 30 seconds before the start of a Frequency Event;

**“Pre-Event System Frequency”** means the average Frequency of the power system for the period 60 seconds to 30 seconds before the start of a Frequency Event;

**“Primary Operating Reserve”** or **“POR”** has the meaning given to it in the Grid Code;

**“Reactive Power”** or **“MVar”** means the product of voltage and current and the sine of the phase angle between them measured in units of volt-amperes reactive and standard multiples thereof;

**“Reactive Power Capability (Lagging)”** means the capacity of the Generating Unit (expressed in MVar at the generator terminals) to provide Reactive Power (Lagging) to the power system as determined in accordance with paragraph 3.1.2 of Schedule 3;

**“Reactive Power Capability (Leading)”** means the capacity of the Generating Unit (expressed in MVar at the generator terminals) to provide Reactive Power (Leading) to the power system as determined in accordance with paragraph 3.1.1 of Schedule 3;

**“Reactive Power Capability (Lagging) Rate”** has the meaning given to it in paragraph 3.2.2(b) of Schedule 3;

**“Reactive Power Capability (Leading) Rate”** has the meaning given to it in paragraph 3.2.1(b) of Schedule 3;

**“Reactive Power Capability Payment (Lagging)”** means the payment due to the Service Provider for the provision of Reactive Power (Lagging) in a Trading Period;

**“Reactive Power Capability Payment (Leading)”** means the payment due to the Service Provider for the provision of Reactive Power (Leading) in a Trading Period;

**“Reactive Power Characteristic Curve”** means the chart of the Reactive Power characteristics of the Generating Unit set out in Schedule 9;

**“Reactive Power Device”** a device for the production or absorption of Reactive Power installed at the Power Station;

**“Reactive Power (Lagging)”** means the production of Reactive Power by the Generating Unit;

**“Reactive Power (Lagging) Scaling Factor”** has the meaning given to it in paragraph 3.2.2(c) of Schedule 3;

**“Reactive Power (Leading)”** the absorption of Reactive Power by the Generating Unit;

**“Reactive Power (Leading) Scaling Factor”** has the meaning given to it in paragraph 3.2.1(c) of Schedule 3;

**“Registered Capacity”** has the meaning set out in the Grid Code;

**“Regulatory Authority”** means the Northern Ireland Authority for Utility Regulation;

**“Relevant Legislation”** means Article 103 of the Insolvency (Northern Ireland) Order 1989 (and the Service Provider shall not be deemed to be unable to pay its debts if any demand for payment is being contested in good faith by the Service Provider with recourse to all appropriate measures and procedures). For the purpose of this definition, Article 103 of the Insolvency (Northern Ireland) Order 1989 shall have effect as if for “£750” there was substituted “£50,000” or such higher figure as the Company may from time to time notify in writing to the Service Provider.

**“Replacement Reserve” or “RR”** has the meaning given to it in the Grid Code;

**“Reserve Rate”** means, in respect of any day, the rate which is seven eighths of one per cent per annum above the base lending rate from time to time of Bank of Ireland at the close of business on the immediately preceding Business Day;

**“RR (De-synchronised)”** means Replacement Reserve provided by a Generating Unit whilst it is de-synchronised from the power system;

**“RR (Synchronised)”** means Replacement Reserve provided by a Generating Unit whilst it is Synchronised to the power system;

**“Scaling Factor”** means, in relation to POR, SOR, TOR1, TOR2 and RR, the scaling factor used in the calculation of payments for POR, SOR, TOR1, TOR2 and RR, described in paragraphs 3.2(c), 4.2(c), 5.2(c), 6.2(c), 7.2.1(c) and 7.2.2(c) respectively of Schedule 2;

**“Secondary Operating Reserve” or “SOR”** has the meaning given to it in the Grid Code;

**“Service Provider’s Installation”** means any Plant and/or Apparatus (as defined in the Grid Code) used or to be used by any Service Provider and connected or to be connected directly or indirectly to the Transmission System or to the Distribution System;

**“Synchronised”** has the meaning set out in the Grid Code;

**“Technical Parameters”** shall have the meaning given to it in the Grid Code;

**“Technical Parameters Notice”** shall have the meaning given to it in the Grid Code;

**“Tertiary Operating Reserve 1” or “TOR1”** has the meaning given to it in the Grid Code;

**“Tertiary Operating Reserve 2” or “TOR2”** has the meaning given to it in the Grid Code;

**“Time Weighted Average”** means, in relation to a parameter (P) which has more than one value for a Trading Period, the time weighted average value of that parameter (“Parameter Value (Trading Period)”), calculated by the application of the following formula:

$$\text{Parameter Value (Trading Period)} = \sum_{Pv=1,N} \{(P_{V1} \times T_1) / \text{TPD}\}$$

Where:

$\sum_{Pv=1,N}$  is the summation for the N values of P during the Trading Period and where  $Pv=1$  denotes the first value of P during the Trading Period;

$T_1$  is the period (expressed in minutes) for which the value of P was equal to  $P_{v1}$  during the Trading Period; and

TPD is the Trading Period Duration;

**“TO Licence”** means the Licence to participate in the transmission of electricity granted to the TO under the Order;

**“Trading and Settlement Code” or “TSC”** means the Single Electricity Market Trading and Settlement Code which sets out the rules for trading in electricity and settling energy imbalances and the responsibilities of parties to the code;

**“Trading Period”** has the meaning set out in the TSC;

**“Trading Period Duration”** means a period equal to the duration of a Trading Period under the Trading and Settlement Code (as at the date of this Agreement it is 30 minutes).

**“Trading Period Payment”** means, in relation to POR, SOR, TOR1, TOR2 and RR and in relation to a Trading Period, the payment to which a Service Provider is entitled for providing the POR Capability, SOR Capability, TOR1 Capability, TOR2 Capability, RR (Synchronised) Capability or RR (De-synchronised) Capability of a Generating Unit in that Trading Period as calculated under paragraphs 3.2, 4.2, 5.2, 6.2, 7.2.1 and 7.2.2 of Schedule 2 respectively;

**“Transmission Owner” or “TO”** means Northern Ireland Electricity plc in its capacity as owner of the Transmission System and the Distribution System;

**“Transmission System”** has the meaning set out in the Grid Code;

**“Transmission System Operator”** has the meaning set out in the Grid Code;

**“TSO Licence”** means the licence to operate the Transmission System granted pursuant to Article 10(1)(b) of the Order;

**“Unit Load Controller”** means a device used to regulate the generation level of a Generating Unit (when it is operating so that its generation level is varied automatically to compensate for variations in the Frequency of the power system) to ensure as far as possible that it does not exceed or fall short of previously set limits;

**“Use of System Agreement”** means the agreement between the Company and the Service Provider which provides the right for the use of the All-Island Transmission Network;

**“Value Added Tax”** or **“VAT”** means the value added tax or any tax on the supply of goods and or services which may hereafter replace or supplement value added tax.

## SCHEDULE 2

### Operating Reserve

#### 1 Definition of Service

The Service Provider agrees to provide reserve Capability in accordance with the provisions of the Grid Code and this Schedule 2. The categories of reserve Capability to be provided, each of which is covered in turn below, are: Primary Operating Reserve, Secondary Operating Reserve, Tertiary Operating Reserve 1, Tertiary Operating Reserve 2 and Replacement Reserve.

#### 2 Minimum Technical Requirements

The Service Provider must provide reserve in accordance with the technical requirements of the Grid Code and the relevant Operating Parameters for the Generating Unit.

Unless stated otherwise, all quantities used in reserve calculations are exported values and the Conversion Factors will be used to convert values that are not so provided into exported values where necessary.

#### 3 Primary Operating Reserve (POR) - Capability and Payment

The basis for payments for Primary Operating Reserve (POR) is the calculation of the POR Capability of the Generating Unit over a Trading Period. The average Output and Availability of the Generating Unit for the Trading Period forms the basis for calculating POR Capability. The POR Capability is the lesser of (i) the sustained load lift obtained from the POR HAS Reserve Curve adjusted by the average Availability of the Generating Unit and (ii) the Declared Maximum POR for the Trading Period. The POR Capability (as calculated in accordance with paragraph 3.1) for the Trading Period is multiplied by the POR Payment Rate to determine the payment to be made to the Service Provider for the Trading Period. The payment for the Trading Period is adjusted by the POR Scaling Factor if the Declared Maximum POR is less than the Contracted Maximum POR.

##### 3.1 POR Capability

The Capability of the Generating Unit to provide POR in a Trading Period will be determined from the lesser of:

- (a) the value on the POR HAS Reserve Curve, adjusted by the Time Weighted Average Availability of the Generating Unit (expressed in MW) over the Trading Period. The



relevant value on the curve will be determined from the Output of the Generating Unit (expressed in MW) over the Trading Period; and

- (b) the Declared Maximum POR (this figure cannot be greater than the Contracted Maximum POR).

### 3.2 POR Payments

The Service Provider will receive a payment for each MW of POR Capability in each Trading Period determined in accordance with the following provisions of this paragraph 3.2. Unless stated otherwise, all parameters used in the calculation of such payments are the Time Weighted Average for a Trading Period.

The payment to the Service Provider for POR Capability of the Generating Unit in a Trading Period is determined as:

POR Trading Period Payment = POR Capability × POR Payment Rate × POR Scaling Factor × Trading Period Duration

Where

- a) POR Capability (expressed in MW) is the Capability of the Generating Unit in respect of POR and is calculated in accordance with paragraph 3.1;
- b) POR Payment Rate is the Payment Rate (expressed in £/MWh) applicable to POR;
- c) POR Scaling Factor is the Scaling Factor applicable to POR and is equal to:  $((\text{Declared Maximum POR} + \text{Contracted Maximum POR}) / (2 \times \text{Contracted Maximum POR}))$ .

### 3.3 Assessment of POR Performance

In order to assess the quality of delivery of POR when required by the power system, the Generating Unit will be monitored and assessed during a Frequency Event in accordance with the provisions of this Section 3 and the provisions of OC11.5.5 of the Grid Code (Spinning Reserve Monitoring) shall not apply to this Agreement. The assessment of POR performance is carried out at one point in time corresponding to the time of the Nadir Frequency during the POR time range of T+5 seconds to T+15 seconds (the “**POR Period**”).

Charges will be applied based on the extent of the difference between the Expected POR and the Achieved POR for the Generating Unit.

The basis for calculating the Expected POR is the anticipated Generating Unit response to the Frequency reduction. The increase in the Generating Unit Output is driven by the governor response and is limited by the sustained loading ability of the Generating Unit. In the initial phase of the POR Period it is recognised that the Generating Unit Output may lag behind the theoretical droop determined response due to the physical reaction of the unit to a power system Frequency change, the variation depending on generating unit type. To compensate for this, the assessment uses the POR Governor Droop Multiplier which decays to a value of one over time, the value during the POR Period determined from the POR Governor Droop Multiplier Alpha and the POR Governor Droop Multiplier Beta.

If the Achieved POR response is less than the Expected POR response after the application of the Applicable Tolerance a POR failure is recorded.

Where a Frequency Event has occurred while the Generating Unit was Synchronised to the power system, the Generating Unit response to any further Frequency Event occurring within 5 minutes after the end of the Frequency Event will not be taken into account for settlement purposes.

### 3.4 Calculation of Expected Provision of POR

#### 3.4.1 The Expected POR following a Frequency Event is derived from –

- 1) The Pre-Event Output of the Generating Unit;
- 2) The Pre-Event System Frequency;
- 3) The “**Nadir Frequency**”, being the minimum Frequency during the POR Period;
- 4) The “**Nadir Time**”, the time at which the minimum Frequency occurs during the POR Period with reference to the start of the Frequency Event at T=0;
- 5) The “**Nadir Frequency Delta**”, being the difference between the Pre-Event System Frequency and the minimum Frequency during the POR Period;
- 6) The “**Generating Unit Output Delta**”, being the change in the Generating Unit Output from the Pre-Event Output to the Generating Unit Output at the Nadir Time;
- 7) The Output of the Generating Unit (in MW) at the Nadir Time;
- 8) The declared Availability of the Generating Unit (in MW) at the start of a Frequency Event;
- 9) The POR HAS Reserve Curve;
- 10) The Declared Maximum POR;
- 11) The Declared Governor Droop;
- 12) The Governor Droop Demanded POR;

- 13) The “POR **Governor Droop Multiplier**” being the multiplier calculated, where applicable, under paragraph 3.4.2;
- 14) The Generating Unit Frequency / Capacity Function (if applicable); and
- 15) The Unit Load Controller settings, if applicable. If a Unit Load Controller is in service during the Frequency Event the Pre-Event System Frequency and Pre-Event Output of the Generating Unit will be determined using the Unit Load Controller settings.

3.4.2 The POR Governor Droop Multiplier, where applicable, is calculated as:

$$\text{PORGovernorDroopMultiplier} = 1 + (\text{PORgovernordroopmultiplier} \times e^{(-\text{PORGovernordroopmultiplier} \beta \times \text{nadirtime})})$$

(Where e is the exponential function)

3.4.3 The Governor Droop Demanded POR is calculated as the product of:

the Governor Droop Generating Unit Related Capacity (MW) and the Nadir Frequency Delta (Hz) divided by the Declared Governor Droop (PU) times the POR Governor Droop Multiplier (PU) times the nominal Frequency (50 Hz)

3.4.4 The Expected POR is the increase from the Pre-Event Output from the Generating Unit at the Nadir Frequency and is calculated as the minimum of -

- (a) The POR value determined from the POR HAS Reserve Curve in conjunction with:
  - (i) the Generating Unit Pre-Event Output; and
  - (ii) the Generating Unit declared Availability.
- (b) The difference between the Generating Unit Pre-Event Output and the declared Availability. This value will be adjusted by the Generating Unit Frequency / Capacity Function at the Nadir Frequency in accordance with the Connection Conditions in the Grid Code, if applicable.
- (c) The Governor Droop Demanded POR.
- (d) The Declared Maximum POR.

3.5 Calculation of Achieved Provision of POR

The Achieved POR following a Frequency Event is equal to the Generating Unit Output Delta.

### 3.6 POR Charges

POR Charges are payable by the Service Provider if the Achieved POR is less than the Expected POR by an amount that exceeds the Applicable Tolerance.

The POR Charge will be based on the difference between the Expected POR and Achieved POR for the Generating Unit.

The Service Provider will be required to pay to the Company a POR Charge in respect of any Trading Period in which a Frequency Event occurs where the difference between Expected POR and Achieved POR is greater than the Applicable Tolerance calculated as follows:

$$\text{POR Charge} = (\text{Expected POR} - \text{Achieved POR}) \times \text{POR Payment Rate} \times \text{POR Charge Period}$$

Where:

- a) Expected POR is calculated in accordance with paragraph 3.4 above;
- b) Achieved POR is calculated in accordance with paragraph 3.5 above;
- c) POR Payment Rate is the Payment Rate (expressed in £/MWh) applicable to POR.
- d) POR Charge Period is the Charge Period (expressed in hours) applicable to POR;

## 4 Secondary Operating Reserve (SOR) - Capability and Payment

The basis for payments for Secondary Operating Reserve (SOR) is the calculation of the SOR Capability of the Generating Unit over a Trading Period. The average Output and Availability of the Generating Unit for the Trading Period forms the basis for calculating SOR Capability. The SOR Capability is the lesser of (i) the sustained load lift obtained from the SOR HAS Reserve Curve adjusted by the average Availability of the Generating Unit and (ii) the Declared Maximum SOR for the Trading Period. The SOR Capability (as calculated in accordance with paragraph 4.1) for the Trading Period is multiplied by the SOR Payment Rate to determine the payment to be made to the Service Provider for the Trading Period. The payment for the Trading Period is adjusted by the SOR Scaling Factor if the Declared Maximum SOR is less than the Contracted Maximum SOR.

### 4.1 SOR Capability

The Capability of the Generating Unit to provide SOR in a Trading Period will be determined from the lesser of:

- (a) the value on the SOR HAS Reserve Curve, adjusted by the Time Weighted Average Availability of the Generating Unit (expressed in MW) over the Trading Period. The relevant value on the curve will be determined from the Output of the Generating Unit (expressed in MW) over the Trading Period; and
- (b) the Declared Maximum SOR (this figure cannot be greater than the Contracted SOR).

#### 4.2 SOR Payments

The Service Provider will receive a payment for each MW of SOR Capability in each Trading Period determined in accordance with the following provisions of this paragraph 4.2. Unless stated otherwise, all parameters used in the calculation of such payments are the Time Weighted Average for a Trading Period.

The payment to the Service Provider for SOR Capability of the Generating Unit in a Trading Period is determined as:

$$\text{SOR Trading Period Payment} = \text{SOR Capability} \times \text{SOR Payment Rate} \times \text{SOR Scaling Factor} \times \text{Trading Period Duration}$$

Where

- a) SOR Capability (expressed in MW) is the Capability of the Generating Unit in respect of SOR and is calculated in accordance with paragraph 4.1;
- b) SOR Payment Rate is the Payment Rate (expressed in £/MWh) applicable to SOR;
- c) SOR Scaling Factor is the Scaling Factor applicable to SOR and is equal to:  $\{(\text{Declared Maximum SOR} + \text{Contracted Maximum SOR}) / (2 \times \text{Contracted Maximum SOR})\}$ .

#### 4.3 Assessment of SOR Performance

In order to assess the quality of delivery of SOR when required by the power system, the Generating Unit will be monitored and assessed during a Frequency Event in accordance with this Section 4 and the provisions of OC11.5.5 of the Grid Code (Spinning Reserve Monitoring) shall not apply to this Agreement. The assessment of SOR performance is carried out during the entire SOR time range of T+15 seconds to T+90 seconds (the “**SOR Period**”).

SOR Charges will be applied based on the extent of the difference between the Expected SOR and the Achieved SOR for the Generating Unit.

The Expected SOR is determined for each sample point during the SOR Period and compared to the Achieved SOR. If the Achieved SOR is less than the Expected SOR, the deficit is

summed for all the Event Recorder sample points and an average deficit produced. If a deficit remains after the application of the Applicable Tolerance a SOR failure is recorded.

Where a Frequency Event has occurred while the Generating Unit was Synchronised to the power system, the Generating Unit response to any further Frequency Event occurring within 5 minutes after the end of the Frequency Event will not be taken into account for settlement purposes.

#### 4.4 Calculation of Expected Provision of SOR

##### 4.4.1 The Expected SOR following a Frequency Event is derived from –

- 1) The Pre-Event Output of the Generating Unit;
- 2) The Pre-Event System Frequency;
- 3) The declared Availability of the Generating Unit (in MW) at the start of a Frequency Event;
- 4) The SOR HAS Reserve Curve;
- 5) The Declared Maximum SOR;
- 6) The Declared Governor Droop;
- 7) The Governor Droop Demanded SOR;
- 8) The Generating Unit Frequency /Capacity Function (if applicable);
- 9) The Unit Load Controller settings, if applicable. If a Unit Load Controller is in service during the Frequency Event the Pre-Event System Frequency and Pre-Event Output of the Generating Unit will be determined using the Unit Load Controller settings.

##### 4.4.2 The Governor Droop Demanded SOR is calculated by reference to each sample point during the SOR Period, as the product of –

the Governor Droop Generating Unit Related Capacity (MW) and the sample point Frequency delta (Hz) divided by the Declared Governor Droop (PU) times the nominal Frequency ( 50 Hz).

##### 4.4.3 The Expected SOR is the increase from the Pre-Event Output from the Generating Unit at each sample point during the SOR Period and is calculated as the minimum of:

- (a) The SOR value determined from the SOR HAS Reserve Curve in conjunction with (i) the Generating Unit Pre–Event Output and (ii) the declared Availability;

- (b) The difference between the Generating Unit Pre–Event Output and the declared Availability. In the case of a CCGT only, this value will be adjusted by the Generating Unit Frequency/Capacity Function at the each sample point Frequency, if applicable;
- (c) The Governor Droop Demanded SOR;
- (d) The Declared Maximum SOR.

The sample point Expected SOR values are averaged over the SOR Period to give the “**Average SOR Requirement**”.

#### 4.5 Calculation of Achieved Provision of SOR

The Achieved SOR following a Frequency Event will be calculated for each sample point during the SOR Period as the Generating Unit Output minus the Generating Unit Pre-Event Output.

If the Achieved SOR is less than the Expected SOR, at a sample point, a deficit of SOR is recorded. SOR deficits averaged over the SOR Period produce the “**Average SOR Deficit**”.

#### 4.6 SOR Charges

SOR Charges are applied if the Average SOR Deficit is greater than the Applicable Tolerance. The SOR Charge is calculated as follows:

$$\text{SOR Charge} = \text{Average SOR Deficit} \times \text{SOR Payment Rate} \times \text{SOR Charge Period}$$

Where:

- a) the Average SOR Deficit is calculated in accordance with paragraph 4.5 above;
- b) SOR Payment Rate is the Payment Rate (expressed in £/MWh) applicable to SOR; and
- c) SOR Charge Period is the Charge Period (expressed in hours) applicable to SOR.

### 5 Tertiary 1 Operating Reserve (TOR1) - Availability and Payment

The basis for payments for Tertiary Operating Reserve 1 (TOR1) is the calculation of the TOR1 Capability of the Generating Unit over a Trading Period. The average Output and Availability of the Generating Unit for the Trading Period forms the basis for calculating TOR1 Capability. The TOR1 Capability is the lesser of (i) the sustained load lift obtained from the TOR1 HAS Reserve Curve adjusted by the average Availability of the Generating Unit and (ii) the Declared Maximum TOR1 for the Trading Period. The TOR1 Capability (as calculated in accordance with paragraph 5.1) for the Trading Period is multiplied by the TOR Payment Rate to determine the payment to be made to the Service Provider for the Trading Period. The payment for the

Trading Period is adjusted by the TOR1 Scaling Factor if the Declared Maximum TOR1 is less than the Contracted Maximum TOR1.

### 5.1 TOR1 Capability

The Capability of the Generating Unit to provide TOR1 in a Trading Period will be determined from the lesser of:

- (a) the value on the TOR1 HAS Reserve Curve, adjusted by the Time Weighted Average Availability of the Generating Unit (expressed in MW) over the Trading Period. The relevant value on the curve will be determined from the Output of the Generating Unit (expressed in MW) over the Trading Period; and
- (b) the Declared Maximum TOR1 (this figure cannot be greater than the Contracted TOR1).

### 5.2 TOR1 Payments

The Service Provider will receive a payment for each MW of TOR1 Capability in each Trading Period determined in accordance with the following provisions of this paragraph 5.2. Unless stated otherwise, all parameters used in the calculation of such payments are the Time Weighted Average for a Trading Period.

The payment to the Service Provider for TOR1 Capability of the Generating Unit in a Trading Period is determined as:

$$\text{TOR1 Trading Period Payment} = \text{TOR1 Capability} \times \text{TOR1 Payment Rate} \times \text{TOR1 Scaling Factor} \times \text{Trading Period Duration}$$

Where

- a) TOR1 Capability (expressed in MW) is the Capability of the Generating Unit in respect of TOR1 and is calculated in accordance with paragraph 5.1;
- b) TOR1 Payment Rate is the Payment Rate for TOR1 (expressed in £/MWh); and
- c) TOR1 Scaling Factor is the Scaling Factor applicable to TOR1 and is equal to:  $\{(\text{Declared Maximum TOR1} + \text{Contracted Maximum TOR1}) / (2 \times \text{Contracted Maximum TOR1})\}$ .

### 5.3 Assessment of TOR1 Performance

In order to assess the quality of delivery of TOR1 when required by the power system, the Generating Unit will be monitored and assessed during a Frequency Event in accordance with



this Section 5 and the provisions of OC11.5.5 of the Grid Code (Spinning Reserve Monitoring) shall not apply to this Agreement. The assessment of TOR1 performance is carried out during the entire TOR1 time range of T+90 seconds to T+300 seconds (the “**TOR1 Period**”).

TOR Charges will be applied based on the extent of the difference between the Expected TOR1 and the Achieved TOR1 for the Generating Unit.

The Expected TOR1 is determined for each sample point during the TOR1 Period and compared to the Achieved TOR1. If the Achieved TOR1 is less than the Expected TOR1, the deficit is summated for all the Event Recorder sample points and an average deficit produced. If a deficit remains after the application of the Applicable Tolerance a TOR1 failure is recorded.

Where a Frequency Event has occurred while the Generating Unit was Synchronised to the power system, the Generating Unit response to any further Frequency Event occurring within 5 minutes after the end of the Frequency Event will not be taken into account for settlement purposes.

#### 5.4 Calculation of Expected Provision of TOR1

##### 5.4.1 The Expected TOR1 following a Frequency Event is derived from –

- 1) The Pre-Event Output of the Generating Unit;
- 2) The Pre-Event System Frequency;
- 3) The declared Availability of the Generating Unit (in MW) at the start of a Frequency Event;
- 4) The TOR1 HAS Reserve Curve;
- 5) The Declared Maximum TOR1;
- 6) The Declared Governor Droop;
- 7) The Governor Droop Demanded TOR1.
- 8) The Generating Unit Frequency / Capacity Function (if applicable).
- 9) The Unit Load Controller settings, if applicable. If a Unit Load Controller is in service during the Frequency Event the Pre-Event System Frequency and Pre-Event Output of the Generating Unit will be determined using the Unit Load Controller settings.

##### 5.4.2 The Governor Droop Demanded TOR1 is calculated by reference to each sample point during the TOR1 Period, as the product of -

the Governor Droop Generating Unit Related Capacity (**MW**) and the sample point Frequency delta (Hz) divided by the Declared Governor Droop (PU) times the nominal Frequency ( 50 Hz).

5.4.3 The Expected TOR1 following a Frequency Event is the increase from the Pre-Event Output from the Generating Unit at each sample point during the TOR1 Period and is calculated as the minimum of:

- (a) The TOR1 value determined from the TOR1 HAS Reserve Curve in conjunction with (i) the Generating Unit Pre-Event Output and (ii) the declared Availability;
- (b) The difference between the Generating Unit Pre-Event Output and the declared Availability. In the case of a CCGT only, this value will be adjusted by the Generating Unit Frequency/Capacity Function at each sample point Frequency, if applicable;
- (c) The Governor Droop Demanded TOR1;
- (d) The Declared Maximum TOR1.

The sample point Expected TOR1 values are averaged over the TOR1 Period to give the **“Average TOR1 Requirement”**.

#### 5.5 Calculation of Achieved Provision of TOR1

The Achieved TOR1 will be calculated for each sample point during the TOR1 Period as the Generating Unit Output minus the Generating Unit Pre-Event Output.

If the Achieved TOR1 is less than the Expected TOR1, at a sample point, a deficit of TOR1 is recorded. TOR1 deficits averaged over the TOR1 Period produce the **“Average TOR1 Deficit”**.

#### 5.6 TOR1 Charges

The TOR1 Charge is not applied if the average Frequency during the first 30 seconds of the TOR1 Period has been greater than 49.8 Hz. Otherwise, the TOR1 Charge will be applied if the Average TOR1 Deficit is greater than the Applicable Tolerance and is calculated as follows:

$$\text{TOR1 Charge} = \text{TOR1 Payment Rate} \times \text{Average TOR Deficit} \times \text{TOR Charge Period}$$

Where:

- a) TOR1 Payment Rate is the Payment Rate (expressed in £/MWh) applicable to TOR1;
- b) the Average TOR1 Deficit is calculated in accordance with paragraph 5.5 above; and

c) TOR1 Charge Period is the Charge Period (expressed in hours) applicable to TOR1.

## **6 Tertiary 2 Operating Reserve (TOR2) - Availability and Payment**

The basis for payments for Tertiary Operating Reserve 2 (TOR2) is the calculation of the TOR2 Capability of the Generating Unit over a Trading Period. The average Output and Availability of the Generating Unit for the Trading Period forms the basis for calculating TOR2 Capability. The TOR2 Capability is the lesser of (i) the sustained load lift value obtained from the TOR2 HAS Reserve Curve adjusted by the average Availability of the Generating Unit and (ii) the Declared Maximum TOR2 for the Trading Period. The TOR2 Capability (as calculated in accordance with paragraph 5.1) for the Trading Period is multiplied by the TOR Payment Rate to determine the payment to be made to the Service Provider for the Trading Period. The payment for the Trading Period is adjusted by the TOR2 Scaling Factor if the Declared Maximum TOR2 is less than the Contracted Maximum TOR2.

## 6.1 TOR2 Capability

The Capability of the Generating Unit to provide TOR2 in a Trading Period will be determined from the lesser of:

- (a) the value on the TOR2 HAS Reserve Curve, adjusted by the Time Weighted Average Availability of the Generating Unit (expressed in MW) over the Trading Period. The relevant value on the curve will be determined from the Output of the Generating Unit (expressed in MW) over the Trading Period; and
- (b) the Declared Maximum TOR2 (this figure cannot be greater than the Contracted TOR2).

## 6.2 TOR2 Payments

The Service Provider will receive a payment for each MW of TOR2 Capability in each Trading Period determined in accordance with the following provisions of this paragraph 6.2. Unless stated otherwise, all parameters used in the calculation of such payments are the Time Weighted Average for a Trading Period.

The payment to the Service Provider for TOR2 Capability of the Generating Unit in a Trading Period is determined as:

$$\text{TOR2 Trading Period Payment} = \text{TOR2 Capability} \times \text{TOR2 Payment Rate} \times \text{TOR2 Scaling Factor} \times \text{Trading Period Duration}$$

Where

- a) TOR2 Capability (expressed in MW) is the Capability of the Generating Unit in respect of TOR2 and is calculated in accordance with paragraph 6.1;
- b) TOR2 Payment Rate is the Payment Rate for TOR2 (expressed in £/MWh) applicable to TOR2; and
- c) TOR2 Scaling Factor is the Scaling Factor applicable to TOR2 and is equal to:  $\{(\text{Declared Maximum TOR2} + \text{Contracted Maximum TOR2}) / (2 \times \text{Contracted Maximum TOR2})\}$ .

## 6.3 Assessment of TOR2 Performance

In order to assess the quality of delivery of TOR2 when required by the power system, the Generating Unit will be monitored and assessed during a Frequency Event in accordance with

the provisions of this Section 6 and the provisions of OC11.5.5 of the Grid Code (Spinning Reserve Monitoring) shall not apply to this Agreement. The assessment of TOR2 performance is carried out for the entire TOR2 time range of T+5 minutes to T+20 minutes (the “**TOR2 Period**”) taking into account, but not limited to, the power system Frequency, Dispatch Instructions and the status of the Generating Unit prior to the Frequency Event.

#### 6.4 TOR2 Charges

Not applied.

### 7. Replacement Reserve

The basis for payments for Replacement Reserve (RR) is the calculation of the RR Capability of the Generating Unit over a Trading Period.

For Generating Units already Synchronised to the power system, the average Output and Availability of the Generating Unit for the Trading Period forms the basis for calculating RR Capability. The RR Capability is the lesser of (i) the sustained load lift obtained from the RR HAS Reserve Curve adjusted by the average Availability of the Generating Unit and (ii) the Declared Maximum RR for the Trading Period. The RR Capability (as calculated in accordance with paragraph 7.1) for the Trading Period is multiplied by the RR Synchronised Payment Rate to determine the payment to be made to the Service Provider for the Trading Period. The payment for the Trading Period is adjusted by the RR Scaling Factor if the Declared Maximum RR is less than the Contracted Maximum RR.

For Generating Units not Synchronised to the power system, the Availability of the Generating Unit for the Trading Period forms the basis for calculating RR Capability. The RR Capability is the lesser of (i) the sustained load lift value obtained from the RR HAS Reserve Curve adjusted by the average Availability of the Generating Unit and (ii) the Declared Maximum RR for the Trading Period. The RR Capability (as calculated in accordance with paragraph 7.1) for the Trading Period is multiplied by the RR De-Synchronised Payment Rate to determine the payment to be made to the Service Provider for the Trading Period. The payment for the Trading Period is adjusted by the RR Scaling Factor if the Declared Maximum RR is less than the Contracted Maximum RR.

#### 7.1 RR Capability

##### 7.1.1 Generating Units Synchronised to the power system

The Capability of the Generating Unit to provide RR in a Trading Period in which it is Synchronised to the power system will be determined from the lesser of:

- (a) the value on the RR HAS Reserve Curve, adjusted by the Time Weighted Average Availability of the Generating Unit (expressed in MW) over the Trading Period. The relevant value on the curve will be determined from the Output of the Generating Unit (expressed in MW) over the Trading Period; and
- (b) the Declared Maximum RR. Note that this figure cannot be greater than the Contracted RR.

#### 7.1.2 Generating Units not Synchronised to the power system

The Capability of the Generating Unit to provide RR in a Trading Period in which it is not Synchronised to the power system will be determined from the lesser of:

- (a) the value on the RR HAS Reserve Curve. The relevant value on the curve will be determined from the Time Weighted Average Availability of the Generating Unit (expressed in MW) over the Trading Period; and
- (b) the Declared Maximum RR. Note that this figure cannot be greater than the Contracted RR.

## 7.2 RR Payments

The Service Provider will receive a payment for each MW of RR Capability in each Trading Period determined in accordance with the following provisions of this paragraph 7.2. Unless stated otherwise, all parameters used in the calculation of such payments are the Time Weighted Average for a Trading Period.

7.2.1 The payment to the Service Provider for RR Capability of the Generating Unit in a Trading Period in which it is Synchronised to the power system is determined as:

$$\text{RR (Synchronised) Trading Period Payment} = \text{RR (Synchronised) Capability} \times \text{RR (Synchronised) Payment Rate} \times \text{RR Scaling Factor} \times \text{Trading Period Duration}$$

Where

- a) RR (Synchronised) Capability (expressed in MW) is calculated in accordance with paragraph 7.1.1;
- b) RR (Synchronised) Payment Rate is the Payment Rate for RR (Synchronised) (expressed in £/MWh); and
- c) RR Scaling Factor is the Scaling Factor applicable to RR and is equal to:  $\{(\text{Declared Maximum RR} + \text{Contracted Maximum RR}) / (2 \times \text{Contracted Maximum RR})\}$ .

7.2.2 The payment to the Service Provider for RR Capability of the Generating Unit in a Trading Period in which it is not Synchronised to the power system is determined as:

$$\text{RR (De-Synchronised) Trading Period Payment} = \text{RR (De-Synchronised) Capability} \times \text{RR (De-Synchronised) Payment Rate} \times \text{RR Scaling Factor} \times \text{Trading Period Duration}$$

Where

- a) RR (De-Synchronised) Capability (expressed in MW) is calculated in accordance with paragraph 7.1.2;
- b) RR (De-Synchronised) Payment Rate is the Payment Rate for RR (De-Synchronised) (expressed in £/MWh); and
- c) RR Scaling Factor is the Scaling Factor applicable to RR and is equal to:  $\{(\text{Declared Maximum RR} + \text{Contracted Maximum RR}) / (2 \times \text{Contracted Maximum RR})\}$ .

### 7.3 Assessment of RR Performance

In order to assess the quality of delivery of RR when required by the power system, the Generating Unit will be monitored and assessed over the RR time range of T+20 minutes to T+4 hours ("**RR Time Period**") taking into account, but not limited to, the power system Frequency, Dispatch Instructions and the status of the Generating Unit prior to the Frequency Event. Monitoring and assessment of RR shall be undertaken in accordance with this Section 7 and the provisions of OC11.5.5 of the Grid Code (Spinning Reserve Monitoring) shall not apply to this Agreement.

### 7.4 RR Charges

Not applied.

## **SCHEDULE 3**

### **Reactive Power**

#### **1. Definition of Service**

The Service Provider agrees to provide Reactive Power Capability (Leading) and Reactive Power Capability (Lagging) in accordance with the provisions of the Grid Code and this Schedule 3.

The Company shall have the right (but shall not be under any obligation) at any time to instruct the Service Provider, by the issue of a Dispatch Instruction, to provide Reactive Power (Leading) or Reactive Power (Lagging).

#### **2. Minimum Technical Requirements**

The Service Provider must provide Reactive Power in accordance with the technical requirements of the Grid Code and the relevant Operating Parameters for the Generating Unit.

Unless stated otherwise, all quantities used in Reactive Power calculations are generated values.

#### **3. Reactive Power – Capability and Payment**

The Service Provider will be entitled to payments for the Reactive Power Capability (Leading) and Reactive Power Capability (Lagging) of the Generating Unit calculated in accordance with this Schedule 3.

Performance of the Generating Unit will be monitored by the Company in real time operation and by post real time review.

##### **3.1 Reactive Power Capability**

For the purposes of settlement, the Reactive Power capability of the Generating Unit shall be determined separately for Reactive Power (Leading) and Reactive Power (Lagging) for each Trading Period as described in paragraphs 3.1.1 and 3.1.2. The Generating Unit will, for the purposes of this Schedule 3, only have Reactive Power Capability (Leading) or Reactive Power Capability (Lagging) when the Generating Unit is Synchronised to the power system and/or a Reactive Power Device is in service.



### 3.1.1 Reactive Power Capability (Leading):

- a) For a CDGU, the “**Reactive Power Capability (Leading)**” for a Trading Period is equal to the lower of the Contracted Reactive Power (Leading) and the Time Weighted Average of all Declared Reactive Power (Leading) values notified by the Service Provider in respect of that Trading Period.

OR

- b) For a non-CDGU, the “**Reactive Power Capability (Leading)**” for a Trading Period is equal to the value of the Contracted Reactive Power (Leading) determined from the point on the Reactive Power Characteristic Curve for the Generating Unit corresponding to the average MW output for that Trading Period.

### 3.1.2 Reactive Power Capability (Lagging):

- a) For a CDGU, the “**Reactive Power Capability (Lagging)**” for a Trading Period is equal to the lower of the Contracted Reactive Power (Lagging) and the Time Weighted Average of all Declared Reactive Power (Lagging) values notified by the Service Provider for that Trading Period.

OR

- b) For a non-CDGU, the “**Reactive Power Capability (Lagging)**” for a Trading Period is equal to the value of Contracted Reactive Power (Lagging) determined from the point on the Reactive Power Characteristic Curve for the Generating Unit corresponding to the average MW output for that Trading Period.

### 3.1.3 Automatic Voltage Regulator Status

- a) For a CDGU, the “**Automatic Voltage Regulator Status (AVR Status)**” for a Trading Period shall be equal to the Time Weighted Average of all Declared Automatic Voltage Regulator Status values submitted by the Service Provider that apply to that Trading Period.

OR

- b) For a non-CDGU, the “**Automatic Voltage Regulator Status (AVR Status)**” is deemed to be in service unless the Service Provider notifies the Company that the AVR is not in service or if the Company, through monitoring, discovers that the AVR is not in service.

### 3.2 Reactive Power Payment

Subject to the terms of this Agreement, the payment rates for the purposes of calculating the amount payable to the Service Provider by the Company in respect of the provision of Reactive Power will be as set out in the Charging Statement. The payment for the provision of Reactive Power is based on the Reactive Power capability of the Generating Unit.

Payment will be made to the Service Provider in respect of each Trading Period in which the Generating Unit is Synchronised and/or has a Reactive Power Device in service. The Service Provider will be paid an amount calculated in accordance with paragraphs 3.2.1 and 3.2.2 on the basis of the Reactive Power capability of the Generating Unit, the Automatic Voltage Regulator Status and a scaling factor. The scaling factor is calculated from the declared capability and the contracted capability (as further described below).

#### 3.2.1 Reactive Power Capability Payments (Leading)

Reactive Power Capability Payment (Leading) for any Trading Period =  
Reactive Power Capability (Leading) x Reactive Power Capability (Leading) Rate x Reactive Power (Leading) Scaling Factor x AVR Factor x Trading Period Duration

where

- a) the Reactive Power Capability (Leading) (expressed in MVar) is the capability of the Generating Unit to absorb Reactive Power as determined in accordance with paragraph 3.1;
- b) the Reactive Power Capability (Leading) Rate is the rate for Reactive Power (Leading) (expressed in £/MVarh) specified in the Charging Statement applicable to the Trading Period;
- c) the Reactive Power (Leading) Scaling Factor is a factor calculated as the sum of the Contracted Reactive Power (Leading) and Declared Reactive Power (Leading) divided by twice the Contracted Reactive Power (Leading);
- d) the AVR Factor is a factor, calculated on a Time Weighted Average basis, of 2 where the Automatic Voltage Regulator is in service (AVR Status ON) and 1 where the AVR for the Generating Unit is not in service (AVR Status OFF) during the Trading Period; and
- e) the Trading Period Duration (expressed in hours).

### 3.2.2 Reactive Power Capability Payments (Lagging)

Reactive Power Capability Payment (Lagging) for any Trading Period =  
Reactive Power Capability (Lagging) x Reactive Power Capability (Lagging) Rate x Reactive Power  
(Lagging) Scaling Factor x AVR Factor x Trading Period Duration

where

- a) the Reactive Power Capability (Lagging) (expressed in MVAR) is the capability of the Generating Unit to produce Reactive Power as determined in accordance with paragraph 3.1;
- b) the Reactive Power Capability (Lagging) Rate is the rate for Reactive Power (Lagging) (expressed in £/MVARh) specified in the Charging Statement applicable to the Trading Period;
- c) the Reactive Power (Lagging) Scaling Factor is a factor calculated as the sum of the Contracted Reactive Power (Lagging) and Declared Reactive Power (Lagging) divided by twice the Contracted Reactive Power (Lagging);
- d) the AVR Factor is a factor, calculated on a Time Weighted Average basis, of 2 where the Automatic Voltage Regulator is in service (AVR Status ON) and 1 where the AVR is not in service (AVR Status OFF) during the Trading Period; and
- e) Trading Period Duration (expressed in hours).

**SCHEDULE 4**

**Not Used**

## SCHEDULE 5

### Billing and Payment Plan

#### 1. Confirmation Statements

##### *Confirmation of Data for Ancillary Services Payments and Charges*

- 1.1 The Company shall prepare and send to the Service Provider a daily statement (“**Confirmation Statement**”) in writing providing details for each Trading Period of a Trading Day of the data to be used in the calculation of Ancillary Services Payments and, if applicable, the data to be used in the calculation of any Ancillary Services Charges in respect of any category of Reserve. A Confirmation Statement shall be sent to the Service Provider no later than the third Business Day after the Trading Day to which it relates.
- 1.2 The Company hereby confirms that, before including any Charge in respect of Reserve in a Confirmation Statement, the Company will have considered and taken into account relevant issues including the following:
  - 1.2.1 whether there were any Transmission System disturbances immediately prior to the start of the Frequency Event;
  - 1.2.2 in circumstances where there have been 2 frequency drops within the one Frequency Event, which frequency drop should be considered to be the start point of the Frequency Event;
  - 1.2.3 whether any Dispatch Instructions issued just prior to or during a Frequency Event might have interfered with the free governor action or Unit Load Controller action of the Generating Unit during the Frequency Event;
  - 1.2.4 whether the appropriate Conversion Factors have been used to convert generated output into sent out values (or vice versa);
  - 1.2.5 whether the Event Recorder data requires smoothing by the application of a moving point average to reduce the effect of Transmission System oscillations on the Generating Unit output being considered;
  - 1.2.6 whether the Generating Unit was operating in accordance with a Dispatch Instruction to increase Load during the Frequency Event; and

- 1.2.7 whether the pre-transient load and frequency calculated from the averaged -60s to -30s period differs from the values at minus 5 seconds prior to the start of the Frequency Event the more representative figures shall be used.

***Access to Information***

- 1.3 The Company shall provide such further information as the Service Provider reasonably requests to verify a Confirmation Statement where the information:
- 1.3.1 is readily available to the Company;
- 1.3.2 is not available to the Service Provider by any other means; and
- 1.3.3 is necessary for the purpose of verifying the information comprised in the Confirmation Statement.

***Review of Confirmation Statements***

- 1.4 In relation to each Confirmation Statement:
- 1.4.1 the information contained in the statement, except for alleged errors or omissions notified under paragraph 1.4.2 below, shall (subject to paragraph 1.6 below) be deemed approved by both Parties on the sixth Business Day after receipt of that statement by the Service Provider;
- 1.4.2 the Service Provider shall notify any errors or omissions to the Company in writing as soon as reasonably practicable (and in any event within five Business Days after receipt); and
- 1.4.3 where the Parties cannot agree any errors or omissions notified under paragraph 1.4.2 above within five Business Days of receipt by the Company of the Service Provider's response to the Confirmation Statement, either Party may refer the dispute to the Expert in accordance with paragraph 3 of Schedule 6.

***Final Confirmation Statement***

- 1.5 A Confirmation Statement which has been expressly approved in writing by both Parties as being complete and correct, or which is deemed to have been approved pursuant to paragraph 1.4 or which is approved by a final decision of the Expert shall be a Final Confirmation Statement. Information contained in a Final Confirmation Statement shall be binding on both Parties for the purposes of this Agreement and no dispute shall be raised in relation to it save in the case and to the extent provided for in paragraph 1.6.

***Disputes Limitation***

1.6 Nothing in paragraphs 1.4 or 1.5 shall prevent either Party from disputing information contained in or referred to in a Final Confirmation Statement at any time where it is reasonable in all the circumstances to do so, which includes in the case of fraud and manifest error. No dispute shall be raised under this paragraph 1.6 in relation to information in a Confirmation Statement regarding a Trading Period after the first anniversary of the date on which the relevant statement becomes final. Any dispute as to whether it is reasonable to raise a dispute under this paragraph 1.6 shall be referred to the Expert for determination in accordance with paragraph 3 of Schedule 6.

***Effect of Confirmation Statement***

1.7 Subject to paragraph 2.2 below the Service Provider shall use the Final Confirmation Statement (or pending resolution of any outstanding disputes, the Confirmation Statement to the extent that it is not in dispute) to prepare the invoices and credit notes required by paragraph 2 below.

**2. Billing and Payment**

***AS Statements and Invoices***

2.1 The Service Provider shall, within 10 Business Days after the end of each month during the term of this Agreement (including the month in which termination of this Agreement occurs), prepare on the basis of the Confirmation Statements, and issue to the Company:

2.1.1 An invoice in respect of the amount of the Ancillary Services Payments earned by the Service Provider during and due from the Company for that month as determined in accordance with Schedules 2 and 3; and

2.1.2 A credit note in respect of the amount of the Ancillary Service Charges due from the Service Provider for that month (as determined in accordance with Schedules 2 and 3).

The amount of the invoice issued pursuant to paragraph 2.1.1 and the amount of the credit note issued pursuant to paragraph 2.1.2 shall be netted off and the net amount payable by the Company or the Service Provider, as the case may be, shall be paid 28 days after the end of the month or 10 Business Days after receipt of the invoice and credit note, whichever is the later.

2.2 Notwithstanding the provisions of paragraph 2.1:

2.2.1 subject to paragraph 2.2.2, the Service Provider shall not issue an invoice or credit note, as the case may be, pursuant to paragraph 2.1, unless Confirmation Statements have been received by the Service Provider in respect of the period covered by the invoice or credit note, as the case may be, and all these Confirmation Statements have been reviewed by the Service Provider and the Company;

2.2.2 if the Service Provider has not received by the beginning of the 8th Business Day after the end of a month a Confirmation Statement in respect of any day during that month, the Service Provider shall be entitled to prepare and issue invoices and credit notes on the basis of information available at that time.

***Other Payments***

2.3 Except where expressly provided to the contrary a payment to be made by either Party under this Agreement shall be made within 14 days of the Party liable to make payment receiving a demand from the other Party.

***Payment Procedure***

2.4 Any sums payable pursuant to this Agreement shall be made for value on the due date in such manner as agreed from time to time by the Parties, to such bank account as may be notified from time to time by the receiving Party to the paying Party. Each Party shall notify the other of the details of the bank account to which sums due to that Party shall be credited, identifying such bank account by means of the bank sort code number, the bank account number and bank account title.

***Application of Payments***

2.5 Payments received by one Party from the other under this Agreement shall be applied in or towards settlement of amounts payable to the recipient, with the longest outstanding such amount being settled first, provided that this clause shall not apply in respect of any amount which is disputed in good faith.

***Interest***

2.6 Any amount (other than one which is disputed in good faith) properly due from one Party to the other pursuant to this Agreement and remaining unpaid after the due date for payment shall bear interest at the Default Rate from and including the date when the amount in question was due until but excluding the date that it is received by the Party entitled to it. Interest at the Default Rate shall accrue from day to day and shall be compounded with monthly rests.

***Disputed Items***

2.7 Where a sum or part of a sum shown on an invoice rendered by one Party is disputed in good faith by the other:

2.7.1 payment by the other of the remainder of the sums on that statement shall not be withheld on those grounds;

2.7.2 to the extent that it shall subsequently be agreed or determined that the amount withheld shall have been properly payable to the other Party, the Party entitled to that amount



shall also be entitled to interest at the Reserve Rate from and including the date that the amount was due up to but excluding the date of payment;

2.7.3 and the sum is subsequently agreed or determined not to have been properly payable, then the Party to whom it was paid shall refund the amount which was not properly payable together with interest at the Reserve Rate from and including the date of receipt up to but excluding the date of repayment;

2.7.4 if a payment or refund is required to be made upon resolution of any dispute under this clause, appropriate adjustments in respect of VAT shall be made by the Parties including the issuing of credit notes, invoices (receipted or otherwise) and the payment of VAT or further sums of VAT; and

2.7.5 any dispute pursuant to the provisions of this clause shall be referred to the Expert for determination in accordance with paragraph 3 of Schedule 6.

## SCHEDULE 6

### Dispute Resolution Procedure

#### 1. Internal Discussion

1.1 Either Party may notify the other Party following the occurrence or discovery of any item or event which the notifying Party acting in good faith considers to be a dispute under the Agreement.

1.2 Within twenty (20) Business Days of the notice in Paragraph 1.1, either Party ("first Party") may, if considered appropriate and by further notice to the other Party ("second Party"), appoint a senior company official with expertise in the area of dispute to represent it. The second Party shall then also appoint a senior company official with expertise in the area of dispute to represent it and shall notify the first Party accordingly within a further ten (10) Business Days. The Parties shall procure that their respective representatives meet within ten (10) Business Days after the date of the second Party's notice and attempt in good faith to satisfactorily resolve the dispute.

#### 2. Referral to Arbitration

If the dispute shall fail to be resolved pursuant to Paragraph 1.2 within thirty five (35) Business Days of the meeting referred to then, save where expressly stated to the contrary in this Agreement or where this Agreement provides that a dispute shall be referred to the Expert or the Regulatory Authority for resolution and subject to any contrary provision of the Order or a Licence or the rights, powers, duties and obligations of the Regulatory Authority or the Secretary of State under the Order, any Licence or otherwise, either Party may refer such dispute to arbitration pursuant to the rules of the Electricity Arbitration Association in force from time to time.

#### 3. Expert

If a dispute shall fail to be resolved pursuant to Paragraph 1.2 within thirty five (35) Business Days of the meeting referred to then, where any provision of this Agreement provides for any matter to be referred to or resolved by the Expert, any dispute or difference arising in connection with any such provision between the parties shall be and is hereby referred to the Expert. The following provisions shall apply between the Parties with respect to any matter, difference or dispute under this Agreement which is to be referred to an Expert:

- (a) The Expert shall be appointed by the Parties, or in default of agreement upon such appointment within seven (7) days of a Party notifying the other Party of its decision

to refer the matter to an Expert, the Expert shall be appointed by the President for the time being of the EAA.

- (b) The Expert will resolve or settle such matter or dispute in such manner as he shall in his absolute discretion see fit and shall act as expert and not as arbitrator. The Expert shall be requested to reach his decision within thirty (30) days of the matter being referred to him. Any decision of the Expert shall, subject to any provision to the contrary in this Agreement, be final and binding on the Parties.
- (c) Unless otherwise determined by the Expert, the costs of the Expert in settling or determining such matter or dispute shall be borne equally by the Parties.

#### 4. Proper Law

Whatever the nationality, residence or domicile of either Party and wherever the dispute or difference or any part thereof arose the law of Northern Ireland shall be the proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the provisions of the Arbitration Act 1996 shall apply to any such arbitration wherever the same or any part of it shall be conducted and the place of the arbitration shall be in England and Wales.

#### 5. Third Party Claims (1)

Subject always to paragraph 8, if any third party (being a person who is not a party to this Agreement) brings any legal proceedings in any court against either Party to this Agreement (the "Defendant Contracting Party"), and the Defendant Contracting Party wishes to make a Third Party Claim (as defined in paragraph 7) against the other Party (a "Contracting Party") which would but for this paragraph 5 have been a dispute or difference referred to arbitration by virtue of paragraph 2 then, notwithstanding the provisions of paragraph 2 which shall not apply and in lieu of arbitration, the court in which the legal proceedings have been commenced shall hear and completely determine and adjudicate upon the legal proceedings and the Third Party Claim not only between the third party and the Defendant Contracting Party but also between either or both of them and the other Contracting Party whether by way of third party proceedings or otherwise as may be ordered by the court.

#### 6. Third Party Claims (2)

Where a Defendant Contracting Party makes a Third Party Claim against the other Contracting Party and such Contracting Party wishes to make a Third Party Claim against the other Contracting Party the provisions of paragraph 5 shall apply mutatis mutandis as if such

Contracting Party had been the Defendant Contracting Party and similarly in relation to any such further Contracting Party.

#### 7. Third Party Claims (3)

For the purposes of this Schedule 5 "Third Party Claim" shall mean:

7.1 any claim by a Defendant Contracting Party against a Contracting Party (whether or not already a party to the legal proceedings) for any contribution or indemnity;

7.2 any claim by a Defendant Contracting Party against such a Contracting Party for any relief or remedy relating to or connected with the subject matter of the legal proceedings and substantially,

the same as some relief or remedy claimed by the third party; or

7.3 any requirement by a Defendant Contracting Party that any question or issue relating to or connected with the subject matter of the legal proceedings should be determined not only as between the third party and the Defendant Contracting Party but also as between either or both of them and a Contracting Party (whether or not already a party to the legal proceedings).

#### 8 Limitation

Paragraph 5 shall apply only if at the time the legal proceedings are commenced no arbitration has been commenced between the Defendant Contracting Party and the other Contracting Party raising or involving the same or substantially the same issues as would be raised by or involved in the Third Party Claim. The tribunal in any arbitration which has been commenced prior to the commencement of legal proceedings shall determine the question, in the event of dispute, whether the issues raised or involved are the same or substantially the same.

**SCHEDULE 7**

**Address Details, Billing Address of SONI and Address Details of The Service Provider**

**1. SONI Limited**

For the attention of

[REDACTED]

**b) Billing Address**

For the attention of

**2. SERVICE PROVIDER**

For the attention of

**SCHEDULE 8**

**Not Used**

**SCHEDULE 9**

**Part 1 – Generating Unit**

## **Part 2 – Operating Parameters**