**Additional Materials:-**

For TSC references please see selected Extracts from TSC v14 below

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**SLIDE 4.- Brief History of Credit Cover**

* Security Cover and Settlement (SEM Discussion Paper 3 August 2005 AIP/SEM/73/05):-

<http://www.allislandproject.org/en/trading-settlement-code-consultation.aspx?article=2921a5c5-72c8-4755-b2e8-f9a18f58c70b>

* TSC Helicopter Guide V2 (7 October 2013, SEM-13-067):-

<http://www.sem-o.com/Publications/General/SEM-13-067%20Amended%20TSC%20Helicopter%20Guide%20Version%202.pdf>

**SLIDE 5- Letters of Credit and Cash**

* For PT’s right to mix LOC and Cash see para 6.35.3
* For priority see para 6.32 and para 6.30
* For unpaid Market Operator Charge see AP 15 3.3:-

“Unpaid Market Operator Charge

The MO will bear the cost of any unpaid Market Operator Charges and these will be included in the calculation of the Market Operator Charge for subsequent years. For the avoidance of doubt, unpaid Market Operator Charges are not included within Unsecured Bad Debt. The unpaid Market Operator Charges are a debt of the relevant Participant that ranks pari passu with other Shortfall and Unsecured Bad Debt. Variable Market Operator charges will be recovered by the Market Operator from available Credit Cover or, if none is available, as part of the Market Operator Charge in subsequent year”

* For ranking of any unpaid Market Operator Charge not paid for through the SEM Collateral Reserve Account (i.e. the pot is empty), see para 6.156

**SLIDE 6- Key Differences**

* For Delay under LOC see Appendix A- Standard Letter of Credit Additional Condition 4:-

4. Upon receipt of a signed Beneficiary Statement in compliance with the above conditions the Advising Bank is required promptly to notify us by SWIFT of receipt of such Beneficiary Statement and inform us of the relevant details of such Beneficiary Statement. Provided such notification is received by us no later than 14:00 hrs on any weekday on which banks are open for business in Dublin and Belfast, we shall make payment under this Standby Letter of Credit for Same Day Value on that day or if received after 14.00hrs on the next such weekday in accordance with such notification and shall confirm payment by notifying the Advising Bank by SWIFT.

* For ability for MO to use SEM Collateral Reserve with automatic effect see paras 6.32.2 and 6.32.3 TSC.
* For Bank Eligibility Requirements see paras 6.163 to 6.170
* For De Minimus- see para s 6.51 and 6.53- De Minimss Level set by AP 15 at 3.3 at €1,000.

**SLIDE 8 – The Glue**

* For locations of SEM Trading Accounts see para 6.16 TSC
* For locations of SEM Capacity Accounts see para 6.17 TSC
* For locations of SEM Collateral Reserve Accounts see para 6.19 of TSC
* For locations of Market Operator Accounts see para 6.154 of TSC.
* For beneficiaries of trust for SEM Trading Accounts see para 6.30
* For beneficiaries of trust for SEM Capacity Accounts, see para 6.30
* For beneficiaries of trust for SEM Collateral Reserve Accounts, see para 6.32
* For purpose of SEM Trading Accounts, see para 6.16
* For purpose of SEM Capacity Accounts, see para 6.17
* For purpose of SEM Collateral Reserve Accounts, see para 6.19
* For purpose of Market Operator Charge Account, see para 6.145
* For provisions in respect of co mingling with MOs funds and accounts, see para 6.22
* For provisions in respect of interest, see paras 6.18, 6.32.1 and 6.35

**SLIDE 9- SEM CRA TRUST.**

* For establishment of trust Ringfence falling into place from the moment cash is placed in SEM Collateral Reserve Account, see para 6.20.3
* For MO’s explicit declaration of trust, see para 6.32
* For Trust Rules, see paragraphs 6.32 to 6.38, and 6.30
* For application to shortfall see para 6.32.2
* For application to shortfall/ Un Secured Bad Debt in accordance with respective of SEM Creditors shares see, para 6.30
* For application to Variable Market Operator Charge, see para 6.32.3
* For interest and excess amount in the SEM CRA going to Participant see para 6.35
* For money below the excess remaining locked in the account, see para 6.35.2
* For conditions of release of final amounts in the SEM Collateral Reserve Account, see para 6.33

**Slide 11- Insolvency under Trust**

* For property which office holder on insolvency can realise and the companies interest in property see Art 2(2) of Insolvency Order 1989:-

Includes “money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidentally to, property

* Only property owned by the company beneficially may be released by the office holder, property held by the company on trust for another, whether that trust is express, implied, resulting or constructive, is not available to be released in the insolvency process- see Re Kayford [1975] 1 All ER 604. Where the interest of a company is equitable, the equitable interest will be part of its available assets.

**Slide 12- Belt and Braces**

* For alteration of priority of payments see, Clause 7.4 of proposed Deed of Charge and Account Security
* For new powers and rights see,:-
  + Power to specify when an amount is due, Clause 2.1. Payment of Proposed Deed of Charge and Account Security;
  + Power to create new accounts, Clause 3.7 of Proposed Deed of Charge and Account Security
  + Power of Sale, see Clauses 7.1 and 7.2 of Proposed Deed of Charge and Account Security;
  + Power to treat the money in the account as if it where its own, Clause 7.3.1 (c) of Proposed Deed of Charge and Account Security
  + Power to appoint a Receiver ,see Clause 7.3.2 of the Proposed Deed of Charge and Account Security
  + Monies on Suspense Account Clause 7.5 of the proposed Deed of Charge and Account Security;
  + Power to delegate, see Clause 9.1 of the proposed Deed of Charge and Account Security;
  + Power place money coming from the enforcement of security with some new bank – not necessarily SEM Bank, Clause 10.1 of the proposed Deed of Charge and Account Security;
  + Currency conversion and indemnity, Clause 10.2 of the proposed Deed of Charge and Account Security
  + Power of Assignment, Clause 10.3 of the Proposed Deed of Charge and Account Security;
  + Power of Certification to determine conclusively what is due, Clause 10.4 Certifications Proposed Deed of Charge and Account Security;
  + Indemnities:-
    - See Clause 10.2.2 of Proposed Deed of Charge and Account Security for currency indemnity;
    - See Clause 10.10 of Proposed Deed of Charge and Account Security for expenses, negotiation, enforcement and preservation of rights of MO
* For Chairs comments, see Committee Modifications Committee Meeting Minutes (Meeting 47- 12 Feb 2013)

“Chair expressed the view that Section 6.21 was put in for a purpose therefore it is imperative to ensure that the issue it was designed to address will be adequately addressed upon removal of the clause. Discussion around possible risk to the market ensued. MO Member advised that EirGrid Legal did not believe there was any risk to the collateralisation of the market; otherwise the proposal would not have been raised. Nevertheless, they recognised that the Committee may require an additional legal view.”

* For joint account in escrow proposal, see above Security Cover and Settlement (SEM Discussion Paper 3 August 2005 AIP/SEM/73/05)

**SLIDE 13.- SEM Mods Committee**

* For duties of SEM Modifications Committee see, paras 2.148 and 2.149
* For Code Objectives, see para 1.3

**SLIDE 14- Has Mods Committee got an answer?**

* For terms of reference, see “Terms of Reference:- Registration of Charges Modification Legal Review” (undated)

“2 Objectives

The objectives of the legal review of the Registration of Charges (Mod\_02\_12) Modification Proposal are to:

a. Address the following questions with regard to the proposed change:

• How secure are the funds to the market?

• If Section 6.21 is removed, are the remaining provisions in Section 6 adequate?

• If Section 6.21 is removed, is section 6.20.3 redundant?

• If not, what should be included?

b. Analyse the risks if any of non-registration, in particular, but without limitation in the event of a collateralised participant going into liquidation, examinership, receivership, etc.

c. To provide a response detailing the outcome of the legal review and responses to issues raised.

The aim of the objectives above are to enable a vote/recommendation on the Registration of Charges Modification Proposal at a Meeting 48 of the Modifications Committee on 11 April 2013.”

3 Scope

The legal review of the Registration of Charges Modification Proposal will:

a. Review in the context of Ireland and England, Wales and Northern Ireland and provide an opinion to the Modifications Committee on the legal effect and robustness of the removal of section 6.21 of the T&SC (including but not limited to reference to section 99 of the Companies Acts 1963 to 2012 and to Part 25 of the Companies Act 2006 (UK)).

b. Address the questions listed below with regard to the Modification Proposal Mod\_02\_13 (Appendix 1).

i. How secure are the funds to the market?

ii. If Section 6.21 is removed, are the remaining provisions in Section 6 adequate?

iii. If Section 6.21 is removed, is section 6.20.3 redundant?

iv. If not, what should be included?

c. Such opinion should detail any issues identified and provide a suggested resolution. The opinion should be provided in the form of a report to the Modifications Committee Secretariat.”

* For Legal Review, see Modifications Committee, Legal Review of Registration of Charges 29 May 2013
* For consideration of Trusts see:-
  + Page 4:-

2. Current Code cash collateral structure

Currently, the Code provides that cash collateral provided by a Participant is:

a) credited to a SEM Collateral Reserve Account established with a SEM Bank in the sole name of the MO, over which the MO has sole control (paragraph 6.20) but to which it does not have absolute title. Some SEM Collateral Reserve Accounts were located in Northern Ireland but these Northern Ireland accounts were moved to London on 26 April 2013;

b) held on trust by the MO for various purposes (paragraph 6.32) and payable by the MO to the Participant in certain circumstances (paragraphs 6.34 and 6.35); and

c) charged by the Participant to the MO as agent for itself and others (SEM creditors) to secure the Participant’s payment obligations under the Code (the “Code Charge”) (paragraph 6.20(3)).

* + Page 5

3.2 EIRGRID GROUP - ADDITIONAL CLARIFICATIONS SOUGHT

If the Market Operator registers a charge as set out in 6.21, is the charge enforceable given the current trust and charging arrangements in the Code? If not, what changes would External Counsel recommend to ensure that the charge is enforceable (if SEMO wanted to preserve the essence of the current arrangements)?

* + Page 6

3.4 EIRGRID GROUP – ADDITIONAL QUESTION

Is it possible to construct another 'model' for holding the cash collateral that stays within the current trust arrangements (probably with some refinement), that does not involve the necessity to create and register security but does not go so far as the 'title transfer' option that External Counsel are advocating? This is an important consideration for SEMO and the Modifications Committee for the purposes of pursing the objectives of the current Modification proposal.

* + Page 7
  + Whilst reference is made to issues around the trust arrangements and the lack of typical security provisions in the code, it remains somewhat unclear from the memorandum why exactly the existing charge is not adequate.
  + Page 7

With regard to section 3.2 of the memorandum, it is External Counsel’s understanding that a Participant owes its obligations to SEMO rather than directly to the SEM Creditor under the Code. The memorandum states "It is not clear to SEMO why, if the Participant does not owe obligations to any SEM Creditor under the Code, this trust would be established in favour of the SEM Creditors." It is worth pointing out, as External Counsel is likely to be aware, that SEMO act as the intermediary by effectively transferring the money owed (by relevant Participants) to the SEM Creditor and this may be why the trust arrangements are structured this way. It is also possibly relevant that, under the Code, in the event that SEMO does not succeed in recovering the full amount owed by a Participant, that the amount paid out to relevant SEM Creditors is correspondingly reduced

* + Page 7

External Counsel have been informed by SEMO (but have not undertaken any due diligence to ascertain independently) that the Participant's counterparty to all transactions entered into, and obligations and rights incurred, by that Participant pursuant to the Code and related documentation is the Market Operator, acting as principal and not as agent (for the SEM Creditors or other parties) or in any other capacity. If this is the case, there is a conflict between the charge created pursuant to 6.20.3 of the Code (the "Code Charge"), which does not reflect this position, and the Deed of Charge, which does reflect this position. As the Deed of Charge is expressed to be entered into pursuant to 6.21 of the Code, to facilitate registrations of the Code Charge, there is a conflict on the face of the Code and the Deed of Charge regarding the identity of the secured parties. This conflict could have an adverse effect on the enforceability of either such charge

* + Page 8

Provision should be made for the trusts and the security to be released, subject to the following.  The issue of the release of trusts needs to be considered in the context of the appropriateness of the trust structure more generally. However, on the assumption that the Market Operator and Participants will wish to avoid

* + Page 9

even a temporary (intra-day) duplication of the collateral requirement, External Counsel would, in connection with the change-over from security interest to title transfer, need some transitional provisions to address collateral provided by a Participant that is, at the "effective time" of the change over from security interest to title transfer, subject to the original trusts/security interest.  That "effective time" would need to be identified and provision made for the outright transfer to the MO of all right, title and interest of the Participant in any security-interest collateral provided by it (effectively, the Participant's equity of redemption), and the release of all relevant trusts, with effect from that effective time.  Upon that transfer/release taking effect, the Participant would cease to hold any right, title and interest in the relevant collateral, so that the security interest would cease to attach to it.  External Counsel would expect that, upon and subject to that transfer/release taking effect, the security interest(s) created by the Participant would be released (note that any security interest that has been created by a deed should be released by a deed); and

**SLIDE 15 – Compliance Issues with TSC**

* For location of SEM Collateral Reserve Accounts, see para 6.19 and definitions of “Currency Zone” and “Jurisdiction”.
* For compliance issues created by charge see discussion of Flawed Charge- cuts across TSC.

**SLIDE 18 Flawed Charge- cuts across tsc**

* For order of priority- payment cascade - under SEM Collateral Reserve Account and Letter of Credit see, para 6.32 TSC
* For order of priority- payment cascade- under Proposed Deed of Charge and Account Security see Clause 7.4 (Application of proceeds)
* For MO’s power of sale, see Clause 7 of the Proposed Deed of Charge and Account Security

**SLIDE 19 Flawed Charge- cuts across tsc**

* For indemnity see Clause 10.10 (Expenses) of the Proposed Deed of Charge and Account Security
* For Indemnities given under the TSC see:-
  + Para 2.293, in respect of the Dispute Resolution Board;
  + Para 2.352, in respect of Data Protection Obligations;
  + Para 6.261 & Para 6.262, in respect of VAT
* For General provisions in respect of liability under the TSC see paras 2.317 to 2.37
* For Governing Law and Jurisdiction under the TSC see para 2.1 and 2.2 of the TSC.
* For Governing Law and Jurisdiction under the Proposed Deed of Charge and Account Security see, Clause 12.1
* For Dispute Resolution see para 2.2 and para 2.290

**SLIDE 20 Flawed Charge- cuts across tsc**

* For MO’s power of Self Certification- see Clause 10.4 of the Proposed Deed of Charge and Account Security
* For Dispute resolution see para 2.2 and Dispute Resolution Process at paras 2.276 to 2.313 (not extracted)
* For entire agreement clause see, Clause 10.5 of the Proposed Deed of Charge and Account Security.
* For the Terms of the SEM Collateral Reserve Account see paras 6.20, 6.22 to 6.24, and para 6.32 to 6,38
* For power of currency conversion, see clause 10.2 of the Proposed Deed of Charge and Account Security
* For indemnity to MO in respect of all costs of negotiation, enforcement, provision to add to security- see Clause 10.10 of the Proposed Deed of Charge and Account Security
* For indemnity to MO in respect of currency conversion see clause 10.2.2 of the Proposed Deed of Charge and Account Security
* For indemnity to Bank see paragraphs 3 and 7 of the “Notice of Charge and Assignment to Account Banks” contained in the Proposed Deed of Charge and Account Security.

**SLIDE 21 Flawed Charge- cuts across tsc**

* For MO’s ability to call a payment on demand if there is no due date, see Clause 2.1 (Payment) of the Proposed Deed of Charge and Account Security.
* For no time frame in the TSC, see para 1.7.18 of TSC.
* For MO’s threshold of liability under SEM Collateral Reserve Assets trust see para 6.38
* For MO’s threshold of liability see Clause 9.2 of the Proposed Deed of Charge and Account Security.

**SLIDE 22. Clause 2.2**

* For Charging clause, see clause 2.2 of the Proposed Deed of Charge and Account Security.

**SLIDE 23. Legal Jurisdiction**

* For Governing Law and Jurisdiction, see clause 12.1 under the Proposed Deed of Charge and Account Security
* For the requirement to appoint and English Service Agent see Clause 12.2 of the Proposed Deed of Charge and Account Security.

**Selected Extracts from TSC v 14**

1.7. 18. Where no timeframe for performance is specified in respect of any obligation to be performed by a Party, then such obligation shall be performed within a reasonable time;

EXTRACT ENDS

Code Objectives

1.3 The aim of this Code is to facilitate the achievement of the following objectives:

1. to facilitate the efficient discharge by the Market Operator of the obligations imposed upon it by its Market Operator Licences;

2. to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner;

3. to facilitate the participation of electricity undertakings engaged in the generation, supply or sale of electricity in the trading arrangements under the Single Electricity Market;

4. to promote competition in the single electricity wholesale market on the island of Ireland;

5. to provide transparency in the operation of the Single Electricity Market;

6. to ensure no undue discrimination between persons who are parties to the Code; and

7. to promote the short-term and long-term interests of consumers of electricity on the island of Ireland with respect to price, quality, reliability, and security of supply of electricity.

1.4 Paragraphs 1.1 to 1.3 of this Section 1 are for information only and, without prejudice to the rights, duties and obligations set out in the Licences and legislation referred to therein, are not intended of themselves and should not be construed so as to create legally binding obligations as between or impose rights and duties on the Parties, provided that the Modifications Committee shall be required to have regard to the Code Objectives in accordance with paragraph 2.149 and any Dispute Resolution Board shall be required to have regard to the Code Objectives in accordance with paragraph 2.286.

EXTRACT ENDS

**GOVERNING LAW**

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

**JURISDICTION**

2.2 Subject to the provisions relating to the Dispute Resolution Process, the Parties hereby submit to the exclusive jurisdiction of the Courts of Ireland and the Courts of Northern Ireland for all disputes arising under, out of, or in relation to the Code**.**

EXTRACT ENDS

2.148 The objective of the Modifications Committee is to progress Modification Proposals with a view to better facilitating the achievement by the Code of the Code Objectives.

Functions of the Modifications Committee

2.149 The functions of the Modifications Committee are to facilitate the Modifications Process by:

1. co-ordinating the resources of Parties to facilitate the development and processing of a Modification Proposal;

2. assessing Modification Proposals and the impact of any Modification Proposals for the Pool having regard to the Code Objectives;

3. further developing Modification Proposals which are not rejected as being spurious;

4. working up the detail of Modification Proposals;

5. consulting on Modification Proposals as required;

6. compiling reports and making recommendations on Modification Proposals to the Regulatory Authorities; and

7. making any appropriate changes to Agreed Procedures.

EXTRACT ENDS

2.290 Referral of a Dispute to a DRB in accordance with the Dispute Resolution Process and compliance with the provisions set out in paragraphs 2.276 to 2.315 is a pre-condition to the entitlement to refer a Dispute to Court.

EXTRACT ENDS

**LIMITATION OF LIABILITY**

2.317 No Party shall be liable to any other Party for loss arising from any breach of the Code or the Framework Agreement other than for loss resulting directly from such breach (but without prejudice to any other provision of the Code which excludes or limits liability in respect of any breach for loss directly resulting from such breach) and which was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:

1. physical damage to the property of any other Party or its officers, employees, or agents; and/or

2. the liability (in law) of any other such Party to any other person for loss in respect of physical damage to the property of such other person.

2.318 No Party shall in any circumstances be liable to any other Party in respect of any breach of the Code or the Framework Agreement for:

1. loss of profits, loss of income, loss of contract, loss of anticipated savings, loss of investment return, loss of goodwill, loss of use, or loss of reputation; or

2. any indirect or consequential loss or any incidental or special damages (including punitive damages); or

3. loss resulting from the liability of any other Party to any other person howsoever and whensoever arising save as provided in paragraphs 2.317.2 and 2.320.

2.319 The limitations of liability set out in paragraph 2.317 are without prejudice to any provision of the Code or the Framework Agreement which provides for an indemnity and shall not relieve any Party of an obligation to pay any amounts due pursuant to the Code.

2.320 Nothing in the Code or the Framework Agreement shall limit or exclude the liability of any Party for death or personal injury resulting from the negligence of such Party or for fraudulent misrepresentation or any other liability which cannot be limited or excluded under Applicable Laws.

2.321 All terms, conditions, warranties and representations implied pursuant to Sections 13 to 15 of the Sale of Goods Act, 1893 and Section 39 of the Sale of Goods and Supply of Services Act, 1980 (Ireland) and Sections 13 to 15 of the Supply of Goods Act, 1979 (United Kingdom) and Sections 2 to 5 and 7 to 10 of the Supply of Goods and Services Act, 1982 (United Kingdom) are excluded to the fullest extent permitted by law.

2.322 The rights and remedies of the Parties pursuant to the Code and the Framework Agreement as set out therein are, save as expressly provided otherwise, cumulative and are in exclusion of all other substantive (but not procedural) rights or remedies express or implied and whether provided by common law, statute, tort, in equity or otherwise by law. Without prejudice to the foregoing and paragraph 2.333 (Waiver), each Party to the fullest extent permitted by law:

1. waives any rights or remedies; and

2. releases each other Party from any duties, liabilities, responsibilities or obligations,

arising or provided by common law, statute, tort, in equity or otherwise by law in respect of the Code.

2.323 Without prejudice to the preceding paragraph 2.322, where any provision of the Code or decision of the DRB provides for any amount to be payable by a Party upon or in respect of that Party’s breach of the Code or the Framework Agreement, each Party agrees and acknowledges that the remedy conferred by such provision or decision is exclusive of and is in substitution for any remedy in damages in respect of such Default or the event or circumstance giving rise thereto.

2.324 Nothing in the Code or the Framework Agreement relating to limitation on liability shall prevent or restrict any Party from enforcing any obligation owed to it under or pursuant to the Code in accordance with the provisions of the Code subject to any applicable limitation of liability.

2.325 Save as expressly provided otherwise in the Code or the Framework Agreement, nothing in paragraphs 2.317 to 2.323 shall apply to or restrict the exercise or enforcement of any rights or remedies which one Party may have against another Party or person pursuant to any other agreement besides the Code and the Framework Agreement.

2.326 For the purposes of paragraphs 2.317, 2.318 and 2.320, references to a “Party” includes any of its Participants, officers, employees or agents, and each Party shall hold the benefit of those paragraphs for itself and as trustee and agent for its officers, employees and agents.

2.327 Each of paragraphs 2.317 to 2.326 shall be construed as a separate and severable contract term, and shall remain in full force and effect and shall continue to bind the Parties even if a Party ceases to be a Party to the Code or the Code is terminated.

EXTRACT ENDS

**Banking Arrangements**

6.14 The Market Operator shall, through its contract with the SEM Bank, administer the banking services required pursuant to the Code for Participants. The Market Operator and each Participant shall, in each case in relation to those banking arrangements that it requires in order to comply with the Code, procure, use, make available and administer such banking arrangements in accordance with Agreed Procedure 17 “Banking and Participant Payments”.

6.15 The SEM Bank shall be a bank which must:

1. hold a Banking Licence in Ireland under Section 9 of the Central Bank Act 1971 (Ireland) or be authorised by the Financial Services Authority to take deposits, under the Banking Act 1987 (Northern Ireland) or be otherwise authorised to provide banking services in Ireland or the United Kingdom; and

either:

2. be a Clearing Bank in either Ireland or the United Kingdom with:

a. a long term debt rating of not less than A- (Standard & Poors) or A3 (Moody’s Investors Service Inc.); or

b. a long term debt rating of not less than BB- (Standard & Poors) or Ba3 (Moody’s Investors Service Inc.) and have a Balance Sheet Net Asset Valueof not less than €1,000 million;

or:

3. be an international bank that is approved by the relevant regulatory authority to provide banking services in Ireland or the United Kingdm and complies with paragraphs 6.15.2.a or 6.25.b.

and:

4. have branches in Ireland and the United Kingdom.

6.16 The Market Operator shall establish and operate in accordance with the Code:

1. a euro SEM Trading Clearing Account at a branch of the SEM Bank in Ireland; and

2. a pounds sterling SEM Trading Clearing Account at a branch of the SEM Bank in the United Kingdom,

to and from which all Trading Payments calculated in accordance with the Code are to be made.

Each SEM Trading Clearing Account shall be an interest bearing account.

6.17 The Market Operator shall establish and operate in accordance with the Code:

1. a euro SEM Capacity Clearing Account at a branch of the SEM Bank in Ireland; and

2. a pounds sterling SEM Capacity Clearing Account at a branch of the SEM Bank in the United Kingdom,

to and from which all Capacity Payments calculated in accordance with the Code are to be made.

Each SEM Capacity Clearing Account shall be an interest bearing account.

6.18 Any Interest received on the SEM Trading Clearing Accounts and the SEM Capacity Clearing Accounts shall accrue to the Market Operator and shall not therefore be part of those accounts for the purposes the trusts established under this section 6. The Market Operator shall take such Interest into account in proposing to the Regulatory Authorities any Market Operator Charge or component thereof.

**Provision of Cash Collateral**

6.19 A 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 chooses to provide a cash deposit as part of its Required Credit Cover, then it must provide to the Market Operator such documents and in such form as the Market Operator may require from time to time in order to establish and maintain the SEM Collateral Reserve Account.

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 and trustee for it and the SEM Creditors to secure the relevant Participant’s payment obligations under the Code, subject always to the provisions of paragraphs 6.32 to 6.36 inclusive.

6.21 Where, 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 paragraph 6.19 and, where appropriate, having regard to the legal form, jurisdiction of incorporation or registration of the relevant Party and the location of the proposed SEM Collateral Reserve Account, to ensure the enforceability of the charge created under paragraph 6.20.3, the Participant (or Applicant, as applicable) shall complete and sign the particulars of charge in respect of such SEM Collateral Reserve Account and SEM Collateral Reserve Assets for registration of the charge with the relevant companies registry or other appropriate body in the appropriate jurisdiction or jurisdictions and the Participant shall do all such things and execute all such documents as necessary to facilitate such registrations (if any) 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. Without prejudice to the foregoing, the Market Operator shall, unless the relevant Participant otherwise does so, register the prescribed particulars with regard to the establishment of each SEM Collateral Reserve Account pursuant to Article 402 Companies (Northern Ireland) Order 1986 and/or section 395 of the Companies Act 1985 (United Kingdom) and/or section 99 of the Companies Act 1963 (Ireland), as appropriate, and/or at such other registry or registries as may be appropriate.

6.22 The SEM Trading Clearing Accounts and the SEM Capacity Clearing Accounts shall be established and maintained in the name of the Market Operator. The cash in and rights relating to each SEM Trading Clearing Accounts, the SEM Capacity Clearing Accounts and each SEM Collateral Reserve Account opened and any balance in any of the accounts shall be held on trust by the Market Operator without obligation to invest in accordance with the provisions of this section 6. Subject to the provisions of this Section 6, the Market Operator shall not commingle any funds standing to the credit of the SEM Trading Clearing Accounts, the SEM Capacity Clearing Accounts or any SEM Collateral Reserve Account with its own personal or any other funds. This is without prejudice to the Market Operator’s rights to transfer funds between the euro and pounds sterling SEM Trading Clearing Accounts and SEM Capacity Clearing Accounts respectively for the purposes of Settlement and Resettlement. The Market Operator shall be entitled to transfer funds between the SEM Trading Clearing Accounts and the SEM Capacity Clearing Accounts as necessary in order to correct any manifest errors in payments by Participants.

6.23 Notwithstanding paragraph 6.22, the Market Operator shall hold the trusts as provided for in this Section 6 subject to its entitlement to make payments into and out of the SEM Trading Clearing Accounts and the SEM Capacity Clearing Accounts for the purpose of settling any Balancing Costs.

6.24 Except as expressly provided for in this Code, no Party or Participant shall enter into any arrangements which assign or charge or purport to assign or charge any interest any Party or Participant may have in any SEM Trading Clearing Account, SEM Capacity Clearing Account or SEM Collateral Reserve Account.

6.25 The Market Operator shall procure that an Electronic Funds Transfer facility with the SEM Bank is provided. Payments shall only be made by the Market Operator and Participants in the Pool through an Electronic Funds Transfer facility.

6.26 The EFT facilities procured by the Market Operator shall be consistent with standard banking practice and the methods and procedures described in Agreed Procedure 17 “Banking and Participant Payments”.

6.27 In procuring the establishment of the EFT facility, the Market Operator shall use its reasonable endeavours to ensure that the use of the EFT facility does not impose unreasonable restrictions on the Participants’ normal banking arrangements.

6.28 Each Party (or Applicant, as applicable) shall give to the Market Operator in accordance with the registration requirements set out in Section 2 details of the bank account or bank accounts to which the Market Operator is instructed to make payments pursuant to the Code to such Party’s Participant(s), and shall provide to the Market Operator such further information in relation to such bank account or bank accounts as the Market Operator may reasonably request. Each Party shall establish and maintain such a bank account at a bank in each Currency Zone in which its Participant has a registered Unit as applicable. Where a Party or Participant changes the bank account or bank accounts to which payments are made pursuant to the Code, it shall inform the Market Operator and provide details of the new bank account or bank accounts. The Market Operator shall not be responsible for any loss to any Party or Participant where the Market Operator has not been informed by the relevant Party or Participant of any change in bank account details.

6.29 The Market Operator shall maintain detailed ledger accounts of all funds held in the SEM Trading Clearing Accounts, SEM Capacity Clearing Accounts, SEM Collateral Reserve Accounts and all other bank accounts held by it at the SEM Bank showing all monies paid in and paid out in respect of each Participant and, where requested by a Participant or its Party, the Market Operator shall provide full details of all such payments and funds in relation to such Participant only and shall keep all information in respect of each Participant confidential. Notwithstanding the foregoing, the Market Operator shall be entitled to disclose any information or data in relation to any SEM Trading Clearing Account, SEM Capacity Clearing Account or SEM Collateral Reserve Account held at the SEM Bank to the Market Auditor or relevant Revenue Authority where required or where otherwise required by law.

**Establishment of Trusts**

6.30 The Market Operator shall hold all funds in the SEM Trading Clearing Accounts and the SEM Capacity Clearing Accounts and such rights (including, without limitation, all rights of action) as shall from time to time be vested in it with regard to payments due and owing by Participants or with regard to the provision of Credit Cover by each Participant including:

1. all monies from time to time standing to the credit of each SEM Trading Clearing Account and each SEM Capacity Clearing Account relating to any Trading Period;

2. all rights of the Market Operator to call for and enforce payment of amounts owing under the Code (including, for the avoidance of doubt, any Shortfall or Unsecured Bad Debt) or to make a Credit Call;

3. the Letters of Credit and all rights to, and monies representing, any proceeds therefrom up to the amount of any applicable Shortfall; and

4. any interest receivable in respect of any amounts due pursuant to the Code relating to any Trading Period,

on trust for SEM Creditors in accordance with their individual respective proportionate entitlements as they arise in accordance with the Code (or to the extent that any Credit Cover shall relate to any Variable Market Operator Charge, on trust for the Market Operator in accordance with the Code). Upon termination of the said trusts, any residual balance after satisfaction of the entitlement of all SEM Creditors shall be held for all Participants in accordance with their individual respective proportionate entitlements as they arise in accordance with the Code.

6.31 The respective rights of the SEM Creditors to the assets held by the Market Operator on trust in the SEM Trading Clearing Accounts and the SEM Capacity Clearing Accounts as set out in paragraphs 6.16 and 6.17 respectively and as provided for in paragraph 6.30 shall be determined in accordance with the Code and in accordance with the following principles:

1. the extent of each SEM Creditor’s individual rights shall be deemed to consist of the aggregate of the claims (to the extent not paid or otherwise settled) of such SEM Creditor in respect of each Trading Period; and

2. the assets referred to in paragraph 6.30 above shall be deemed to consist of a series of funds, each fund representing the rights or monies owed, paid, held or otherwise attributable to each Trading Period in relation to Trading Payments and Capacity Payments.

The Market Operator shall not be obliged to segregate moneys into separate funds.

6.32 The Market Operator shall hold the SEM Collateral Reserve Assets in respect of each Participant that establishes and maintains a SEM Collateral Reserve Account in accordance with the Code on trust as follows:

1. at any time when no amounts owed by any such Participant are overdue, on trust to repay (subject always to and in accordance with paragraphs 6.33 to 6.35 inclusive, 6.50 and 6.51 to 6.68 as appropriate) to that Participant the monies, together with any interest accrued on such monies, held in the relevant SEM Collateral Reserve Account as part of that Participant’s Posted Credit Cover; and

2. with automatic effect as soon as any amount owed by a Participant becomes overdue and becomes a Shortfall (excluding any Market Operator Charge), such amount of the monies deposited in the relevant SEM Collateral Reserve Account by such Participant as is equal to the amount of the Shortfall and any applicable Interest (or Default Interest as applicable) in respect of the relevant Participant on trust for the SEM Creditors on the same basis as set out in paragraph 6.30 above and the balance (if any) shall be held in trust in respect of the Participant as provided for in paragraph 6.32.1 subject to paragraph 6.32.3 where applicable; and

3. with automatic effect as soon as any Variable Market Operator Charge owed by a Participant becomes overdue and where there is no Shortfall or Unsecured Bad Debt in respect of that Participant at that time or, if there is such Shortfall or Unsecured Bad Debt only after the SEM Collateral Reserve Assets have been applied to meet the Shortfall or Unsecured Bad Debt in full, such amount of the monies then held in the relevant SEM Collateral Reserve Account as is available up to the amount of the Variable Market Operator Charge outstanding and any applicable Interest on trust for the Market Operator in accordance with the Code and the balance (if any) shall be held on trust as provided for in paragraph 6.32.1

6.33 Each Participant which has funds remitted by it for the credit of a relevant SEM Collateral Reserve Account agrees that none of the remittances shall be repayable (or capable of being repaid) to it or its Party, except where provided otherwise in accordance with the provisions of the Code, until Deregistration of the Participant’s Unit(s) becomes effective in accordance with the Code and, in particular, subject to paragraph 2.273, and the Participant has paid in full all amounts actually or contingently owed by the relevant Participant to any SEM Creditor or the Market Operator pursuant to the Code.

6.34 Each Participant with a SEM Collateral Reserve Account undertakes not to seek withdrawal of any funds to which it may otherwise be entitled in the relevant SEM Collateral Reserve Account except in the circumstances permitted by paragraph 6.35. The Market Operator shall reject any purported notice of withdrawal not complying with this paragraph 6.34, the Code or the Bank Mandate. The Code shall take precedence over the Bank Mandate.

6.35 Notwithstanding paragraphs 6.33 and 6.34, if a Participant is not in default in respect of any amount owed to a SEM Creditor, then:

1. the Market Operator shall transfer quarterly to the relevant Participant the interest credited to the relevant SEM Collateral Reserve Account unless the Participant requests otherwise;

2. the Market Operator shall transfer to such Participant within 2 Working Days after a written request from such Participant (exclusive of the day of request) any amount of the balance which exceeds the amount which such Participant has agreed to maintain in the relevant SEM Collateral Reserve Account from time to time in accordance with this Section 6, the Code and the Bank Mandate, provided that the Participant at all times maintains its Required Credit Cover. The Code shall take precedence over the Bank Mandate;

3. the Participant shall be entitled to change the composition of its Posted Credit Cover in satisfying the Required Credit Cover provided any reduction in any amount standing to the credit of the relevant SEM Collateral Reserve Account does not result in a breach of the Required Credit Cover.

4. the Market Operator shall transfer from the relevant Collateral Reserve Account an amount specified by the Participant, in order to make payment on any outstanding Invoice for such Participant, on the Payment Due Date after a written request from such Participant in accordance with Agreed Procedure 9 and providing that such Participant at all times maintains its Required Credit Cover.

6.36 Except as expressly provided for in the Code, each Party and Participant waives any right it might otherwise have to set off against any obligation owed to the Market Operator, the SEM Bank or any other Party or Participant any claims such Party or Participant may have to or in respect of any monies standing to the credit of the relevant SEM Trading Clearing Account, SEM Capacity Clearing Account or SEM Collateral Reserve Account as applicable.

6.37 The provisions of section 10(2)(c) of the Trustee Act, 1893 shall not apply to any change in the identity of the Market Operator.

6.38 No Party or Participant shall have any claim against the Market Operator for breach of trust or fiduciary duty by the Market Operator under the Code except in the case of reckless or wilful misconduct.

EXTRACT ENDS

6.50 Payment shall be in accordance with the following:

1. each Ex-Post Indicative Settlement Statement, Initial Settlement Statement, Invoice and Self Billing Invoice shall be based on the data then available to the Market Operator at the time of its production;

2. each Invoice and Self Billing Invoice shall include the amount of all applicable charges and payments and shall include any applicable VAT charges;

3. each Debit Note (where applicable) shall include the amount of the Unsecured Bad Debt as set out in paragraph 6.56 and 6.57 as applicable and shall include any applicable VAT charges;

4. any invoiced Participant shall pay each Invoice in full without deduction, set-off or counterclaim (except as otherwise expressly provided for in the Code) by paying the amount due into the relevant SEM Trading Clearing Account or relevant SEM Capacity Clearing Account as applicable for full value by the Invoice Due Date; the Invoice Due Date is 12:00, 3 Working Days after the date of the Invoice; and

5. the Market Operator shall, subject to the provisions of the Code, pay each Self Billing Invoice less any applicable Debit Note to any Participant who is a SEM Creditor by paying the amount due from the SEM Trading Clearing Account or SEM Capacity Clearing Account as applicable to the SEM Creditor’s designated bank account or bank accounts for full value by the Self Billing Invoice Due Date. The Self Billing Invoice Due Date is 17:00, 4 Working Days after the date of the Self Billing Invoice.

6.50A The Market Operator shall issue Invoices and Self Billing Invoices on the date appearing on the relevant Invoice or Self Billing Invoice as appropriate.

6.50B Without prejudice to paragraph 6.50.4, a Participant may exercise the option to make an aggregate payment in accordance with Agreed Procedure 17 “Banking and Participant Payments”.

6.51 If any Invoiced Participant fails to pay an Invoice in full in accordance with paragraph 6.50.4, then the Participant has a Shortfall and the Market Operator shall forthwith make a Credit Call on the Participant’s Posted Credit Cover for payment of the Shortfall, subject to the De Minimis Level for Letter of Credit Draw Down provisions in Paragraph 3.3 of Agreed Procedure 15. The Market Operator shall identify the Settlement Period to which the Shortfall relates in making any Credit Call. Default Interest shall accrue on any Shortfall and Unsecured Bad Debt in accordance with the Code.

6.52 If the Market Operator fails to pay pursuant to the Code (except as otherwise provided for in the Code) the full amount owing pursuant to a Self Billing Invoice for full value by the Self Billing Invoice Due Date, then Default Interest shall accrue on the amount outstanding in accordance with the Code.

6.53 If any Participant fails to pay its Variable Market Operator Charge in accordance with the Code, the Market Operator shall be entitled, subject to the De Minimis Level for Letter of Credit Draw Down provisions in Paragraph 3.3 of Agreed Procedure 15, to make a Credit Call against the Posted Credit Cover of that Participant for payment of the amount of the overdue Variable Market Operator Charge. The Market Operator shall ensure that any amounts recovered relating to the Variable Market Operator Charge and any Interest thereon are not paid into or commingled or combined in any way with the SEM Trading Clearing Accounts or the SEM Capacity Clearing Accounts and shall deposit the funds recovered as a result of such a Credit Call in the relevant Market Operator Charge Account. Any unpaid Market Operator Charge shall not and shall never be treated as a Shortfall or an Unsecured Bad Debt under the Code. The Market Operator shall only be entitled to make a Credit Call in relation to overdue Variable Market Operator Charge where there is no Shortfall or Unsecured Bad Debt in respect of that Participant at that time or, if there is such Shortfall or Unsecured Bad Debt, only after the relevant Participant’s Posted Credit Cover has been applied to meet the Shortfall or Unsecured Bad Debt in full.

6.54 Despite the making of a Credit Call by the Market Operator, if the Participant meets any Shortfall either through its own funds, its Posted Credit Cover, or a combination of the foregoing by 12:00 on the next Working Day after the Invoice Due Date then Settlement shall continue to proceed in accordance with the Code.

6.55 If the Shortfall is not paid in full by 12:00 on the next Working Day after the Invoice Due Date, then, subject to the De Minimis Level for Letter of Credit Draw Down provisions in Paragraph 3.3 of Agreed Procedure 15:

1. the amount of the Shortfall shall become an Unsecured Bad Debt for the purposes of this Code;

2. the Market Operator shall, where practicable, withhold, deduct or set off payment of any amount due pursuant to the Code to the Defaulting Participant until the amount of the Unsecured Bad Debt and any applicable Default Interest has been recovered in full; and

3. paragraphs 6.56 to 6.62 shall apply as appropriate.

6.56 The Shortfall or the Unsecured Bad Debt as applicable shall be a debt owing by the Defaulting Participant to the Market Operator as trustee and agent for all Participants beneficially interested therein as provided for in the Code and affected thereby pro-rated according to their individual respective proportionate entitlements in the Shortfall or the Unsecured Bad Debt concerned and on the trusts provided for in paragraph 6.30.

6.57 Where a Participant has an Unsecured Bad Debt relating to any Trading Period(s) then, without prejudice to the Market Operator’s rights or obligations under the Code and notwithstanding any other provisions of the Code, the Market Operator shall procure that each Self Billing Invoice relating to the Trading Period(s) affected by such Unsecured Bad Debt shall be subject to the calculation of an adjustment by a reduction in the amount payable to each affected SEM Creditor pro-rated in accordance with the individual respective proportionate entitlement of each such SEM Creditor (excepting any Defaulting Participant, which would otherwise be a SEM Creditor, and subject to paragraph 6.55.2 until the Unsecured Bad Debt and any applicable Default Interest has been recovered in full and any Self Billing Invoices issued to it whether or not relating to the Trading Periods concerned shall, until such event, be subject to the calculation of an adjustment by such amount or amounts up to the amount of the Unsecured Bad Debt and any applicable Default Interest, and relevant Debit Notes shall be issued to it) for payment of the relevant Unsecured Bad Debt, in accordance with the Code. The Market Operator shall issue the appropriate adjustments to the Self Billing Invoices in the form of a Debit Note to each of the applicable SEM Creditors (“Reduced Participants”) and the Defaulting Participant within the timeframe of making the payment. The Market Operator shall make payments to each Participant for the amount of the Self Billing Invoice less the applicable Debit Note in accordance with paragraph 6.50.

6.58 In the event that, for any Participant (an “Excess Participant”), the amount of the Debit Note would exceed the amount of the applicable Self Billing Invoice (a “Debit Note Excess”), the Market Operator will make no payment to the Excess Participant in respect of that Settlement Period. In addition, the Excess Participant shall, within 2 Working Days of the receipt of the relevant Debit Note, make a payment to the relevant SEM Trading Clearing Account or SEM Capacity Clearing Account as applicable for the amount of the Debit Note Excess. The Market Operator shall calculate further reductions in the payments to each SEM Creditor (other than the Excess Participant) by the amount of the Debit Note Excess applied pro-rata to their respective proportionate entitlements. The Market Operator shall issue a Debit Note to each SEM Creditor showing the original reduction resulting from the Unsecured Bad Debt and, in respect of each SEM Creditor other than the Excess Participant, the relevant proportion of the Debit Note Excess. In the event that upon receipt of an Excess Debit Note, a further Participant or Participants become Excess Participants, then the Market Operator shall repeat the process of calculation of reduction, and the resultant Debit Notes shall show the resultant reductions for each relevant SEM Creditor, until the amount due in respect of each Self Billing Invoice net of a Debit Note or Excess Debit Note is positive or zero. Any Debit Note Excess which remains unpaid after the second Working Day shall be treated as a Shortfall in accordance with paragraph 6.55.

6.59 All Parties agree that the Market Operator as trustee and agent shall be entitled and irrevocably authorise the Market Operator, subject to paragraph 6.60 to take all necessary action against a Participant (or its Party where legally necessary) with an Unsecured Bad Debt to recover any Unsecured Bad Debt on behalf of SEM Creditors consequently incurring loss and to deal with any recovered monies in accordance with the Code. Any such action of the Market Operator to recover the Unsecured Bad Debt shall not be subject to the Dispute Resolution Process.

6.60 The Market Operator shall consult the Modifications Committee in relation to any plans for the pursuit of any Unsecured Bad Debt. The Market Operator shall take into account the views of the Modifications Committee as to the most appropriate action to take against a Party in respect of the Unsecured Bad Debt of any of its Participants.

6.61 Where the Market Operator partially or fully recovers any Unsecured Bad Debt, the Market Operator shall procure the payment of any such monies into the relevant SEM Trading Clearing Account or SEM Capacity Clearing Account as applicable. Then the Market Operator shall issue an appropriate Self Billing Invoice to each Reduced Participant for an amount pro-rated to the individual respective proportionate entitlement of each Reduced Participant in the amount of the relevant Unsecured Bad Debt recovered relating to the Trading Periods concerned with the issue of the Self Billing Invoices for the then next immediate Billing Period or Capacity Period (excepting, where the Unsecured Bad Debt and any applicable Default Interest has not been fully recovered, the Defaulting Participant, which would otherwise be a SEM Creditor, subject to paragraph 6.55.2 until the Unsecured Bad Debt and any applicable Default Interest has been recovered in full). The Market Operator shall pay each such Self Billing Invoice in accordance with the Code.

6.62 Paragraphs 6.152 to 6.153 shall apply in relation to the recovery of any Unsecured Bad Energy Debt. Paragraphs 6.154 to 6.155 shall apply in relation to the recovery of Unsecured Bad Capacity Debt.

6.63 If any payments made by the Market Operator pursuant to any Self Billing Invoice and any Debit Note or otherwise pursuant to the Code to any Participant do not correspond exactly with their respective payment entitlements established in accordance with the Code, then (and the Parties and Participants agree and consent to the actions of the Market Operator as set out as follows):

1. in the case of overpayment by the Market Operator, the Participant receiving any such overpayment shall pay back the difference between the amount of the payment received and the actual amount due to the Market Operator on becoming aware of the overpayment or, in any event, in accordance with the Code on the issue of a notice by the Market Operator to the Participant concerned in respect of the relevant amount. Any Participant receiving any overpayment shall be obliged to notify the Market Operator of this on becoming aware of such overpayment detailing, where possible, the amount and date of the overpayment and details of any Self Billing Invoice and any Debit Note pursuant to which it was made. As soon as the Market Operator becomes aware of the overpayment, the Market Operator shall issue an overpayment notice for the relevant amount and the Participant shall pay the amount set out in the overpayment notice as if it were an Invoice in accordance with the Code;

2. in the case of underpayment to any Participant by the Market Operator not otherwise permitted pursuant to any other provision of the Code, the Market Operator shall pay the difference between the amount of the payment received and the actual amount due, with Default Interest on that difference, to the Participant concerned on becoming aware of the underpayment or on being notified of the underpayment by the Participant concerned. The Market Operator shall also issue an underpayment notice to the Participant concerned setting out the relevant amount with Default Interest from the date of the underpayment until the date of payment of the sum set out in the underpayment notice as if such notice were a Self Billing Invoice issued in accordance with the Code. Any Participant receiving any underpayment shall notify the Market Operator of this on becoming aware of such detailing, where possible, the amount and date of the underpayment and details of any Self Billing Invoice or Debit Note pursuant to which it was made.

6.64 If any payments made by any Participant pursuant to any Invoice or otherwise pursuant to the Code do not correspond exactly with their respective payment obligations established in accordance with the Code, then (and the Parties and Participants agree and consent to the actions of the Market Operator as set out as follows):

1. in the case of overpayment by the relevant Participant, the Market Operator, unless otherwise restricted from doing so pursuant to the Code, shall pay back the difference between the amount of the payment remitted and the actual amount due with Interest on that difference to the relevant Participant on becoming aware of the overpayment or on being notified of the overpayment by the Participant concerned (except where the Participant is a Defaulting Participant and the Market Operator invokes paragraph 6.55.2). The Market Operator shall then issue an overpayment notice to the Participant concerned setting out the relevant amount with Interest from the date of the overpayment until the date of payment of the relevant Self Billing Invoice and pay to the Participant the sum set out in the overpayment notice as if such notice were a Self Billing Invoice issued in accordance with the Code. Any Participant making any overpayment shall notify the Market Operator of this on becoming aware of such overpayment detailing, where possible, the amount and date of the overpayment and details of any Invoice pursuant to which it was made. The Market Operator shall notify any Participant making an overpayment on becoming aware of such detailing, where possible, the amount and date of the overpayment and details of any Invoice pursuant to which it was made and issue an overpayment notice for the relevant amount with Interest and shall pay the sum set out in the overpayment notice as if such notice were a Self Billing Invoice issued in accordance with the Code; and

2. in the case of underpayment by any Participant to the Market Operator, paragraphs 6.51 to 6.62 shall apply.

6.65 Any Participant making any underpayment or anticipating that it will be making an underpayment in respect of any Invoice shall notify the Market Operator of this on becoming aware that full payment of any Invoice will not be made by the Invoice Due Date detailing, where possible, the amount and date of the underpayment and details of any Invoice to which it relates.

6.66 Subject to paragraphs 6.33, 6.55, 6.57, 6.61, 6.63 and 6.64, all payments under this Section 6 shall be made on the basis that a Participant shall only be entitled to claim reimbursement of an overpayment made by it pursuant to the Code if, and then only to the extent that, the aggregate amounts paid by the Participant in respect of the relevant Payment Due Date exceed the total amounts payable by that Participant to SEM Creditors in respect of that Payment Due Date together with all amounts (if any) overdue from that Participant in respect of Settlement Periods prior to the relevant Payment Due Date.

6.67 Notwithstanding paragraph 6.30, if:

1. a payment is received by the Market Operator under a Letter of Credit after a sum has been withdrawn from an SEM Collateral Reserve Account (where applicable) to make good (in whole or in part) a Shortfall or Unsecured Bad Debt (or any overdue Variable Market Operator Charge where applicable); and

2. the aggregate of the amounts paid out of that SEM Collateral Reserve Account and paid under the Letter of Credit in respect of a relevant Participant exceeds the Shortfall or Unsecured Bad Debt (or any overdue Variable Market Operator Charge where applicable),

then any excess paid over the Shortfall or Unsecured Bad Debt (or any overdue Variable Market Operator Charge where applicable) shall be remitted with any applicable Interest by the Market Operator to the relevant Participant’s bank account or bank accounts.

6.68 Where payments in respect of one or more Settlement Period(s) are fully or partially outstanding, any payments made shall be, and shall be deemed to be, settled according to the following priority:

1. first, in or towards settlement of amounts outstanding under the Code in respect of Timetabled Settlement Reruns (with the longest outstanding Settlement Period to which a Timetabled Settlement Rerun relates being settled first); and

2. secondly, in or towards settlement of amounts outstanding under the Code for Settlement with the longest outstanding Settlement being settled first.

EXTRACT ENDS

MARKET OPERATOR CHARGE

6.143 The Market Operator Charge shall comprise (i) a Fixed Market Operator Generator Charge, and a Fixed Market Operator Supplier Charge, applicable to Participants as appropriate, and (ii) a Variable Market Operator Charge applicable to all Participants in respect of their Supplier Units as appropriate. The Fixed Market Operator Generator Charge shall be a charge applied in respect of every Generator Unit, which may be different for each Generator Unit and the Fixed Market Operator Supplier Charge shall be a charge applied in respect of every Supplier Unit, which may be different for each Supplier Unit (either “the Fixed Market Operator Charge” as applicable). The Variable Market Operator Charge shall be a charge in respect of each unit of Settlement Net Demand at Supplier Units, and is based on a Variable Market Operator Price expressed in euro/MWh.

6.144 The Market Operator shall issue the applicable Variable Market Operator Charge Invoice to each Participant in respect of each Billing Period during the Year or the period to which the Variable Market Operator Charge relates or at such other frequency as the Market Operator shall decide.

6.145 The Market Operator shall establish and maintain with the SEM Bank within the relevant Jurisdiction a euro bank account at a branch of the SEM Bank in Ireland and a pounds sterling bank account at a branch of the SEM Bank in Northern Ireland in its name and each called “the Market Operator Charge Account”. Participants shall make all payments due pursuant to the issue of the Fixed Market Operator Charge Invoices and Variable Market Operator Charge Invoices to the relevant Market Operator Charge Account according to the Currency Zone of its registered Units. Each Market Operator Charge Account shall be an interest bearing account.

6.146 Each Participant shall pay the Fixed Market Operator Charge including any applicable VAT within 5 working days of the issue of the Fixed Market Operator Charge Invoice.

6.147 Each Participant shall pay the Variable Market Operator Charge including any applicable VAT within 5 working days of the issue of the Variable Market Operator Charge Invoice.

6.148 Interest shall accrue on any overdue payments in accordance with paragraphs 6.157.

EXTRACT ENDS

6.163 A Credit Cover Provider shall be a Bank which must:

1. hold a Banking Licence in Ireland under Section 9 of the Central Bank Act 1971 (Ireland) or be authorised by the Financial Services Authority to take deposits, under the Banking Act 1987 (Northern Ireland) or be otherwise authorised to provide banking services in Ireland or the United Kingdom; and

either,

2. be a Clearing Bank in either Ireland or the United Kingdom:

a. with a long term debt rating of not less than A- (Standard & Poors) or A3 (Moody’s Investors Service Inc.); or

b. with a long term debt rating of not less than BB- (Standard & Poors) or Ba3 (Moody’s Investors Service Inc. ) and have a Balance Sheet Net Asset of not less than €1,000 million: or

c. that is holder of a participating institution certificate under the Credit Institutions (Eligible Liabilities Guarantee) Scheme 2009 provided by the government of Ireland (or any successor to or replacement of this scheme) or any equivalent to the scheme provided by the government of the United Kingdom;

or

3. be an international bank that is authorised or approved by the relevant regulatory authority or is otherwise eligible to provide banking services in Ireland or the United Kingdom and complies with paragraph 6.163.2.a or 6.163.2.b.

6.164 If a bank is a subsidiary that is not independently rated, then its parent company must guarantee the obligations of the subsidiary and either (i) have a long term debt rating of not less than A- (Standard & Poors) or A3 (Moody’s Investors Service Inc.) or (ii) have a long term debt rating of not less than BB- (Standard & Poors) or Ba3 (Moody’s Investors Service Inc.) and have a Balance Sheet Net Asset of not less than €10,000 million.

6.165 If a Participant’s Credit Cover Provider is no longer qualified to issue or hold Credit Cover, the Participant shall re-post its Required Credit Cover with a Bank or a subsidiary of a Bank that satisfies the requirements in paragraph 6.163 within 10 Working Days of the Participant’s Credit Cover Provider ceasing to be qualified. This period shall not form part of the Settlement Risk Period.

6.166 Each Participant shall post the Required Credit Cover in its designated Currency.

6.167 For each New Participant and Adjusted Participant using pounds sterling as the Settlement Currency, the Market Operator shall convert the Required Credit Cover into pounds sterling using the Trading Day Exchange Rate applicable to the Trading Day that commences at 06:00 on the day on which the calculation of Required Credit Cover is performed.

6.168 The Market Operator shall, before accepting a Letter of Credit tendered by a Participant as a part of that Participant’s Posted Credit Cover, validate that Letter of Credit in accordance with Agreed Procedure 9 “Management of Credit Cover and Credit Default” to ensure compliance with paragraphs 6.162 to 6.164.

6.169 Without prejudice to a Participant’s obligation to maintain the Required Credit Cover under paragraph 6.160 in accordance with the conditions set out in paragraphs 6.162 to 6.163, where the Market Operator becomes aware that a Participant’s Letter of Credit or Credit Cover Provider fails or ceases to comply with such requirements, the Market Operator shall inform the relevant Participant or Participants as soon as reasonably practicable.

6.170 If the Market Operator, following a Credit Call, draws down any amounts from the Participant’s Posted Credit Cover, such that the Posted Credit Cover no longer meets the Participant’s notified Required Credit Cover, the Participant shall within 2 Working Days fully re-establish the Required Credit Cover and shall notify the Market Operator on doing this

EXTRACT ENDS.

Proposed Deed of Charge and Account Security

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| **DEED of CHARGE and ACCOUNT SECURITY**  between  **[the Participant]**  and  **EirGrid p.l.c. and SONI Limited**  **Dated** |
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**DEED of CHARGE and ACCOUNT SECURITY** dated the day of 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;

"**Schedules**" 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 2 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 7.5 (*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 10.1 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: The Oval, 160 Shelbourne Road, Ballsbridge, Dublin 4.

For the attention of: SEMO Finance

Fax number: +353 (0)1 661 5375

**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 11.21 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 (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:

[Appropriate execution blocks for Participant to execute as a deed to be included]

**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