

AGENT OF LAST RESORT CONTRACT

THIS AGENT OF LAST RESORT CONTRACT is made the ● day of ● ●.

BETWEEN

1. **EIRGRID plc**, an Irish company formed pursuant to Regulation 34 of the European Communities (Internal Market in Electricity) Regulations 2000 with company registration number 338522 ("**EirGrid**"); and
SONI LIMITED, a body corporate registered in Northern Ireland with company registration number NI038715 ("**SONI**"),
EirGrid and SONI in their joint capacity as Agent of Last Resort under the Market Operator Licences (the "**AOLR**"); and
2. The person named in the Contract Schedule as the Exchange Member ("**Exchange Member**").

RECITALS:

- A. Under their respective Market Operator Licences, EirGrid and SONI are:
 - (1) required to offer to provide AOLR Services to facilitate the participation of Eligible Generators in the Ex-Ante Markets; but
 - (2) not to assume any market risk in doing so.
- B. The Regulatory Authorities have approved the form of this AOLR Contract.
- C. The Exchange Member is an Eligible Generator, and an Exchange Member under the SEMOpX Rules, and wishes to contract with the AOLR for the provision of AOLR Services.
- D. The parties have agreed to enter into this AOLR Contract on the terms and conditions as more particularly described herein.

THE PARTIES AGREE:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

- 1.1.1 In this AOLR Contract (including the Recitals), the following terms shall have the following meanings unless the context requires otherwise:

Affected Person means:

- (a) in the case of a Modification Proposal concerning the form of the AOLR Contract, all Eligible Generators; and
- (b) in the case of a Modification Proposal concerning the AOLR Procedures, the Exchange Member and any other persons to which the AOLR provides AOLR Services.

AOLR Contract means this agent of last resort contract between the parties.

AOLR Objective means the objective specified in the "Agent of Last Resort" condition in each of the Market Operator Licences.

AOLR Procedures has the meaning given in clause 3.1.

AOLR Services means the services described in Attachment 1 and provided by or on behalf of the AOLR in accordance with the AOLR Procedures.

Authorised Officer means a person appointed by a party to act as an Authorised Officer for the purposes of this AOLR Contract.

Claim includes loss (whether direct or indirect), claim, demand, damage, liability (including any fine or penalty), cost and expense of any kind.

Clearing Conditions has the meaning given in the SEMOpx Rules.

Commencement Time means the beginning of the first Trading Period for which the AOLR will be submitting Orders on behalf of the Exchange Member under this Contract, as specified in the Contract Schedule attached to this AOLR Contract.

Contract has the meaning given in the SEMOpx Rules.

Default has the meaning given in clause 7.1.2.

Default Notice means a notice given under clause 7.1.4.

Defaulting Party has the meaning given in clause 7.1.2.

Eligible Generator has the meaning given to the term "eligible generator" in the "Agent of Last Resort" condition in the Market Operator Licences.

Ex Ante Markets means any market operated by SEMOpx under the SEMOpx Rules.

Exchange Member has the meaning given in the SEMOpx Rules.

Force Majeure Event has the meaning given in clause 8.1.1.

Intellectual Property Rights has the meaning given in the SEMOpx Rules.

Legal Requirement has the meaning given in the SEMOpx Rules.

Market Operator Licence has the meaning given in the SEMOpx Rules.

Modification Proposal has the meaning given in clause 4.1.1.

Order has the meaning given in the SEMOpx Rules.

parties mean the parties to this AOLR Contract and **party** shall be construed accordingly.

Regulatory Authorities means the Northern Ireland Authority for Utility Regulation (established under Article 3 Part II of the Energy (Northern Ireland) Order 2003, as amended by Article 3 of the Water and Sewerage Services (Northern Ireland) Order 2006) and the Commission for Regulation of Utilities (established under the Electricity Regulation Act, 1999).

SEM has the meaning given to it in the SEMOpx Rules.

SEMOpx has the meaning given in the SEMOpx Rules.

SEMOpx Procedures has the meaning given to the term "Procedures" in the SEMOpx Rules.

SEMOpx Rules means the exchange rules (including for the avoidance of doubt the glossary for the exchange rules) approved by the Regulatory Authorities under the Market Operator Licences, as modified from time to time.

SEMO Website means the website established and maintained by the Market Operator under the Trading and Settlement Code.

Statement of Charges means the statement published by the AOLR on the SEMO Website under clause 5.1.1.

Trading and Settlement Code has the meaning given in the SEMOpx Rules.

Trading Period has the meaning given in the SEMOpx Rules.

Transfer means assign, novate, transfer or otherwise dispose of (or purport to assign, transfer or otherwise dispose of) any rights, obligations or estate in law or in equity, whether by sale, lease, declaration, security assignment, creation of trust or otherwise.

Unit has the meaning given in the Trading and Settlement Code.

Value Added Tax or **VAT** means the value added tax chargeable under the provisions of:

- (c) in respect of Ireland, the Irish Value Added Tax Consolidation Act, 2010 (as amended); or
- (d) in respect of Northern Ireland, the Value Added Tax Act 1994 (as amended),

and includes any substitute or replacement tax on the supply of goods or services.

Workshop means a workshop to consider a Modification Proposal convened under clause 4.3.

1.1.2 Unless the context otherwise requires, a word or expression which is not defined in clause 1.1.1 and is used in this AOLR Contract (and the Recitals) shall have the same meaning as is given to it in the AOLR Procedures.

1.2 Rules of Interpretation

1.2.1 In this AOLR Contract, unless the context requires otherwise:

- (a) the headings are for ease of reference only and do not form part of the contents of this AOLR Contract and do not and shall not affect its interpretation;
- (b) words in the singular shall include the plural and vice versa and the masculine gender shall include the feminine and neuter;
- (c) the word “including” and its variations are to be construed without limitation;
- (d) any reference to any legislation, primary or secondary, in this AOLR Contract includes any statutory interpretation, amendment, or modification, re-enactment or consolidation of any such legislation and any regulations or orders made thereunder and any general reference to any legislation includes any regulations or orders made thereunder;
- (e) any references to any clause, schedule or attachment are references to a clause, schedule or attachment of this AOLR Contract as modified from time to time. The clauses, schedules and attachments shall, as amended or modified, be construed as and form part of this AOLR Contract and shall be subject to the terms of this AOLR Contract;
- (f) any reference to another contract, agreement or document, or any deed or other instrument, is to be construed as a reference to that other contract,

agreement, or document, deed or other instrument as lawfully modified, assigned or novated from time to time;

- (g) any reference to a day, month or year is to be construed as a reference to a calendar day, month or year as the case may be;
- (h) any reference to a time is to be construed as a reference to the time prevailing in Belfast;
- (i) a reference to a “person” includes any individual, partnership, firm, company, corporation (statutory or otherwise), joint venture, trust, association, organisation or other entity, in each case and whether or not having separate legal personality;
- (j) a reference to “modify” includes modify, amend, vary, replace, supplement and substitute and “modification” has a corresponding meaning;
- (k) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
- (l) where a word, phrase, acronym, abbreviation or variable is referred to in this AOLR Contract as having the meaning given in the Trading and Settlement Code, that word, phrase, acronym, abbreviation or variable shall have the meaning given in the Glossary of Part B of the Trading and Settlement Code.

2 AOLR SERVICES

2.1 Services

- 2.1.1 The Exchange Member hereby appoints the AOLR as its agent to carry out the AOLR Services on the terms and conditions of this AOLR Contract.
- 2.1.2 The AOLR hereby accepts the appointment, and agrees to provide the AOLR Services to the Exchange Member, on the terms and conditions of this AOLR Contract.
- 2.1.3 The Exchange Member shall provide such assistance to the AOLR as the AOLR reasonably requests in order to enable the AOLR to fulfil its obligations under this AOLR Contract.
- 2.1.4 The Exchange Member consents to the AOLR providing information which the AOLR is required to provide under the SEMOpx Rules or the SEMOpx Procedures in connection with the Exchange Member or the provision of the AOLR Services.
- 2.1.5 Subject to clause 2.2.1(c), the AOLR shall exercise all reasonable skill and care in providing the AOLR Services under this AOLR Contract.

2.2 Nature of Relationship

- 2.2.1 The Exchange Member acknowledges and agrees that:
 - (a) in providing the AOLR Services, the AOLR has full authority to deal with SEMOpx in accordance with the SEMOpx Rules and SEMOpx Procedures on behalf of the Exchange Member;
 - (b) the Exchange Member ratifies, is responsible for, and is bound by, any acts and omissions of the AOLR in providing the AOLR Services in accordance with this AOLR Contract and the AOLR Procedures, and becomes party to any Contracts which result from Orders which the AOLR makes on behalf of the Exchange Member under the SEMOpx Rules and the SEMOpx

Procedures in accordance with this AOLR Contract and the AOLR Procedures;

- (c) the AOLR is not required to exercise (and for all purposes under this AOLR Contract will be deemed not to have exercised) commercial judgement or discretion in submitting Orders under the SEMOpx Rules and SEMOpx Procedures on behalf of the Exchange Member but will do so on the basis of pre-determined formulaic calculations in accordance with the AOLR Procedures;
- (d) the Exchange Member is liable for, and must pay, any amount payable in respect of any Contract entered into as a result of any Orders submitted on behalf of the Exchange Member by the AOLR in accordance with this AOLR Contract and the AOLR Procedures (including any fees and charges incurred under the SEMOpx Rules, the SEMOpx Procedures, the Clearing Conditions or otherwise in relation to those Contracts); and
- (e) the Exchange Member is responsible for its own compliance with the SEMOpx Rules, the SEMOpx Procedures, the Clearing Conditions and all other applicable laws, codes, rules and licences that it is subject to.

2.3 **Joint Administration of this AOLR Contract**

2.3.1 EirGrid and SONI are obliged under their respective Market Operator Licences, in conjunction with each other, to provide the AOLR Services.

2.3.2 Accordingly, unless the context otherwise requires:

- (a) a reference in this AOLR Contract and the AOLR Procedures to the "AOLR" is a reference to both EirGrid and SONI in their joint role of providing the AOLR Services;
- (b) EirGrid and SONI shall perform that role together and in a co-ordinated way;
- (c) each of EirGrid and SONI shall be jointly and severally liable in performing the role of, and performing the obligations of, the AOLR under this AOLR Contract and the AOLR Procedures; and
- (d) without prejudice to the obligations of the Exchange Member to comply with this AOLR Contract, where the Exchange Member owes an obligation or liability to the AOLR, if the Exchange Member discharges that obligation or liability to either EirGrid or SONI, then the Exchange Member shall be deemed to have discharged the obligation or liability to the AOLR.

3 **AOLR PROCEDURES**

3.1.1 The parties shall be bound by, and must observe, comply with, and (to the extent applicable to it) perform, the AOLR Procedures.

3.1.2 A reference to the "**AOLR Procedures**" is to be construed as the AOLR Procedures in the form published by the AOLR on the SEMO Website at the time of this AOLR Contract, as subsequently modified from time to time as contemplated by this AOLR Contract.

3.1.3 The initial AOLR Procedures are entitled "AOLR Operating Procedure 01 - Registration and Data Management" and "AOLR Operating Procedure 02 – AOLR Operations".

3.1.4 The AOLR Procedures may be published as a single document, or in multiple documents each called "AOLR Procedures" or "AOLR Operating Procedures", and that collectively comprise the AOLR Procedures.

- 3.1.5 If any provision of the AOLR Procedures conflicts with or is otherwise inconsistent with the terms of the AOLR Contract, then the terms of the AOLR Contract shall prevail to the extent of the conflict or inconsistency.

4 CONSULTATION

4.1 Modification Proposals

- 4.1.1 A proposal to modify the form of the AOLR Contract or the AOLR Procedures (“**Modification Proposal**”) may be put forward by the AOLR or an Affected Person.

- 4.1.2 Any Modification Proposal put forward by an Affected Person shall be submitted to the AOLR using the form published by the AOLR under clause 4.6.2 and following the instructions on the form. When putting forward a Modification Proposal, the AOLR shall also use that form and follow those instructions.

- 4.1.3 The person putting forward a Modification Proposal may withdraw the Modification Proposal at any stage prior to a decision on the Modification Proposal.

- 4.1.4 The person putting forward a Modification Proposal shall ensure that the Modification Proposal is clear and substantiated with sufficient detail, including how it furthers the AOLR Objective, to enable it to be considered.

- 4.1.5 Each Modification Proposal shall include the draft text of the relevant provision of (as applicable) the form of the AOLR Contract or the AOLR Procedures, in either case as amended by the Modification Proposal.

- 4.1.6 Where the AOLR receives a Modification Proposal, it may if it considers that further information or clarification is required in order to consider the Modification Proposal, send a notice to the person putting forward the Modification Proposal identifying the further information or clarification required and a reasonable period within which it is to be provided by that person.

- 4.1.7 If the AOLR does not receive the further information or clarification required within the period specified in the notice given under clause 4.1.6, the person putting forward the Modification Proposal shall be deemed to have withdrawn it with effect from the expiry of the period specified in such notice. The person putting forward the Modification Proposal may request additional time to provide any clarification or additional information and the AOLR shall not unreasonably withhold consent to any such request.

- 4.1.8 The AOLR shall, as soon as reasonably practicable (and in any event within five Working Days) after receipt of a Modification Proposal and any clarification or further information requested by the AOLR, publish the Modification Proposal on the SEMO Website. If the AOLR puts forward a Modification Proposal, the AOLR shall publish the Modification Proposal on the SEMO Website and shall notify all Affected Persons of the proposal.

- 4.1.9 The AOLR may decide to modify or combine Modification Proposals. Modified or combined Modification Proposals shall reference the original Modification Proposals.

4.2 Timetable

- 4.2.1 Within ten Working Days of receiving or making a Modifications Proposal (including any combined Modification Proposals under section 4.1.9), the AOLR shall publish a timetable for consideration, consultation and decision relating to that Modification Proposal or Proposals on the SEMO Website. The AOLR may publish an amended timetable at any time.

4.2.2 In determining or amending the timetable in relation to a Modification Proposal or Proposals, the AOLR shall take into account the urgency of the modification proposed.

4.2.3 If the AOLR requests the Exchange Member to express its opinion on any Modification Proposal, the Exchange Member shall use reasonable endeavours to do so within any reasonable time period prescribed by the AOLR.

4.3 **Workshops**

4.3.1 The AOLR may, if it considers it appropriate, organise a workshop to consider a Modification Proposal.

4.3.2 Subject to clause 4.3.3, the following procedural requirements apply to each Workshop to consider a Modification Proposal under this clause 4.3:

- (a) the AOLR shall invite the Regulatory Authorities, SEMOpx and all Affected Persons to attend the Workshop;
- (b) the AOLR may invite any other person to attend the Workshop;
- (c) non-attendance by any person invited to attend the Workshop does not invalidate the Workshop;
- (d) the AOLR shall give at least 20 Working Days' notice of a Workshop;
- (e) other than the AOLR's attendance at each Workshop, there is no quorum requirement for a Workshop;
- (f) the AOLR shall circulate an agenda to Workshop participants who have confirmed their attendance at least 10 Working Days in advance of the Workshop;
- (g) the AOLR may schedule more than one Modification Proposal for consideration at a Workshop;
- (h) the person putting forward the Modification Proposal or its representative shall be entitled to present the Modification Proposal at the Workshop at which it is to be considered;
- (i) the Workshop shall be chaired by a representative of the AOLR who may adopt such procedures for conducting the Workshop as he or she thinks fit, and may terminate the Workshop whenever he or she thinks fit; and
- (j) the AOLR shall prepare a report of the discussions which took place at the Workshop, and publish it on the SEMO Website.

4.3.3 Each party agrees that substantial compliance with the procedural requirements in clause 4.3.2 is sufficient.

4.4 **Consultation**

4.4.1 The AOLR shall conduct a consultation process in relation to a Modification Proposal (or combined Modification Proposals as applicable).

4.4.2 Subject to paragraph 4.4.3, the following procedural requirements apply to a consultation process in relation to a Modification Proposal under this clause 4.4:

- (a) the AOLR shall give a notice to each Affected Person giving details of the matter under consultation, including a copy of the Modification Proposal;
- (b) the notice shall invite the Affected Persons to make written submissions concerning the Modification Proposal within a reasonable period. To be valid, a submission must be received not later than the date specified in

the notice. Any submission received following the date specified in the notice shall be deemed not to have been made by the Affected Person and not to have been received by the AOLR;

- (c) the AOLR shall consider all valid submissions received from Affected Persons and shall publish them on the SEMO Website save where the consultee requests that their submission is kept confidential; and
 - (d) if, after having considered all valid submissions from Affected Persons, the AOLR concludes that it is desirable or necessary to hold a Workshop or a further Workshop, then it may convene one.
- 4.4.3 Each party agrees that substantial compliance with the procedural requirements in clause 4.4.2 is sufficient.

4.5 **Making Modifications**

4.5.1 Following the consultation under clause 4.4 in relation to a Modification Proposal or Proposals concerning the form of the AOLR Contract, the AOLR shall decide whether to:

- (a) seek the approval of the Regulatory Authorities under the Market Operator Licences to a modification to the form of the AOLR Contract; or
- (b) not seek the approval of the Regulatory Authorities under the Market Operator Licences to a modification to the form of the AOLR Contract.

4.5.2 Following the consultation under clause 4.4 in relation to a Modification Proposal or Proposals concerning the AOLR Procedures, the AOLR shall decide whether:

- (a) to make a modification to the AOLR Procedures; or
- (b) not to make a modification to the AOLR Procedures.

4.5.3 Notwithstanding the other provisions of this clause 4, where the AOLR considers that there is, or will be, a material conflict or inconsistency between the AOLR Procedures (on the one hand) and the SEMOpx Rules, the SEMOpx Procedures or the Clearing Conditions (on the other hand), the AOLR may make a modification to the AOLR Procedures to remove any such conflict or inconsistency.

4.5.4 The AOLR may only seek approval of a modification to the form of the AOLR Contract under the Market Operator Licences or make a modification to the AOLR Procedures if it is satisfied that the modification will or is likely to contribute to the achievement of the AOLR Objective.

4.5.5 In making a decision concerning a Modification Proposal or Proposals, the AOLR shall have regard to comments and submissions received during the consultation process, including any Workshop. For the avoidance of doubt, the AOLR may also consider submissions made in relation to a Modification Proposal or Proposals by persons other than Affected Persons.

4.5.6 The AOLR may seek approval of a modification to the form of the AOLR Contract under the Market Operator Licences or make a modification to the AOLR Procedures that is different (including one that is materially different) from that proposed in a Modification Proposal or Proposals, Workshop or consultation notice if the AOLR is satisfied that, having regard to the issue or issues that were raised, that the different modification will or is likely to better contribute to the achievement of the AOLR Objective.

4.5.7 The AOLR may also seek approval of a modification to the form of the AOLR Contract under the Market Operator Licences or make a modification to the AOLR

- Procedures that is necessary or consequential or that corresponds to a modification it makes as a result of a Modification Proposal.
- 4.5.8 The AOLR shall make its decision in relation to a Modification Proposal as soon as reasonably practicable following the conclusion of the consultation under clause 4.4.
- 4.5.9 Following its decision on a Modification Proposal (or combined Modification Proposals, as the case may be), the AOLR shall publish a report on the SEMO Website, setting out:
- (a) the conclusions of the AOLR;
 - (b) the decision of the AOLR, including the final form of the modification where relevant;
 - (c) reasons for those conclusions and that decision; and
 - (d) in the case of a proposal to modify the form of the AOLR Contract:
 - (i) confirmation that it has written to the Regulatory Authorities seeking approval to the modification; or
 - (ii) if the AOLR decides not to seek the approval of the Regulatory Authorities to the modification, its justification for not doing so.
- 4.5.10 Where the AOLR seeks approval from the Regulatory Authorities of a modification to the form of the AOLR Contract under the Market Operator Licences, the AOLR shall publish on the SEMO Website the Regulatory Authorities' decision in relation to the modification within two Working Days after the decision has been provided to the AOLR and, where a Modification Proposal has been approved, include the text of the modification in the notice of the decision.
- 4.5.11 A modification to the form of the AOLR Contract approved by the Regulatory Authorities shall take effect at the time and on the date determined by the Regulatory Authorities under the Market Operator Licences.
- 4.5.12 A modification to the AOLR Procedures shall take effect at the time and on the date determined by the AOLR in its decision.
- 4.5.13 In deciding upon the date on which a modification takes effect, the Regulatory Authorities and the AOLR (as applicable) shall have due regard for the time it will take to make the necessary changes to systems and processes to implement the modification.
- 4.5.14 For the avoidance of doubt, in no event shall the effective date of a modification determined under clause 4.5.11 or 4.5.12 be earlier than the date on which the modification is approved or made (as applicable). To the maximum extent permissible under law, modifications shall not have retrospective effect.
- 4.5.15 Once any modification has been made, the AOLR and the Exchange Member shall implement the modification, including making the necessary changes to systems and processes, with effect from the time it takes effect.
- 4.6 **Publications**
- 4.6.1 The AOLR shall publish information relating to the modification process and the status of each Modification Proposal on the SEMO Website subject to the confidentiality provisions set out in the AOLR Procedures.
- 4.6.2 The AOLR shall publish a form for Modification Proposals on the SEMO Website and may amend that form from time to time.

4.7 **Intellectual Property**

- 4.7.1 Each person submitting a Modification Proposal to AOLR shall be required to grant to each of the AOLR and the Regulatory Authorities an irrevocable worldwide royalty-free non-exclusive licence to any Intellectual Property Rights and any other rights to use and reproduce, and waive any moral rights in the content, form or other aspect of, the Modification Proposal and the granting of such licence and waiver shall be a precondition to the acceptance of a Modification Proposal put forward under clause 4.1 by an Affected Person.
- 4.7.2 The form for Modification Proposals published by the AOLR under clause 4.6.2 shall include the licence and the waiver contemplated under clause 4.7.1.

5 **FEES AND CHARGES**

- 5.1.1 The AOLR shall from time to time prepare and publish on the SEMO Website a statement of charges for the services it provides as AOLR (the “**Statement of Charges**”), setting out its fees (in euro and sterling) and the basis on which its charges are calculated. The Statement of Charges shall apply to all persons to whom the AOLR is providing services under this AOLR Contract or any other AOLR Contract.
- 5.1.2 The AOLR shall calculate its charges for the AOLR Services in accordance with the prevailing Statement of Charges.
- 5.1.3 The Exchange Member shall pay the AOLR's charges together with the appropriate amount of VAT, where applicable, within five Working Days of the date of issue of an invoice from the AOLR (or from EirGrid or SONI or any other person as may be authorised on behalf of the AOLR (as applicable)).
- 5.1.4 The AOLR may set off any amount due for payment by the Exchange Member to the AOLR under this AOLR Contract against any amount due for payment by the AOLR or either of the joint venturers to the Exchange Member (other than Capacity Payments or Trading Payments under the Trading and Settlement Code).
- 5.1.5 Where any payment under this AOLR Contract is overdue, the Exchange Member shall be liable to AOLR for default interest (at the rate specified in the Statement of Charges) on such overdue payment which shall accrue from the relevant due date until the date of actual payment in full of the overdue amount by remittances for full value, and such default interest to accrue daily and both before and after any judgment.

6 **LIABILITY**

6.1 **Exclusion of implied warranties**

- 6.1.1 Except as expressly set out in this AOLR Contract and the AOLR Procedures, to the maximum extent permitted by law, the AOLR disclaims all other conditions, warranties or other terms which might have effect between the parties with respect to the AOLR Services, or be implied or incorporated into this AOLR Contract or the AOLR Procedures, whether by statute, common law or otherwise, including any implied conditions, warranties, or other terms relating to satisfactory quality, reasonable skill and care, fitness for any particular purpose or ability to achieve a particular result.
- 6.1.2 The Exchange Member acknowledges and agrees that the AOLR gives no warranty as to the operation, fitness or well-functioning of the systems used in providing the AOLR Services and that any obligation of the AOLR under this

AOLR Contract and the AOLR Procedures is a reasonable endeavours obligation, meaning that the AOLR shall only be liable for any failure by the AOLR to comply with this AOLR Contract or the AOLR Procedures where the Exchange Member demonstrates that the AOLR has not performed the relevant obligation or obligations using reasonable endeavours.

- 6.1.3 The AOLR shall have no liability whatsoever for any Order not being executed or any Contract not being entered into except where the failure has been caused by a breach of this AOLR Contract or the AOLR Procedures by the AOLR. This clause is subject to the other provisions of this clause 6.

6.2 **Limitations**

- 6.2.1 Nothing in this AOLR Contract and the AOLR Procedures excludes or limits the liability of any Party for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence;
- (c) any other liability which cannot be excluded or limited by applicable law; or
- (d) the indemnity in clause 6.3.

- 6.2.2 The AOLR shall not be liable for any loss or damage caused directly or indirectly by:

- (a) any event which constitutes force majeure under the SEMOpx Rules (including any Force Majeure Event as defined in the SEMOpx Rules) or the SEMOpx Procedures;
- (b) malfunctions of a service when such malfunction is attributable to circumstances beyond its control arising from inter alia the unavailability, failure or interruption of telecommunication networks or from constraints or limits imposed by telecommunication operators or other service providers;
- (c) inaccuracy, partial or total unavailability or incompleteness of the technical information or data originating from third parties;
- (d) degradation of computerised data during transfer over the internet or upon arrival at, or dispatch from, the computer hardware used to communicate between the AOLR and SEMOpx; or
- (e) non-compliance by the Exchange Member with this AOLR Contract or the AOLR Procedures.

- 6.2.3 The AOLR shall have no liability (whether in contract, negligence, misrepresentation, tort, restitution or otherwise) under or in connection with this AOLR Contract, the AOLR Procedures or the AOLR Services in respect of any:

- (a) indirect, consequential, incidental or special losses, damages, costs or expenses;
- (b) loss of actual or anticipated profits;
- (c) loss of contracts, loss of business or loss of opportunity;
- (d) loss of use of money;
- (e) loss of anticipated savings;
- (f) loss of revenue, profits or ex gratia payments;
- (g) loss of goodwill or reputation; or
- (h) loss of operation time; or

- (i) loss resulting from the liability of the Exchange Member to any other person however and whenever arising save as provided in clause 6.3.2.
- 6.2.4 Regardless of the nature of any claim or action against the AOLR, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise at law, the liability of the AOLR with respect to, arising out of or in connection with this AOLR Contract, the AOLR Procedures and the provision of the AOLR Services shall be limited, to the fullest extent permitted by law, to the aggregate amount of the charges paid by the Exchange Member under this AOLR Contract in the calendar year in which the claim or action arises.
- 6.2.5 The Exchange Member irrevocably and unconditionally waives any and all rights to make any Claim against the AOLR in respect of any liability other than those expressly accepted by the AOLR in this AOLR Contract and the AOLR Procedures, and irrevocably and unconditionally releases the AOLR from any liability in respect thereof.
- 6.3 Indemnity**
- 6.3.1 Subject to clause 6.3.2, the Exchange Member agrees to indemnify and hold harmless, on an on demand basis, the AOLR against any Claim by a person other than the Exchange Member that may be incurred or sustained by the AOLR, howsoever arising, from or in connection with its acts or omissions in providing the AOLR Services.
- 6.3.2 The liability of the Exchange Member for a Claim under the indemnity provided in clause 6.3.1 shall be reduced to the extent that such Claim was caused by any fraudulent act or omission of the AOLR, its officers or agents or any breach by the AOLR of this AOLR Contract.
- 6.3.3 Each indemnity in this AOLR Contract is a continuing obligation, separate and independent from the other obligations of the parties and survives the termination of this AOLR Contract.
- 6.3.4 It is not necessary for the AOLR to incur expense or make a payment before enforcing any indemnity conferred by this AOLR Contract.
- 6.4 General**
- 6.4.1 In the interpretation of this AOLR Contract or the AOLR Procedures, no rule of construction applies to the disadvantage of one party on the basis that it put forward this AOLR Contract or the AOLR Procedures or any part or provision of them.
- 7 TERMINATION AND DEFAULT**
- 7.1.1 The Exchange Member may terminate this AOLR Contract by giving not less than 20 Working Days' notice in writing to the AOLR.
- 7.1.2 A party (called the "**Defaulting Party**") shall be in default (a "**Default**") where it is in material breach of any provision of this AOLR Contract or the AOLR Procedures.
- 7.1.3 A party shall notify the other party as soon as reasonably practicable upon becoming aware of any circumstance that will give rise to a Default, and upon the occurrence of a Default.
- 7.1.4 On becoming aware of a Default, whether through a notification under clause 7.1.3 or otherwise, the other party shall give the Defaulting Party a notice specifying the Default (a "**Default Notice**").

- 7.1.5 A party giving a Default Notice shall specify in a Default Notice:
- (a) the nature of the Default;
 - (b) if the Default is capable of remedy, a reasonable time from the date of the Default Notice within which the Defaulting Party is required to remedy the Default; and
 - (c) any other action which the party giving the Default Notice may reasonably require the Defaulting Party to take in respect of the Default.
- 7.1.6 The Defaulting Party shall comply with a Default Notice (including any prescribed remedy period).
- 7.1.7 Where the Defaulting Party is the AOLR, and the AOLR has not remedied the Default within 10 Working Days of receiving a Default Notice under clause 7.1.4 (or such longer period as may be set out in the relevant Default Notice), the Exchange Member may terminate this AOLR Contract by giving not less than 10 Working Days' notice in writing to the AOLR.
- 7.1.8 The AOLR may, by written notice to the Exchange Member, suspend the provision of AOLR Services to the Exchange Member where:
- (a) the Exchange Member has not paid an invoice by the due time for payment;
 - (b) an Insolvency Event occurs in relation to the Exchange Member;
 - (c) the AOLR has issued a Default Notice to the Exchange Member under clause 7.1.4, and the Exchange Member has failed to remedy the Default and/or comply with the terms of the Default Notice within a period of 20 days (or such longer period as may be set out in the relevant Default Notice) following the Default Notice being issued; or
 - (d) the Exchange Member has been suspended under the SEMOpx Rules or is subject to a Trading Halt (as defined in the SEMOpx Rules).
- 7.1.9 The AOLR may amend or lift a suspension by written notice to the Exchange Member and shall do so where the circumstances giving rise to the suspension cease to exist and there are no other circumstances in existence which would entitle the AOLR to suspend the Exchange Member.
- 7.1.10 The AOLR may, by written notice to the Exchange Member, terminate this contract where the Exchange Member:
- (a) ceases to be an Exchange Member under the SEMOpx Rules; or
 - (b) the provision of AOLR Services to the Exchange Member has been suspended for 20 days and the Exchange Member has not remedied the Default or Defaults or other event giving rise to the suspension.
- 7.1.11 In this clause 7, **Insolvency Event** means, in respect of a person, that any of the following events has occurred:
- (a) the person enters into or takes any action to enter into an arrangement or composition with its creditors (except in the case of a solvent and bona fide reconstruction or amalgamation);
 - (b) a receiver, manager, receiver and manager, administrative receiver, examiner or administrator is appointed in respect of the person or any of its assets, or a petition is presented for the appointment of an examiner or administrator, or a petition is presented or an order is made or a resolution is passed for the dissolution of, winding up of or appointment of a liquidator to the person, or a liquidator, trustee in bankruptcy or other similar person

is appointed in respect of the person, or any steps are taken to do any of the foregoing or any event analogous to any of the foregoing happens in any jurisdiction;

- (c) the person is dissolved or struck off; or
 - (d) the person is unable to pay its debts for the purposes of section 570 of the Companies Act, 2014 (Ireland), Article 103 (1) or (2) of the Insolvency Order (Northern Ireland) 1989, or Section 123 (1) or (2) of the Insolvency Act 1986 (Great Britain) (as applicable) or if any voluntary arrangement is proposed in relation under Article 14 of the Insolvency Order (Northern Ireland) 1989, or section 1 of the Insolvency Act 1986 (Great Britain) (as applicable), or for the purpose of any similar or analogous legislation under the laws of any jurisdiction. For the purposes of this sub-paragraph:
 - (i) section 570 of the Companies Act, 2014 shall have effect as if “€100,000” (or such higher figure as the AOLR may specify from time to time) was substituted for the monetary amounts currently specified in or for the purposes of that section; and
 - (ii) article 103 of the Insolvency Order (Northern Ireland) and section 123 of the Insolvency Act, 1986 (Great Britain) shall have effect as if “£60,000” (or such higher figure as the AOLR may specify from time to time) was substituted for the monetary amount currently specified in or for the purposes of that Article or section.
- 7.1.12 The termination of this AOLR Contract does not affect any accrued rights or obligations of the terminated party under this AOLR Contract or the AOLR Procedures.

8 FORCE MAJEURE

8.1 Definition

8.1.1 “**Force Majeure Event**” means any of the following events provided that, in each case, they are outside the reasonable control of the affected party and could not have been prevented or avoided by that party taking all reasonable steps:

- (a) act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought or meteor;
 - (b) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
 - (c) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
 - (d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
 - (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority;
 - (f) strikes, blockades, lock out or other industrial disputes; or
 - (g) non-performance by SEMOpx under the SEMOpx Rules or SEMOpx Procedures.
- 8.1.2 To the extent that a party (the “**affected party**”) is rendered wholly or partially unable to perform all or any of its obligations under this AOLR Contract or the AOLR Procedures (other than an obligation to pay money) by reason of a Force Majeure Event, the affected party’s relevant obligations under this AOLR Contract

or the AOLR Procedures shall be suspended and the affected party shall be relieved from liability, subject to clause 8.1.3, in respect of such obligations, provided that such liability and suspension shall be of no greater scope and of no longer duration than is required by the Force Majeure Event. For the avoidance of doubt, lack of funds or an inability to pay shall not constitute a Force Majeure Event for the purpose of this AOLR Contract.

- 8.1.3 The affected party shall be relieved from liability only for so long as and to the extent that the occurrence of the Force Majeure Event and/or the effects of such occurrence could not be overcome by measures which the party might reasonably be expected to take with a view to continuing or resuming performance of its affected obligations.
- 8.1.4 If the Exchange Member is affected by a Force Majeure Event, then it must give the AOLR a written notice containing the details set out below in this clause. If the AOLR is affected by a Force Majeure Event, then it must publish a notice containing the details set out below on the SEMO Website. The details to be included in a notice under this clause are:
- (a) details of the Force Majeure Event;
 - (b) the nature and extent of the obligations affected by the Force Majeure Event;
 - (c) the period of time during which the affected party estimates that it will not be able to perform or will be delayed in performing its obligations under this AOLR Contract or the AOLR Procedures; and
 - (d) details of the action that it has taken or proposes to take to remedy the situation.
- 8.1.5 A party affected by a Force Majeure Event must:
- (a) use all possible diligence to avoid, remove or limit the effects of the Force Majeure Event on its performance of the suspended obligations as soon as reasonably practicable in the circumstances;
 - (b) promptly re-commence performing the suspended obligations as soon as reasonably possible;
 - (c) if the affected party is the Exchange Member, keep the AOLR informed as to the status of the Force Majeure Event and promptly notify the AOLR after re-commencing performance of the suspended obligations; and
 - (d) if the affected party is the AOLR, promptly publish a notice on the SEMO Website after re-commencing performance of the suspended obligations.

9 ASSIGNMENT

- 9.1.1 The Exchange Member must not Transfer or otherwise deal with its rights under this AOLR Contract or allow any interest in the AOLR Contract to be Transferred or varied, without the prior written consent of the AOLR.
- 9.1.2 The AOLR may, with the prior written approval of the Regulatory Authorities, Transfer its right, title and/or interest in this AOLR Contract to a person who takes on the role of "Agent of Last Resort" (as further described in the Market Operator Licences) or a similar role.

10 AMENDMENT OF CONTRACT

- 10.1.1 Subject to clause 10.1.2, any modification to this AOLR Contract must only be made in writing or signed by or on behalf of each party to this AOLR Contract.

- 10.1.2 If both of the Regulatory Authorities approve an amendment to the AOLR Contract under the Market Operator Licences, then:
- (a) the AOLR shall notify the Exchange Member; and
 - (b) from the date determined by the Regulatory Authorities, this AOLR Contract shall be and stand amended accordingly.

11 DISPUTES

- 11.1.1 Nothing in this clause 11 prevents a party seeking urgent injunctive or similar interim relief from a court.
- 11.1.2 Any party (in this clause 11 called the “**Initiating Party**”) claiming that a dispute has arisen concerning this AOLR Contract, the AOLR Procedures or the provision of the AOLR Services must give the other party (in this clause 11 called the “**Recipient Party**”) a notice setting out brief details of the dispute (in this clause 11 called the “**Dispute Notice**”).
- 11.1.3 Within 5 Working Days of receiving a Dispute Notice (or any longer period the parties agree), the Recipient Party must give the Initiating Party a notice setting out brief details of the Recipient Party’s position on the dispute (in this clause 11 called the “**Reply Notice**”).
- 11.1.4 If a Dispute Notice and a Reply Notice are given:
- (a) the parties must make representatives with authority to settle the dispute available for the purpose of meeting in an effort to resolve the dispute;
 - (b) the parties must procure that at least one meeting of the authorised representatives takes place within 20 Working Days of the Initiating Party receiving the Reply Notice either in person, or where that is not practicable, by videoconference, phone or other form of simultaneous communication; and
 - (c) the parties shall negotiate in good faith and use their respective reasonable endeavours to agree a resolution to the dispute as soon as reasonably practicable in the circumstances.
- 11.1.5 In the event the Recipient Party does not give a Reply Notice within the time period contemplated by clause 11.1.3 or the parties do not agree a resolution to the dispute within 30 Working Days of the Dispute Notice being given, the Initiating Party will be entitled to commence court proceedings regarding the dispute.

12 WARRANTIES

- 12.1.1 Each party hereby warrants and represents to the other parties that:
- (a) it is a person validly existing and in good standing under the laws of the country in which it is established;
 - (b) it has the requisite power and authority to execute validly this AOLR Contract;
 - (c) its execution of this AOLR Contract, and adhering to this AOLR Contract and any transactions provided for and contemplated by this AOLR Contract do not conflict with, infringe or constitute a breach of or default under any licence, authorisation, exemption, permit, contract, agreement, arrangement undertaking or legal, statutory or equitable obligation of any kind to which it is a party or subject or any Legal Requirement which is applicable to it or its assets, or infringe the rights of any third party;

- (d) it has fully satisfied itself as regards the nature and extent of the SEMOpx Rules, the SEMOpx Procedures, the Clearing Conditions and the SEM and any transactions provided for and contemplated by any of the foregoing; and
- (e) it has acquainted itself with all applicable Legal Requirements and such other laws, recommendations, guidance or practices as may affect the SEMOpx Rules, the SEMOpx Procedures, the Clearing Conditions and the SEM and any transactions provided for and contemplated by any of the foregoing.

13 GENERAL

13.1 Special Conditions

13.1.1 The Special Conditions set out in the Contract Schedule form part of this AOLR Contract as if set out in the main body of this AOLR Contract.

13.2 Notices

13.2.1 Unless provided otherwise in the AOLR Procedures, all notices, certificates, consents, approvals, waivers and other communications in connection with this AOLR Contract and the AOLR Procedures (each a "**Notice**") shall be in writing, signed by the sender (if an individual) or an Authorised Officer of the sender and marked for the attention of the person identified in the Exchange Member's AoLR application form or, if the recipient has notified otherwise, then marked for attention in the way last notified by the recipient.

13.2.2 Each Notice must be:

- (a) left at the address set out or referred to in the Exchange Member's AoLR application form;
- (b) sent by prepaid ordinary post to the address set out or referred to in the Exchange Member's AoLR application form;
- (c) sent by facsimile to the facsimile number set out or referred to in the Exchange Member's AoLR application form;
- (d) sent by email to the email address set out or referred to in the Exchange Member's AoLR application form; or
- (e) given in any other way permitted by law.

13.2.3 However, if the intended recipient of any Notice has notified the other party of a changed postal address, changed email address or changed facsimile number, then the Notice must be to that postal address, email address or facsimile number.

13.2.4 Any Notice takes effect from the time it is received unless a later time is specified in the Notice (or under this AOLR Contract or the AOLR Procedures).

13.2.5 Any Notice sent by post, is taken to be received three days after posting.

13.2.6 Any Notice sent by facsimile, is taken to be received at 5pm on the Working Day on which they were sent as evidenced by a transmission report of the sending party showing that they have been transmitted.

13.2.7 Any Notice sent by email, is taken to be received when the email enters the receiving party's IT system.

13.2.8 For the purposes of this AOLR Contract, "facsimile" includes e-fax, that is a software based solution which converts inbound faxes into e-mails and allows outbound e-mails to be received by traditional fax machines.

13.3 **Delegation**

13.3.1 The Exchange Member acknowledges that the AOLR may appoint a person as a delegate to perform any of its functions, rights and powers under this AOLR Contract and the AOLR Procedures.

13.3.2 Any delegation under this clause may be revoked, changed, delegated, limited or made subject to such conditions as the AOLR determines from time to time.

13.3.3 The AOLR shall give the Exchange Member written notice of:

(a) any delegate appointed under this clause, setting out the delegated functions, rights and powers (or confirming that such delegate is performing all of the AOLR's conditions and obligations under this AOLR Contract and the AOLR Process); and

(b) any revocation or change of any delegation under this clause.

13.3.4 The appointment of a delegate to perform some or all of the functions, rights and powers of the AOLR under this AOLR Contract shall not limit or affect the AOLR's obligations or liability to the Exchange Member under this AOLR Contract.

13.4 **Counterparts**

13.4.1 This AOLR Contract may be entered into in any number of counterparts and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute the one and the same instrument.

13.5 **Commencement**

13.5.1 This AOLR Contract takes effect when the last party to execute it does so.

13.6 **Governing Law and Jurisdiction**

13.6.1 This AOLR Contract and any disputes arising under, out of, or in relation to the AOLR Procedures shall be interpreted, construed and governed in accordance with the laws of the jurisdiction specified in paragraph B.3.5.1 of the SEMOpX Rules.

13.6.2 The parties hereby submit to the jurisdiction of the Courts of Ireland and the Courts of Northern Ireland (and no other court) for all disputes arising under, out of, or in relation to this AOLR Contract.

13.7 **Entire Agreement**

13.7.1 This AOLR Contract (including the AOLR Procedures) constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

13.7.2 Each party acknowledges that in entering into this AOLR Contract it has not relied on any representations or warranties about its subject matter except as expressly provided by the written terms of this AOLR Contract.

13.8 **Consents**

13.8.1 A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this AOLR Contract expressly states otherwise.

13.9 **Further Assurances**

13.9.1 The Exchange Member must sign, execute and deliver such documents, and do all such acts and things, as may reasonably be required of it to carry out and give full effect to this AOLR Contract and the rights and obligations of the parties to it.

13.10 **Value Added Tax**

13.10.1 All sums or other consideration set out herein, or otherwise payable or provided by any party to any other party pursuant to this AOLR Contract, shall be deemed to be exclusive of any VAT which is chargeable on the supply or supplies for which such sums or other consideration (or any part thereof) are the whole or part of the consideration for VAT purposes. An amount equal to such VAT shall in each case be paid by the party making such payment, in addition to such payment, within five Working Days of the date of issue of a valid VAT invoice.

CONTRACT SCHEDULE

Full Name of Exchange Member:

Registered address of Exchange Member:

Corporate ID of Exchange Member:

Commencement Time (Trading Period):

Unit(s):

Unit Name	Unit ID

Special Conditions (if any):

ATTACHMENT 1

AGENT OF LAST RESORT SERVICES

(A term in italics in this Attachment has the meaning given in the SEMOpX Rules)

In accordance with the AOLR Procedures:

- Produce forecast trading quantities based on data submitted by the Exchange Member and, where applicable, the latest TSO forecasts available at any given point in time;
- Submit *Orders* in day-ahead and intraday auctions on behalf of the Exchange Member under the SEMOpX Rules and SEMOpX Procedures in respect of the Units specified in the Contract Schedule for Trading Periods after the Commencement Time;
- Inform the Exchange Member of any *Order* that has been rejected during submission, in accordance with the AOLR Procedures;
- Submit physical notifications after each day-ahead or intraday auction that reflect the total actual traded quantities for each Trading Period from the auctions that have been completed for each of the Units specified in the Contract Schedule.