

DATED *THIRD JULY* 2007

- (1) SONI LIMITED
- (2) EIRGRID PLC

MARKET OPERATOR AGREEMENT

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THIS AGREEMENT is made the *THIRD* day of *JULY* 2007

BETWEEN

- (1) **SONI Limited** (incorporated in Northern Ireland with registered number NI 38715) having its registered office at 120 Malone Road, Belfast BT9 5HT, Northern Ireland and acting in its capacity as holder of a licence under Article 10(1)(d) of the Electricity (Northern Ireland) Order 1992 ("**SONI**"); and
- (2) **EirGrid PLC** (incorporated in the Republic of Ireland with registered number 338522) whose registered office is at 27 Lower Fitzwilliam Street, Dublin 2, Ireland and acting in its capacity as holder of a licence under Section 14(1)(j) of the Electricity Regulation Act 1999 ("**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 and the Electricity Regulation (Amendment) (Single Electricity Market) Act 2007 have been enacted, and regulations are expected to be made in or around the date of this Agreement pursuant to Section 9BA of the Electricity Regulation Act 1999 of Ireland and in Northern Ireland the Northern Ireland (Miscellaneous Provisions) Act 2006 has been enacted and the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 has been made, to provide for the establishment and implementation of the SEM.
- (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 CER 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 CER 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 (Northern Ireland) 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 licensed Party 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 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

- (A) 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.
- (B) SONI, pursuant to condition 14 of its Market Operator Licence, and EirGrid, pursuant to condition 2 of its Market Operator Licence and a direction expected to be given in or around the date of this Agreement by the CER pursuant to Section 9B(3)(b) of ERA 1999, 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.
- (C) This Agreement and the activities of the Parties in carrying on the SMO Business exist in the wider context of the SEM Legislation, the Code and the overall regulatory governance of the SEM by the Regulatory Authorities.

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, its Market Operation Activity, is carried out in a manner such that the other Party is capable, on a continuing basis, of carrying on its Market Operation 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 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. **SMO BUSINESS AND 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 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 in conjunction with each other, the Parties shall provide complementary services and resources to enable the SMO Business to be established and operated such that the Parties together can deliver the SMO 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 in conjunction with each other.

2.3 Prudent Operator

In carrying on the SMO 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.

2.4 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 Governing Committee, the General Manager and the staff of the SMO 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.

2.5 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

3.1 Governing Committee

- (a) The Parties have established with effect on date of this Agreement, and shall maintain in place from time to time, a governing committee in respect of the SMO Business (the “**Governing Committee**”).
- (b) The function of the 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 dealt with under this Agreement. The 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 and other matters as the Parties may agree in writing from time to time.
- (c) The 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 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 appointment and replacement from time to time of the General Manager;
 - (ii) the approval of the Revenue Submission in respect of each Revenue Control Period;
 - (iii) the Budget in respect of each Financial Year;
 - (iv) matters outside the scope of the Budget including the recruitment of staff not provided for in the Budget;
 - (v) certain large acquisitions and disposals of assets for the purposes of the SMO Business;
 - (vi) determining whether MOA Force Majeure affecting one or other Party under this Agreement comprises Force Majeure for the purposes of paragraph 2.330 of the Code, in which event the Governing Committee shall immediately notify the Regulatory Authorities; and
 - (vii) 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 Governing Committee and, subject to such provisions and such other provisions as the Parties may agree in writing from time to time, the Governing Committee may regulate its proceedings as it sees fit:

- (a) the Governing Committee shall comprise an equal number of members from SONI and EirGrid appointed by the CEO of 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 Governing Committee are conducted in an efficient and proper manner;

- (c) the total number of Members on the Governing Committee shall not exceed eight;
- (d) Members may be removed and replaced at the discretion of the CEO of the Party that appointed them by notice in writing to the CEO of the other Party;
- (e) each Member shall have one vote on the Governing Committee and all decisions of the 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 ten Governing Committee meetings each year held at not less than eight weekly intervals and at such venues as the Members may agree.

3.3 **General Manager**

- (a) The Governing Committee shall appoint and replace from time to time as required a General Manager in respect of the SMO Business (the "**General Manager**").
- (b) The 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 the overall direction of the Governing Committee and 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 General Manager shall be as set out in this Agreement and as determined by the Governing Committee 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 and the Budget;
 - (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 Governing Committee at such intervals and in such format as the 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 Governing Committee as may be required for the operation of the SMO Business.
- (d) The 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.

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 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**

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.

4.3 **Provision of information and access by the SMO Business**

The 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.

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) such costs incurred in setting up the SMO Business and preparing for the operation of the SEM as they may determine in a manner agreed between them in writing;
 - (ii) capital expenditure incurred in operating the SMO Business;
 - (iii) operating expenditure incurred in operating the SMO Business; and
 - (iv) the Balancing Costs.
- (c) In order to make provision for costs of the SMO Business referred to at Clause 5.1(b)(ii) and (iii) 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) The Parties have to date funded in the Specified Proportions the costs incurred in setting up the SMO Business and preparing for the operation of the SEM and intend that such costs shall 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 is set out in the Revenue Submission in respect of the Revenue Control Period from 1 November 2007 to 30 September 2008.

5.2 **Revenue Submissions**

- (a) The Parties agree that in respect of Revenue Control Periods commencing after Go-Live a Revenue Submission shall be made to the Regulatory Authorities 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.

- (b) The Parties agree that the Revenue Submission in respect of a Revenue Control Period shall be prepared in the following manner subject to any directions of the Regulatory Authorities and such additional or amended provisions as the Parties may agree in writing, from time to time:
 - (i) within such timeframe as the Governing Committee may determine, before the start of the Revenue Control Period, the General Manager shall arrange for the preparation and submission to the Governing Committee for consideration and approval (subject to such amendments as it sees fit) of a draft of the Revenue Submission in respect of that Revenue Control Period which may include Performance Criteria and shall include provision for the cost of such assets and services as it shall be considered necessary or appropriate to procure in the course of the Revenue Control Period in accordance with Clause 7; and
 - (ii) within such timeframe as the Governing Committee may determine, before the start of the Revenue Control Period, the General Manager shall arrange for the Revenue Submission for that Revenue Control Period to be made to the Regulatory Authorities in such form as the Governing Committee shall have approved.

5.3 Budgets

- (a) The Parties agree that in respect of the period from the Go-Live Date to 31 December 2007 the SMO Business shall be operated in accordance with such initial budget as the Parties may agree between them in writing from time to time.
- (b) In respect of each Financial Year commencing after 31 December 2007 the SMO Business shall be operated in accordance with a Budget for that Financial Year which shall be prepared at the direction of the General Manager and approved by the Governing Committee in accordance with Clause 3.1(d) and such additional or amended provisions as the Parties may agree in writing from time to time. To the extent that approval is given in accordance with Clause 3.1(d) and such other procedures as the Parties may agree in writing from time to time for a transaction or matter outside the original scope of the initial budget or a Budget, the initial budget or Budget, as the case may be, shall be deemed to be amended accordingly.

5.4 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 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.

6.2 Staffing

- (a) The Parties shall ensure that the SMO Business is adequately staffed in accordance with the following provisions of this Clause 6.2 to enable the Parties to fulfil their obligations under the SEM Legislation, Market Operator Licences and the Code.
- (b) All functions for which the SMO is responsible will be undertaken by staff employed by or contracted to either SONI or EirGrid who will be organisationally assigned to the SMO Business.
- (c) Staff 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) The Parties shall publish on the SMO website from time to time an organisation chart in respect of the SMO Business setting out the operational units making up the SMO Business and the staff allocated to each such unit from time to time.

6.3 Assets

The SMO Business shall have such assets jointly owned by the Parties as they shall agree in writing from time to time and as are required from the establishment and operation of the SMO 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 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 as may be necessary or appropriate to enable them to discharge their obligations under the SEM Legislation, the Market Operator Licences and the Code.

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 required by paragraph 2.119 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 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 the SMO Business facilitates 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 do all acts 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 acting prudently 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 Governing Committee; or
- (b) a unanimous vote of the 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 and the matter has been referred to its CEO,

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 the CEO of each Party shall, within 7 days of delivery of a notice pursuant to 9.1 cause its Members on the Governing Committee to prepare and circulate to the other Party and other Members 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 the CEOs shall consider such memoranda and shall respectively use their reasonable endeavours to resolve such dispute. If the CEOs agree upon a resolution of the matter, they shall 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 SMO 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.
- (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 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 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 is operated in such a manner that both Parties are in compliance with their respective obligations under the Market Operator Licences restricting the use and disclosure by the Parties of information held or obtained by the Parties (or their Affiliates or related undertakings) pursuant to or by virtue of carrying on their Market Operation Activities.

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**

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 or 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.

12.2 **Continuation of Obligations**

On termination 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 cooperate together to procure the proper and orderly winding-up of the SMO 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, 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 annually and 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 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 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 any 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 is 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.

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 deliver by hand.

21.2 **Addresses**

Such communication 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: System Operations Manager

EirGrid

27 Lower Fitzwilliam Street
Dublin 2
Ireland

Facsimile: 00 353 1 661 5375

Email: niamh.cahill@eirgrid.com

For the attention of: Niamh Cahill

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

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 D.P. Lewis)
for and on behalf of)
SONI LIMITED)

DAVID LEWIS
Director/Duly Authorised Signatory

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

DERMOT BYRNE
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 Agreement including the Recitals and Schedules;

“**Applicable Laws**” has the meaning given in the Code;

“**Balancing Costs**” means balancing costs 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**” means in respect of any Financial Year the budget for the SMO Business as approved and amended from time to time as described in Clause 5.3 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;

“**CEO**” means as applicable the Chief Executive of EirGrid or the System Operations Manager of SONI from time to time or in each case the person appointed to that role by whatever name so called from time to time and “**CEOs**” means both of them;

“**CER**” means the Commission for Energy Regulation including the committee thereof appointed pursuant to section 8A of the ERA 1999;

“**Code**” means the Single Electricity 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;

“**Dispute**” has the meaning given in clause 9.1 of this Agreement;

“**Electricity Order 1992**” means the Electricity (Northern Ireland) Order 1992 (N.I.);

“**ERA 1999**” means the Electricity Regulation Act 1999 of Ireland;

“**Financial Year**” means any twelve month period ended on 31 December or such other period as may be agreed in writing between the Parties from time to times 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;

“**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;

“General Manager” means the person appointed by the Parties as General Manager in accordance with clause 3.2 of this Agreement;

“Go-Live Date” means the time and date designated as such by the Regulatory Authorities for the purposes of the SEM and which, at the date of this Agreement, is anticipated to be on 1 November 2007;

“Governing Committee” has the meaning given in clause 3.1 of this Agreement;

“Irish SEM legislation” means the Energy Miscellaneous Provisions Act 2006, the Electricity Regulation (Amendment) (Single Electricity Market) Act 2007 and the Irish SEM Regulations;

“Irish SEM Regulations” means the regulations expected to be made in or around the date of this Agreement pursuant to Section 9BA of ERA 1999;

“Island of Ireland” means the entire island of Ireland comprising Northern Ireland and the Republic of Ireland;

“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 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;

“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 and the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007;

“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;

“Prudent Electric Utility Practice” has the meaning given in the Code;

“Prudent Industry Operator” has the meaning given in the Code;

“quorum” means the quorum for meetings of the Governing Committee 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 CER, condition 2(3) of the Market Operator Licence granted to EirGrid;

“Regulatory Authorities” means the NIAUR and the CER 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 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 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;

“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;

“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 Market Operator Accession Fee, the Market Operator Participation Fee, the

Market Operator Variable Charge, the Market Operator Fixed Charge, the Market Operator Imperfections Charge and the Market Operation Generator under Test Charge;

“**SMO Fund**” has the meaning given in Clause 5.1(c) of this Agreement;

“**SMO Revenues**” means the revenues earned in the course of carrying out the SMO Business including, but not restricted to, the SMO Charges;

“**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 "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 Council 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 shall, unless otherwise defined in this Agreement or the context otherwise requires, have the same meaning when used in this Agreement.

SCHEDULE 2

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 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;
- (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 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;
- (x) 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
- (xi) 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 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.