|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **MODIFICATION PROPOSAL FORM** | | | | | |
| **Proposer** | **Date of receipt** | | **Type of Proposal** | | **Modification Proposal ID** |
| **EirGrid** | **21 November 2013** | | **Standard** | | **Mod\_02\_13\_v2** |
| **Contact Details for Modification Proposal Originator** | | | | | |
| **Name** | | **Telephone number** | | **Email address** | |
| **Leigh Williamson** | | **02890707459** | | **leigh.williamson@soni.ltd.uk** | |
| **Modification Proposal Title** | | | | | |
| **Registration of Charges** | | | | | |
| **Documents affected** | | **Section(s) Affected** | | **Version number of T&SC or AP used in Drafting** | |
| **T&SC**  **AP & Glossary** | | **T&SC Section 2 and Section 6, AP 1, AP 9 AP 17 , Glossary** | | **13.0** | |
| **Explanation of Proposed Change**  *(mandatory by originator)* | | | | | |
| Modifications to the Code required to regulate the position regarding security over Collateral Reserve Accounts and to give effect to the decision of the TSC Modifications Committee at Meeting 50:  “Committee consensus was that Option 2 *Stricter enforcement and additional security around existing and future registration of charges*, inclusive of a reference in the Code to registrable security in relation to Participant Collateral Reserve Accounts and involving provision for suspension to apply where a Participant fails to sign a Deed of Charge be pursued.”  By way of background, the Code requires credit cover to be provided by Participants as security for their obligations under the Code. Such credit cover can be provided either by way of letters of credit or cash collateral. The cash collateral takes the form of monies deposited in to the relevant Collateral Reserve Account opened with the SEM Bank (currently Danske Bank) either in London or Dublin. The agreed level of credit cover is posted to the relevant Collateral Reserve Account and can be added to as the levels of credit cover required fluctuate.  The original version of the Modification Proposal was raised by EirGrid legal and sought removal of the obligation on the Market Operator to register a charge over the Collateral Reserve Accounts. A number of unsecured accounts exist in SEM as a result of both administrative oversights and the failure of some participants to comply with the obligations set out in the Code. This has resulted in no charge over certain Participants’ Collateral Reserve Accounts registered with the Market Operator and Participants potentially being in breach of the Code. Difficulties have also arisen with regard to registering charges in jurisdictions outside of SEM.  Independent legal advice was sought by the Modifications Committee to assess the impacts of the Modification Proposal.  The legal advice delivered to the Modifications Committee by External Counsel (legal advisors to the Modifications Committee) resulted in three options for consideration. Option 3 Title *Transfer* was put forward as the preferred option by External Counsel.   1. Do nothing   Proposer (SEMO legal) withdraws the Modification Proposal and pursues Participants to register charge as per the Code Provisions set out in section 6.21. There is a substantial risk involved in this given the various difficulties experienced and shortcomings outlined above.   1. Stricter enforcement and additional security around existing and future registration of charges.   Amend the Code to remove the Code Charge and include an obligation that requires the Participant to enter into a separate Deed of Charge. This would apply only where a Participant wishes to provide cash collateral rather than a letter of credit. In addition to this a general "further assurances" obligation should be included in the Code. Consideration should also be given to the possibility of including deeds of charge in Participant Registration Packs and suspending Participants, where necessary, in the event of non-compliance.   1. Title transfer   Outright title transfer of collateral from Participant to Market Operator, the Participant would cease to hold any right, title and interest in the relevant collateral. However, subject to any necessary specialist accountancy advice, we understand that this arrangement should not have materially adverse accountancy repercussions for Participants.  In cases where security interest had been created by a deed, it should be released by a deed. This option would require amendments to the Code.  The Modifications Committee agreed by majority that Option 2 *Amendment of the Deed of Charge inclusive of registrable security and stricter enforcement* is the preferred option to implement in SEM at this time.  Legal drafting was developed by External Counsel to reflect the changes necessary to enforce Option 2 above, changes are incorporated in this version of the proposal. | | | | | |
| **Legal Drafting Change**  *(Clearly show proposed code change using* ***tracked*** *changes, if proposer fails to identify changes, please indicate best estimate of potential changes)* | | | | | |
| **2. Legal and Governance**  Participation and Registration of Units  2.31 In addition to the requirements set out in paragraph 2.33, a Party (or Applicant as applicable) shall complete such documentation as may be required by the Market Operator in respect of any requirement to register a charge on any SEM bank account (including, in relation to SEM Collateral Reserve Accounts, any applicable Account Security Requirements as set out in paragraphs 6.19, 6.20 and 6.21 and 6.160-6.162 of this Code and in Agreed Procedure 1 "Participant and Unit Registration and Deregistration" and Agreed Procedure 17 "Banking and Participant Payments)"  Additional Rules for Participant Registration  2.43 On receipt of a Participation Notice, the Participation Fees and any additional clarification or information requested by the Market Operator from a Party (or an Applicant, as applicable) within the timelines provided for in paragraph 2.42, the Market Operator shall within 5 Working Days send a notice to the Party (or the Applicant, as applicable) informing the Party (or the Applicant, as applicable) of any conditions for registration of each Unit which was the subject of the Participation Notice from the following list as applicable:   1. the amount of Credit Cover required to be posted by the proposed Participant prior to the Effective Date in respect of each such Unit calculated with effect from the Effective Date and any applicable Account Security Requirement (including, without limitation, the Deed of Charge and Account Security) to be put in place by the Participant prior to the Effective Date; 2. any qualification requirements pursuant to Agreed Procedure 3 “Communication Channel Qualification” for the Participant’s designated Communication Channels; 3. the requirement for the satisfactory provision of the Registration Data set out in Agreed Procedure 1 “Participant and Unit Registration and Deregistration” (if not already provided); and 4. the requirement that the relevant facilities are Connected to the Distribution System and/or Transmission System.   2.47 Where the Party (or Applicant, as applicable) concerned:   1. has supplied all information required and satisfied all such conditions as notified to the Party (or Applicant, as applicable) pursuant to paragraphs 2.43.2 to 2.43.4; 2. has paid the Participation Fees; and 3. is not otherwise in breach of the Code or the Framework Agreement,   then the Market Operator shall issue a Commencement Notice to the Participant and a copy to each System Operator and relevant External Data Provider as soon as reasonably practicable and at least 4 Working Days prior to the Unit Effective Date. The Commencement Notice shall specify the Effective Date, being the Trading Day on which, from the start of the first Trading Period on that Trading Day, registration of the Units concerned shall be effective, provided that the Required Credit Cover has been posted and that any applicable Account Security Requirements (including, for the avoidance of doubt, the Deed of Charge and Account Security) have been put in place 5 Working Days prior to the Effective Date  2.48 Where a Party (or Applicant, as applicable) has not put in place the Required Credit Cover and/or any applicable Account Security Requirements (including, for the avoidance of doubt, the Deed of Charge and Account Security) 5 Working Days before the Effective Date specified in a Commencement Notice, the Effective Date shall be deferred to commence on the first Trading Period of the first Trading Day agreed by the relevant Party (or Applicant as applicable), the Market Operator and the relevant System Operator and Meter Data Provider, to be achievable by reasonable endeavors, provided that such Trading Day is within twelve months of the initial effective date specified in the relevant Commencement Notice. Otherwise the Participation Notice shall be deemed to have been withdrawn and none of the Participation Fee shall be refunded  Default, Suspension and Termination  **Suspension**  2.243 In the event that:   1. a Credit Call is made and a Participant’s Credit Cover Provider fails to meet such demand within the timeframe as provided for in paragraphs 6.54 and 6.55; or 2. a Participant fails at any time to provide the Required Credit Cover and/or to comply with any applicable Account Security Requirements (including, for the avoidance of the doubt, the Deed of Charge and Account Security) in relation to the provision of cash collateral as set out in paragraphs 6.19, 6.20 and 6.21 of this Code and in Agreed Procedure 1 "Participant and Unit Registration and Deregistration", Agreed Procedure 9 "Management of Credit Cover and Credit Default" and Agreed Procedure 17 "Banking and Participant Payments";   then, notwithstanding paragraph 2.246 and subject to paragraphs 2.244 and 2.245, the Market Operator shall at the same time as or following the issue of the Default Notice to the Defaulting Party in respect of such Default, issue a Suspension Order in respect of all of the relevant Participant’s Units. A Suspension Order issued under this paragraph 2.243 shall have immediate effect, save as expressly provided under paragraph 2.244. In the circumstances where the Market Operator has already issued a Suspension Order in respect of any of a Participant's Units, no further Suspension Order shall be issued in respect of such Units until the previously issued Suspension Order is withdrawn or has lapsed  2.243B In the circumstances set out in paragraph 2.243.2, the Participant’s failure to provide the Required Credit Cover shall be treated as indebtedness for the purposes of the Insolvency (Northern Ireland) Order 1989 and the Market Operator is authorised to issue a Statutory Demand to the relevant Participant on behalf of all Parties concerned. A Statutory Demand issued in accordance with paragraph 2.243A for a failure of a Participant to provide the Required Credit Cover in accordance with paragraph 2.243.2 shall be satisfied upon the relevant Participant putting in place the Required Credit Cover together with any applicable Account Security Requirements (including, for the avoidance of the doubt, the Deed of Charge and Account Security) in relation to the provision of cash collateral as set out in paragraphs 6.19, 6.20 and 6.21 of this Code and in Agreed Procedure 1 "Participant and Unit Registration and Deregistration", Agreed Procedure 9 "Management of Credit Cover and Credit Default" and Agreed Procedure 17 "Banking and Participant Payments"  2.246 The Market Operator may, with the prior written approval of the Regulatory Authorities, issue a Suspension Order in respect of all or any of a Party’s Units where:   1. it becomes unlawful for a Party to comply with any of its obligations under the Code; 2. it becomes unlawful for a Party’s Credit Cover Provider to comply with any of its Credit Cover obligations; 3. a Legal Requirement necessary to enable a Party or its Credit Cover Provider to fulfil its obligations and functions under the Code is amended or revoked in whole or in part so as to prevent a Party or its Credit Cover Provider from fulfilling its obligations and functions under the Code; 4. a Party or its Credit Cover Provider suspends or ceases to carry on its business, or any part of its business which is relevant to its activities under the Code; 5. a Party’s Credit Cover Provider ceases to be eligible for the purposes of the Code to be able to provide the Credit Cover and the Party has not acquired a new Credit Cover Provider within 10 Working Days as required under paragraph 6.165; 6. a Party 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); 7. a Party’s Credit Cover Provider 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); 8. a receiver, manager, receiver and manager, administrative receiver, examiner or administrator is appointed in respect of a Party or its Credit Cover Provider or any of their respective 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 a Party or its Credit Cover Provider, or a liquidator, trustee in bankruptcy or other similar person is appointed in respect of a Party or its Credit Cover Provider, or any steps are taken to do any of the foregoing or any event analogous to any of the foregoing happens in any jurisdiction; 9. a Party or its Credit Cover Provider is dissolved or struck off; 10. a Party or its Credit Cover Provider is unable to pay its debts for the purposes of section 214 of the Companies Act, 1963 (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 paragraph 2.246.10, Section 213 of the Companies Act, 1963 shall have effect as if for “£60,000” there was substituted “€100,000” and Article 103 of the Insolvency Order (Northern Ireland) and section 123 of the Insolvency Act, 1986 (Great Britain) shall have effect as if for “£750” there was substituted “£60,000” or such higher figure as the Market Operator may specify from time to time; 11. a Party which is required to be licensed in respect of any or all of its roles under the Code has its Licence revoked in whole or in part or amended, so as to prevent the Party from fulfilling its obligations and functions under the Code; 12. a Party has committed 3 Defaults within a period of 20 Working Days; 13. a Party has committed a Default and has failed for a period of 20 consecutive days, or such longer period as may be set out in the relevant Default Notice, to comply with the terms of such Default Notice; or 14. a Party or a Participant has failed to comply with any applicable Account Security Requirements (including, for the avoidance of the doubt, the Deed of Charge and Account Security) in relation to the provision of cash collateral as set out in paragraphs 6.19, 6.20 and 6.21 of this Code and in Agreed Procedure 1 "Participant and Unit Registration and Deregistration", Agreed Procedure 9 "Management of Credit Cover and Credit Default" and Agreed Procedure 17 "Banking and Participant Payments"   **6. Financial and Settlement**  General  Provision of Cash Collateral  6.19A Participant may at any time provide a cash deposit as part of its Required Credit Cover as permitted pursuant to paragraph 6.162. Where a Participant decides to provide such a cash deposit, then the Participant shall instruct the Market Operator to establish and maintain a SEM Collateral Reserve Account with the SEM Bank in each Currency Zone in which the Participant has a registered Unit as applicable and so that the relevant cash deposit shall be paid into such SEM Collateral Reserve Account. Each SEM Collateral Reserve Account shall be an interest bearing account. If a Participant elects to provide a cash deposit as part of its Required Credit Cover, then the Participant shall fully comply with any applicable Account Security Requirements (including, for the avoidance of the doubt, the Deed of Charge and Account Security) in relation to the provision of cash collateral as set out in paragraphs 6.20 and 6.21 of this Code and in Agreed Procedure 1 "Participant and Unit Registration and Deregistration", Agreed Procedure 9 "Management of Credit Cover and Credit Default" and Agreed Procedure 17 "Banking and Participant Payments".  6.20 The SEM Collateral Reserve Account in relation to each relevant Participant shall contain the cash element of that Participant’s Posted Credit Cover on the following terms:   1. the SEM Collateral Reserve Account shall be in the sole name of the Market Operator with the designation “SEM Collateral Reserve Account relating to [Insert Participant Details]”; 2. the Participant and the Market Operator shall have irrevocably instructed the SEM Bank to make payment against the sole instruction of the Market Operator in accordance with the Code and the Bank Mandate. The Code shall take precedence over the Bank Mandate; and   3. to give effect to the provisions of the Code in relation to SEM Collateral Reserve Accounts, with effect from the time of payment into the relevant SEM Collateral Reserve Account, the relevant Participant thereby charges all sums paid into and accruing on that account by way of first fixed charge over cash at the SEM Bank in favour of the Market Operator as agent for the SEM Creditors and as trustee for it to secure the relevant Participant’s payment obligations under the Code, subject always to the provisions of paragraphs 6.32 to 6.36 inclusive and subject to the provisions of the Deed of Charge and Account Security. For the avoidance of doubt, in the event of a discrepancy between this paragraph 6.20(3) and the Deed of Charge and Account Security, the Deed of Charge and Account Security shall prevail.  6.21 If, at any time, a Participant (or Applicant, as applicable) wishes the Market Operator to establish a SEM Collateral Reserve Account on its behalf for the purposes of paragraphs 6.19 and 6.20, the Participant (or Applicant, as applicable) shall (i) on the same date on which its Required Credit Cover is posted and the cash collateral is paid into the relevant SEM Collateral Reserve Account(s), complete and enter into the Deed of Charge and Account Security (including the Notice of Assignment and Acknowledgment) in respect of such SEM Collateral Reserve Account and SEM Collateral Reserve Assets (ii) within 5 Working Days from the date on which its Required Credit Cover is posted, furnish to the Market Operator the original executed Deed of Charge and Account Security to for the purposes of the registration of such Deed of Charge and Account Security pursuant to section 860 of the Companies Act 2006 and/or section 99 of the Companies Act 1963 (Ireland), as appropriate, and/or at such other registry or registries as may be appropriate; (iii) within 5 Working Days from the date on which its Required Credit Cover is posted, furnish to the Market Operator the original executed Notice of Assignment and Acknowledgment for the purposes of enabling the Market Operator to give notice to the SEM Bank and procure the SEM Bank's acknowledgment pursuant to Clause 2.3 of the Deed of Charge and Account Security and (iv) do all such things and execute all such documents and provide any further information that the Market Operator may require in order to carry out such registrations within such timelines as may be specified by the Market Operator, having regard to any applicable time limit for the registration of such a charge.    Credit cover Obligations    6.162 Each Participant must maintain its Credit Cover with a Credit Cover Provider. The acceptable forms of Credit Cover which Participants can post are:   1. an irrevocable standby Letter of Credit which: 2. shall be issued by a Credit Cover Provider fulfilling the Bank Eligibility Requirements set out in paragraph 6.163 below; 3. shall be in the form attached in Appendix A “Standard Letter of Credit”; and shall be for a minimum duration of 12 months. At least 60 calendar days before expiry of the current letter of credit the Participant must put a replacement letter of credit in place, with an effective date starting from the date following the date of expiry of the current letter of credit; and, 4. shall be capable of being paid out for Same Day Value following a Credit Call;   and/or:  2. a cash held deposit in a SEM Collateral Reserve Account as provided for in paragraphs 6.19, 6.20 and 6.21. For the avoidance of doubt, if a Participant elects to provide a cash deposit as part of its Required Credit Cover, then it shall (i) on the same date on which its Required Credit Cover is posted and the cash collateral is paid into the relevant SEM Collateral Reserve Account(s), complete and enter into the Deed of Charge and Account Security (including the Notice of Assignment and Acknowledgment) in respect of such SEM Collateral Reserve Account and SEM Collateral Reserve Assets (ii) within 5 business days from the date on which its Required Credit Cover is posted, furnish to the Market Operator the original executed Deed of Charge and Account Security to for the purposes of the registration of such Deed of Charge and Account Security pursuant to section 860 of the Companies Act 2006 and/or section 99 of the Companies Act 1963 (Ireland), as appropriate, and/or at such other registry or registries as may be appropriate; (iii) within 5 business days from the date on which its Required Credit Cover is posted and the Deed of Charge and Account Security is dated, furnish to the Market Operator the original executed Notice of Assignment and Acknowledgment for the purposes of enabling the Market Operator to give notice to the SEM Bank and procure the SEM Bank's acknowledgment pursuant to Clause 2.3 of the Deed of Charge and Account Security and (iv) do all such things and execute all such documents and provide any further information that the Market Operator may require in order to carry out such registrations within such timelines as may be specified by the Market Operator, having regard to any applicable time limit for the registration of such a charge. The Participant shall also fully comply with any other applicable Account Security Requirements in relation to the provision of cash collateral as set out in paragraphs 6.19, 6.20 and 6.21 of this Code and in Agreed Procedure 1 "Participant and Unit Registration and Deregistration", Agreed Procedure 9 "Management of Credit Cover and Credit Default" and Agreed Procedure 17 "Banking and Participant Payments"  Agreed Procedure 1   * 1. **Participant and Unit Registration**      1. **Overview**   In order to become a Participant a Party (or Applicant) must register a Unit.   * + The process flow in Section details the timelines and information involved in the registration of a Unit.   + The Party (or Applicant) downloads a Registration Pack from the Market Operator Website. The Registration Pack includes the Participation Notice which can be used by the Party (or Applicant) to register its first or any subsequent Unit. The Registration Pack also includes the Deed of Charge and Account Security (with attached Notice of Assignment and Acknowledgment) which is required in relation to the SEM Collateral Reserve Accounts and the provision by the Participant of Credit Cover in the form of cash collateral pursuant to the Code.   + The Party (or Applicant) completes the Registration Pack and submits it to the Market Operator via registered mail.   + Where the Party (or Applicant) is registering a new Generator Unit, the Meter Data Provider shall validate the Meter Data for that Unit in accordance with the relevant Metering Code.   + The Market Operator shall share all relevant Registration Data provided by the Party (or Applicant) with System Operators, Distribution System Operators, Interconnector Administrators or Meter Data Providers, as appropriate, for the purpose of confirmation that the relevant Registration Data matches equivalent Data held by them in order to facilitate, processing registration and participation in respect of the relevant Unit. The dependencies on System Operators, Distribution System Operators, Interconnector Administrators and Meter Data Providers are described in Section 3.2.4.   + If the Party (or Applicant) fails to satisfy any part of the timelines or provision of required information or fails to comply with any applicable Account Security Requirements (including for the avoidance of doubt, the Deed of Charge and Account Security) in relation to Initial Credit Cover under the registration process, the Market Operator may withdraw the Participation Notice, sending a Deemed Withdrawn Notice to the Party by registered mail and shall refund the relevant portion of the Participation Fees.   + Once all of the information requested has been provided and validated by the Market Operator and the Party is not in breach of the Code or the Framework Agreement, a Commencement Notice shall be sent by registered mail, to the Party, with a copy sent by email to each System Operator and the relevant External Data Provider.   + During the registration process, the Market Operator shall receive data through fax and registered post. The Market Operator shall manually input the Unit information into the registration system. A Participant is given a status of ‘Pending’ and a classification of ‘Trading Participant’.   + When the Commencement Notice is issued, the Participant is given a status of ‘Active’. The Units registered to the Participant will be eligible for trading as determined by their registered Effective Date. For Trading, a Unit will become effective at the start of a Trading Day which corresponds with the relevant Effective Date.   + Once the Commencement Notice is issued, Participant staff that have been nominated as Users and have been allocated Digital Certificates as appropriate (Agreed Procedure 3 “Communication Channel Qualification”) will be able to access the Market Website and perform different actions depending on their roles. This is explained further in Appendix 2.   + If a Participant subsequently registers additional Users, no additional Communication Channel Qualification shall be required in respect of these new Users. The User registration requirements will be approved by the Market Operator, and include application for, retrieval of and installation of a valid Digital Certificate for each new User. This is explained further in Appendix 2.     1. **Procedural Steps**      | # | Procedural Step | Timing | Method | By/From | To | | --- | --- | --- | --- | --- | --- | |  | **Stage 1: Application** |  |  |  |  | | 1.1 | Retrieve Participation Notice and Registration Pack (including the Deed of Charge and Account Security and the Notice of Assignment and Acknowledgment) confirm required information with external organisations with reference to table in 3.2.4. | As Required | Download from the MO Website, Communication with external organisation | Party or Applicant | System Operator, Meter Data Providers, Interconnector Administrator | | 1.2 | Complete Participation Notice and Registration Pack, interacting with System Operator, Interconnector Administrator, and Meter Data Providers as appropriate | As Required | - | Party or Applicant |  | | 1.3 | Submit Participation Notice and completed Registration Pack and the required Participation Fees in the form of a bank draft. Where the Unit is being registered by an Intermediary then the Nominating Party shall submit a duly executed Form of Authority. The Registration Pack will detail how to commence completion of certain eligibility requirements. | As Required | Email and Registered Post | Party or Applicant | Market Operator | | 1.4 | * Receive/Check Participation Notice, Registration Pack and any Form of Authority. If Registration Fee is not included with Registration Pack, go to step 1.5 * If there are omissions in the required information, advise Party or Applicant, go back to step 1.2. * Otherwise go to step 1.7 | As Required |  | Market Operator | Party or Applicant | | 1,5 | Advise Party (or Applicant) that the Registration Pack has been rejected. | Within 1 WD of receipt of Registration Pack | Email/Registered post | Market Operator | Party or Applicant | | 1.6 | Refund any Participation Fees entitled to be refunded.  End Process: Unit Registration Cancelled | Within 10 WDs | Email/Registered Post | Market Operator | Party or Applicant | | 1.7 | Issue Confirmation of Receipt of Application  End of Stage 1 | Within 2 WDs of receiving the Registration Pack | Email/Registered Post | Market Operator | Party or Applicant | |  | **Stage 2: Review & Validation** |  |  |  |  | | 2.1 | Generate Participant ID, Account ID and Unit ID as required and issue IDs to Applicant. | As Required | Email | Market Operator | Party or Applicant | | 2.2 | Inform Applicant of all the agreements that need to be in place before a Unit can become effective in the market | Within 1 WD of Stage 2 commencing | Email | Market Operator | Party or Applicant | | 2.3 | The Applicant confirms the following (where applicable):   1. TUoS / DUoS application in progress 2. Submission of EDIL Data in progress 3. Metering is in place 4. Discussions with Interconnector Administrator in progress for registering Interconnector Users   5. Contact TSO ir Interconnector Owner regarding credit cover requirements | Within 15 WD of notification of agreements that need to be in place prior to Unit being effective in the market | Email | Party or Applicant | Market Operator | | 2.4 | Issue Initial Credit Cover Requirement (ICCR) and Banking Details Confirmation Letter (BDCL) | Within 2 WDs of Step 2.1 | Email/Registered Post | Market Operator | Party or Applicant | | 2.4a | If Initial Credit Cover is in the form of cash collateral deposited in SEM Collateral Reserve Accounts, the Applicant sends to Market Operator (i) original Deed of Charge and Account Security executed by Participant and (ii) original Notice of Assignment executed by Participant | Within 5 WDs of Step 2.1 | Registered Post | Party or Applicant | Market Operator | | 2.5 | Send completed Registration Pack and all relevant IDs to the relevant System Operator, Interconnector Administrator, and/or Meter Data Provider | Within 2 WDs of Step 2.1 | Email | Market Operator | System Operator / Meter Data Provider / Interconnector Administrator | | 2.6 | Check Registration Data provided by Participant, as set out in the Registration Pack;   * Identify if there are any issues and clarifications required with information provided, if so, advise Market Operator and go to step 2.7 * Otherwise, confirm it is complete, and commence work on MDP/SO systems and processes to achieve Unit Registration. Go to Step 2.10 | Within 15 WDs of SO receipt of Registration Pack from MO. | Email | System Operator / Interconnector Administrator / Meter Data Provider | Market Operator | | 2.7 | Inform Applicant of any clarifications or information needed. | Within 2 WDs of request for clarification from SO/IA/MDP | Email | Market Operator | Party or Applicant | | 2.8 | Provide all necessary clarifications or additional information requested. | Within 5 WDs of request for clarification from MO | Email | Party or Applicant | Market Operator | | 2.9 | Send appropriate information from clarifications to the relevant System Operator, Interconnector Administrator, and relevant Meter Data Provider. Return to Step 2.6 | Within 1 WD of receipt of clarifications from the Applicant | Email | Market Operator | System Operator / Interconnector Administrator / Meter Data Provider | | 2.10 | Have all requirements for Stage 2 been met?   * If Applicant requirements have not been met go back to Step 2.2 * If Registration Pack has not been checked then go back to Step 2.6 * If all requirements have been met this completes Stage 2   End of Stage 2  **Stage 3: Participant Readiness** |  |  |  |  |   **3.2.7 Swimlane – Unit Registration: Stage 2 – Review**    **3.2.8 Swimlane – Unit Registration: Stage 3 – Participant Readiness**     1. **DEFINITIONS and Abbreviations**   **Definitions**   |  |  | | --- | --- | | **Accession Deed** | As defined in the Code | | **Accession Fee** | As defined in the Code | | **Account ID** | An identifier representing either a unique grouping of Generator Units or a unique grouping of Supplier Units. A Participant may have multiple Account IDs registered in the Central Market Systems. | | **Account Security Requirements** | As defined in the Code | | **Adjusted Participant** | As defined in the Code | | **Aggregated Generator Unit** | As defined in the Code | | **Agreed Procedure** | As defined in the Code | | **Applicant** | As defined in the Code | | **Application Form** | Means the form available on the MO Website which is required to be completed by an Applicant to become a Party to the Code. | | **Associated Supplier Unit** | As defined in the Code | | **Bank Automated Clearing System, or BACS** | As defined in the Code. | | **Certificate Authority** | As defined in Agreed Procedure 5 “Data Storage and IT Security” | | **Change of Supplier** | AP1 – Note that this is a Retail Market term and may need to refer to Retail Market documentation for its definition. | | **Clearing House Automated Payments System, or CHAPS** | As defined in the Code. | | **Classification** | As defined in the Code | | **Code** | As defined in the Code | | **Commencement Notice** | As defined in the Code | | **Communication Channel** | As defined in the Code | | **Connection** | As defined in the Code (under Connected) | | **Credit Cover** | As defined in the Code | | **Currency Zone** | As defined in the Code | | **Deed of Charge and Account Security** | As defined in the Code | | **Deemed Withdrawn Notice** | Notification provided by the Market Operator that an application for registration is being withdrawn | | **Demand** | As defined in the Code | | **Demand Side Unit** | As defined in the Code | | **Deregistration** | As defined in the Code | | **Deregistration Form** | A form that provides notice that a Participant requires the deregistration of a Unit | | **Digital Certificate** | As defined in Agreed Procedure 5 “Data Storage and IT Security” | | **Distribution System Operator** | As defined in the Code | | **Effective Date** | As defined in the Code | | **Electronic Funds Transfer, or EFT** | As defined in the Code. | | **Error Supplier Unit** | As defined in the Code | | **First Participation Information Notice** | As defined in the Code | | **Form of Authority** | As defined in the Code | | **Functional Area** | Means the different parts of the Market Participant Interface that Users may be provided access as set out in this Agreed Procedure. | | **Generator** | As defined in the Code | | **Generator Aggregator** | As defined in the Code | | **Generator Aggregator System Operator Agreement** | As defined in the Code | | **Meter Data Export Date** | As defined in the Code | | **Generator Unit** | As defined in the Code | | **Generic Settlement Class** | As defined in the Code | | **Help Desk** | As defined in Agreed Procedure 11 "Market System Operation, Testing, Upgrading and Support" | | **Interconnector** | As defined in the Code | | **Interconnector Administrator** | As defined in the Code | | **Interconnector Unit** | As defined in the Code | | **Interconnector User** | As defined in the Code | | **Intermediary** | As defined in the Code | | **Invoice** | As defined in the Code | | **Isolated Market System** | As defined in the Code | | **Jurisdiction** | As defined in the Code | | **Market Operator** | As defined in the Code | | **Market Operator Charge** | As defined in the Code | | **Market Participant Interface** | The function within the Market Operator’s Isolated Market System that interfaces to the Type 2 Channel and Type 3 Channel communications | | **Meter Validation Date** | As defined in the Code | | **MO Website or Market Operator Website** | The Market Operator’s website that is accessed by the general public and where information that is required to be published by the Market Operator can be accessed. | | **Meter Data Provider** | As defined in the Code | | **Netting Generator Unit** | As defined in the Code | | **Nominating Party** | Means a Party who nominates an Intermediary to register its Unit as allowed under the Code. | | **Notice of Assignment and Acknowledgment** | As defined in the Code | | **Offer Data** | As defined in the Code | | **Operational Readiness Confirmation** | As defined in the Code | | **Participant** | As defined in the Code | | **Participant ID** | An identifier that represents the unique grouping of Generator and/or Supplier Units to the entity defined as a Participant in the Code and is used in the Central Market Systems to calculate Required Credit Cover. | | **Participation Fee** | As defined in the Code | | **Participation Notice** | As defined in the Code | | **Party** | As defined in the Code | | **Party ID** | A unique identifier allocated by the Market Operator | | **Party Name** | The name of the Party | | **Priority Dispatch** | As defined in the Code | | **Public Electricity Supplier** | The supplier of electricity to consumers within each Jurisdiction prior to market competition | | **Pumped Storage Unit** | As defined in the Code | | **Receiving Party** | As defined in the Code | | **Registration Data** | As defined in the Code | | **Registration Pack** | Documentation and information that assists with Party registration | | **Regulatory Authorities** | As defined in the Code | | **Rejection Notice** | As defined in the Code | | **Required Credit Cover** | As defined in the Code | | **Resettlement** | As defined in the Code | | **Retail Market Operator** | The business group within ESB Networks or NIE T&D responsible for managing the retail market data, registrations, and deregistration between final consumers and Supplier Units. | | **Settlement** | As defined in the Code | | **Settlement Statement** | As defined in the Code | | **Single Electricity Market** | As defined in the Code | | **Supplier** | As defined in the Code | | **Supplier of Last Resort** | As defined in the Code | | **Supplier Suspension Delay Period** | As defined in the Code | | **Supplier Unit** | As defined in the Code | | **Suspension** | As defined in the Code | | **System Operator** | As defined in the Code | | **Termination** | As defined in the Code | | **Termination Date** | As defined in the Code | | **Termination Order** | As defined in the Code | | **Trading Site** | As defined in the Code | | **Trading Site Class** | The classification of a Trading Site. | | **Trading Site Supplier Unit** | As defined in the Code | | **Transmission Network** | As defined in the Code | | **Type 1 Channel** | As defined in the Code | | **Type 2 Channel** | As defined in the Code | | **Type 3 Channel** | As defined in the Code | | **Unit** | As defined in the Code | | **Unit Owner** | As defined in the Code | | **Unit Registration** | As defined in the Code | | **User** | In relation to a Participant: a nominated member of the Participant staff who is authorised to utilise qualified communication facilities that interact with the Market Operator’s Isolated Market System;  In relation to the Market Operator: a member of the Market Operator staff who has been authorised to access specific parts of the Market Operator Isolated Market System. | | **VAT** | As defined in the Code | | **Working Day** | As defined in the Code | | **Meter Point Registration Number** | As defined in the Code |   appendix 4: deed of charge and account security  **DEED of CHARGE and ACCOUNT SECURITY**  between  **[the Participant]**  and  **EirGrid p.l.c. and SONI Limited**  **Dated [ ] 20[●]**  1 Definitions and Interpretation 26  1.1 Definitions 26  1.2 Interpretation 27  1.3 Headings 28  2 Security 28  2.1 Payment 28  2.2 Security 28  2.3 Notices 28  3 Protection of security 28  3.1 Continuing security 28  3.2 No prejudice 28  3.3 No waiver 29  3.4 Severability 29  3.5 Non impairment 29  3.6 Further assurance 30  3.7 New accounts 30  4 Power of attorney 30  4.1 Appointment 30  4.2 Ratification 31  4.3 Exercise of power 31  5 RepresentationS, Warranties and Undertakings 31  5.1 Representations and warranties 31  5.2 Undertakings 32  6 Operation of account[s] 33  7 Enforcement 33  7.1 Security enforceable 33  7.2 Law of Property Act, Conveyancing and Law of Property Acts and Irish Act 33  7.3 Rights upon enforcement 34  7.4 Application of proceeds 36  7.5 Monies on suspense account 36  7.6 Balance 36  7.7 Third parties 36  7.8 Redemption of prior securities 37  8 Release 37  8.1 Release 37  8.2 Avoidance of payments 38  8.3 Retention of Security 38  9 Liability of Market Operator or delegate 38  9.1 Delegation 38  9.2 Liability 38  10 Miscellaneous 38  10.1 Non compliance by Participant 38  10.2 Currency conversion and indemnity 39  10.3 Assignment 39  10.4 Certifications 39  10.5 Entire agreement 40  10.6 Non-reliance 40  10.7 Amendments 40  10.8 Third party rights 40  10.9 Counterparts 40  10.10 Expenses 40  11 Notices 41  11.1 Notices and deemed receipt 41  11.2 Addresses for notices 41  11.3 No electronic service 42  12 Governing Law, jurisdiction, Process agent 42  12.2 Agent for service 42  SCHEDULES  SCHEDULE 1 The Account[s] and Account Bank[s] 42  SCHEDULE 2 Part 1: Notice of charge and assignment to Account Bank(s) 43  SCHEDULE 2 Part 2: Acknowledgement from Account Bank(s) 45  **DEED of CHARGE and ACCOUNT SECURITY** dated the [ ] day of [ ] 20[ ] between:   1. **[ ] LIMITED [PLC ]** incorporated in [England][Scotland] [Northern Ireland] [Ireland] (Registered Number [ ]) whose registered office is at [ ] (the "**Participant**")   and   1. **EirGrid p.l.c.** incorporated in Ireland (Registered Number 338522) whose registered office is situated at Block 2, The Oval, 160 Shelbourne Road, Ballsbridge, Dublin 4 and **SONI Limited** incorporated in Northern Ireland (Registered Number NI038715) whose registered office is situated at Castlereagh House, 12 Manse Road, Belfast together trading as the Single Electricity Market Operator (the "**Market Operator**")   **RECITALS**  (A) The Market Operator and the Participant are parties to the Single Electricity Market Trading and Settlement Code governing the wholesale sale and purchase of electricity on the island of Ireland (the **"Code"**);  (B) Pursuant to the Code the Participant is obliged to put in place Required Credit Cover to secure the Participants payment obligations under the Code and has elected as permitted by the Code to open SEM Collateral Reserve Account(s), within the meaning of the Code, being the Account(s) referred to in this Deed, to provide such security;  (C) Pursuant to the Code the Participant agrees to create in favour of the Market Operator a first fixed charge over, and to assign by way of first fixed security to the Market Operator, its interest in such Account(s) and all funds held to the credit thereof from time to time and has agreed to execute this Deed for that purpose.   1. definitions and interpretation    1. Definitions   In this Deed unless the context requires otherwise:  "**Account[s]**" means the collateral bank account[s] specified in Schedule 1 (as [that account][any such account] may from time to time be re-designated or re-numbered or replaced), including any successor or replacement account, or subdivision or sub-account, of [that account][any such account];  "**Account Bank[s]**" means the bank[s] with which the Account[s] [is] [are] held being, as at the date of this Deed, as specified in Schedule 1, which shall include reference to any successor [of any] thereof;  "**Business Day**" means a day (other than a Saturday or Sunday) on which commercial banks are open for business in:  (a) for the purpose of clause 11.1, the place specified in the address for notice provided by the recipient; and  (b) for all other purposes, [London] [Belfast][Dublin];  **"Credit Cover"** means the credit cover required of and provided by the Participant in a form that meets the requirements of the Code;  "**this Deed**" means these presents (including the Schedules) as amended, supplemented, novated, extended or restated from time to time;  "**Event of Default**" means the failure by the Participant to pay or fulfil the Secured Obligations in whole or part on the due date;  **"Irish Act"** means the Land and Conveyancing Law Reform Act 2009 of Ireland;  **"parties"** means the parties to this Deed and **"party"** means either of them;  **"Required Credit Cover"** means the Credit Cover calculated by the Market Operator in accordance with the Code;  "**Schedule[s]**" means any one or more of the Schedules to this Deed;  "**Secured Obligations**" means all or any monies, liabilities and obligations, whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, surety or otherwise, which are now or may at any time hereafter (whether before or at any time after demand) be or become due in any manner by the Participant under the Code including interest and all lawful charges or expenses which the Market Operator may in the course of its business charge or incur in respect of any of those matters and so that the interest shall be computed and compounded according to the usual rate and practice under the Code as well as after as before any demand made or decree or judgement obtained under this Deed or the Security, and all or any monies, liabilities and obligations due under the Code or under this Deed;  "**Security**" means all or any of the Security Interests now or at any time hereafter created by or pursuant to this Deed;  "**Security** **Assets**"means the Account[s] and the debt[s] thereby represented and all sums, whether principal or interest, accrued or accruing, which are now or may at any time hereafter be deposited in or otherwise standing to the credit of the Account[s], and all other rights and benefits in connection therewith; and  "**Security Interest**" means any mortgage, charge, pledge, lien, retention of title arrangement (other than in respect of goods purchased in the ordinary course of business), hypothecation, encumbrance or security interest of any kind, or any agreement or arrangement having substantially the same economic or financial effect as any of the foregoing (including any "*hold back*" or "*flawed asset*" arrangement).   * 1. Interpretation   In this Deed unless the context requires otherwise:   * + 1. words importing the singular shall include the plural and vice versa;     2. references to this Deed or any other document shall be construed as references to this Deed or such other document as amended, supplemented, novated, extended or restated from time to time;     3. references to any statute or statutory provision (including any subordinate legislation) shall include any statute or statutory provision for the time being in force which amends, extends, consolidates or replaces the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision;     4. references to a "**person**" shall include any individual, firm, company, corporation, body, trust or foundation, or any association, partnership or unincorporated body (whether or not having separate legal personality);     5. any reference to a party includes its permitted successors, transferees and assignees;     6. references to a document "**in** **the** **agreed** **form**" means a document in a form agreed by the Participant and the Market Operator and initialled by, or on behalf of, each of them for the purpose of identification as such; and     7. "**tax**" means all forms of taxation, duties, imposts and levies whatsoever in the nature of taxation whenever and wherever imposed, including (but without limitation) all stamp duties, imposts, duties, capital and revenue taxes and value added tax, and "**taxes**" and "**taxation**" shall be construed accordingly.   1. Headings   The table of contents and the headings in this Deed are included for convenience only and shall be ignored in construing this Deed.   1. security    1. Payment   The Participant undertakes to the Market Operator that it will pay and discharge the Secured Obligations on the due date therefor, or, if no date for payment has been agreed, on demand.   * 1. Security   As continuing security for the payment and discharge of the Secured Obligations, the Participant, as legal and beneficial owner and with full title guarantee hereby charges by way of first fixed charge and assigns absolutely by way of a first fixed security interest to the Market Operator its whole right, title and interest, present and future, in the Security Assets.   * 1. Notices   Immediately after delivery of this Deed, the Participant shall give notice to the [each] Account Bank in the form set out in Part 1 of Schedule 2, and procure its acknowledgement and agreement in the form set out in Part 2 of Schedule 2.   1. Protection of security    1. Continuing security   The Security shall be a continuing security notwithstanding any intermediate payment or satisfaction of the Secured Obligations and shall remain in force until the Secured Obligations have been fully and unconditionally paid and discharged.   * 1. No prejudice   The Security shall be in addition to and shall not in any way prejudice or be prejudiced by any other Security Interest, right or remedy which the Market Operator may now or at any time hereafter hold for all or any part of the Secured Obligations.   * 1. No waiver   Failure or delay on the part of the Market Operator in exercising any right, power or discretion under or pursuant to this Deed shall not operate as a waiver thereof, nor will any single or partial exercise of any such right, power or discretion preclude any other or further exercise thereof. The rights, powers and discretions contained in this Deed are in addition to and not substitution for any right of set-off, compensation, retention, combination of accounts, lien or other right or remedy provided by law.   * 1. Severability   The provisions of this Deed shall be severable and distinct from one another and if at any time one or more of such provisions is or becomes or is declared void, invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be affected or impaired thereby.   * 1. Non impairment   The Participant agrees that none of its obligations or the Market Operator's rights, powers and discretions under this Deed shall be reduced, discharged or otherwise adversely affected by:   * + - * 1. any variation, extension, discharge, compromise, dealing with, exchange or renewal of any Security Interest or any right or remedy which the Market Operator or any other person may have now or in the future from or against the Participant or any other person in respect of any of the Secured Obligations; or         2. any failure, act or omission by the Market Operator or any other person in taking up, perfecting or enforcing any Security Interest or guarantee from or against the Participant or any other person in respect of the Secured Obligations; or         3. any increase in or waiver or discharge of any of the Secured Obligations or any termination, amendment, variation, supplement, restatement, novation or replacement of any deed, document or agreement relating thereto; or         4. any grant of time, indulgence, waiver or concession to the Participant or any other person; or         5. any of the administration, receivership, examinership, liquidation, winding-up, insolvency, bankruptcy, incapacity, limitation, disability, discharge by operation of law or any change in the constitution, name or style of the Participant or any other person; or         6. any invalidity, illegality, unenforceability, irregularity or frustration of any of the Secured Obligations; or         7. any renumbering, redesignation, consolidation, sub-division or replacement of the Account[s] or its [their] being transferred to another branch or department of the Account Bank[s]; or         8. anything done or omitted to be done by the Market Operator or any other person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish the liability of the Participant under this Deed or the Security.   1. Further assurance   Without prejudice to the provisions of Clause the Participant shall promptly after being requested to do so by the Market Operator, do all such acts and things, give such instructions (in material or dematerialised form) and sign, seal and execute and deliver all such deeds and other documents as the Market Operator may require for perfecting or protecting the Security in respect of the Security Assets or its priority or for facilitating the operation of the Account[s] and the realisation or application of the Security Assets and the exercise of the rights, powers and discretions conferred on the Market Operator under this Deed. The obligations of the Participant under this Deed shall be in addition to and not in substitution for the covenants for further assurance deemed to be included herein by virtue of the Law of Property (Miscellaneous Provisions) Act 1994.   * 1. New accounts   At any time after the Market Operator has received or is deemed to be affected by notice (whether actual or constructive) of the creation of any subsequent Security Interest over or affecting any part of the Security Assets or the proceeds of realisation, the Market Operator may open a new account or accounts with the Participant. If the Market Operator does not open a new account or accounts it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received such notice and as from that time all payments made to the Market Operator shall be credited or be treated as having been credited to the new account or accounts and shall not operate to reduce the amount covered by the Security.   1. power of attorney    1. Appointment   The Participant by way of security hereby irrevocably appoints the Market Operator or its nominee and every Receiver separately as its attorney (with full powers of substitution and delegation) on its behalf and in its name or otherwise, at such times and in such a manner as the attorney may think fit:   * + - * 1. to do anything which the Participant is obliged to do (but has not done) under this Deed including, without limitation, to sign, seal, execute and deliver all deeds, documents, notices, further securities, transfers or assignments of and other instruments relating to, and give instructions (in material or dematerialised form) in respect of, the Security Assets; and         2. generally to exercise all or any of the rights, powers and discretions conferred on the Market Operator or that Receiver, as applicable, in relation to the Security Assets under this Deed, the Law of Property Act 1925, the Conveyancing and Law of Property Acts 1881-1911 in respect of any Security Asset located in Northern Ireland or the Irish Act.   1. Ratification   The Participant hereby ratifies and confirms and agrees to ratify and confirm whatever its attorney may do or purport to do in the exercise or purported exercise of the power of attorney given by the Participant under this Clause.   * 1. Exercise of power   The appointment effected under Clause (*Appointment*) shall take effect immediately, but the powers conferred shall only become exercisable upon the Security becoming enforceable or if the Participant does not fulfil any of its obligations under Clause (*Further assurance*) within [two] Business Days of notice from the Market Operator or any Receiver to do so.   1. representationS, warranties AND UNDERTAKINGS    1. Representations and warranties   The Participant represents and warrants to the Market Operator that:   * + - * 1. it is duly incorporated and validly existing under the law of [England] [Scotland] [Northern Ireland] [Ireland] [other];         2. it has the capacity and power to enter into this Deed and perform its obligations hereunder and to create the Security;         3. it has taken all necessary corporate action to authorise the execution and delivery of the Deed and the performance of its obligations hereunder and the creation of this Security;         4. its entering into this Deed and the performance of its obligations hereunder and the creation of the Security will not contravene any law, regulation, agreement or judicial or official order to which it is a party or by which it is bound, or cause any limitation on any of its powers however imposed, or the right or ability of its directors to exercise any of such powers, to be exceeded;         5. all actions, authorisations and consents required or advisable in connection with the creation, performance, validity and enforceability of this Deed and the Security and the transactions hereby contemplated and to ensure that (subject to all necessary registrations being made) the Security constitutes a valid, legal, binding and enforceable first fixed Security Interest over the Security Assets ranking in priority to the interests of any liquidator, administrator or creditor of the Participant have been obtained or effected and are and shall remain in full force and effect;         6. it is and will be the sole absolute unencumbered beneficial owner of the Security Assets free of any other Security Interest or third party claims or interests, other than any such Security Interest, claim or interest that has been or may from time to time be created in favour of the Market Operator and/or any other person pursuant to the Code;         7. it has not (otherwise than pursuant to this Deed or otherwise in favour of the Market Operator and/or any other person pursuant to the Code) granted or created any Security Interest over or sold, transferred, lent, assigned, parted with its interest in, disposed of, or granted or created any option or other right to purchase or otherwise acquire the Security Assets or any interest therein, or agreed, conditionally or unconditionally, to do so;         8. the Participant's obligations under this Deed and (subject to all necessary registrations being made) the Security are and until fully and unconditionally discharged will be valid, legal, binding and enforceable and the Security constitutes and will remain a valid, legal, binding and enforceable first fixed Security Interest over the Security Assets ranking in priority to the interests of any liquidator, administrator or creditor of the Participant; and         9. each of the above representations and warranties will be correct and complied with in all respects at all times during the continuance of the Security as if repeated by reference to the circumstances existing at such times.   1. Undertakings   The Participant undertakes to the Market Operator that it shall:   * + - * 1. not save as permitted by the Code make or attempt to make any withdrawal from the Account[s] or create, attempt to create or permit any Security Interest (other than the Security or any Security Interest in favour of the Market Operator and/or any other person created pursuant to the Code) to subsist over or in respect of any of the Security Assets;         2. not sell, transfer, lend or otherwise dispose of, or grant or create any other Security Interest over, or any option or other right to purchase or otherwise acquire, the Security Assets or any interest therein (other than any Security Interest in favour of the Market Operator and/or any other person created pursuant to the Code) or agree, conditionally or unconditionally, to do so;         3. not take or omit to take any action which would prejudice the Security or impair the Security Assets and shall, at its own cost, promptly take all action which is at any time necessary or which the Market Operator may request, to protect the interests of the Participant and the Market Operator in the Security Assets;         4. not vary or abrogate any of the rights attached to the Security Assets or take or omit to take any action which would have that result;         5. ensure that no monies or liabilities are outstanding in respect of any of the Security Assets;         6. take all action within its power to procure, maintain in effect and comply with all the terms and conditions of all approvals, authorisations, consents and registrations necessary or advisable under or in connection with this Deed and the Security; or         7. procure that the Security shall at all times be a valid, legal, binding and enforceable first fixed security interest over the Security Assets ranking in priority to the interests of any liquidator, administrator, examiner or creditor of the Participant.  1. operation of account[s]   **Withdrawals**  The Participant shall not be entitled to make any withdrawals from the Account[s] without the prior written consent of the Market Operator, which consent:   * + - * 1. shall not be unreasonably withheld or delayed in the case of any withdrawal expressly permitted pursuant to the Code; and         2. if given, may be provided by the issue of written instructions by the Market Operator to the relevant Account Bank to effect the relevant withdrawal.      1. ENFORCEMENT    1. Security enforceable   The Security shall become enforceable, and the power of sale and other powers conferred by Section 101 of the Law of Property Act 1925 or Section 19 of the Conveyancing Act 1881 and Section 4 of the Conveyancing Act 1911 in respect of any Security Assets located in Northern Ireland or the Irish Act, in each case as varied and extended by this Deed, shall be exerciseable on or at any time after the occurrence of an Event of Default.   * 1. Law of Property Act, Conveyancing and Law of Property Acts and Irish Act      1. Law of Property Act and Conveyancing and Law of Property Acts   The powers conferred by Section 101 of the Law of Property Act 1925 or Section 19 of the Conveyancing Act 1881 and Section 4 of the Conveyancing Act 1911, as varied and extended by this Deed, shall be deemed to have arisen immediately upon execution of this Deed, and Sections 93, 103 and 109 of the Law of Property Act 1925 and Sections 17, 20 and 24 of the Conveyancing Act 1881 shall not apply to this Deed.  7.2.2 Irish Act  7.2.2.1 In the event that:  (a) the laws of Ireland apply to:  (i) the Security Assets or any of them; or  (ii) the Security or any of it; or  (b) in the event of the appointment in Ireland of a receiver, liquidator, examiner or similar officer to the Participant or over any or all of its assets,  the provisions of Chapter 3 (*Obligations, powers and rights of mortgagee*) of Part 10 (*Mortgages*) of the Irish Act, save as specified in Clauses 7.2.2.2 to 7.2.2.5, inclusive, below, shall apply to this Deed notwithstanding anything to the contrary contained in this Deed.  7.2.2.2 The provisions of sections 96(1)(c) (*Powers and rights generally*), 97 (*Taking possession*), 99(1) (*Mortgagee in possession*), 101 (*Applications under sections 97 and 100*), 103(2) (*Obligations on selling*), 106(3) (*Application of mortgagee’s receipts*), 107 (*Application of proceeds of sale*), 108(1) (*Appointment of receiver*), 108(7) (*Remuneration of rece*iver), 109 (*Application of money received by a receiver*) and 110(2) (*Insuranc*e) of the Irish Act shall not apply to this Deed.  7.2.2.3 The restrictions and any requirements to give notice to the Participant contained in section 108(1) (*Appointment of Receiver*) of the Irish Act shall not apply to this Deed.  7.2.2.4 Notwithstanding anything to the contrary contained in the Irish Act, the Market Operator reserves the right to consolidate mortgage securities without restriction.  7.2.2.5 The Participant shall not be entitled to take any action in respect of the Security Assets pursuant to section 94 (*Court order for sale*) of the Irish Act.  7.2.2.6 The restrictions and any requirements to give notice to the Participant contained in section 100 (*Power of sale*) of the Irish Act shall not apply to this Deed.  7.2.2.7 The Market Operator may, at any time and from time to time, delegate by power of attorney or in any other manner (including, without limitation, under the hand of any officer of the Market Operator) to any person or persons or company or fluctuating body of persons all or any of the powers, authorities and discretions which are, for the time being, exercisable by the Market Operator under this Deed or under the Irish Act without the restrictions contained in the Irish Act in relation to the Security Assets or any part thereof, and any such delegation may be made upon such terms and conditions (including power to sub-delegate) and subject to such regulations as the Market Operator may think fit, and the Market Operator shall not be in any way liable or responsible to the Participant for any loss or damage arising from any act, default, omission, or misconduct on the part of any such delegate (or sub-delegate).   * 1. Rights upon enforcement      1. **Powers of Market Operator**   At any time after the Security has become enforceable, the Market Operator shall be entitled, without any notice to, demand on or consent of the Participant, either in its own name or in name of the Participant or otherwise, and in such manner and on such terms and conditions as it thinks fit, to take possession of and realise the Security Assets and apply the proceeds of realisation in or towards payment or satisfaction of the Secured Obligations in accordance with Clause 7.4, and in particular, without limiting the generality:   * + - * 1. to call in and/or uplift or withdraw the sums standing to the credit of the Account[s] in whole or part (and whether or not any deposit period may be broken by so doing);         2. to do all things it may consider necessary or expedient for the realisation of the Security Assets or incidental to the exercise of any of the rights conferred on it under or in connection with this Deed, the Law of Property Act 1925, the Conveyancing Acts 1881 - 1911 or the Irish Act; and         3. generally to exercise all the rights powers and discretions in respect of the Security Assets it would be entitled to exercise if it were the absolute owner of the Security Assets.     1. **Receiver**        1. At any time after the Security has become enforceable the Market Operator may without further notice appoint by way of deed, or otherwise in writing, any one or more person or persons to be a receiver (the "**Receiver"**) of all or any part of the Security Assets and thereafter from time to time, by way of deed, or otherwise in writing, may remove any such person appointed to be Receiver and may, in a similar manner appoint another in his or her place.        2. Where more than one person is appointed Receiver, they shall have power to act separately (unless the appointment by the Market Operator specifies to the contrary).        3. The Market Operator may fix the remuneration of the Receiver without the restrictions contained in Section 109 of the Law of Property Act 1925, section 108(7) of the Irish Act and in the case of Security Assets located in Northern Ireland without the restrictions contained in Section 24 of the Conveyancing and Law of Property Act 1881 and the remuneration of the Receiver shall be a debt secured by this Deed which shall be due and payable immediately upon it being paid by the Market Operator.        4. Any Receiver appointed by the Market Operator under this Deed shall be the agent of the Participant and the Participant shall be solely responsible for his or her acts and remuneration, as well as for any defaults committed by him or her.        5. Any Receiver appointed by the Market Operator under this Deed shall, in addition to the powers conferred on him by the Law of Property Act 1925 and the Insolvency Act 1986, the Conveyancing and Law of Property Acts 1881 – 1911 and the Insolvency (Northern Ireland) Order 1989, have the power to do all such acts and things as an absolute owner could do in the management and realisation of the Security Assets.        6. The power to appoint a Receiver (whether conferred by this Deed or by statute) shall be, and remain, exercisable by the Market Operator despite any prior appointment in respect of all or any part of the Security Assets.   1. Application of proceeds   All monies realised or otherwise arising from the enforcement of the Security shall subject to Clause (*Monies on suspense account*) be applied by the Market Operator or any Receiver:   * + - * 1. in or towards payment or satisfaction of all costs and expenses incurred by the Market Operator (and any Receiver, attorney or agent appointed by it) under or in connection with this Deed and the Security;         2. in or towards the remuneration of any Receiver (as agreed between the Receiver and the Market Operator);         3. in or towards payment or satisfaction of the remaining Secured Obligations in accordance with the terms of the Code; and         4. in payment of any surplus to the Participant or any other person entitled thereto.   This Clause is subject to the settlement of any claims which have priority over the Security, and shall not prejudice the Market Operator's right to recover any shortfall from the Participant.   * 1. Monies on suspense account   Nothing in this Deed shall limit the right of the Market Operator (and the Participant acknowledges that the Bank is so entitled) if and for so long as the Market Operator in its discretion shall consider it appropriate, to place all or any monies arising from the enforcement of the Security into a suspense account or accounts (which may be with the Bank), without any obligation to apply the same or any part thereof in or toward the discharge of the Secured Obligations provided that if the aggregate of such monies so placed to the credit of such suspense account or accounts shall equal or exceed the Secured Obligations, the Bank shall, subject always to Clause *(Release)*, forthwith apply the same towards settlement of the Secured Obligations.   * 1. Balance   The rights powers and discretions conferred on the Market Operator under this Deed are subject only to its obligation to account to the Participant for any balance of the Security Assets or their proceeds remaining in its hands after the Secured Obligations have been fully and unconditionally paid and discharged.   * 1. Third parties      1. No person dealing with the Market Operator in relation to the Security Assets shall be concerned to enquire whether any event has occurred upon which any of the rights, powers and discretions conferred under or in connection with this Deed or the Law of Property Act 1925 or the Conveyancing and Law of Property Acts 1881-1911 or the Irish Act is or may be exerciseable, or whether any of the rights, powers and discretions exercised or purported to be exercised by it hereunder has otherwise become exercisable, whether any of the Secured Obligations remains outstanding, or generally as to the propriety or validity of the exercise or purported exercise of any right, power or discretion hereunder. All the protection to purchasers and other persons contained in Sections 104 and 107 of the Law of Property Act 1925 and Sections 21 and 22 of the Conveyancing and Law of Property Act 1881 and sections 104, 105 and 106(1) of the Irish Act shall apply to any person purchasing from or dealing with the Market Operator or its nominee or delegate as if the Secured Obligations had become due and the statutory powers of sale in relation to the Security Assets had arisen on the date of this Deed.      2. The receipt or discharge of the Market Operator shall be an absolute discharge to any purchaser or other person dealing with the Market Operator or its nominee or delegate in relation to the Security Assets and any such purchaser or other person shall not have any obligation to enquire after or see to the application of any payments made by it to the Market Operator or its nominee or delegate or at its direction.   2. Redemption of prior securities      1. The Market Operator shall be entitled at any time:         + 1. to redeem any prior Security Interest over the Security Assets; and/or           2. to procure the transfer of such Security Interest to itself or its nominee; and/or           3. to settle and pass the accounts of the person or persons entitled to any such prior Security Interest and any accounts so settled and passed shall, save for manifest error, be conclusive and binding on the Participant.      2. The Participant shall pay the Market Operator, immediately on demand, the costs and expenses incurred by the Market Operator in connection with any such redemption and/or transfer, including the payment of any principal or interest, and these shall be subject to the terms of Clause and shall be Secured Obligations.  1. RELEASE    1. Release   When the Market Operator confirms in writing to the Participant that the Secured Obligations have been fully and unconditionally paid or discharged the Market Operator shall at the Participant's request, and at its expense, discharge the Security and retransfer to the Participant so much of the Security Assets as has not been realised or applied in or towards satisfaction of the Secured Obligations. Any payment or realisation in respect of the Secured Obligations which in the reasonable opinion of the Market Operator is liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, shall not be regarded as having been irrevocably effected until the expiry of the period during which it may be challenged on any such ground.   * 1. Avoidance of payments   The Market Operator's right to recover the Secured Obligations in full shall not be affected or prejudiced by any payment or realisation which is avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, or by any release or discharge given by the Market Operator on the faith of any such payment or realisation.   * 1. Retention of Security   If any payment or realisation in respect of the Secured Obligations is, in the Market Operator's reasonable opinion, liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, the Market Operator shall be entitled to retain this Deed and the Security undischarged and shall not be obliged to retransfer the Security Assets until the expiry of the period during which it may be challenged on any such ground.   1. liability of Market Operator or delegate    1. Delegation   The Market Operator may delegate any right, power or authority exercisable by it under this Security to such person, on such terms and conditions (including power to sub-delegate) and in such manner as it thinks fit, but such delegation shall not preclude the Market Operator from itself exercising any such right, power or authority.   * 1. Liability   The Market Operator or any delegate shall not in any circumstances be liable to the Participant or any other person as mortgagee in possession or otherwise for any losses, damages, liabilities or expenses arising from or in connection with the application or enforcement of the Security or any realisation, appropriation or application of the Security Assets or from any act, default or omission of the Market Operator or delegate or his/her or its officers, employees or agents in relation to the Security Assets or otherwise in connection with this Deed and the Security, except to the extent caused by the wilful neglect or default of the Market Operator or delegate or his/her or its officers, employees or agents.   1. MISCELLANEOUS    1. Non compliance by Participant   If the Participant fails to make any payment or fulfil any obligation due by it under or pursuant to this Deed, the Market Operator shall be entitled to do so in accordance with the Code and on its behalf and in its name (or in its own name as it considers expedient) and/or to take such action to remedy or mitigate the consequences of such failure as it considers expedient, and the amount of any such payment and/or the costs incurred in fulfilling such obligation or mitigating the consequences of such failure, shall be repayable by the Participant on demand, together with interest at 2% per annum over the Market Operator's cost of funding from time to time from the date of demand until settlement and shall constitute Secured Obligations.   * 1. Currency conversion and indemnity      1. Irrespective of the currency (whether Sterling, euro or otherwise) in which all or part of the Secured Obligations or the Security Assets from time to time is/are expressed, the Market Operator shall be entitled, for any purpose under or in connection with this Deed, at any time and without prior notification to the Participant, to convert the amount(s) in question into such other currency (whether Sterling, euro or otherwise) as the Market Operator may from time to time consider appropriate: any such conversion shall be effected at such rate of exchange as is determined by the Market Operator.      2. If by reason of any applicable law or regulation, or pursuant to any judgement, decree or order against the Participant, or in respect of the liquidation or other insolvency of the Participant, or for any other reason, any payment under or in connection with this Deed is due or made in a currency (the "**payment currency**") other than the currency in which it is expressed to be due under or in connection with this Deed (the "**contractual currency**") then to the extent that the amount of such payment actually received by the Market Operator when converted into the contractual currency at the applicable rate of exchange falls short of the amount due under or in connection with this Deed, the Participant shall as a separate and independent obligation indemnify and hold the Market Operator harmless against the amount of such shortfall.      3. For these purposes "**applicable rate of exchange**" means the rate at which the Market Operator is able on or about the date of such payment to purchase, in accordance with its usual practice, the contractual currency with the payment currency, and shall take into account (and the Participant should be liable for) any premium and other costs of exchange, including taxes and duties incurred by reason of such exchange.   2. Assignment      1. The Market Operator may at any time (without notice to or consent of the Participant) assign or transfer the benefit of this Deed and the Security or any of its rights or obligations thereunder, provided that such assignment and transfer is in compliance with any applicable requirements of the Code. The Market Operator shall be entitled to impart any information concerning the Participant to any assignee, transferee or proposed assignee or transferee or to any person who may otherwise enter into contractual relations with the Market Operator in relation to this Deed, the Secured Assets or the Secured Obligations.      2. The Participant may not, without the prior written consent of the Market Operator which may be given or withheld in the Market Operator’s absolute discretion, assign, transfer or otherwise deal with the benefit or burden of this Deed or the Security or any of its rights or obligations thereunder.      3. This Deed shall be binding upon and inure to the benefit of each of the parties hereto and their respective permitted successors, transferees and assignees and references in this Deed to any of them shall be construed accordingly.   3. Certifications   Any certification or determination by the Market Operator in connection with any Secured Obligation or other matter provided for in this Deed shall, save in the case of manifest error, conclusive evidence of the matters to which it relates.   * 1. Entire agreement   This Deed constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Deed.   * 1. Non-reliance   Each of the parties acknowledges and agrees that in entering into this Deed it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) of any person (whether a party or not) other than as expressly set out in this Deed.   * 1. Amendments   No amendment or variation of this Deed shall be effective unless it is in writing and executed by or on behalf of each of the parties.   * 1. Third party rights   The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and only the parties hereto may enjoy its benefit or enforce its terms.   * 1. Counterparts   This Deed may be executed in any number of counterparts, and by one or more parties hereto in separate counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.   * 1. Expenses   The Participant shall indemnify the Market Operator on demand against all liabilities, costs, charges and expenses properly and reasonably incurred by the Market Operator and its nominees and delegates (including the fees and expenses of any legal advisers and where appropriate any VAT) in connection with the preparation, execution and registration of this Deed and the Security and the enforcement or preservation of the Market Operator's rights under this Deed and the Security together with interest at 2% per annum over the Market Operator's cost of funding from time to time from the date of demand until settlement, and the amount thereof shall be a Secured Obligation.  10.12 **Calculations**  To the extent that this Deed provides for the making of a calculation or determination by the Market Operator, it will be made in good faith and, taking into account the circumstances of its making, in a commercially reasonable manner.   1. NOTICES    1. Notices and deemed receipt   Any demand or notice to be given under this Deed shall be in writing signed by or on behalf of the party giving it and shall be served by delivering it personally or sending it by pre-paid recorded delivery or registered post or by facsimile to the address and for the attention of the relevant party set out in Clause (or as otherwise notified by that party thereunder). Any such notice shall be deemed to have been received:   * + - * 1. if delivered personally, at the time of delivery or attempted delivery;         2. in the case of pre-paid recorded delivery or registered post, at the time of delivery or attempted delivery; and         3. in the case of facsimile, at the time of transmission, where in order to prove transmission it shall be sufficient to produce confirmation of uninterrupted transmission by a transmission report,   provided that if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day.   * 1. Addresses for notices   The addresses and facsimile numbers of the parties for the purposes of this Clause are:  **The Market Operator**  Address: [ ]  For the attention of: [ ]  Fax number: [ ]  **The Participant**  Address: [ ]  For the attention of: [ ]  Fax number: [ ]  or such other address or facsimile number as may be notified in writing from time to time by the relevant party to the other.   * 1. No electronic service   For the avoidance of doubt no demand or notice given under this Deed shall be validly given if sent by e-mail.   1. GOVERNING LAW, jurisdiction, Process agent   12.1 This Deed (including any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in accordance with the law of England and in so far as not already subject thereto the parties irrevocably submit to the non-exclusive jurisdiction of the English Courts.  12.2 Agent for service  The Participant irrevocably appoints [NAME] of [ADDRESS] [FAX NUMBER] as its agent to receive on its behalf in England service of any proceedings under Clause 1 above. Such service shall be deemed completed and delivery to such agent (whether or not it is forwarded to or received by the Participant) and shall be valid until such time as the Market Operator has received prior written notice from the Participant that such agent has ceased to act as its agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England the Borrower shall forthwith appoint a substitute acceptable to the Market Operator and deliver to the Market Operator the new agent's name, address (and fax number) within England failing which the Market Operator may select a substitute agent to receive on the Participant's behalf service of any proceedings arising out of or in connection with this Deed.  **EXECUTED AND DELIVERED** as a deed on the date first above stated.    SCHEDULES  SCHEDULE 1 The Account[s] and Account Bank[s]  **Name of Number of Bank, Branch and sort code**  **Account Account where Account held**  [ ] [ ] [ ]    **SCHEDULE 2 Part 1: Notice of charge and assignment to Account Bank(s)**  **[On letterhead of Participant]**  To: Name of Account Bank (the “**Account Bank**”)  Branch: [ ]  Address: [ ]  Attention: [ ]  Date: [ ]  Dear Sirs  **Account number[s]: [specify] (the "Account[s]")**  We ([*insert name*] (the "**Participant**") hereby give notice that by a Deed of Charge and Account Security between us and EirGrid p.l.c. and SONI Limited together trading as the Single Electricity Market Operator (the "**Market Operator**") dated the [ ] day of [ ] 200[ ] (the "**Account** **Security**") we have charged by way of first fixed charge and assigned by way of first fixed security interest to the Bank our whole right, title and interest present and future in the Account[s], the debt(s) thereby represented, and all sums, whether principal or interest, now or hereafter deposited in or otherwise standing to the credit of the Account[s]. A copy of the Account Security is annexed.  We irrevocably instruct and authorise you, without further reference to, or enquiry or permission from, us:   1. to disclose to the Market Operator any information about the Account[s] which it may request; 2. to comply with the terms of any written notice or instruction relating to the Account[s] which you may receive from the Market Operator; 3. to hold all sums standing at credit of the Account[s] to the order of the Market Operator; 4. to pay or release any sum standing at credit of the Account[s] only in accordance with the written instructions or with the written consent of the Market Operator.   For the avoidance of doubt, any notice, instruction or authorisation from the Market Operator may validly be given by fax or email. In the event of the Account Bank suffering any cost, expense or loss of any nature as a result of acting in reliance upon such notice, instruction or authorisation that the Account Bank reasonably considers to have been made or issued by the Market Operator and which was not so made or issued, we hereby agree to indemnify the Account Bank forthwith upon demand against any such cost, expense or loss of any nature so arising, save to the extent arising from gross negligence or wilful misconduct on the part of the Account Bank.  The instructions and authorisations in this letter may not be revoked or amended without the prior written consent of the Market Operator.  Please confirm that you have not received notice or are otherwise aware of any other assignment, charge, encumbrance or third party interest in respect of the Account[s] or the sums standing at credit of or any rights or benefits relating to the Account[s] and that you have not claimed or exercised, and will not claim or exercise any right of set-off, counterclaim, deduction, lien or combination of accounts or security interest in respect thereof.  In the absence of gross negligence or wilful misconduct on its part, the Account Bank shall not be liable to the Participant, Market Operator or any other person with respect to any act or omission in connection with the services provided. Provided that it has complied with the terms of the written acknowledgement by it of this notice and, to the extent not inconsistent with such acknowledgment, with the mandate relating to, and terms and conditions applicable to the Account[s], under no circumstances shall the Account Bank be liable to the Participant, Market Operator or any other person for indirect or consequential damages and the Account Bank shall not in any event be liable for the following direct losses: loss of profits, loss of contracts, loss of goodwill, whether or not foreseeable, even if the Account Bank has been advised of the likelihood of such loss or damage and regardless of whether the claim for loss or damage is made in negligence, for breach of contract or otherwise.  Provided that the Account Bank has complied with the terms of the written acknowledgement by it of this notice and, to the extent not inconsistent with such acknowledgment, with the mandate relating to, and terms and conditions applicable to the Account[s], we hereby agree to indemnify and hold the Account Bank harmless from and against all losses incurred or suffered by the Account Bank and its officers, directors, employees and shareholders resulting directly or indirectly from the Account Bank carrying out its obligations under this mandate or acting in accordance with any instructions relating to the Account[s], save to the extent arising from gross negligence or wilful misconduct on the part of the Account Bank.  This letter is governed by English law.  Please acknowledge receipt and confirm your agreement to the terms hereof by sending the attached acknowledgement to the Market Operator with a copy to us.  Yours faithfully  For and on behalf of [Participant]  ……………………………………………….  Authorised Signatory  **SCHEDULE 2 Part 2: Acknowledgement from Account Bank(s)**  **[On letterhead of [each] Account Bank]**  To: EirGrid p.l.c.  and  SONI Limited  Address: [ ]  Attention: [ ]  Date: [ ]  Dear Sirs  **Account number[s]: [specify] (the "Account[s]")**  We hereby acknowledge receipt from [Participant] of a notice of charge and assignment dated [ ] (the "**Notice**") of its whole right, title and interest, present and future, in and to the Account[s], the debt(s) thereby represented, and all sums, whether principal or interest, now or hereafter deposited in or otherwise standing to the credit of the Account[s] which appears on its face to be validly given and Danske Bank A/S has not nor is it required to verify or confirm with any person whether such notice was actually given by any person authorised to do so or the circumstances which would entitle such notice to be given had actually occurred). We also acknowledge receipt of a copy of the Deed of Charge and Account Security dated [ ] 200[ ] between you and the Participant (the “**Account Security**”).  We confirm that:   * + - * 1. we accept the instructions contained in the Notice and undertake to comply with its terms;  1. we have not received nor are we aware of any other assignment, charge, encumbrance or third party interest in the Account[s] or the sums standing at credit of or, any rights and benefits relating to the Account[s]; 2. we have not claimed or exercised, nor will we claim or exercise, any right of set-off, counterclaim, deduction, lien, combination of accounts or security interest in respect of the Account[s]; and 3. we will not permit any amount to be withdrawn from the Account[s] except on your written instructions or with your prior written consent in accordance with the provisions of Clause 6 (Withdrawals) of the Account Security or otherwise (to the extent not inconsistent with the foregoing) in accordance with any bank mandate in relation to the Accounts.   We are aware that you will rely on this letter in respect of your rights under the Account Security.  This letter is governed by English law.  Yours faithfully  For and on behalf of [Account Bank]  ………………………………………………………..  Authorised Signatory  Copied to: [Participant]  Address:  Attention:  **THE COMMON SEAL** of  **[PARTICIPANT]**  **was affixed hereto**  **and this Deed was delivered:**  Director  Director/Secretary  OR  **EXECUTED and DELIVERED as a**  **DEED by [PARTICIPANT]**  **acting by:**  Director  Full Name  Director  Full Name  OR  **EXECUTED and DELIVERED as a**  **DEED by [PARTICIPANT]**  **acting by:**  Director  Full Name  in the presence of:  Witness  Full Name  Address    **THE COMMON SEAL** of  **Eirgrid p.l.c.**  **was affixed hereto**  **and this Deed was delivered:**  Director  Director/Secretary  **EXECUTED and DELIVERED as a**  **DEED by SONI Limited**  **acting by:**  Director  Full Name  Director  Full Name  Agreed Procedure 9  2 Descriptive Overview  2.4 Provision of Credit Cover  Credit Cover is collateral required to be posted as a guarantee against a Participant’s Credit Risk in the SEM. In the event of a payment default, this Credit Cover can be utilised by the Market Operator to satisfy a Participant’s outstanding financial obligations in the SEM. Given the potential for Resettlement, a Participant withdrawing or being suspended from the SEM will not be reimbursed its Posted Credit Cover until the Resettlement period has passed (currently 14 months).  Credit Cover for use in the SEM must be posted in the form of either:   * Cash (in the designated Currency of the Participant) in a SEM Collateral Reserve Account; or * Letter of Credit (LC) from a Bank that meets the Bank Eligibility Requirements and in the form as set out in the Code.   If a Participant elects to provide a cash deposit as part of its Credit Cover, then it shall fully comply with the requirements in relation to the provision of cash collateral as set out in paragraphs 6.19, 6.20 and 6.21 and in paragraphs 6.160-6.162 of the Code (including, without limitation, the Deed of Charge and Account Security and/or any other Account Security Requirement).  A Participant may meet its Credit Cover requirements by posting a combination of the eligible types of Credit Cover. In the event of a Shortfall (i.e. the failure of a Participant to pay an Invoice in full, by the due date and time), Posted Credit Cover will need to be accessible in a timely manner such that the Market Operator may meet all relevant payment obligations in respect of the SEM.  Each Participant must maintain its Credit Cover with a Credit Cover Provider who meets the Bank Eligibility Requirements.  The Market Operator shall perform periodic reviews of Credit Cover Providers on its published list to confirm that they continue to meet the Bank Eligibility Requirements. The Market Operator shall update the published list as necessary.  3.Procedure Definition  3.1 Management of Credit Cover Requirements  3.1.1 Overview  Required Credit Cover is calculated as set out in the Code and shall be compared with the Posted Credit Cover each Working Day. The Market Operator shall publish a Required Credit Cover report to each Participant each Working Day. As a result of the Credit Cover assessment, various warnings may be generated, or adjustments to Required Credit Cover made.   * If the Required Credit Cover is greater than the Posted Credit Cover: * The Market Operator shall, where possible, cancel Settlement Reallocation Agreements such that the resulting Required Credit Cover is less than or equal to the Posted Credit Cover. Such cancellation shall be undertaken by the Market Operator prior to the issuance of the Required Credit Cover report on each Working Day. * Where such Settlement Reallocation Agreements cannot be cancelled such that the resulting Required Credit Cover is less than or equal to the Posted Credit Cover, the Market Operator shall issue a Credit Cover Increase Notice to the affected Participant as part of the Required Credit Cover report. The Market Operator shall also notify the Participant of the issuance, by telephone and/or email, by 17:00 on the day that the relevant Required Credit Cover report is issued. The issue of a Credit Cover Increase Notice (as part of the Required Credit Cover report) shall require the Participant to provide a valid response as defined below. * If a valid response to a Credit Cover Increase Notice is not received by 17:00 hours on the day that is two Working Days after issue of the Credit Cover Increase Notice, a Participant shall be in breach of its obligations and a Default Notice and a Suspension Order shall be issued by the Market Operator. A valid response to a Credit Cover Increase Notice shall be one of the following:   + Taking steps to increase its Posted Credit Cover;   + Paying an outstanding Invoice early; or   + Entering into an appropriate Settlement Reallocation Agreement for which the Participant is a Credited Participant. * If the Participant later re-establishes appropriate Credit Cover and puts in place any applicable Account Security Requirements (including, without limitation, the Deed of Charge and Account Security and/or any other Account Security Requirement) and the Suspension Order was issued in respect of insufficient Credit Cover, the Market Operator shall withdraw the Suspension Order. * Otherwise, if the ratio of Required Credit Cover to Posted Credit Cover is greater than the Warning Limit: * The Market Operator shall include a Warning Notice in the Required Credit Cover report issued to the affected Participant. If a Warning Notice is issued, a Participant may elect to post more Credit Cover, but is not obliged to do so.   Appendix 1 - Definitions and Abbreviations  Definitions   |  |  | | --- | --- | | **Account Security Requirements** | As defined in the Code | | **Actual Exposure** | As defined in the Code | | **Adjusted Participant** | As defined in the Code | | **Agreed Procedure** | As defined in the Code | | **Analysis Percentile Parameter** | As defined in the Code | | **Bank Eligibility Requirements** | As defined in the Code | | **Billing Period** | As defined in the Code | | **Billing Period 1** | The first Billing Period to which a Settlement Risk Period applies | | **Billing Period 2** | The second Billing Period to which a Settlement Risk Period applies | | **Billing Period 3** | The third Billing Period to which a Settlement Risk Period applies | | **Capacity Charge** | As defined in the Code | | **Capacity Payment** | As defined in the Code | | **Capacity Period** | As defined in the Code | | **Code** | As defined in the Code | | **Credit Assessment Price** | As defined in the Code | | **Credit Call** | As defined in the Code | | **Credit Cover** | As defined in the Code | | **Credit Cover Adjustment Trigger** | As defined in the Code | | **Credit Cover Increase Notice** | As defined in the Code | | **Credit Cover Provider** | As defined in the Code | | **Credit Risk** | The potential amount of payment default by a Participant on their financial obligations in the SEM | | **Currency** | As defined in the Code | | **Default Notice** | As defined in the Code | | **Deregistration** | As defined in the Code | | **Deed of Charge and Account Security** | As defined in the Code | | **Effective Date** | As defined in the Code | | **Estimated Capacity Price** | As defined in the Code | | **Estimated Energy Price** | As defined in the Code | | **Euro** | As defined in the Code | | **Excess Cash Collateral** | means cash in a Market Participant’s SEM Collateral Reserve Account that is in excess of its Required Credit Cover | | **Ex-Post Indicative Settlement Statement** | As defined in the Code | | **Gate Window Closure** | As defined in the Code | | **Generation Participant** | As defined in the Code | | **Generator** | As defined in the Code | | **Historical Assessment Period** | As defined in the Code | | **Imperfections Price** | As defined in the Code | | **Initial Settlement Statement** | As defined in the Code | | **Interconnector Unit** | As defined in the Code | | **Interconnector Unit Capacity Offered Exposure** | As defined in the Code | | **Interconnector Unit Energy Offered Exposure** | As defined in the Code | | **Interconnector Unit Traded Exposure** | As defined in the Code | | **Interest** | As defined in the Code | | **Invoice** | As defined in the Code | | **Invoice Day** | The day that an Invoice and or Self Billing Invoice is prepared and sent to Participants. | | **Letter of Credit** | As defined in the Code | | **Market Operator** | As defined in the Code | | **Market Operator Charge** | As defined in the Code | | **Meter Data** | As defined in the Code | | **Meter Data Provider** | As defined in the Code | | **Minimum Collateral Level** | The minimum level of Posted Collateral which is €50,000 or £35,000 | | **MSP Software** | As defined in the Code | | **New Participant** | As defined in the Code | | **Participant** | As defined in the Code | | **Party** | As defined in the Code | | **Payment Due Date** | As defined in the Code | | **Posted Credit Cover** | As defined in the Code | | **Pounds Sterling** | As defined in the Code | | **Regulatory Authorities** | As defined in the Code | | **Required Collateral** | Total Collateral posting required by the MO to cover a Participant’s exposures. | | **Required Credit Cover** | As defined in the Code | | **Resettlement** | As defined in the Code | | **Re-Settlement Exposure** | The potential exposure from Resettlement for a Participant | | **Retail Market Operator** | As defined in Agreed Procedure 1 "Participant and Unit Registration and Deregistration" | | **Secured Credit** | See Credit Cover | | **SEM Collateral Reserve Account** | As defined in the Code | | **Settlement** | As defined in the Code | | **Settlement Period** | As defined in the Code | | **Settlement Reallocation** | As defined in the Code | | **Settlement Reallocation Agreement** | As defined in the Code | | **Settlement Reallocation Amount** | As defined in Agreed Procedure 10 “Settlement Reallocation” | | **Settlement Risk Period** | As defined in the Code | | **Shortfall** | As defined in the Code | | **Single Electricity Market** | As defined in the Code | | **Standing Request** | means an instruction from a Market Participant to the Market Operator to drawdown Excess Cash Collateral to pay all qualifying Invoices amounts until such time as the Participant withdraws the instruction. | | **Supplier of Last Resort** | As defined in the Code | | **Supplier Suspension Delay Period** | As defined in the Code | | **Supplier Unit** | As defined in the Code | | **Suspension** | As defined in the Code | | **Suspension Order** | As defined in the Code | | **SWIFT** | The global communication network which facilitates secure international exchange of payment instructions. | | **Termination** | As defined in the Code | | **Termination Order** | As defined in the Code | | **Time-to-Remedy** | Grace period granted to a Participant to remedy a non-payment of financial obligations to the market before Suspension Orders come into affect. | | **Trading Charges** | As defined in the Code | | **Trading Day** | As defined in the Code | | **Trading Payments** | As defined in the Code | | **Trading Period** | As defined in the Code | | **Type 1 Channel** | As defined in the Code | | **Undefined Exposure Period** | As defined in the Code | | **Undefined Potential Exposure** | As defined in the Code | | **Unit** | As defined in the Code | | **Unit Registration** | As defined in the Code | | **Unsecured Credit** | Credit extended to a Participant on the basis of its deemed financial standing, without the requirement to post security (i.e. Collateral). | | **Variable Market Operator Price** | As defined in the Code | | **VAT** | As defined in the Code | | **Warning Limit** | As defined in the Code | | **Warning Notice** | As defined in the Code | | **Working Day** | As defined in the Code |   Agreed Procedure 17  **2. Descriptive Overview**  **Collateral Reserve Accounts**  2.3.4 Collateral Reserve Accounts  These accounts will be set up where a Participant decides to post some or all of its Required Credit Cover in the form of cash collateral. If a Participant elects to provide a cash deposit as part of its Credit Cover, then it shall fully comply with the requirements in relation to the provision of cash collateral as set out in paragraphs 6.19, 6.20 and 6.21 and in paragraphs 6.160- 6.162 of the Code (including, without limitation, the Deed of Charge and Account Security and/or any other Account Security Requirement.  The accounts will be held in the sole name of the MO and will be held on trust as further described in the Code. The SEM Bank, the Participant and the MO will sign a form of Bank Mandate which shall irrevocably instruct the SEM Bank to make payment against the sole instruction of the MO. In the event of a Shortfall, the MO may drawdown funds from these accounts to meet such Shortfall as further described in the Code.  2.7 Collateral Reserve Accounts  Under the Code, if a Participant chooses to hold their Required Credit Cover in the form of cash then they will need to open a Collateral Reserve Account, which will be held in the sole name of the MO, with the SEM Bank. The Collateral Reserve Account will be held on trust in accordance with the Code.  If a Participant chooses to provide a cash deposit as part of its Credit Cover, then it shall fully comply with the requirements in relation to the provision of cash collateral as set out in paragraphs 6.19, 6.20 and 6.21 and in paragraphs 6.160-6.162 of the Code (including, without limitation, the Deed of Charge and Account Security and/or any other Account Security Requirement).  The Participants may also have all or part of their Required Credit Cover in the form of a LOC. If this is the case, then the LOC must be held with a bank whereby the MO can make a Credit Call.  The Collateral Reserve Account may be set up at registration, in which case the Participant shall complete the required Collateral Reserve Account bank account mandate as part of the registration package, or following registration, in which case a mandate shall be completed subsequent to registration.  The form shall be held on the Market Operator Website and shall be downloaded by the Participant, completed and signed before being sent to the Market Operator.  The Market Operator shall check that the Participant has completed the form correctly.  If the Participant has not completed the form correctly the MO shall return it to the Participant who will need to re-submit the form.  If the form is complete, the MO shall countersign it and then send the form to the appropriate SEM bank for that Participant’s Currency Zone.  The SEM bank shall set up the account and inform the Market Operator and the Participant.   1. Appendix   Definitions   | Term | Definition | | --- | --- | | Account Security Requirements | As defined in the Code | | Bank Automated Clearing System, or BACS | As defined in the Code | | Clearing House Automated Payments System, or CHAPS | As defined in the Code | | Clearing Account and Collateral Reserve Account | mean respectively the SEM Capacity Clearing Account and Trading Clearing Accounts, and the SEM Collateral Reserve Accounts as defined in the Code. | | Deed of Charge and Account Security | As defined in the Code | | Electronic Funds Transfer, or EFT | As defined in the Code | | Letter of Credit | means an unconditional and irrevocable standby letter of credit as more particularly described in the Code. | | Market Operator Website | As defined in Agreed Procedure 1 "Participant and Unit Registration and Deregistration" | | Short Name | A unique identifier that identifies a Participant, provided by the Market Operator’s Isolated Market System following the registration of that Participant |   Glossary  Definitions  **Accession Process** means the process set out at paragraphs 2.13 to 2.19 | | | | | |
| **Account Security Requirements** means , in relation to any SEM Collateral Reserve Account:  (i) any requirement in relation to the execution and registration of the Deed of Charge and Account Security pursuant to the terms and conditions of the Code (including, without limitation, as detailed in paragraphs 6.20 and 6.21);  (ii) any requirement in relation to the Notice of Assignment and Acknowledgment pursuant to the terms and conditions of the Code (including, without limitation, as detailed in paragraphs 6.20 and 6.21) and to the provisions of Clause 2.3 of the Deed of Charge and Account Security;  (iii) any obligation and/or requirement for the Participant to provide any other information or to enter into any document and/or to do any such things as the Market Operator may require in order to perfect the security granted under the Deed of Charge and Account Security and to register the same within the prescribed statutory time limit. | | | | | |
| **Active Interconnector Unit Capacity Holding** means for each Interconnector Unit, the Active Interconnector Unit Import Capacity Holding and the Active Interconnector Unit Export Capacity Holding for each Trading Period during the Optimisation Time Horizon, with values in aggregate for import being consistent with the Maximum Import Available Transfer Capacity for import and with values in aggregate for export being consistent with the Maximum Export Available Transfer Capacity for export.  **Debited Participant** means the Participant who has money transferred from it to the Credited Participant as part Settlement Reallocation Agreement. | | | | | |
| **Deed of Charge and Account Security** means the deed of charge and account security to be entered into between a Participant and the Market Operator in relation to SEM Collateral Reserve Account(s) in accordance with the terms and conditions of the Code in the form set out in Appendix 4 of Agreed Procedure 1 "Participant and Unit Registration and Deregistration" | | | | | |
| **Default** means any material breach by a Party of the Code or the Framework Agreement.  **Notice of Effective Date** means a Notice issued from the Market Operator to a Party (or Applicant) specifying the Effective Date for each relevant Unit in accordance with Agreed Procedure 1 “Participant and Unit Registration and Deregistration” | | | | | |
| **Notice of Assignment and Acknowledgment** means (i) the notice of charge and assignment to be provided by a Participant to the SEM Bank in the form set out in Schedule 2 , Part 1 (*Notice of charge and assignment to Account Bank*) of the Deed of Charge and Account Security; and (ii) the acknowledgment of receipt of such notice of assignment to be obtained from the SEM Bank in the form set out in Schedule 2 , Part 2 (*Acknowledgment from Account Bank*) of the Deed of Charge and Account Security;  in both cases pursuant to Clause 2.3 (*Notices*) of the Deed of Charge and Account Security. | | | | | |
| **Offer Data** means Commercial Offer Data and/or Technical Offer Data as appropriate. | | | | | |
| **Modification Proposal Justification**  *(Clearly state the reason for the Modification)* | | | | | |
| Modifications to the Code required to regulate the position regarding security over Collateral Reserve Accounts and to give effect to the decision of the TSC Modifications Committee at Meeting 50:  “Committee consensus was that Option 2 *Stricter enforcement and additional security around existing and future registration of charges*, inclusive of a reference in the Code to registrable security in relation to Participant Collateral Reserve Accounts and involving provision for suspension to apply where a Participant fails to sign a Deed of Charge be pursued.”  The Code contains embedded charge provisions which attempt to create a charge over the Participant's interest in the Collateral Reserve Account. However, it was recognised that the charge provisions embedded in the Code were not effective and SEMO attempted to introduce a ‘stand alone’ charge document to be executed by the Participants. Because the Code was not clear on the obligation to execute the charge, SEMO has encountered difficulty getting the charge documents fully executed and registered.  It was then decided that a more robust stand alone charge would be put in place (see new form of Deed of Charge and Account Security as set out in Appendix 4 to Agreed Procedure 1). The form of Deed of Charge and Account Security is governed by English law but includes enforcement provisions and charging language for all three main jurisdictions in which the Participants in the market operate (i.e. the Republic of Ireland, Northern Ireland and England and Wales). The form of Notice of Assignment and the Acknowledgment (attached as Schedule 2 to the Deed of Charge and Account Security) has been agreed with Danske Bank.    The proposed amendments to the Code seek to achieve the following: (i) to create  a clear obligation on the Participant to grant a fixed charge over the Collateral Reserve Accounts in favour of SEMO by entering into the Deed of Charge and Account on the date on which the cash collateral is paid into the Collateral Reserve Account (ii) to create a clear obligation  on the Participant to provide SEMO with the original executed Deed of Charge and Account Security  within a specified time limit (5 working days from the date on which the cash collateral is paid into the Collateral Reserve Account) in order  to enable SEMO to register the Deed of Charge and Account Security  within the prescribed time limit of 21 days; (iii) to create a clear obligation  on the Participant to provide SEMO with the original executed Notice of Assignment  to enable SEMO to give notice of the assignment of the Collateral Reserve Account to the SEM Bank and procure an acknowledgment of receipt of such Notice from the SEM Bank; and (iv) to introduce  a specific sanction of default and suspension as a consequence of failure by the Participant to comply with the new Account Security Requirements  under the Code (which include the execution and registration requirements  in relation to  the Deed of Charge).    The proposed modifications ensure that SEMO remains in control of the process of registration of the Deed of Charge and Account Security and introduce a clear sanction (default and suspension) for failure of the Participant to comply with the new security requirements in relation to the Collateral Reserve Accounts under the Code. | | | | | |
| **Code Objectives Furthered**  *(State the Code Objectives the Proposal furthers, see Section 1.3 of T&SC for Code Objectives)* | | | | | |
| 1.3.1 to facilitate the efficient discharge by the Market Operator of the obligations imposed upon it by its Market Operator Licences | | | | | |
| **Implication of not implementing the Modification Proposal**  *(State the possible outcomes should the Modification Proposal not be implemented)* | | | | | |
| There would be no effective way of ensuring that the SEMO charge over the Collateral Reserve Accounts is in place. | | | | | |
| **Working Group**  *(State if Working Group considered necessary to develop proposal)* | | | **Impacts**  *(Indicate the impacts on systems, resources, processes and/or procedures)* | | |
| No | | | The proposed modifications set out a procedure for putting in place a charge in favour of SEMO over the Collateral Reserve Accounts under the Trading and Settlement Code. | | |
| ***Please return this form to Secretariat by email to*** [***modifications@sem-o.com***](mailto:modifications@sem-o.com) | | | | | |

**Notes on completing Modification Proposal Form:**

1. **If a person submits a Modification Proposal on behalf of another person, that person who proposes the material of the change should be identified on the Modification Proposal Form as the Modification Proposal Originator.**
2. **Any person raising a Modification Proposal shall ensure that their proposal is clear and substantiated with the appropriate detail including the way in which it furthers the Code Objectives to enable it to be fully considered by the Modifications Committee.**
3. **Each Modification Proposal will include a draft text of the proposed Modification to the Code unless, if raising a Provisional Modification Proposal whereby legal drafting text is not imperative.**
4. **For the purposes of this Modification Proposal Form, the following terms shall have the following meanings:**

**Agreed Procedure(s): means the detailed procedures to be followed by Parties in performing their obligations and functions under the Code as listed in Appendix D “List of Agreed Procedures”.**

**T&SC / Code: means the Trading and Settlement Code for the Single Electricity Market**

**Modification Proposal: means the proposal to modify the Code as set out in the attached form**

**Derivative Work: means any text or work which incorporates or contains all or part of the Modification Proposal or any adaptation, abridgement, expansion or other modification of the Modification Proposal**

**The terms “Market Operator”, “Modifications Committee” and “Regulatory Authorities” shall have the meanings assigned to those terms in the Code.**

**In consideration for the right to submit, and have the Modification Proposal assessed in accordance with the terms of Section 2 of the Code (and Agreed Procedure 12), which I have read and understand, I agree as follows:**

**1. I hereby grant a worldwide, perpetual, royalty-free, non-exclusive licence:**

* 1. **to the Market Operator and the Regulatory Authorities to publish and/or distribute the Modification Proposal for free and unrestricted access;**
  2. **to the Regulatory Authorities, the Modifications Committee and each member of the Modifications Committee to amend, adapt, combine, abridge, expand or otherwise modify the Modification Proposal at their sole discretion for the purpose of developing the Modification Proposal in accordance with the Code;**
  3. **to the Market Operator and the Regulatory Authorities to incorporate the Modification Proposal into the Code;**

**1.4 to all Parties to the Code and the Regulatory Authorities to use, reproduce and distribute the Modification Proposal, whether as part of the Code or otherwise, for any purpose arising out of or in connection with the Code.**

**2. The licences set out in clause 1 shall equally apply to any Derivative Works.**

**3. I hereby waive in favour of the Parties to the Code and the Regulatory Authorities any and all moral rights I may have arising out of or in connection with the Modification Proposal or any Derivative Works.**

**4. I hereby warrant that, except where expressly indicated otherwise, I am the owner of the copyright and any other intellectual property and proprietary rights in the Modification Proposal and, where not the owner, I have the requisite permissions to grant the rights set out in this form.**

**5. I hereby acknowledge that the Modification Proposal may be rejected by the Modifications Committee and/or the Regulatory Authorities and that there is no guarantee that my Modification Proposal will be incorporated into the Code.**