

**DISTRIBUTION SYSTEM OWNER LICENCE  
GRANTED TO  
ELECTRICITY SUPPLY BOARD**

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## **PART I TERMS OF THE LICENCE**

1. The Commission for Energy Regulation (hereinafter referred to as "**the Commission**"), in exercise of the powers conferred by Section 14(1)(k) of the Electricity Regulation Act, 1999 (hereinafter referred to as "**the Act**"), as amended by the European Communities (Internal Market in Electricity) Regulations 2000 to 2008 (hereinafter referred to as "**the Regulations**"), hereby grants to Electricity Supply Board (hereinafter referred to as "**the Licensee**") a licence to discharge the functions of the Distribution System Owner in the State subject to the conditions (hereinafter referred to as "**the Conditions**") set out in Part II.
2. The Licensee shall facilitate the Distribution System Operator in the development, maintenance and operation of the Distribution System in an efficient, economical, co-ordinated, safe, secure and reliable manner.
3. The Conditions are subject to Modification or amendment in accordance with Sections 14(3), 14(6)(a) and 19 of the Act.
4. The licence hereby granted (hereinafter referred to as "**this Licence**") shall come into force on the Transfer Date and shall continue in full force and effect until determined by notice in writing given by the Commission to the Licensee.

Sealed with the common seal of the Commission for Energy Regulation on  
January 2009

Member of Commission

Member of staff of Commission

## **PART II CONDITIONS OF THE LICENCE**

### **Condition 1 Interpretation and Construction**

1. Unless the contrary intention appears:
  - (a) words and expressions used in the Conditions shall be construed as if they were in an enactment and the Interpretation Act 2005 applied to them; and
  - (b) references to an enactment shall include subordinate legislation and in both cases any statutory Modification or re-enactment thereof after the date when this Licence comes into force.
2. Any word or expression defined for the purposes of any provision of the Act or the Regulations shall, unless otherwise defined herein, have the same meaning when used in the Conditions.
3. In the Conditions, unless otherwise specified or the context otherwise requires:

**“Act”** refers to the Electricity Regulation Act, 1999;

**"Affiliate"** in relation to the Licensee or any Subsidiary of a Holding Company of the Licensee, means any Holding Company of the Licensee or any Subsidiary of the Licensee or any Subsidiary of a Holding Company of the Licensee;

**“Ancillary Services”** means services, other than the production of electricity, which are used to operate a stable and secure power system;

**“Commercially Sensitive Information”** means any matter the disclosure of which would materially prejudice the interests of any person.

**“Confidential Information”** means information relating to the business, affairs and finances of a system user being confidential to that system user whether or not such information is marked confidential, including, without limitation, Commercially Sensitive Information held or obtained by the Licensee in the discharge of its functions as Distribution System Owner under the Act, the Regulations and this Licence;

**“Direct Line”** has the meaning under the Act;

<b>“Distribution Business”</b>	means the business of the Distribution System Operator as the operator of the Distribution System;
<b>"Distribution System"</b>	means all electric lines of the Licensee which the Licensee may, with the approval of the Commission, specify as being part of the Licensee's Distribution System, and includes any electric plant, transformers and switchgear of the Licensee which is used for conveying electricity to Final Customers, including any Direct Lines acquired by the Licensee pursuant to Condition 3 of this Licence;
<b>"Distribution System Operator"</b>	means the entity licensed pursuant to Section 14(1)(g) of the Act;
<b>“Distribution System Owner”</b>	means the Licensee as owner of the Distribution System, licensed pursuant to Section 14(1)(k) of the Act;
<b>"Distribution System Owner’s Business"</b>	means the business of the Licensee as owner of the Distribution System and includes the activities covered by the Operation Agreements;
<b>“Final Customer”</b>	has the meaning under the Act;
<b>"Generation Business"</b>	means the business of the Licensee or any Affiliate or Related Undertaking of the Licensee in the generation of electricity or the provision of Ancillary Services;
<b>“Group Business”</b>	means any business of the Licensee, or any Affiliate or Related Undertaking of the Licensee but shall not include the Generation Business, the Transmission System Owner’s Business, the Distribution Business, the Distribution System Owner’s Business, the Independent Supply Business and the Supply Business;
<b>"Holding Company"</b>	means a Holding Company within the meaning of the Companies Acts, 1963 to 2006;

<b>"Independent Supply Business"</b>	means the business of the Licensee or any Affiliate or Related Undertaking of the Licensee in the supply of electricity to Final Customers pursuant to a licence granted under Section 14(1)(b) or 14(2) of the Act;
<b>"Interconnector"</b>	means for the purposes of this Licence, equipment used to link the Transmission System to electricity systems outside of the Island of Ireland, and (for the avoidance of doubt) does not include the North/South Circuits;
<b>"Modification"</b>	includes addition, deletion, amendment and substitution; and cognate expressions shall be construed accordingly;
<b>"North/South Circuits"</b>	means the electric lines and electrical plant and meters used for conveying electricity directly to or from a substation or converter station within the Republic of Ireland directly to or from a substation or converter station within Northern Ireland (and not for conveying electricity elsewhere);
<b>"Operation Agreements"</b>	means the agreement or agreements entered into between the Distribution System Operator and the Licensee, pursuant to Regulation 6 of SI 280 of 2008, as from time to time revised, amended, supplemented or replaced with the approval or at the instance of the Commission;
<b>"Participating Interest"</b>	has the meaning given to that term in Regulation 35 of the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. 201 of 1992);
<b>"Principal Regulations"</b>	means the European Communities (Internal Market in Electricity) Regulations 2000;
<b>"Regulations"</b>	means the European Communities (Internal Market in Electricity) Regulations, 2000 to 2008
<b>"Related Undertaking"</b>	means any undertaking having a Participating Interest in the Licensee or any undertaking in which the Licensee has a Participating Interest;

**"Separate Business"**

means each of:

- the Distribution Business;
- the Distribution System Owner's Business
- the Generation Business;
- the Independent Supply Business;
- the Supply Business;
- the Transmission System Owner's Business;
- the Group Business;

each taken separately from each other and from any other business of the Licensee or any Affiliate or Related Undertaking of the Licensee, but so that where all or any part of such business is carried on by an Affiliate or Related Undertaking of the Licensee, such part of the business as is carried on by that Affiliate or Related Undertaking shall be consolidated with any such other business of the Licensee (and of any other Affiliate or Related Undertaking of the Licensee) so as to form a single Separate Business;

**"Single Market Regulations"**

means the Electricity Regulation Act 1999 (Single Electricity Market) Regulations 2007 (S.I. 406 of 2007);

**"Subsidiary"**

has the meaning given in the Companies Acts, 1963 to 2006;

**"Supply Business"**

means the business of the Licensee in the supply of electricity to Final Customers pursuant to a licence granted under Section 14(1)(h) of the Act;

**"Transfer Date"**

means the date specified by the Minister for Communications, Energy and Natural Resources pursuant to Regulation 8 of SI 280 of 2008;

**"Transmission System"**

means the system of electric lines comprising wholly or mainly the Transmission System Owner's high voltage lines and electric plant which is used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another or to or from any Interconnector or to Final Customers (including such part of the North/South Circuits as is owned by the Board) (but shall not include any such lines which the Board may, with the approval of the Commission, specify as part of the Distribution System); and

**"Transmission System Owner's Business"**

means the business of the Licensee as owner of the Transmission System.

4. Unless otherwise specified:
  - (a) any reference to a numbered Condition is a reference to the Condition bearing that number in this Licence;
  - (b) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the Condition or Schedule in which the reference occurs; and
  - (c) without prejudice to any provision which restricts such variation, supplement or replacement, any reference to any agreement, licence (other than this Licence), code, statute or other instrument shall include a reference to such agreement, licence, code, statute or other instrument as varied, amended, supplemented or replaced from time to time.
5. The heading or title of any Part, Condition, Schedule or paragraph shall not affect the construction thereof.
6. Where any obligation of the Licensee is expressed to require performance within a specified time limit that obligation shall continue to be binding and enforceable after that time limit if the Licensee fails to perform that obligation within that time limit (but without prejudice to all rights and remedies available against the Licensee by reason of the Licensee's failure to perform within the time limit).
7. The provisions of Section 4 (Service of notices) of the Act shall apply for the purposes of the delivery or service of any document, direction or notice to be delivered or served pursuant to this Licence and directions issued by the Commission pursuant to any Condition shall be delivered or served as aforesaid.
8. Words in the singular include the plural and in the plural include the singular.

## **Condition 2 Operation Agreements**

1. The Licensee shall, by 1 January 2009 (or such later date as the Commission may direct), enter into, and thereafter comply with, and, in conjunction with the Distribution System Operator, at all times maintain in force the Operation Agreements, which:
  - (a) insofar as any matter is within the control of the Licensee and affects the ability of the Licensee to carry out the directions of the Distribution System Operator, ensures that such matter is carried out in a manner such that the Licensee is capable, on a continuing basis, of carrying on the Distribution System Owner's Business;
  - (b) is designed so as to:
    - (i) promote the efficient discharge of the obligations imposed on the Licensee in its capacity as the Distribution System Owner, under licences, laws and regulations;
    - (ii) facilitate the development, maintenance and operation of the Distribution System in an efficient, economical, co-ordinated, safe, secure and reliable manner;
    - (iii) neither prevent nor restrict effective competition in the generation and supply of electricity; and
    - (iv) promote good industry practice and efficiency in the implementation and administration of the matters covered by the Operation Agreements.
2. The Licensee shall, in conjunction with the Distribution System Operator, submit the Operation Agreements to the Commission for approval before entering into them.
3. The Operation Agreements may not be amended without the consent of the Commission.
4. Subject to paragraph 3 above, where the Distribution System Operator wishes to vary the Operation Agreements the Licensee shall enter into negotiations in good faith with a view to concluding such a variation.
5. Subject to paragraph 3 above, where the Licensee and the Distribution System Operator cannot reach agreement on a variation referred to in paragraph 4, the matter shall be submitted to the Commission and the Commission shall determine the matter and issue a direction to both parties. The Licensee shall comply with any Direction issued under this paragraph.
6. The Licensee shall, in conjunction with the Distribution System Operator, periodically review (including at the request of the Commission) the Operation Agreements and their implementation. The Licensee shall report the findings of any such review to the Commission in a timely manner.

7. Where required by the Commission and to the extent required by the Commission, the Licensee shall publish the Operation Agreements on its web-site.

**Condition 3 Acquisition of Direct Lines**

1. The Licensee shall acquire any Direct Line pursuant to a direction of the Commission under Section 37(4)(a) (Direct lines) of the Act, as amended by SI 60 of 2005, and any Direct Line so acquired shall form part of the Distribution System.

#### **Condition 4 Additional Use or Disposal of Relevant Assets**

1. The Licensee shall not dispose of or relinquish control of any relevant asset without prior approval of the Distribution System Operator.
2. If any relevant assets are proposed to be used or disposed of by the Licensee (or any Separate Business of the Licensee) for interests other than or in addition to discharging the functions of the Distribution System Operator, the Licensee shall, as soon as is practicable after the date of issue of this Licence, notify the Distribution System Operator in writing of same and provide the Distribution System Operator with such information as the Distribution System Operator may require in relation to such usage or disposal.
3. In this Condition:

**"disposal"** includes any sale, assignment, gift, lease, licence, transfer, mortgage, charge, restriction on use (whether physical or legal), or the grant of any other encumbrance or the permitting of any encumbrance to subsist or any other disposition to a third party and **"dispose"** shall be construed accordingly;

**"register of relevant assets"** Means the register of relevant assets maintained by the Distribution System Operator pursuant to its licence;

**"relevant asset"** means:

- (a) any equipment which can be considered material used by the Distribution System Operator in the discharge of its functions under the Distribution System Operator's licence, the Act or the Regulations;
- (b) any control centre for use in conjunction with the Distribution System;
- (c) any legal or beneficial interest which can be considered material in land and/or premises upon which any of the foregoing is situated and/or used by the Licensee in the discharge of its functions under this Licence

And in all cases shall include those assets recorded in the register of relevant assets.

Any question arising as to the materiality of relevant assets shall be determined by the Commission for the purposes of this Condition.

**Condition 5 Facilitate the Discharge of Distribution System Operator's Functions**

1. The Licensee shall neither direct nor give instructions to the Distribution System Operator in relation to any of the functions conferred on the Distribution System Operator by the Act, the Regulations, the Single Market Regulations or the Distribution System Operator's licence.
2. The Licensee shall at all times facilitate the discharge by the Distribution System Operator of its functions and provide such co-operation as may be required by the Distribution System Operator in carrying out its functions under the Act, the Regulations or the Distribution System Operator's licence.
3. The Licensee shall comply with any requirements, directions and/or determinations as may be made by the Commission under the Act, the Regulations, the Single Market Regulations or in respect of this Condition of the Licence.

**Condition 6 Duty of Non-Discrimination**

1. In the carrying out of its functions under this Licence, the Licensee shall not discriminate unfairly between persons or classes of persons, or between system users or classes of system users, particularly in favour of its Subsidiaries, Affiliates or Related Undertakings or joint ventures.

**Condition 7 Ring Fencing of the Distribution System Owner's Business**

1. The Licensee shall as soon as practical and in any event not later than 28 days after this Licence has come into force, designate a division of the Licensee, to be approved by the Commission, to exercise the functions of the Distribution System Owner under the Regulations, the Act and this Licence.
2. Subject to such arrangements as the Commission may approve in the interests of economic efficiency in accordance with the Regulations and Operation Agreements, the Licensee shall secure the complete and effective separation of the Distribution System Owner's Business from other Separate Businesses of the Licensee. This separation shall include, but not be limited to, ring-fencing in relation to:
  - (a) access to and exchange of information including (without limitation) undertakings by individual employees regarding the non-disclosure of information;
  - (b) information systems;
  - (c) resources including (without limitation) staff, premises, finance; and
  - (d) a code of conduct on the transfer and/or movement of employees, either part-time or full time, between the Distribution System Owner's Business and any other Separate Business of the Licensee.

The Licensee shall comply with any requirement or direction as may be made by the Commission from time to time for the purposes of this Condition.

3. The Licensee shall provide the Commission with any information or access to information the Commission may deem necessary in relation to the ring-fencing of the Distribution System Owner's Business.
4. The Licensee shall (and shall procure that its Affiliates and Related Undertakings shall) comply with any directions as may from time to time be issued by the Commission requiring the Licensee (or its Affiliates and Related Undertakings) to take such steps or desist from such action as the Commission considers appropriate to secure compliance with this Condition.

### **Condition 8 Separate Accounts for Separate Businesses**

1. The Licensee shall prepare annual accounts in accordance with the Principal Regulations and shall deliver to the Commission a copy of the annual audited accounts so prepared as soon as reasonably practicable, and in any event no later than three months after the end of the period to which the accounts relate. This period may be extended by the Commission to six months, at the request of the Licensee, in respect of the first accounting year.
2. Without prejudice to paragraph 1, the Licensee shall keep or cause to be kept accounts for the Distribution System Owner's Business, which when requested from time to time by the Commission, must be delivered to the Commission in the form and at the times specified by the Commission. The accounts shall be in accordance with such regulatory accounting guidelines as may be issued by the Commission from time to time. The accounts shall also be in accordance with any and all directions as are reasonable and appropriate for the purposes of this Condition as the Commission may, from time to time, notify to the Licensee.
3. The regulatory accounting guidelines or directions notified by the Commission to the Licensee under paragraph 2 may, inter alia:
  - (a) specify the form of the accounting statements/records, including but not limited to, profit and loss accounts, balance sheets, recognised gains and losses statements, cash flow statements and statements of the amounts of any revenues, costs, assets, liabilities, reserves or provisions which have been either charged from or to any other business or determined by allocation or apportionment between the Distribution Business and any other business;
  - (b) specify the nature and content of the accounting statements/records, including information on specified types of revenue, cost, asset or liability and information on the revenues, costs, assets and liabilities attributable to specified activities;
  - (c) require any reconciliation that may be required with the annual accounts of the Licensee prepared under the Companies Acts, 1963 to 2006;
  - (d) specify the accounting principles (including the basis for the allocation of costs) and the bases of valuation to be used in preparing accounting statements/records.
4. The Licensee shall not, in relation to the accounting statements in respect of a financial year, change the basis of charge, apportionment or allocation from those applied in respect of the previous financial year, unless the Commission shall previously have issued directions for the purposes of this Condition directing the Licensee to change such basis in a manner set out in the directions or the Commission gives its prior written approval to the change in such basis.
5. The Licensee shall comply with any directions issued by the Commission for the purposes of this Condition.

**Condition 9 Prohibition of Subsidies and Cross-subsidies**

1. The Licensee shall procure that the Distribution System Owner's Business does not give any subsidy or cross-subsidy (direct or indirect) to any other Separate Business of the Licensee and/or any Affiliate or Related Undertaking of the Licensee.
2. For the purposes of this Condition, the Commission shall determine whether or not subsidisation or cross-subsidisation is taking place. Where the Commission determines that a subsidy or cross-subsidy involving the Distribution System Owner's Business is taking place, the Commission may issue a direction to that effect and require the cessation of same.
3. Nothing which the Licensee is obliged or permitted to do or not do pursuant to this Licence or the Operation Agreements shall be regarded as a subsidy or cross-subsidy for the purposes of this Condition.

### **Condition 10 Restriction on Use of Certain Information**

1. The Licensee shall preserve the confidentiality of Commercially Sensitive Information held and/or obtained by it in the discharge of its functions as Distribution System Owner in accordance with the Regulations, the Act, the Operation Agreements and this Licence.
2. The Licensee shall implement such measures and procedures and take all such other steps as shall be specified in directions issued by the Commission from time to time for the purposes of this Condition to be in its opinion reasonably necessary for the purpose of securing compliance by the Licensee with its obligations under paragraph 1.
3. The Licensee shall ensure that Confidential Information is only disclosed to authorised recipients, classes of authorised recipients or authorised advisors.
4. Paragraphs 1 and 3 shall not apply to:
  - (a) any Confidential Information which, before or after it is furnished to the Licensee's employees, is in the public domain; or
  - (b) the disclosure of any Confidential Information:
    - (i) in compliance with the duties of the Licensee under the Act, the Regulations, the Operation Agreements or any other requirement of a competent authority; or
    - (ii) in compliance with the Conditions granted in this Licence or any document referred to in this Licence with which the Licensee is required by virtue of the Act, the Regulations, the Operation Agreements or this Licence to comply; or
    - (iii) in compliance with any other requirement of law; or
    - (iv) pursuant to any judicial or other arbitral process or tribunal of competent jurisdiction; or
5. Without prejudice to the other provisions of this Condition, the Licensee shall procure that any additional copies made of the Confidential Information, whether in hard copy or computerised form, will clearly identify the Confidential Information as confidential.
6. The Licensee shall take all reasonable measures to prevent (so far as the Licensee can so require) any person who is or ceases to be employed by the Licensee, whether that person is or was employed part-time or full time in the Distribution System Owner's Business, from disclosing Confidential Information.
7. The Licensee shall take all reasonable steps to ensure that every authorised adviser to whom the Licensee discloses Confidential Information does not use that Confidential Information for any purpose other than that for which it was provided and does not disclose that Confidential Information otherwise than in accordance with the provisions of this Condition.

8. This Condition is without prejudice to the duties at law of the Licensee towards third parties.

9. In this Condition:

**"authorised adviser"** means such professional advisers of the Licensee, engaged and acting in that capacity, as require access to any Confidential Information;

**"authorised recipient"** means, in relation to any Confidential Information, any employee who, before the Confidential Information had been divulged to him by the Licensee, had been informed of the nature and effect of this Condition and who requires access to such Confidential Information for the proper performance of his duties as an employee in the course of permitted activities;

**Condition 10 Payment of Levy**

1. The Licensee shall pay to the Commission any amounts specified in, or determined under, a Levy Order, in accordance with the provisions of such Levy Order.
2. In this Condition:

**"Levy Order"**

means an Order made by the Commission under paragraph 16 of the Schedule 1 to the Act.

**Condition 11 Dispute Resolution**

1. The Commission shall decide on any difference or dispute between the Licensee and the Distribution System Operator and the Commission shall issue a direction regarding its decision, as it sees fit, regarding the matter in dispute and the Licensee shall comply with such direction.

**Condition 12 Provision of Information**

1. The Licensee shall furnish to the Distribution System Operator, in such manner and at such times as may reasonably be required, such information as may be required by the Distribution System Operator in order for it to carry out its licensed activities and duties under the Act, the Regulations or the Distribution System Operator's licence.

### **Condition 13 Provision of Information to the Commission**

2. The Licensee shall procure and furnish to the Commission, in such form and at such times as the Commission may require, such information as the Commission may consider relevant in the light of the Conditions or as it may require for the purpose of performing the functions assigned or transferred to it by or under the Act, the Regulations or the Single Market Regulations.
3. The power of the Commission to call for information under paragraph 1 is without prejudice to the power of the Commission to call for information under or pursuant to any other Condition of this Licence or under or pursuant to the Act, the Regulations or the Single Market Regulations.
4. In this Condition "**information**" means oral or written and shall include, without limitation, any books, documents, records, accounts (statutory or otherwise), estimates, returns or reports of any description (whether or not in electronic or any other format, or prepared specifically at the request of the Commission) requested by the Commission and any explanations (oral or written) in relation to such information as may be requested by the Commission.
5. The information shall be to a level of audit as may be required by the Commission from time to time.

#### **Condition 14 Compliance with Laws and Directions**

1. The Licensee shall comply with all applicable laws.
2. The Licensee shall comply with any requirements, directions or determinations made by the Commission pursuant to the Act, the Regulations, the Operation Agreements or this Licence.
3. Any costs associated with compliance with this Condition shall be the responsibility of the Licensee.
4. The Licensee shall monitor and keep a record of its compliance with this Licence, and any requirement, direction, determination, code, procedure or guideline it is required to comply with.
5. In this Condition:

**“applicable laws”**

means any requirements imposed by or under any applicable Irish or EU law, including but not limited to any legislative provision, common law, order, direction, licence, decision, rule or code.

**Condition 15 Health and Safety**

1. The Licensee shall take all reasonable steps to protect persons and property from injury and damage that may be caused by the Licensee when carrying out the Distribution System Owner's Business.
2. The Licensee shall, upon request by the Distribution System Operator, ensure that a technical and safety audit is undertaken in respect of the Distribution System Owner's Business by an independent expert whose appointment is approved by the Distribution System Operator.
3. The Licensee shall provide the results of such audits carried out in a timely manner to the Distribution System Operator and the Commission.