

Dated

2016

SONI LIMITED

(1)

and

[]

(2)

ROCOF AGREEMENT

FOR Unit [] AT [] POWER STATION

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THIS AGREEMENT is made the _____ day of _____ 2016
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) [] having its registered office at [] (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 Service Provider is now entering into this Agreement with the Company in order for the Company to remunerate the Service Provider for the Rate of Change of Frequency (RoCoF) remuneration mechanism in line with Decision paper ‘Rate of Change of Frequency Modification to the Grid Code’¹ published by the Regulatory Authorities as set out in Schedule 2 with effect from the Contracted Date.

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;

¹<http://www.cer.ie/docs/000260/CER14081%20ROCOF%20Decision%20Paper%20-%20FINAL%20FOR%20PUBLICATION.pdf>
and
http://www.uregni.gov.uk/uploads/publications/Decision_Paper_on_the_Rate_of_Change_of_Frequency_Grid_Code_Modification.pdf

- 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 of this Agreement;
 - 1.3.4 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;
 - 1.3.5 any reference to a month or year shall be construed as reference to a calendar month or year, as the case may be;
 - 1.3.6 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;
 - 1.3.7 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
 - 1.3.8 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 , and/or as may be applicable, 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.

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 Effective Date and continue in full force and effect until 28th February 2018 or until terminated in accordance with Clause 7 (*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 Contracted Date;

2.3.2 The Service Provider shall be a party to a Connection Agreement for each Generating Unit.

2.3.3 The Service Provider shall be a party to a Use of System Agreement with the Company for each Generating Unit.

2.3.4 Meet the requirements set out for the demonstration of RoCoF compliance process and in accordance with the following category criteria:

- (1) High-priority: relatively high run-hours; frequently constrained on; frequently run at times of high wind;

- (2) Mid-priority: those units not falling into the other categories;
- (3) Low-priority: low run-hours; infrequently constrained on; rarely running at times of wind generation and;
- (4) New units: new units, where applicable, will be required to declare compliance during the commissioning process.

3 Demonstration of RoCoF Compliance to 1Hz/s

3.1 Duty to provide RoCoF in accordance with Decision paper 'Rate of Change of Frequency Modification to the Grid Code'² published by the Regulatory Authorities.

3.1.1 In consideration of the Company's agreement to pay the Demonstration of Compliance 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 Units as required by Good Industry Practice and any legal requirements in order to provide RoCoF compliance.

3.2 Compliance with the Grid Code

3.2.1 In the event and to the extent for demonstration of RoCoF compliance that the Grid Code applies, the Service Provider shall, during the term of this Agreement, be remunerated for demonstration of RoCoF compliance in accordance with the technical requirements of the Grid Code and the relevant Operating Parameters for the Generating Unit and shall comply with the Grid Code (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.

²<http://www.cer.ie/docs/000260/CER14081%20ROCOF%20Decision%20Paper%20-%20FINAL%20FOR%20PUBLICATION.pdf>
and
http://www.uregni.gov.uk/uploads/publications/Decision_Paper_on_the_Rate_of_Change_of_Frequency_Grid_Code_Modification.pdf

3.3 Health and Safety, Environmental

3.3.1 Nothing in this Agreement shall require the Service Provider to operate the Generating Unit in such a manner so as to breach its obligations under any health and safety legislation or environmental legislation.

4 Payment

4.1 Demonstration of Compliance Payments

4.1.1 In consideration of the demonstration of RoCoF compliance pursuant to this Agreement the Company shall pay the Service Provider the payments ("Demonstration of Compliance Payments") as calculated in accordance with Schedule 2.

4.1.2 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.

4.1.3 Subject to paragraph 2.1 of Schedule 3 (Billing and Payment Plan), the Company and the Service Provider shall have no right to settle amounts due to the other Party under this Agreement net of amounts due to it from the other Party under this Agreement or any other agreements.

4.2 Billing and Payment Plan

4.2.1 The provisions of Schedule 3 shall apply in relation to the billing and payment of RoCoF demonstration.

5 Assignment

- 5.1 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 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
 - (b) 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 or Generating Units 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.
- 5.2 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 its successor Transmission System Operator in Northern Ireland.
- 5.3 No assignment, novation or other transfer pursuant to Clause 5.1 or 5.2 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 (so far as they apply to the assignee),, 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.

6 Variations

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

6.2 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:

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

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

6.2.3 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

6.2.4 the imposition of a public service obligation on the Company;

which necessitates a variation to this Agreement, the Parties shall, 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.

6.3 If any variation proposed under Clause 6.2 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.

7 Termination

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

- (i) the Connection Agreement being properly terminated in accordance with its terms; or
- (ii) the Use of System Agreement being properly terminated in accordance with its terms; or
- (iii) revocation or withdrawal of the TSO Licence or any replacement thereof granted to the Company by a Competent Authority; or
- (iv) revocation or withdrawal of the Generation Licence, the integrated pollution prevention and control (IPPC) permit relating to the Power Station or any replacement thereof granted to the Service Provider by a Competent Authority; or
- (v) the Service Provider failing to comply with or failing to operate in conformity with any provisions of this Agreement or the Grid Code, where applicable, 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
- (vi) 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, 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
- (vii) 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 five (5) 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; or

and in any such case in Clause 7.1(vii) 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.

7.2 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 five (5) 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; or
- (iii) in relation to the Company:
 - (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, 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 Service Provider); or
 - (d) inability to pay its debts within the meaning of the Relevant Legislation;
- (iv) the Company 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 Company'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 Company is given notice of the default by the Service Provider;

and in any such case in Clause 7.2 (iv) 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 Service Provider a guarantee of future performance by the Company of the Agreement in such form and amount as the Service Provider may reasonably require.

7.3 Without prejudice to any other remedy to which either Party may be entitled for breach of this Agreement, Clause 7 states the only circumstances in which either Party may unilaterally terminate this Agreement.

8 Effect of Termination

8.1 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 or other monies due and owing pursuant to this Agreement.

8.2 Termination of this Agreement under Clause 7 (*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.

9. Force Majeure

9.1 If during any Trading Period, the Generating Unit has a capability of less than its Minimum Generation owing to Force Majeure the Service Provider shall not be entitled to Demonstration of Compliance Payments in respect of that Trading Day.

9.2 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.

9.3 Subject to the other provisions of this Clause 9, 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.

10 Limitation of Liability

10.1 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 10.5 being referred to as a "legal claim"); or
- (c) (in the case of breach by the Company) the loss of Demonstration of Compliance Payments by the Service Provider under this Agreement 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.

10.2. Subject to Clause 10.3 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 (other than under this Agreement), 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 10.1 and 10.3.

- 10.3 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 10.6 being referred to as an “injury claim”).
- 10.4 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.
- 10.5 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.

10.6 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.

10.7 Each of the provisions of this Clause 10 shall:

10.7.1 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

10.7.2 survive termination of this Agreement.

10.8 Each of the Parties agrees that the other Party holds the benefit of Clauses 10.1, 10.2 and 10.3 for itself and as trustee and agent for its officers, directors, employees and agents.

10.9 For the avoidance of doubt nothing in this Clause 10 shall prevent or restrict either Party enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Agreement.

10.10 Nothing in this Clause 10 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.

10.11 Subject to Clause 10.10 and unless expressly provided otherwise in this Agreement, this Clause 10 insofar as it excludes or limits liability shall override any other provisions of this Agreement.

10.12 Each Party hereby acknowledges and agrees that the provisions of this Clause 10 are fair and reasonable having regard to the circumstances as at the date of this Agreement.

11 Confidentiality

11.1 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.

11.2 For the purposes of this Clause 11, the term Confidential Information shall not include information which:

11.2.1 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 11;

11.2.2 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 11;

11.2.3 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

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

11.3 Notwithstanding the provisions of Clause 11.1, Confidential Information may be disclosed by a Party:

11.3.1 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 11; 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;

11.3.2 as may be ordered or required by any applicable law or a Competent Authority;

11.3.3 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;

11.3.4 as may be permitted by or required to comply with the requirements of the Grid Code, Metering Code or the Trading and Settlement Code;

11.3.5 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;

11.3.6 (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;
- (c) the Company shall use its best endeavours to notify the Service Provider in advance of any disclosure of Confidential Information under this sub-clause 11.3.6.

11.3.7 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;

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

11.3.9 (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.

11.4 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.

11.5 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 11.1. Those procedures shall be as follows:

11.5.1 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;

- 11.5.2 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;
- 11.5.3 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
- 11.5.4 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.
- 11.6 The provisions of this Clause 11 shall continue to bind a Party after termination of this Agreement, in whole or in part, for five (5) years.
- 11.7 Subject to Clause 11.3, 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 in writing.

12 Testing

At the Company's discretion, the Service Provider must have successfully passed the tests set by the Company to ascertain the reliability of the Generating Unit to achieve RoCoF compliance ahead of the Contracted Date.

13 Additional Costs

13.1 Save where expressly provided for otherwise in this Agreement, and including but not limited to the provisions of Clause 6.2, 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 any Generating Unit or otherwise for the purposes of

changing the manner of operation of a Generating Unit in relation to the provision of any demonstration of RoCoF compliance; 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 demonstration of RoCoF compliance from any 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 **the Order**.

14 Dispute resolution

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 4.

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 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 5. Either Party may, by notice to the other, given in compliance with this Clause 14.5, 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 hours 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 of the Jurisdiction. 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 Jurisdiction

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 jurisdiction of the courts of the Jurisdiction.

16.3 Each Party further agrees that a lawful finding or conclusion of the Regulatory Authority under this Agreement 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.

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:-

SCHEDULE 1

DEFINITIONS

“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 the Companies Acts, 1963 to 2001 inclusive

“All Island Transmission Network” means the Transmission System together with the “transmission system” as defined in the licence granted to the Other TSO under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992;

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

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

“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 Ireland (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 11;

“Connection Agreement” means in relation to a Service Provider’s Installation 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 Date” means the date from which the Service Provider having demonstrated compliance with RoCoF in accordance with this Agreement, shall be entitled to receive Demonstration of Compliance Payments pursuant to Clause 3 of this Agreement;

“Demonstration of Compliance Payments” means the payments, set out in and calculated in accordance with Schedule 2, which shall be payable by the Company to the Service Provider in consideration for compliance by the Service Provider with RoCoF in accordance with this Agreement.

“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 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;

“Dispute Resolution Procedure” means the procedure set out in Schedule 4;

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

“EAA” means the Electricity Arbitration Association;

“Effective date” means the date shown at the top of the first page of this Agreement. For the avoidance of doubt, on signature of this Agreement by both Parties, but not until then, this Agreement shall be deemed to have become effective as and from the Effective Date, notwithstanding that the actual date of signing by both Parties may be a later date.

“Environmental Legislation” means any statute, rule, regulation, statutory instrument, treaty, directive, direction, decision, by law, code of practice, circular, guidance note, order, notice, demand, injunction, rule of common law or statutory or common law duty of care of (in each case) any governmental authority or agency or any regulatory or other body in relation to the environment, natural resources or public health or safety or to emissions, discharges, release or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes into the environment (including without limitation, ambient air, soil, surface water, ground water, wetlands (and/or sub surface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes, but only to the extent that breach of the same creates legally enforceable rights and responsibilities;

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

“Final Invoice” means the last invoice submitted by the Service Provider for all services provided and monies claimed for payment prior to that invoice and where no further invoices are or are intended to be submitted.

“Final Claim” means the last claim made by the Service Provider for all services provided and monies claimed for payment as set out in the Final Invoice.

“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 included but is not limited to the following events including:

- (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;

“Generating Units” means the generating units described in 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;

“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;

“Jurisdiction” means Northern Ireland;

“Liability Cap” for the purposes of Clause 10.1, means an overall cumulative cap that is equal to the higher of (i) £5,000,000.00 and (ii) the value of the Net Revenue the Service Provider could reasonably have expected to receive in respect of Demonstration of Compliance Payments over the remaining term of this Agreement from the relevant date of breach of this Agreement, with any dispute about this amount being referable to the Expert by either Party in accordance with paragraph 3 of Schedule 4;

“Metering Code” means the code of that name which specifies the minimum technical design and operational criteria to be complied with for metering and data collection equipment and associated procedures as required under the Trading and Settlement Code;

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

“Net Revenue” means gross revenue less costs;

“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;

“Order” means The Electricity (Northern Ireland) Order 1992 (as amended);

“Other TSO” means EirGrid plc in its role as the Transmission System Operator in Ireland;

“Operating Parameters” means the performance and operating specifications of each Generating Unit (certain of which are referred to in the Grid Code as Technical Parameters).

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

“Power Station” means the power station named [];

“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.

“SEM” means the single wholesale electricity market for the island of Ireland, implemented in Northern Ireland pursuant to section 23 of the Northern Ireland (Miscellaneous Provisions) Act 2006;

“Service Provider’s Installation” means any structures, equipment, lines, appliances or devices 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;

“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;

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

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

“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;

“The Generating Unit” means generating the Generating Unit at the Power Station described in Schedule 2;

“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

Demonstration of Compliance Payments

1. Demonstration of Compliance Payments

1.1. The Service Provider will receive a daily payment, determined in accordance with the following provisions of this paragraph 1.1.

The payment to the Service Provider is determined as:

$$c = 1500 \times d \times e$$

Where:

c is the daily payment;

d is a scalar associated with the size of the unit;

e is a scalar associated the expiration of the defined generator study period which commenced on November 21st 2014; and

1500 is the monetary value (€).

Based on the Regulatory Authorities decision paper, the remuneration mechanism comes into effect on 1st March 2016 and runs until 28th February 2018. The daily rate decreases in each six month period as shown in Table 1. Scalar e is set to 100% for the period 1st June 2016 to 30th November 2016. The second six month period will then run from 1st December 2016 until 31st May 2017 with scalar e set to 75% and so on.

The daily rates apply in accordance with the unit's Registered Capacity. The relationship between Registered Capacity and scalar d are detailed in Table 1.

Registered Capacity (MW)	d	1 st Mar 2016 to 31 st May 2016 e = 125%	1 st Jun 2016 to 30 th Nov 2016 e = 100%	1 st Dec 2016 to 31 st May 2017 e = 75%	1 st Jun 2017 to 30 th Nov 2017 e=50%	1 st Dec 2017 to 28 th Feb 2018 e=25%
>= 400	1	€ 1,875.00	€ 1,500.00	€ 1,125.00	€ 750.00	€ 375.00
>= 300	0.75	€ 1,406.25	€ 1,125.00	€ 843.75	€ 562.50	€ 281.25
>= 200	0.5	€ 937.50	€ 750.00	€ 562.50	€ 375.00	€ 187.50
>=100	0.25	€ 468.75	€ 375.00	€ 281.25	€ 187.50	€ 93.75
>=50	0.15	€ 281.25	€ 225.00	€ 168.75	€ 112.50	€ 56.25
<50	0.05	€ 93.75	€ 75.00	€ 56.25	€ 37.50	€ 18.75

Table 1

Generating Unit Details:

Generating Unit: []

Registered capacity: []

Effective Date: []

Note: Payment will be calculated from the effective date until scheme expiry 28th Feb 2018

- 1.2 The exchange rate methodology is aligned to that utilised in the SEM as may be updated from time to time and as published in the Company's TUoS Statement of Charges. The only difference being the 5 day timeframe is taken in July rather than August in order to align to other Regulatory Authorities timeframes with regard to publication of charges.

SCHEDULE 3

Billing and Payment Plan

1. Statement of Account and Invoicing

- 1.1 Within twenty five (25) Business Days after the end of each Charging Period, the Company shall submit to the Service Provider a statement of account (the “**Statement**”) specifying the demonstration of Compliance Payments due in respect of that Charging Period.
- 1.2 Within twenty (20) Business Days after the date on which the Company submits to the Service Provider a Statement, the Service Provider shall either:
- (a) where the Service Provider agrees with the Statement’s accuracy, submit to the Company an invoice for the same aggregate amount as is specified in the Statement (the “**Invoice**”) together with a written notice confirming the accuracy of the Statement; or
 - (b) where the Service Provider disputes the Statement’s accuracy, submit to the Company an Invoice for such sum as the Service Provider, acting in good faith, believes is due together with a written notice (the “**Claim**”) specifying the sum disputed and the grounds of such dispute. For the avoidance of doubt, the Service Provider shall not be entitled to issue an Invoice for an amount greater than the aggregate amount specified in the Statement. Any claim under this Paragraph 1.2 shall be subject to the dispute resolution mechanism set out in Paragraph 3 below.
- 1.3 The Service Provider shall be deemed to have agreed with the accuracy of the Statement if it fails to submit the Claim to the Company in accordance with Paragraph 1.2.

2. Invoice Payment Date

- 2.1 Subject to Clause 4.1.3, within ten (10) Business Days after the Company’s receipt of the Invoice, the Company shall pay to the Service Provider the sum due in respect of the Invoice by electronic transfer of funds to such bank account as is specified in Schedule 6 or otherwise communicated in writing to the Company, quoting the invoice number against which payment is made.
- 2.2 Subject to Paragraph 3, if any amount included in the Invoice remains unpaid after the time period stated in Paragraph 2.1, then the Service Provider shall be entitled to charge interest on the amount unpaid, including interest on any Value Added Tax unpaid, in

accordance with the European Communities (Late Payments in Commercial Transactions) Regulations 2002.

3. Dispute Resolution Mechanism

3.1 Where the Service Provider pursuant to Paragraph 1.2 (b) disputes the Statement and submits a Claim to the Company:

- (a) the Parties shall use reasonable endeavours to resolve the dispute in good faith; or
- (b) where the dispute remains unresolved forty (40) Business Days after the Company's receipt of the Claim, either Party may refer the dispute for resolution by the Expert in accordance with the Dispute Resolution Procedure; and
- (c) following resolution of the dispute, any amount agreed or determined to be payable shall be paid within ten (10) Business Days after such agreement or determination and interest shall accrue on such amounts plus Valued Added Tax (if any) from the date such amount was originally due until the date of payment in accordance with the European Communities (Late Payments in Commercial Transactions) Regulations 2002.

3.2 On the seventieth (70th) Business Day after the end of the calendar year or within ten (10) Business Days of the Company's receipt of the Final Invoice, whichever is the later, the Company shall pay to the Service Provider the sum due in respect of the Final Invoice by electronic transfer of funds to such bank account as is specified in Schedule 6 or otherwise communicated in writing to the Company, quoting the invoice number against which payment is made. If any amount included in the Final Invoice remains unpaid after the due date hereof, the Service Provider shall be entitled to charge interest on the amount unpaid, including interest on any Value Added Tax unpaid, in accordance with the European Communities (Late Payments in Commercial Transactions) Regulations 2002.

3.3 Where the Service Provider has notified the Final Claim to the Company in accordance with Paragraph 3.2:

- (a) the Parties shall use reasonable endeavours to resolve the dispute in good faith; or
- (b) where the dispute remains unresolved forty (40) Business Days after the Company's receipt of the Final Claim, either Party may refer the dispute for resolution by the Expert in accordance with the Dispute Resolution Procedure; and

(c) following resolution of the dispute, any amount agreed or determined to be payable by one Party to the other shall be paid within ten (10) Business Days after such agreement or determination and interest shall accrue on such amounts plus Value Added Tax (if any) from the date such amount was originally due until the date of payment in accordance with the European Communities (Late Payments in Commercial Transactions) Regulations 2002.

SCHEDULE 4

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 for resolution and subject to any contrary provision of the Order or a licence granted under the Order or the rights, powers, duties and obligations of the Regulatory Authority or the Department of Enterprise, Trade and Investment under the Order, any licence granted under the Order or otherwise, either Party may refer such dispute to arbitration pursuant to the rules of the EAA 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 Northern Ireland.

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 4 "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 5

Address Details, Billing Address of SONI and Address Details of

1. SONI Limited

Castlereagh House

12 Manse Road

Belfast

BT6 9RT

For the attention of

Contracts and Settlement
Department

b) Billing Address

Castlereagh House

12 Manse Road

Belfast

BT6 9RT

For the attention of

Contracts and Settlement
Department

2. SERVICE PROVIDER

XXXXXX

For the attention of

Commercial Department