

DATED

28th September 2018

(1) SONI LIMITED

(2) EIRGRID PLC

**DEED OF AMENDMENT AND RESTATEMENT TO THE
MARKET OPERATOR AGREEMENT**

This DEED is made on

28th September 2018

BETWEEN

- (1) **SONI LIMITED**, a company incorporated in Northern Ireland with registered number NI 38715 and having its registered office at Castlereagh House, 12 Manse Road, Belfast BT6 9RT, Northern Ireland acting in its capacity as holder of a licence under Article 10(1)(d) of the Electricity (Northern Ireland) Order 1992 (as amended) (the "NI Order") which authorises it to act as the SEM operator within the meaning of Article 8(6) of the NI Order ("SONI");

AND

- (2) **EIRGRID PLC**, a company incorporated in Ireland with registered number 338522 and having its registered office at The Oval, 160 Shelbourne Road, Ballsbridge, Dublin 4, Ireland and acting in its capacity as holder of a licence under Section 14(1)(j) of the Electricity Regulation Act 1999 (as amended) which authorises it to undertake in the Republic of Ireland the role of single market operator of the Single Electricity Market ("EirGrid").

each a "Party" and together the "Parties".

RECITALS

- A. The Parties entered into the Market Operator Agreement on 3 July 2007 amended by a deed of variation between the Parties dated 7 March 2014 (the "Market Operator Agreement"), for the principal purpose of ensuring that where any matter is within the control of one Party and affects the ability of the other Party to carry on, on a continuing basis, its Market Operation Activity such matter is carried out in a manner such that the other Party is capable, on a continuing basis, of carrying on its Market Operation Activity.
- B. The Market Operator Agreement is entered into in compliance with the Parties' respective obligations under the Market Operator Licences and the System Operator Licences.
- C. As part of revised SEM arrangements there have been a number of modifications to the Market Operator Licences. SONI, pursuant to Condition A(13) of its Market Operator Licence, and EirGrid pursuant to Condition A(13) of part A, part 2 of its Market Operator Licence are required to carry out a review of regulatory documents in order to identify any changes which may, in the opinion of SONI and EirGrid, be necessary or expedient in light of the revised SEM arrangements.
- D. Among other things the modifications to the Market Operator Licences require that the Market Operator Agreement is amended to ensure that where any matter is within the control of one Party and affects the ability of the other Party to carry on, on a continuing basis, its NEMO Activity, such matter is carried out in a manner such that the other Party is capable, on a continuing basis, of carrying on its NEMO Activity.
- E. The Parties have entered into this Deed to amend and restate the Market Operator Agreement to reflect the revised SEM arrangements.
- F. Having considered the matter, the Parties have agreed that the amendments to the Market Operator Agreement contemplated by this Deed shall not materially impact on the business of any electricity undertaking or on the operation of the Single Electricity Market for the purposes of Condition 14(4) of the SONI Market Operator Licence and Condition 2(4) of the EirGrid Market Operator Licence.

THIS DEED PROVIDES as follows:

1. Definitions and Interpretation

1.1. Except as otherwise defined in Clause 1.2, capitalised terms used in this Deed (including the Recitals) shall have the meaning given to them in the Market Operator Agreement. The rules of construction and interpretation set out in Schedule 1, Part 2 of the Market Operator Agreement shall apply *mutatis mutandis* to this Deed.

1.2. In this Deed (including the Recitals), the following words have the following meanings:

"Deed" means this Deed of amendment and restatement to the Market Operator Agreement between the Parties, including the Schedule, as the same may be amended from time to time;

"Market Operator Agreement" has the meaning given in Recital A;

"Proceedings" mean any proceeding, suit or action (including arbitration);

"revised SEM arrangements" has the meaning given in the Market Operator Licences.

2. Effect on the Market Operator Agreement

2.1. With effect from the date of this Deed, the Market Operator Agreement shall be amended and restated so as to read as set out in the Schedule to this Deed.

2.2. Save as otherwise expressly provided in this Deed, the Market Operator Agreement shall continue in full force and effect in accordance with its terms.

2.3. Nothing in this Deed affects any accrued rights or liabilities of either Party that have arisen pursuant to the Market Operator Agreement prior to the date of this Deed.

2.4. Each of the Parties hereby agrees and consents to the making of the amendments and to the restatement described in Clause 2.1.

3. Counterparts

3.1. This Deed may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart.

3.2. Each counterpart shall constitute an original of this Deed, but all the counterparts shall together constitute but one and the same instrument.

4. Miscellaneous

Clauses 10 (Confidentiality); 11 (Assignment); 13 (Entire Agreement); 15 (Waiver and Invalidity); 16 (Announcements); 17 (No Partnership); 18 (No Authority); and 21 (Notices) of the Market Operator Agreement shall be incorporated into this Deed, *mutatis mutandis*,

and such provisions shall be given full effect as if the same were set out in full in this Deed.

5. Governing Law

- 5.1. This Deed shall be governed by and construed in accordance with the laws of Northern Ireland.
- 5.2. Each of the Parties to this Deed irrevocably agrees that the Courts of Northern Ireland and the Courts of Ireland are to have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed and, for such purposes, irrevocably submits to the exclusive jurisdiction of such courts. Any Proceedings shall therefore be brought in the Courts of Northern Ireland or the Courts of Ireland.
- 5.3. Each of the Parties to this Deed irrevocably waives any objection to Proceedings in the courts referred to in Clause 5.2 on the grounds of venue or on the grounds of forum non conveniens.

IN WITNESS WHEREOF this Deed has been executed and delivered as a deed on the date which first appears on page 1 above.

Present when the Common Seal of
EirGrid plc

Was affixed hereto:

Tom Fin
Director/ Secretary

John Kelly
Director

Signed as a Deed by
for and on behalf of
SONI LIMITED

A Kelly
Director/ Secretary

John Kelly
Director

Maion McEvoy
(Witness' Signature)

The Oval, Block 2, 160 Shelbourne Road, Ballsbridge, D4
(Witness' Address)

PA GLED
(Witness' Occupation)

SCHEDULE

AMENDED AND RESTATED MARKET OPERATOR AGREEMENT

SONI LIMITED

EIRGRID PLC

**AMENDED AND RESTATED
MARKET OPERATOR AGREEMENT**

CONTENTS

	Page No
1 BASIS AND PURPOSE OF AGREEMENT	5
2 LICENCE REQUIREMENTS	5
3 GOVERNANCE OF SMO BUSINESS	7
3A. GOVERNANCE OF NEMO BUSINESS	9
4 PROVISION OF INFORMATION	11
5 FINANCIAL MATTERS	12
6 RESOURCES	13
7 PROCUREMENT OF GOODS AND SERVICES	14
8 MOA FORCE MAJEURE BETWEEN THE PARTIES	15
9 DISPUTE RESOLUTION	16
10 CONFIDENTIALITY	17
11 ASSIGNMENT	18
12 TERM AND TERMINATION	18
13 ENTIRE AGREEMENT	19
14 REVIEW, REPORT, AMENDMENT AND PUBLICATION	19
15 WAIVER AND INVALIDITY	20
16 ANNOUNCEMENTS	21
17 NO PARTNERSHIP	21
18 NO AUTHORITY	21
19 THIRD PARTY RIGHTS	21
20 COUNTERPARTS	22
21 NOTICES	22
22 GOVERNING LAW AND JURISDICTION	23
SCHEDULE 1	26
Definitions and Interpretation	26
SCHEDULE 2	32
Licence Obligations	32
SCHEDULE 3	34
Independent Expert	34

THIS AGREEMENT is made the 28 day of September 2018

BETWEEN

- (1) **SONI Limited** (incorporated in Northern Ireland with registered number NI 38715) having its registered office at Castlereagh House, 12 Manse Road, Belfast BT6 9RT, Northern Ireland and acting in its capacity as holder of a licence under Article 10(1)(d) of the Electricity (Northern Ireland) Order 1992 (as amended) (the "NI Order") which authorises it to act as the SEM operator within the meaning of Article 8(5) of the NI Order ("SONI"); and
- (2) **EirGrid PLC** (incorporated in the Republic of Ireland with registered number 338522) having its registered office at The Oval, 160 Shelbourne Road, Ballsbridge, Dublin 4, Ireland and acting in its capacity as holder of a licence under Section 14(1)(j) of the Electricity Regulation Act 1999 (as amended) which authorises it to undertake in the Republic of Ireland the role of single market operator of the Single Electricity Market ("EirGrid").

RECITALS:

- (A) In December 2006 the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland entered into a Memorandum of Understanding describing the arrangements relating to the establishment and operation of a single competitive wholesale electricity market for the Island of Ireland (the "SEM").
- (B) In Ireland the Energy (Miscellaneous Provisions) Act 2006, the Electricity Regulation (Amendment) (Single Electricity Market) Act 2007, the Energy Act 2016 and the Irish SEM Regulations have been enacted, and in Northern Ireland the Northern Ireland (Miscellaneous Provisions) Act 2006, the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 and the Electricity (Single Wholesale Market) Order (Amendment) Regulations (Northern Ireland) 2016 have come into force, to provide for, inter alia, the establishment and implementation of the SEM and the revised SEM arrangements.
- (C) The SEM Legislation provides, amongst other things, for the role of the operator for the single electricity market in the Republic of Ireland and in Northern Ireland. The Irish SEM Legislation amends Section 14 of the ERA 1999 to give the CRU the power to grant a licence to a person to act as the single electricity market operator in Ireland and to grant an exemption from the requirement to hold such a licence to the person who holds a licence to perform corresponding functions in Northern Ireland. The Irish SEM Legislation also amends the ERA 1999 to empower the CRU to direct EirGrid to enter into an agreement with SONI to establish an entity to be known as the single market operator. The Northern Ireland SEM Legislation amends Sections 9 and 10 of the Electricity Order 1992 to give to the NIAUR the power to grant a licence to a person to act as the SEM operator in Northern Ireland and to grant an exemption from the requirement to hold such a licence.
- (D) Pursuant to the SEM Legislation each of SONI and EirGrid has been asked, or, as the case may be, directed, by the relevant Regulatory Authority to carry out the

function of SEM operator and has been granted a licence by the relevant Regulatory Authority authorising it to carry out the role of SEM operator in accordance with that licence. The roles and functions of the SEM operator are set out in the respective Market Operator Licences and the Code.

- (E) Each Market Operator Licence authorises the Party licensed thereunder to undertake in the relevant jurisdiction the role of market operator of the single electricity market, subject to the conditions of that licence. Such role is to be undertaken, where the Market Operator Licences require, in conjunction with the other Party (as holder of the other Market Operator Licence) with the objective that, so far as is required by the Market Operator Licences, the licensed Party will, with the other Party, undertake the business of SEM operator under the Market Operator Licences. The conditions of each of the Market Operator Licences set out in more detail specific the licence obligations in respect of which the Parties must act in conjunction with each other and the nature of the obligation to act in conjunction with each other.
- (F) To enable both SONI and EirGrid to undertake the role of SEM operator, in conjunction with each other on an All-Island basis, as required by the Market Operator Licences and envisaged by the Code, SONI has been granted an exemption pursuant to Section 14(2F) of ERA 1999 from any requirement to have a licence to act as the SEM operator in the Republic of Ireland and EirGrid falls within the scope of the exemption granted pursuant to Article 9(1) of the Electricity Order 1992 from the requirement to have a licence to act as the SEM operator in Northern Ireland.
- (G) SONI, pursuant to Condition 14 of its Market Operator Licence, and EirGrid, pursuant to Condition 2 of its Market Operator Licence, are required to enter into, comply with and at all times maintain in force this Agreement for the principal purpose of ensuring that each Party is capable, on a continuing basis, of carrying on its Market Operation Activity.
- (H) This Agreement was originally entered into on 3 July 2007 and was amended by a deed of variation between the Parties on 7 March 2014. Since the deed of variation was entered into, there have been a number of modifications to the Market Operator Licences to provide for the revised SEM arrangements. SONI, pursuant to Condition A(13) of its Market Operator Licence, and EirGrid pursuant to Condition A(13) of part A, part 2 of its Market Operator Licence are required to carry out a review of certain regulatory documents (including this Agreement) in order to identify any changes which may, in the opinion of SONI and EirGrid, be necessary or expedient in light of the revised SEM arrangements. Now subject to the terms and conditions hereof, it is intended that this Agreement is amended and restated to reflect certain of the revised SEM arrangements.
- (I) Among other things the revised SEM arrangements require this Agreement to be amended to ensure that where any matter is within the control of one Party and affects the ability of the other Party to carry on, on a continuing basis, its NEMO Activity, such matter is carried out in a manner such that the other Party is capable, on a continuing basis, of carrying on its NEMO Activity. Provisions of this Agreement which relate to the NEMO Activity and / or the NEMO Business or impose obligations or liabilities on the Parties with respect to the NEMO Activity and / or the NEMO Business shall only be applicable to the extent that Condition 15A of the SONI Market Operator Licence and Condition 3A of the EirGrid Market Operator Licence are in

effect (or where the Parties are otherwise required to perform the NEMO Activity and / or the NEMO Business).

- (J) This Agreement and the activities of the Parties in carrying on the SMO Business and NEMO Business exist in the wider context of the SEM Legislation, all relevant laws of the European Union, the Code, the Exchange Rules and the overall regulatory governance of the SEM by the Regulatory Authorities.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1 BASIS AND PURPOSE OF AGREEMENT

1.1 Regulatory basis

The Parties acknowledge that this Agreement is entered into in compliance with their respective obligations under the Market Operator Licences.

1.2 Purpose of the Agreement

The Parties agree that the purpose of this Agreement is:

- (a) to ensure that any matter that is within the control of one Party and affects the ability of the other Party to carry on, on a continuing basis, (as applicable) its Market Operation Activity or its NEMO Activity, is carried out in a manner such that the other Party is capable, on a continuing basis, of carrying on (as applicable) its Market Operation Activity or its NEMO Activity; and
- (b) to facilitate the achievement of the following objectives:
 - (i) the efficient discharge by the Parties of the obligations imposed upon them by the Market Operator Licences;
 - (ii) the development and administration of the SMO Business and the NEMO Business in accordance with the requirements of Condition 14(1)(c)(ii) of the Market Operator Licence granted to SONI and Condition 2(1)(c)(ii) of the Market Operator Licence granted to EirGrid; and
 - (iii) such other objectives in respect of this Agreement (if any) as may be set out in the Market Operator Licences or either of them.

2 LICENCE REQUIREMENTS

2.1 SMO Business

- (a) The Parties agree to act in conjunction with each other, in accordance with the Market Operator Licences, to establish and operate the SMO Business so that persons who are a party or who wish to become a party to the Code will have a single point of contact when interfacing with the SMO Business as further set out in or pursuant to this Agreement.
- (b) The Parties agree and acknowledge that, as provided for in the Market Operator Licences, the SMO Business comprises principally:

- (i) the administration and maintenance in force of the Code in accordance with its terms and the Market Operator Licences; and
- (ii) the operation and maintenance of the SEM Trading and Settlement System in accordance with the Code and the carrying out of the market operator obligations pursuant to the Code.

in each case in a manner that the Parties reasonably consider best calculated to achieve the Performance Criteria.

2.2 NEMO Business

- (a) The Parties agree to act in conjunction with each other, in accordance with the Market Operator Licences, to establish and operate the NEMO Business so that persons who receive or who wish to receive NEMO services will have a single point of contact when interfacing with the NEMO Business as further set out in or pursuant to this Agreement.
- (b) The Parties agree and acknowledge that, as provided for in the Market Operator Licences, the NEMO Business comprises principally of, at all times during which the Parties' Designation is in effect:
 - (i) fulfilling obligations as NEMO as provided for in the CACM Regulation;
 - (ii) maintaining compliance with the requirements of Article 6 of the CACM Regulation;
 - (iii) satisfying any conditions attached to the Designation; and
 - (iv) complying with the provisions of the Exchange Rules.

2.3 Obligation to act in conjunction

- (a) The Parties agree that, in compliance with their obligations under the Market Operator Licences to carry out the SMO Business and NEMO Business in conjunction with each other, the Parties shall provide complementary services and resources to enable the SMO Business and NEMO Business to be established and operated such that the Parties together can deliver the SMO Business and NEMO Business in the manner further provided in this Agreement.
- (b) The Parties acknowledge that, as at the date of this Agreement, the obligations imposed by the Market Operator Licences in respect of which they are required by the Market Operator Licences to act in conjunction with each other are as set out in Schedule 2 and that such obligations are subject to any amendments or variations which may lawfully be made to the relevant provisions of the Market Operator Licences from time to time.
- (c) The Parties agree and undertake to perform their obligations under this Agreement in a manner which facilitates the carrying out of the SMO Business and NEMO Business in conjunction with each other.

2.4 Prudent Operator

In carrying on the SMO Business and NEMO Business each of the Parties shall act in accordance with its Market Operator Licence, the Code and any applicable Legal Requirements and shall exercise the degree of care, skill, diligence and judgement which would reasonably be expected of a Prudent Industry Operator.

2.5 Exercise of powers of control

Each Party agrees and undertakes to the other Party that it shall procure (in so far as it is within its power to do so) that, at all times during the term of this Agreement, the SEMO Governing Committee, the SEMOpX Governing Committee, the SEMO General Manager and the staff of the SMO Business or NEMO Business comply with, and act in a manner which ensures that effect is given to, the terms and conditions of this Agreement and such other terms and conditions as may be agreed in writing between the Parties from time to time.

2.6 Regulatory Approval

Where the performance of any obligation arising under or in relation to this Agreement requires approval by either of the Regulatory Authorities, the Parties agree that they need not perform such obligation unless and until such regulatory approval is obtained. The Parties further agree that they shall co-operate with each other in order to prepare, make and provide in a timely manner all such submissions and information as are necessary in order to seek such regulatory approval.

3 GOVERNANCE OF SMO BUSINESS

3.1 SEMO Governing Committee

- (a) The Parties have established with effect from 3 July 2007, and shall maintain in place from time to time, a governing committee in respect of the SMO Business (the "SEMO Governing Committee").
- (b) The function of the SEMO Governing Committee shall be to oversee and direct the operation of the SMO Business and, save as otherwise provided in this Agreement, or as may be agreed in writing between the Parties from time to time, the overall management of matters relating to the SMO Business dealt with under this Agreement. The SEMO Governing Committee shall fulfil its functions in accordance with this Agreement, the Market Operator Licences, the Code and any applicable Legal Requirements and subject to such requirements in respect of approvals of the Parties relating to the SMO Business and other matters as the Parties may agree in writing from time to time.
- (c) The SEMO Governing Committee shall carry out its functions in a manner which is compatible with the obligations imposed on the Parties to operate the SMO Business in conjunction with each other and so that persons who are a party, or who wish to become a party, to the Code will have a single point of contact when interfacing with the SMO Business as further set out in or pursuant to this Agreement.

- (d) There shall be reserved to the SEMO Governing Committee for decision or approval such matters in respect of the SMO Business as the Parties may agree in writing from time to time. Such matters shall include:
- (i) the approval of the Revenue Submission in respect of each Revenue Control Period;
 - (ii) certain large acquisitions and disposals of assets for the purposes of the SMO Business;
 - (iii) determining whether MOA Force Majeure affecting one or other Party under this Agreement comprises Force Majeure for the purposes of section B.22.1 of the Code, in which event the SEMO Governing Committee shall immediately notify the Regulatory Authorities; and
 - (iv) such other matters in respect of the SMO Business as the Parties may agree in writing from time to time

in each case subject to such terms regarding the process for seeking approval and such requirements for approvals of the Parties as the Parties may agree in writing from time to time.

3.2 The provisions set out in this Clause 3.2 shall apply to the constitution and the proceedings of the SEMO Governing Committee and, subject to such provisions and such other provisions as the Parties may agree in writing from time to time, the SEMO Governing Committee may regulate its proceedings as it sees fit:

- (a) the SEMO Governing Committee shall comprise an equal number of members from SONI and EirGrid appointed by SONI and EirGrid respectively (the "Members");
- (b) the Members shall appoint one of their number as their chairperson and such person shall be responsible for ensuring that the meetings of the SEMO Governing Committee are conducted in an efficient and proper manner;
- (c) the total number of Members on the SEMO Governing Committee shall not exceed eight;
- (d) Members may be removed and replaced at the discretion of the Party that appointed them by notice in writing to the other Party;
- (e) each Member shall have one vote on the SEMO Governing Committee and all decisions of the SEMO Governing Committee must be unanimous and recorded in minutes or such record of the meeting as the Members may direct; and
- (f) there shall be at least four Governing Committee meetings each year at such venues as the Members may agree.

3.3 SEMO General Manager

- (a) The Parties shall appoint and replace from time to time as required a SEMO General Manager in respect of the SMO Business (the "SEMO General Manager").
- (b) The SEMO General Manager shall be responsible for the day-to-day management of the SMO Business in accordance with this Agreement, the Market Operator Licences, the Code and any applicable Legal Requirements and subject to such requirements in respect of approvals and other matters as the Parties may agree in writing from time to time.
- (c) The functions of the SEMO General Manager shall be as set out in this Agreement and as determined by the Parties from time to time. Such functions shall include:
 - (i) procuring the preparation, for consideration by the Governing Committee, in such form as the Governing Committee may require from time to time, a draft of the Revenue Submission;
 - (ii) managing the day-to-day operation of the SMO Business by the staff of the SMO Business within the scope of the Budget;
 - (iii) reporting to the SEMO Governing Committee at such intervals and in such format as the SEMO Governing Committee may require from time to time on the performance of the SMO Business against the targets set in the Budget from time to time; and
 - (iv) identifying and seeking any additional approvals of the SEMO Governing Committee as may be required for the operation of the SMO Business.
- (d) The SEMO General Manager shall carry out his or her functions in a manner which is compatible with the obligations imposed on the Parties to operate the SMO Business in conjunction with each other and so that persons who are a party to or who wish to become a party, to the Code will have a single point of contact when interfacing with the SMO Business as further set out in or pursuant to this Agreement.

3A. GOVERNANCE OF NEMO BUSINESS

3A.1 SEMOpx Governing Committee

- (a) The Parties have established with effect from the date of this Agreement, and shall maintain in place from time to time, a governing committee in respect of the NEMO Business (the "SEMOpx Governing Committee").
- (b) The function of the SEMOpx Governing Committee shall be to oversee and direct the operation of the NEMO Business and, save as otherwise provided in this Agreement, or as may be agreed in writing between the Parties from time to time, the overall management of matters relating to the NEMO Business dealt with under this Agreement. The SEMOpx Governing Committee shall fulfil its functions in accordance with this Agreement, the Market Operator Licences, the Exchange Rules and any applicable Legal Requirements and subject to such requirements in respect of approvals of

the Parties and other matters as the Parties may agree in writing from time to time.

- (c) The SEMOpx Governing Committee shall carry out its functions in a manner which is compatible with the obligations imposed on the Parties to operate the NEMO Business in conjunction with each other and so that persons who receive or who wish to receive NEMO services will have a single point of contact when interfacing with the NEMO Business as further set out in or pursuant to this Agreement.
- (d) There shall be reserved to the SEMOpx Governing Committee for decision or approval such matters in respect of the NEMO Business as the Parties may agree in writing from time to time. Such matters shall include:
 - (i) the approval of any Revenue Submission in respect of each Revenue Control Period, if relevant, or any statement of charges;
 - (ii) determining whether MOA Force Majeure affecting one or other Party under this Agreement comprises Force Majeure for the purposes of section G.4.1 of the Exchange Rules, in which event the SEMOpx Governing Committee must publish a Market Notice in accordance with section G.4.2 of the Exchange Rules; and
 - (iii) certain large acquisitions and disposals of assets for the purposes of the NEMO Business.

in each case subject to such terms regarding the process for seeking approval and such requirements for approvals of the Parties as the Parties may agree in writing from time to time.

3A.2 The provisions set out in this Clause 3A.2 shall apply to the constitution and the proceedings of the SEMOpx Governing Committee and, subject to such provisions and such other provisions as the Parties may agree in writing from time to time, the SEMOpx Governing Committee may regulate its proceedings as it sees fit:

- (a) the SEMOpx Governing Committee shall comprise an equal number of members from SONI and EirGrid appointed by SONI and EirGrid respectively (the "Members");
- (b) the Members shall appoint one of their number as their chairperson and such person shall be responsible for ensuring that the meetings of the SEMOpx Governing Committee are conducted in an efficient and proper manner;
- (c) the total number of Members on the SEMOpx Governing Committee shall not exceed eight;
- (d) Members may be removed and replaced at the discretion of the Party that appointed them by notice in writing to the other Party;
- (e) each Member shall have one vote on the SEMOpx Governing Committee and all decisions of the SEMOpx Governing Committee must be unanimous and recorded in minutes or such record of the meeting as the Members may direct; and

- (f) there shall be at least four SEMOpX Governing Committee meetings each year at such venues as the Members may agree.

4 PROVISION OF INFORMATION

4.1 Exchange of information between the Parties

Each Party shall provide to the other Party such information regarding the SMO Business or NEMO Business as the other Party may reasonably require to enable it to comply with its obligations under this Agreement and the respective Market Operator Licences.

4.2 Provision of information to the SMO Business and NEMO Business

- (a) The Parties shall ensure that the SMO Business shall have access to all such information as may be necessary for the purposes of the operation of the SMO Business in accordance with this Agreement.
- (b) The Parties shall ensure that the NEMO Business shall have access to all such information as may be necessary for the purposes of the operation of the NEMO Business in accordance with this Agreement.

4.3 Provision of information and access by the SMO Business

The SEMO General Manager shall procure that each Party is provided with:

- (a) such information as the Parties may agree in writing from time to time;
- (b) such access as it may reasonably request to the premises, books, accounts, assets, facilities and staff of the SMO Business to enable it to prepare its accounts, comply with or monitor compliance with its Market Operator Licence and generally to protect its interests including a right to take and remove copies of any books and accounts; and
- (c) such other financial, management or other information relating to the SMO Business as it may reasonably request from time to time.

4.4 Provision of information and access by the NEMO Business

The NEMO Business shall procure that each Party is provided with:

- (a) such information as the Parties may agree in writing from time to time;
- (b) such access as it may reasonably request to the premises, books, accounts, assets, facilities and staff of the NEMO Business to enable it to prepare its accounts, comply with or monitor compliance with its Market Operator Licence and generally to protect its interests including a right to take and remove copies of any books and accounts; and
- (c) such other financial, management or other information relating to the NEMO Business as it may reasonably request from time to time.

5 FINANCIAL MATTERS

5.1 Financing of the SMO Business

- (a) The Parties agree that they shall fund the SMO Business in the Specified Proportions in accordance with the following provisions of this Clause 5 and such other terms and conditions as they may agree between them in writing from time to time and with the intention that the costs of the SMO Business would be recovered by way of the SMO Revenues.
- (b) The costs of the SMO Business for the purposes of this Clause 5 comprise:
 - (i) capital expenditure incurred in operating the SMO Business;
 - (ii) operating expenditure incurred in operating the SMO Business; and
 - (iii) the Balancing Costs.
- (c) In order to make provision for costs of the SMO Business referred to at Clause 5.1(b)(i) and (ii) and the Balancing Costs the Parties agree that a fund of such amount as is agreed in writing between them from time to time shall be maintained by the SMO Business.
- (d) When setting up the SMO Business and preparing for the operation of the SEM, the Parties funded in the Specified Proportions the costs incurred in so doing and intended that such costs be recovered by way of the SMO Revenues and reimbursed to the Parties in the Specified Proportions at such intervals and in such manner as was set out in the Revenue Submission in respect of the Revenue Control Period from 1 October 2007 to 30 September 2008.

5.2 Financing of NEMO Business

- (a) The Parties agree that they shall fund the NEMO Business in the Specified Proportions in accordance with the following provisions of this Clause 5 and such other terms and conditions as they may agree between them in writing from time to time and with the intention that the costs of the NEMO Business would be recovered by way of the NEMO Revenues.
- (b) The costs of the NEMO Business for the purposes of this Clause 5 comprise:
 - (i) capital expenditure incurred in operating the NEMO Business; and
 - (ii) operating expenditure incurred in operating the NEMO Business.
- (c) In order to make provision for costs of the NEMO Business referred to at Clause 5.2(b)(i) and (ii) the Parties agree that a fund of such amount as is agreed in writing between them from time to time shall be maintained by the NEMO Business.

5.3 Revenue Submissions

The Parties agree that in respect of Revenue Control Periods commencing after the Go-Live Date a Revenue Submission shall be made to the Regulatory Authorities, as required, in such manner as the Parties may agree in writing from time to time subject to any directions of the Regulatory Authorities from time to time.

5.4 Budgets

In respect of each Financial Year the SMO Business and NEMO Business shall be operated in accordance with a Budget for that Financial Year which shall be prepared by the Parties in conjunction with each other in accordance with such procedures as the Parties may agree in writing from time to time.

5.5 Specified Proportions

The Parties acknowledge that the Specified Proportions at the date of the Agreement have been agreed having regard to comparative levels of energy consumption in the Republic of Ireland and Northern Ireland.

6 RESOURCES

6.1 Facilities

- (a) The SMO Business and the NEMO Business shall be co-located in Belfast and Dublin. SONI and EirGrid respectively shall provide the Belfast and Dublin properties for this purpose together with ancillary facilities which may include utilities, cleaning services, maintenance, car parking, security, mail service, copy bureau, switchboard and other similar facilities.
- (b) In order to achieve an appropriate level of system availability and to ensure that persons who are a party, or who wish to become a party, to the Code will have a single point of contact when interfacing with the SMO Business as further set out in or pursuant to this Agreement, the SMO Business will maintain two sites, one at each of its locations in Belfast and Dublin, each of which is capable, subject to appropriate resourcing, of performing all of the functions of the SMO Business.
- (c) In order to achieve an appropriate level of system availability and to ensure that persons who wish to receive NEMO Services will have a single point of contact when interfacing with the NEMO Business as further set out in or pursuant to this Agreement, the NEMO Business will maintain two sites, one at each of its locations in Belfast and Dublin, each of which is capable, subject to appropriate resourcing (which may include outsourcing), of performing all of the functions of the NEMO Business.

6.2 Staffing

- (a) The Parties shall ensure that the SMO Business and NEMO Business are adequately staffed in accordance with the following provisions of this Clause 6.2 to enable the Parties to fulfil their respective obligations under the SEM Legislation, Market Operator Licences, all relevant laws of the European Union, the Exchange Rules and the Code, as applicable.

- (b) All functions for which the SMO Business and NEMO Business are responsible will be undertaken by staff employed by or contracted to either SONI or EirGrid and in the case of the NEMO Business certain functions will be undertaken through outsourcing arrangements.
- (c) Staff of the SMO Business will be located in one or other of the offices of the SMO in Belfast or Dublin to facilitate the operation of those offices in accordance with Clause 6.1. They shall undertake their functions in such manner as will ensure that persons who are a party, or who wish to become a party, to the Code have a single point of contact when interfacing with the SMO Business as further set out in or pursuant to this Agreement.
- (d) Staff of the NEMO Business will be located in one or other of the offices of the NEMO in Belfast or Dublin to facilitate the operation of those offices in accordance with Clause 6.1. They shall undertake their functions in such manner as will ensure that persons who wish to receive NEMO services will have a single point of contact when interfacing with the NEMO Business as further set out in or pursuant to this Agreement.

6.3 Assets

The SMO Business and NEMO Business shall have such assets jointly owned by the Parties as they shall agree in writing from time to time and as are required for the establishment and operation of the SMO Business and NEMO Business in accordance with this Agreement.

7 PROCUREMENT OF GOODS AND SERVICES

7.1 General

The Parties agree that they shall procure jointly (or on such other basis as they may agree in writing from time to time) in accordance with the Code, the Exchange Rules and the Market Operator Licences and such processes as they agree in writing from time to time, such assets and services for the SMO Business and NEMO Business as may be necessary or appropriate to enable them to discharge their obligations under the SEM Legislation, the Market Operator Licences, the CACM Regulation, the Code, the Exchange Rules and any other relevant Legal Requirements.

7.2 Approvals

Any proposal for the procurement of any goods and/or services for the SMO Business, or the modification or cancellation of an existing contract for goods and services shall be subject to receipt of any approval of the Regulatory Authorities if required by paragraph B.13.1.3 of the Code and such other approvals as the Parties may agree in writing from time to time.

7.3 Procurement Strategy

In procuring assets and services for the SMO Business and NEMO Business and agreeing processes for this purpose the Parties shall follow a procurement strategy which is designed to facilitate, to the extent within their control in undertaking (as applicable) the SMO Business or NEMO Business, achievement of the objectives set

out in Condition 5(4) of EirGrid's Market Operator Licence and Condition 19(4) of SONI's Market Operator Licence.

8 MOA FORCE MAJEURE BETWEEN THE PARTIES

8.1 Where a Party is affected by an event of MOA Force Majeure:

- (a) the FM Party shall notify the other Party of the circumstances of MOA Force Majeure, identifying the nature of the event, its expected duration, and the particular obligation(s) affected;
- (b) the FM Party shall furnish reports at such intervals as the other Party may reasonably request, in respect of the circumstances of MOA Force Majeure during the period of MOA Force Majeure;
- (c) no obligations of either Party under or pursuant to this Agreement that arose before the MOA Force Majeure and which can reasonably be expected to be performed are excused as a result of MOA Force Majeure;
- (d) on the occurrence of the MOA Force Majeure, the FM Party shall consult with the other Party as to how the FM Party might best give effect to its obligations under or pursuant to this Agreement so far as is reasonably practicable during the period of the MOA Force Majeure;
- (e) the FM Party, in consultation with the other Party, shall take such measures which may reasonably be expected to be taken as a Prudent Industry Operator in the circumstances to mitigate the consequences of any MOA Force Majeure to enable it to resume full performance of its obligations under this Agreement;
- (f) the FM Party shall resume full performance of its obligations under or pursuant to this Agreement on cessation of any MOA Force Majeure and shall inform the other Party of this without delay; and
- (g) the FM Party shall be relieved of its obligations under or pursuant to this Agreement only for so long as and to the extent that the occurrence of the MOA Force Majeure and/or its effects could not be overcome by measures which the FM Party might reasonably be expected to take as a Prudent Industry Operator with a view to continuing or resuming performance of its obligations as appropriate.

8.2 Where a Party is rendered wholly or partially unable to perform all or any of its obligations under or pursuant to this Agreement by reason of MOA Force Majeure, the FM Party's relevant obligations under or pursuant to this Agreement shall be suspended and it shall be relieved from liability subject to Clause 8.3 in respect of such obligations provided that such liability and suspension shall be of no greater scope and no longer duration than is required by the MOA Force Majeure.

8.3 The FM Party shall be relieved from liability only for so long as and to the extent that the occurrence of MOA Force Majeure and/or the effects of such occurrence could not be overcome by measures which the FM Party might reasonably be expected to take as a Prudent Industry Operator with a view to continuing or resuming performance of its obligations as appropriate. Notwithstanding the foregoing, MOA

Force Majeure shall not relieve any FM Party from any liability to make payments due under or pursuant to this Agreement save to the extent that any failure to pay is caused by MOA Force Majeure affecting all reasonable means of payment in which event on cessation of the MOA Force Majeure event, the FM Party shall pay all amounts due together with interest thereon at a rate agreed between the Parties in writing from time to time from the due date to the actual date of payment.

9 DISPUTE RESOLUTION

9.1 Decisions

Where:

- (a) there is any disagreement between the Parties arising out of or in connection with this Agreement which has not been resolved through the SEMO Governing Committee or SEMOpx Governing Committee (as appropriate); or
- (b) a unanimous vote of the SEMO Governing Committee or SEMOpx Governing Committee cannot be achieved at a meeting, or a quorum is not present at two consecutive meetings of the Governing Committee, and either Party has subsequently notified the other within 7 days after that meeting or the second consecutive meeting, as the case may be, that a matter has not been resolved to its satisfaction, a Dispute (a "Dispute") shall be deemed to have arisen and subject to Clause 9.5 the procedure set out in Clauses 9.2 and 9.3 shall apply.

9.2 Amicable Discussions

If a Dispute arises each Party shall, within 7 days of delivery of a notice pursuant to 9.1 cause its Members on SEMO Governing Committee (in the case of the SMO Business) or its Members on the SEMOpx Governing Committee (in the case of the NEMO Business) to prepare and circulate to the other Party and the other members of the relevant governing committee, a memorandum or other form of statement setting out its position on the matter in dispute and its reason for adopting such position. During the period of 20 days (the "Discussion Period") from the termination of said 7 day period a designated representative of each of the Parties shall consider such memoranda and shall respectively use their reasonable endeavours to resolve such Dispute. If the designated representative of each of the Parties agree upon a resolution of the matter, they shall on behalf of the Parties jointly execute a statement setting out the terms of such resolution and the Parties shall exercise the voting rights and the other powers of control available to them as (as applicable) SMO or NEMO to procure that such resolution is fully and promptly carried into effect.

9.3 Dispute Resolution Process

- (a) If a resolution is not agreed in accordance with the provisions of Clause 9.2 within the Discussion Period or such longer period as the Parties may agree in writing then the Parties shall refer the Dispute to either:
 - (i) an independent expert agreed between them who shall determine the Dispute in accordance with the terms of Schedule 3; or
 - (ii) the Regulatory Authorities, if appropriate.

- (b) Where the Parties are unable within 7 days of the expiry of the Discussion Period to agree whether to refer the Dispute to an independent expert or to the Regulatory Authorities, the Parties shall refer the matter to the Regulatory Authorities which may determine the Dispute or determine that the Dispute be referred to an independent expert.
- (c) Where the Parties agree to refer the Dispute to an independent expert but are unable within 7 days of the expiry of the Discussion Period to agree whether the Dispute involves a commercial matter or a technical matter for the purposes of Schedule 3, the Parties shall refer the matter to the Regulatory Authorities which may decide which type of matter the Dispute involves.
- (d) Where the Parties agree to refer the Dispute to an independent expert and the type of matter which the Dispute involves for the purposes of Schedule 3, but are unable within 7 days of the expiry of the Discussion Period to agree on the identity of the independent expert of the relevant type, the Parties shall refer the matter to The Electricity Arbitration Association which shall appoint an independent expert of that type who meets the criteria set out in Schedule 3.

9.4 Final and Binding

The determination of the Regulatory Authorities, or subject to Schedule 3 an independent expert, pursuant to Clause 9.3 shall be final and binding on the Parties, save in respect of fraud or manifest error, and the Parties agreed to be bound by, perform and/or amend this Agreement in accordance with and undertake to implement, as the case may be, such determination.

9.5 Disputes regarding amendments

A Party may refer to a Regulatory Authority any proposed amendment to this Agreement that the other Party disputes if such dispute remains outstanding for more than 30 days after either Party serves a notice on the other that refers to the Relevant Licence Dispute Condition. In the event of such a referral of a proposed amendment the Parties shall comply with, and shall in conjunction with each other amend this Agreement to conform to, such amendment to the extent that it is approved by that Regulatory Authority.

9.6 Interim activities

During the course of any dispute or Dispute under this Agreement:

- (a) the Parties shall to the extent possible continue to perform their respective obligations under this Agreement; and
- (b) neither Party shall exercise any other remedies arising under this Agreement with respect to the matters in dispute.

10 CONFIDENTIALITY

10.1 General

Each Party shall take all steps, and shall procure that its officers, employees, agents and professional and other advisers take all steps as shall be necessary to ensure that the SMO Business and NEMO Business is operated in such a manner that both Parties are in compliance with their respective obligations under the Market Operator Licences and any relevant laws of the European Union restricting the use and disclosure by the Parties of information held or obtained by the Parties (or their Affiliates, related undertakings or any of their respective sub-contractors or delegates as may be permitted under (as applicable) the Code or the Exchange Rules) pursuant to or by virtue of carrying on their respective Market Operation Activity and NEMO Activity.

11 ASSIGNMENT

11.1 Consent

Neither Party may assign the benefit of this Agreement without the prior written consent of the other Party.

11.2 Successor

Subject to clause 11.1, this Agreement is binding upon and ensures for the benefit of the assigns and successors in title of each of the Parties.

12 TERM AND TERMINATION

12.1 Term

(a) This Agreement shall commence on the date of this Agreement and shall continue in full force and effect for such time as SONI and EirGrid both remain licensed to perform the function of SMO under their separate Market Operator Licences or until terminated by written agreement between the Parties in accordance with this Clause 12 or until one or both Parties is instructed by its or their Regulatory Authority(ies) to terminate this Agreement, whichever is the earlier.

(b) Subject to Clause 12.2, each of the Parties agree that any provision of this Agreement which relates to the NEMO Activity and / or the NEMO Business or imposes obligations or liabilities on the Parties with respect to the NEMO Activity and / or the NEMO Business shall only be applicable for the period during which and the extent to which Condition 15A of the SONI Market Operator Licence and Condition 3A of the EirGrid Market Operator Licence are in effect (or where the Parties are otherwise required to perform the NEMO Activity and / or the NEMO Business).

12.2 Continuation of Obligations

On termination of this Agreement, the rights and liabilities of the Parties which have accrued beforehand shall subsist. This Clause 12 and Clauses 10 (Confidentiality), 15 (Waiver and Invalidity), 16 (Announcements), 22 (Governing Law and Jurisdiction) and to the extent required Schedule 1 (Definitions and interpretation) shall survive termination without limitation in time.

12.3 Winding up process

In the event of the termination of this Agreement under this Clause 12 the Parties will co-operate together to procure the proper and orderly winding-up of the SMO Business or NEMO Business conducted under this Agreement.

12.4 Market Operator Licence Obligations

Without prejudice to the generality of Clause 12.3 in the event of termination of this Agreement or any part of this Agreement, the Parties will take reasonable steps to ensure each Party can continue to comply with its Market Operator Licence obligations, to the extent that the same remains in force.

13 ENTIRE AGREEMENT

13.1 Definition of Agreement

In this clause, references to this Agreement include all other written agreements and arrangements between the Parties which are agreed by the Parties to be supplemental to this Agreement or which this Agreement expressly preserves or requires to be executed.

13.2 Entire Agreement

This Agreement constitutes the whole and only agreements and understandings between the Parties in relation to the subject matter of the Agreement. All previous drafts, agreements, understandings, undertakings, representations, warranties, promises and arrangements of any nature whatsoever between the Parties with any bearing on the subject matter of this Agreement (including any heads of agreement) are superseded and extinguished and all rights and liabilities arising by reason of them, whether accrued or not at the date of this Agreement, are cancelled to the extent that they have such a bearing, except insofar as any such thing is in terms repeated or otherwise reflected in this Agreement, of the Agreement.

14 REVIEW, REPORT, AMENDMENT AND PUBLICATION

14.1 Review

Each Party shall in conjunction with the other Party review this Agreement and its implementation at any time at the request of the Regulatory Authorities.

14.2 Report

Each Party shall, in conjunction with the other, report annually to the Regulatory Authorities on the operation of this Agreement to the extent relevant to the functions, rights and obligations of that Party.

14.3 Amendment

- (a) Save as provided in Clause 9.5, no amendment to this Agreement shall be of any effect unless it is agreed in writing and signed by or on behalf of each Party.
- (b) Either Party may propose an amendment to this Agreement for any purpose it sees fit including for the purpose of ensuring that, to the extent that it does

not already do so, this Agreement requires that, where a Party (the "first Party") is not reasonably capable of fulfilling an obligation imposed by its Market Operator Licence without the assistance of the other Party, the other Party shall provide such assistance as the first Party reasonably requests in order to enable it to fulfil that obligation.

- (c) Any proposal for an amendment made by a Party shall be notified to the other Party in writing setting out reasonable details of the proposed amendment and the reasons for it. The other Party shall respond promptly to the proposal and shall enter into negotiations in good faith regarding the proposal. Any dispute regarding a proposed amendment shall be dealt with in accordance with Clause 9.5.
- (d) The Parties agree and acknowledge that this Agreement is entered into in compliance with the Market Operator Licences and that its terms are intended to reflect the terms of and give effect to, or facilitate the operation of or compliance with, the Market Operator Licences, the Code, the Exchange Rules, any relevant laws of the European Union, the Designation and other applicable Legal Requirements. The Parties further agree and acknowledge that they intend that this Agreement would be amended in a manner agreed between them to the extent necessary to reflect and give effect to, or facilitate the operation of or compliance with, any amendments or variation properly made to the Market Operator Licences, the Code, the Exchange Rules, the CACM Regulation, the Designation and the other applicable Legal Requirements from time to time.

14.4 Publication

The Parties shall publish this Agreement as amended from time to time in accordance with Clause 14.3 on the website established for the SMO Business.

15 WAIVER AND INVALIDITY

15.1 No implied waiver

No right, power or remedy provided by law or under this Agreement shall be waived, impaired or precluded by:

- (a) any delay or omission to exercise it; or
- (b) any single or partial exercise of it on an earlier occasion; or
- (c) any delay or omission to exercise, or single or partial exercise, of any other such right, power or remedy.

15.2 Express waivers

Any waiver of any right, power or remedy under this Agreement must be in writing and signed on behalf of the waiving Party and may be given subject to any conditions through fit by the guarantor. No waiver will take effect if the person seeking the waiver has failed to disclose to the grantor every material fact or circumstance which (so far as the person seeking the waiver is aware) has a bearing on its subject

matter. Unless otherwise expressly stated, any waiver shall be effective only in the instance and only for the purpose for which it is given.

16 ANNOUNCEMENTS

16.1 Prior consent

Save and insofar as required by any Regulatory Authority or as expressly provided for in this Agreement, no announcement shall be made by either Party, either before or after the date of this Agreement, in relation to any of the transactions provided for in this Agreement without the prior written consent of the other Party which consent shall not be unreasonably withheld or delayed.

16.2 Consultation

In the event that any announcement is to be made in connection with this Agreement which does not require the prior written consent of the other Party, the Party making the announcement shall use all reasonable endeavours to consult the other Party with regard to the terms of such announcement before it is made.

16.3 Provision of information

Each Party undertakes to provide all such information known to it or which, on reasonable enquiry, ought to be known to it as may reasonably be required by the other Party for the purpose of complying with the requirements of any regulatory authority.

17 NO PARTNERSHIP

17.1 None of the provisions of this Agreement (or any of the arrangements contemplated by this Agreement) shall be deemed to constitute a partnership between the Parties at any time or, save as expressly provided in this Agreement, to constitute any Party the agent of the other, or to have any authority to bind the other in any way.

18 NO AUTHORITY

18.1 No Party shall have the right nor shall either Party hold itself out as having the authority or right to assume, create or undertake any obligation of any kind whatsoever, expressed or implied, including but not limited to borrowing money, pledging credit, in the name of the other Party without the prior written consent of the other Party.

18.2 Nothing contained in this Agreement is intended in any manner to limit the Parties in the conduct of their respective businesses or activities, which are not related to this Agreement.

19 THIRD PARTY RIGHTS

Nothing in this Agreement is intended to confer on any person other than the Parties any right to enforce any term of this Agreement and the terms of the Contracts (Rights of Third Parties) Act 1999, which is Northern Ireland legislation, shall not apply to this Agreement.

20 COUNTERPARTS

This Agreement may be executed in any number of counterparts and by the Parties on different counterparts. Each counterpart shall constitute an original of this Agreement but all the counterparts shall together constitute one and the same Agreement. Transmission of an executed counterpart of this Agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement and each Party shall provide the other Party with the original of such counterpart as soon as reasonably possible thereafter.

21 NOTICES

21.1 General

Any communication to be given in connection with the matters contemplated by this Agreement shall except where expressly provided otherwise be in writing and shall either be delivered by hand or sent by email, pre-paid post (where available first class) or facsimile transmission. Delivery by courier shall be regarded as delivery by hand.

21.2 Addresses

Any such communication referred to in clause 21.1 shall be sent to the email address or address of the relevant Party referred to in this Agreement or the facsimile number set out below or to such other email address or address or facsimile number as may previously have been communicated to the sending Party in accordance with this clause. Each communication shall be marked for the attention of the relevant person.

SONI

Castlereagh House
12 Manse Road
Belfast
BT6 9RT
Facsimile: 028 907 07560

Email: robin.mccormick@soni.ltd.uk

For the attention of: Robin McCormick, General Manager, SONI Limited

EirGrid

The Oval
160 Shelbourne Road
Ballsbridge
Dublin 4
Ireland
Facsimile: 00 353 1 661 5375

Email: Rodney.Doyle@Eirgrid.com

For the attention of: Rodney Doyle, Market Operations Director, EirGrid plc

21.3 Timing

A communication shall be deemed to have been served:

- (a) if delivered by hand at the address referred to in sub-clause 21.2 at the time of delivery;
- (b) if sent by email to the email address referred to in that sub-clause, at the time of completion of the transmission of the email;
- (c) if sent by pre-paid post (where available first class) to the address referred to in that sub-clause, at the expiration of 2 clear days after the time of posting; and
- (d) if sent by facsimile to the number referred to in that sub-clause, at the time of completion of transmission by the sender.

If a communication would otherwise be deemed to have been delivered outside normal business hours (being 9:30a.m. to 4:45p.m. on a Business Day) under the preceding provisions of this clause, it shall be deemed to have been delivered at the next opening of such normal business hours.

21.4 Evidence

In proving service of the communication, it shall be sufficient to show that delivery by hand was made or that the envelope containing the communication was properly addressed and posted as a first class pre-paid letter or that the email or facsimile was dispatched and a confirmatory transmission report received.

21.5 Changes

A Party may notify the other Parties of a change to its name, relevant person, email address or facsimile number for the purposes of sub-clause 21.2 provided that such notification shall only be effective on:

- (a) the date specified in the notification as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five clear Business Days after the date on which notice is deemed to have been served, the date falling five clear Business Days after notice of any such change is deemed to have been given.

21.6 Service for Proceedings

For the avoidance of doubt, the Parties agree that the provisions in this clause shall not apply in relation to the service of any claim form, application notice, order, judgement or other document relating to or in connection with any Proceedings.

22 GOVERNING LAW AND JURISDICTION

22.1 Governing Law

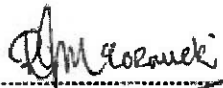
This Agreement and any disputes arising under, out of, or in relation to this Agreement shall be interpreted, construed and governed in accordance with the laws of Northern Ireland.

22.2 Jurisdiction

Subject to the provisions of Clause 9, the Parties hereby submit to the exclusive jurisdiction of the Courts of Ireland and the Courts of Northern Ireland for all disputes arising under, out of or in relation to this Agreement.

IN WITNESS of which the Parties have executed this Agreement on the date above written.

Signed by.....)
for and on behalf of)
SONI LIMITED)



Director/Duly Authorised Signatory

Signed by)
for and on behalf of)
EIRGRID PLC)



Director/Duly Authorised Signatory

SCHEDULE 1

Definitions and Interpretation

Part 1

In this Agreement (including the Recitals) the following terms shall, unless the context otherwise requires, have the meaning hereby attributed to them:

"2007 Order" means the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007;

"Agreement" means this amended and restated market operator agreement between the Parties including the Recitals and Schedules;

"Applicable Laws" has the meaning given in the Code;

"Balancing Costs" means the Balancing Cost (as defined in the Code) required to be paid by the SMO under the Code subject to a mechanism approved by the Regulatory Authorities to deal with exceptional costs events;

"Budget" in respect of each of the SMO Business and NEMO Business, means in respect of any Financial Year the budget as approved and amended from time to time as described in Clause 5.4 of this Agreement;

"Business Day" means a day (other than a Saturday or Sunday) when banks are open for business in both Dublin and Belfast;

"CACM Regulation" means Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management;

"Code" means the Single Electricity Market Trading and Settlement Code as designated by the Regulatory Authorities from time to time for the purposes of the Market Operator Licences;

"Competent Authority" has the meaning given in the Code;

"CRU" means the Commission for Regulation of Utilities including the committee thereof appointed pursuant to section 8A of the ERA 1999;

"Designation" in respect of each Party, has the meaning set out in Condition 15A(12) of the Market Operator Licence granted to SONI and Condition 3A(12) of the Market Operator Licence granted to EirGrid;

"Dispute" has the meaning given in Clause 9.1 of this Agreement;

"Electricity Order 1992" means the Electricity (Northern Ireland) Order 1992 applicable in Northern Ireland;

"ERA 1999" means the Electricity Regulation Act 1999 applicable in Ireland;

"Exchange Rules" means the Exchange Rules contemplated by Condition 3A(3) of the EirGrid Market Operator Licence and Condition 15A(3) of the SONI Market Operator Licence dealing with the NEMO;

"Financial Year" means any twelve month period ended on 30 September or such other period as may be agreed in writing between the Parties from time to time for the purposes of preparing accounts under the Market Operator Licences;

"FM Party" means a Party which is unable to perform all or any of its obligations under this Agreement by reason of MOA Force Majeure;

"Go-Live Date" means 1 November 2007, being the time and date designated as such by the Regulatory Authorities for the purposes of the SEM;

"Irish SEM Legislation" means the Energy Miscellaneous Provisions Act 2006, the Electricity Regulation (Amendment) (Single Electricity Market) Act 2007, the Energy Act 2016 and the Irish SEM Regulations;

"Irish SEM Regulations" means the Electricity Regulation Act 1999 (Single Electricity Market) Regulations 2007 and 2017;

"Island of Ireland" means the entire island of Ireland comprising Northern Ireland and the Republic of Ireland (and the term "All-Island" shall be construed accordingly);

"Legal Requirements" means any requirement under Applicable Laws, the Market Operator Licences, any applicable Grid Code or Metering Code or any requirement, direction, determination, decision, instruction or rule of any Competent Authority;

"Market Notice" has the meaning given in the Exchange Rules;

"Market Operation Activity" in respect of a Party, shall have the meaning set out in its Market Operator Licence;

"Market Operator Licence" means the licence granted to SONI under Article 10(1)(d) of the Electricity (Northern Ireland) Order 1992 and/or the licence granted to EirGrid under Section 14(1)(j) of the Electricity Regulation Act 1999 as applicable and "Market Operator Licences" shall be construed accordingly;

"Market System Development Plan" means the plan of that name prepared by the Parties in accordance with Condition 16 of the Market Operator Licence granted to SONI and Condition 4 of the Market Operator Licence granted to EirGrid;

"MOA Force Majeure" means in relation to a Party, any event beyond the reasonable control of that Party and which could not have been reasonably prevented or the consequences of which could not have been prevented by Prudent Electricity Utility Practice and which is not due to the act, error, omission, breach, default or negligence of that Party, its employees, agents or contractors and which has the effect of preventing that Party from complying with all or any of its obligations under this Agreement and including, without limitation:

- (a) acts of terrorism,
- (b) war (whether declared or undeclared), blockade, revolution, riot, insurrection, civil commotion, invasion or armed conflict;

- (c) sabotage or acts of vandalism or criminal damage;
- (d) natural disasters and phenomena, including extreme weather or environmental conditions, fire, 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; or
- (e) nationwide or industry wide strikes, lockouts or other industrial actions or labour disputes provided that such occurrence is not limited to that Party and/or its suppliers, contractors, agents or employees

provided that MOA Force Majeure does not include:

- (1) any inability (however caused) of that Party to pay any amount due to be paid by it pursuant to this Agreement;
- (2) mechanical or electrical breakdown or failure of machinery, plant or systems owned or operated by that Party; or
- (3) the failure or inability of that Party's IT systems or manual processes to perform any function necessary for that Party to comply with this Agreement

other than where such events arise as a result of the circumstances in sub-paragraphs (a)-(e) above;

"NEMO" means the nominated electricity market operator function as provided for in the CACM Regulation and Market Operator Licences;

"NEMO Activity" in respect of a Party, shall have the meaning set out in its Market Operator Licence;

"NEMO Business" has the meaning given to that term in the Market Operator Licences;

"NEMO Revenues" mean the revenues earned in the course of carrying out the NEMO Business;

"NIAUR" means the Northern Ireland Authority for Utility Regulation including the committee thereof appointed pursuant to Article 8 of the 2007 Order;

"Northern Ireland SEM Legislation" means the Northern Ireland (Miscellaneous Provisions) Act 2006, the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 and the Electricity (Single Wholesale Market) Order (Amendment) Regulations (Northern Ireland) 2016;

"Parties" means SONI and EirGrid and **"Party"** shall be construed accordingly;

"Performance Criteria" means the performance criteria against which the performance of the SEM Trading and Settlement System may be measured for the purposes of Condition 10 of EirGrid's Market Operator Licence and Condition 17 of SONI's Market Operator Licence;

"Proceedings" mean any proceeding, suit or action (including arbitration);

"Prudent Electric Utility Practice" has the meaning given in, as the context dictates or requires, either the Code or the Exchange Rules;

"Prudent Industry Operator" has the meaning given in, as the context dictates or requires, either the Code or the Exchange Rules;

"quorum" in respect of each of the SEMO Governing Committee and NEMO Governing Committee means the quorum for meetings as agreed between the Parties in writing from time to time;

"Relevant Dispute Resolution Condition" means where a referral is to NIAUR, Condition 14(5) of the Market Operator Licence granted to SONI and where a referral is to the CRU, Condition 2(3) of the Market Operator Licence granted to EirGrid;

"Regulatory Authorities" means the NIAUR and the CRU and **"Regulatory Authority"** shall mean either one of them;

"Revenue Control Decision" means a decision or direction taken or given by the Regulatory Authorities approving or imposing price controls in respect of the tariffs imposed by the SMO or NEMO on participants in the SEM during the term of a Revenue Control Period;

"Revenue Control Period" means the price control period set by the Regulatory Authorities from time to time in respect of tariffs imposed by the SMO, or NEMO if relevant, in relation to participation in the trading arrangements under the SEM;

"Revenue Submission" means in respect of a Revenue Control Period the submission of the Parties to the Regulatory Authorities in respect of the allowed revenues of the Parties and the level of the SMO Charges or NEMO Charges;

"revised SEM arrangements" has the meaning give in the Market Operator Licences.

"SEM" means the single wholesale electricity market for the Island of Ireland;

"SEM Legislation" means the Irish SEM Legislation and the Northern Ireland SEM Legislation;

"SEM Trading and Settlement System" means the hardware, software and processes operated by or on behalf of the Parties in their capacity as SMO for the trading of electricity in the SEM and the settlement of financial obligations in respect thereof;

"SEMOpX Governing Committee" has the meaning given in Clause 3A.1 of this Agreement;

"SEMO Governing Committee" has the meaning given in Clause 3.1 of this Agreement;

"SMO" means the joint market operator function for the single wholesale electricity market for the Island of Ireland as provided for pursuant to the Code and the Market Operator Licences;

"SMO Business" means the Market Operation Activity of each Party taken together;

"SMO Charges" means the tariffs imposed by the SMO on participants in the SEM pursuant to the Code as approved by the Regulatory Authorities from time to time and which at present include the Variable Market Operator Charge and the Fixed Market Operator Charge ;

"SMO Revenues" means the revenues earned in the course of carrying out the SMO Business; and

"Specified Proportions" means 25% for SONI and 75% for EirGrid or such other proportions as may be agreed in writing between the Parties.

Part 2

In this Agreement:

- 2.1 the Recitals and Schedules form part of this Agreement and shall have the same force and effect as if set out in the body of this Agreement;
- 2.2 the table of contents and headings and sub-headings are for convenience only and shall not affect the construction of this Agreement;
- 2.3 unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and references to any gender shall include all other genders. References to any person (which for the purposes of this Agreement shall include natural persons, bodies corporate, unincorporated associations, partnerships, governments, governmental agencies and departments, statutory bodies or other entities, in each case whether or not having a separate legal personality) shall include the person's successors;
- 2.4 the terms "other", "include" and "including" do not connote limitation in any way;
- 2.5 references to Recitals, Schedules, clauses and sub-clauses are to (respectively) recitals to, schedules to, and clauses and sub-clauses of, this Agreement (unless otherwise specified); and references within a Schedule to paragraphs are to paragraphs of that Schedule (unless otherwise specified);
- 2.6 references to any treaty, statute, statutory provision, directive of the Commission of the European Union (whether issued jointly with any other person or under any other name) or other legislation include a reference to that treaty, statute, statutory provision, directive or legislation as amended, extended, re-enacted, consolidated or replaced from time to time (whether before or after the date of this Agreement) and include any order, regulation, instrument or other subordinate legislation made under the relevant treaty, statute, statutory provision, directive or legislation;
- 2.7 any reference to another agreement, licence or document or any deed or other instrument is to be construed as a reference to that other agreement, licence or document, deed or other instrument as lawfully amended, modified, supplemented, substituted, assigned or novated from time to time;
- 2.8 any reference to "writing" or "written" includes faxes and any legible reproduction of words delivered in permanent and tangible form (and shall unless otherwise agreed or provided for in this Agreement include e-mail); and
- 2.9 words or expressions defined for the purposes of the Code and the Exchange Rules shall, unless otherwise defined in this Agreement or the context otherwise requires, have the same meaning when used in this Agreement.

SCHEDULE 2

Licence Obligations

Obligations imposed under the conditions of the Market Operator Licences in respect of which, as at the date of this Agreement, the Parties are required by the Market Operator Licences to act in conjunction with each other

- (i) keeping or causing to be kept accounts for the SMO Business and separately for the NEMO Business in accordance with their respective Market Operator Licences;
- (ii) preparing and maintaining a register of relevant market assets in the form specified by the Regulatory Authorities and identifying those assets which the Parties jointly own;
- (iii) at all times maintaining in force this Agreement, including its periodic review, in order to facilitate the carrying out of the SMO Business and NEMO Business;
- (iv) amending this Agreement in accordance with a proposed amendment approved by the Regulatory Authorities;
- (v) preparing a report annually for the Regulatory Authorities on the operation of this Agreement;
- (vi) administering and maintaining in force the Code;
- (vii) ensuring that persons who are party to or who wish to become party to the Code have, to the extent reasonably practicable, a single point of contact when interfacing with the SMO Business;
- (viii) establishing and maintaining a website for the SMO Business;
- (ix) preparing and submitting to the Regulatory Authorities for approval, a set of rules to be known and referred to as the Exchange Rules, setting out the terms on which the Parties will carry out the NEMO Activity;
- (x) establishing and maintaining a website for the NEMO Business;
- (xi) ensuring that persons who receive or wish to receive services from NEMO from either Party (in its capacity as the Licensee under its Market Operator Licence) have, to the extent reasonably practicable, a single point of contact when interfacing with the NEMO Business;
- (xii) providing Agent of Last Resort ("AoLR") services in accordance with the Market Operator Licences;
- (xiii) preparing and submitting to the Regulatory Authorities for approval, the form of the AoLR Contract;
- (xiv) preparing and submitting to the Regulatory Authorities for approval the Market System Development Plan which shall be revised at least annually such that the Market System Development Plan remains accurate in all material respects;

- (xv) preparing and submitting to the Regulatory Authorities for approval a report setting out the Performance Criteria against which the performance of the SEM Trading and Settlement System may be measured and reviewing the Performance Criteria in consultation with electricity undertakings and reporting to the Regulatory Authorities on the outcome of such review and consultation; and
- (xvi) conducting the SMO Business in a manner that the Parties reasonably consider best calculated to achieve the Performance Criteria.

SCHEDULE 3

Independent Expert

(Referred to in Clause 9.3)

1. This Schedule 3 shall apply where a Dispute is referred to an independent expert pursuant to Clause 9. A Dispute involving a commercial matter shall be referred to an independent commercial expert and a dispute involving a technical matter shall be referred to an independent technical expert in each case in accordance with this Schedule 3.
2. The expert shall be engaged on such reasonable terms as the expert shall accept. The following procedure shall apply to determination of a dispute by an expert and the Parties shall procure that it is reflected in the expert's terms of engagement.
3. The expert shall:
 - (a) in the case of an independent commercial expert, possess skills in the interpretation, negotiation or implementation of contracts or financial and economic analysis (as appropriate for the type of dispute) and shall not, directly or indirectly, be associated with either Party as officer, employee, consultant, contractor or otherwise;
 - (b) in the case of an independent technical expert, possess skills and expertise in the technical areas that are the subject matter of the dispute and shall not, directly or indirectly, be associated with either Party as officer, employee, consultant, contractor or otherwise;
 - (c) give his decision within 10 Business Days (or such longer period as may be decided by the independent expert but not exceeding 15 Business Days) from the date that the independent expert is satisfied that it has received adequate representations from both Parties;
 - (d) determine the amount of his fees and the costs of referral to him in accordance with the terms of his engagement and which Party shall be responsible for such fees and costs; and
 - (e) give copies of his decision and the reasons for his decision in writing to each of the Parties.
4. The Parties shall promptly provide the expert and each other with all such evidence and information within their respective possession or control as the expert may request, as he considers necessary, for determining the Dispute or which is relevant to and bears upon the dispute.
5. The Parties shall each within 20 Business Days of the referral of the Dispute to the expert submit to the expert and to each other a written proposal detailing their respective positions on the issue in dispute and the expert shall decide which of the Parties' proposals most closely reflects the intention of this Agreement. The expert shall have no discretion to propose or select any proposal which is not one of the proposals submitted by the Parties.

6. If the expert shall fail to give his decision within the period specified in paragraph 3(c), either Party may by notice to the other require that the Dispute be decided by reference to the Regulatory Authorities pursuant to Clause 9.3, whereupon the expert shall be instructed not to consider the matter further.
7. The expert shall not act as arbitrator and the Arbitration Act 2010 and the law relating to arbitration shall not apply to the expert or his determination or the procedure by which he reaches his determination. The expert shall decide the Dispute referred to him using his skill, experience and knowledge and with regard to such matters as are expressly specified in this Agreement to be considered by him and as the expert in his sole discretion considers appropriate.
8. In the event that the expert fails or is unable to act in relation to the Dispute for a continuous period of one month or (being a firm or partnership) is dissolved or discontinued or (being a company) goes into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation, or commences carrying on its business under an administrator, receiver, manager or liquidator for the benefit of its creditors, then the Parties shall agree on a substitute expert. The substitute expert shall be selected in accordance with the procedure specified in Clause 9 and this Schedule 3.