

**NORTHERN IRELAND ELECTRICITY plc**

**COMPLIANCE PLAN**

26 August 2009





# Table of Contents

PART I – BUSINESS INDEPENDENCE .....	1
1. Introduction .....	1
2. Overview .....	1
3. Criteria for Independence .....	2
4. Other provisions.....	6
5. Audit Arrangements and Compliance Investigations.....	7
6. Monitoring, Reporting and Reviewing .....	7
PART II – CORPORATE GOVERNANCE AND COMMON SERVICES .....	8
Section A: Corporate Governance.....	9
1. Corporate Structure .....	9
2. Interpretation and Application .....	9
3. Governance Arrangements .....	9
4. Financial Plans .....	11
5. Internal Control/Risk Management.....	12
6. Appointment of Directors .....	13
7. Price Control Matters .....	13
8. Decision Making .....	14
9. Information Flows and Restrictions .....	16
Section B: Common Services.....	18
1. Overview .....	18
2. External Advisors.....	18
3. Group Common Services .....	19
Appendix 1 .....	22
Staff Transfer Procedure .....	22
Appendix 2 .....	23
Memorandum of Understanding between NIE and Viridian.....	23
Appendix 3 .....	31
NIE Work Locations.....	31
Appendix 4 .....	33
Contingency Process .....	33

## **PART I – BUSINESS INDEPENDENCE**

### **1. Introduction**

Northern Ireland Electricity plc (“**NIE**”) is the holder of an electricity participation in transmission licence (the “**Licence**”). The Licence includes conditions regulating NIE’s transmission and distribution activities.

In particular the Licence contains a condition (Condition 12) relating to the Independence of the Transmission and Distribution Business (the “**T&D Business**”).

Under Condition 12, NIE is required, amongst other things, to –

- Establish and maintain the full managerial and operational independence of the T&D Business from any Associated Business (as defined in the Licence). The Associated Businesses are identified in Part II, Section A of this Compliance Plan. The Compliance Manager will advise the Authority, in writing, of any additions or deletions to the list of Associated Businesses.
- Prepare and submit to the Northern Ireland Authority for Utility Regulation (the “**Authority**”) for its approval a Compliance Plan which sets out the practices, procedures, systems and rules of conduct which it has adopted or intends to adopt to ensure compliance with that Condition 12; and
- Comply with the approved Compliance Plan.

This Compliance Plan is submitted pursuant to Condition 12 of the Licence granted to Northern Ireland Electricity plc (NIE) which requires NIE to establish, and at all times maintain, the full managerial and operational independence of the Transmission and Distribution Business from any Associated Business. This licence condition reflects the "unbundling" provisions of Articles 15 and 17 of Directive 2003/54/EC ("the Directive") and also supports the Single Electricity Market.

This Compliance Plan, dated 26 August 2009, is submitted for the Authority's approval.

### **2. Overview**

The purpose of this Compliance Plan is to set out the practices, procedures, systems and rules of conduct that NIE has adopted, or intends to adopt, to ensure its compliance with Condition 12 of the Licence.

NIE shall be taken to have complied with the requirement for full managerial and operational separation where it complies with the Compliance Plan and with the specific duties set out in paragraph 3 of Condition 12 - the Compliance Plan explains how NIE will do this.

The Compliance Plan is supplemented by a Compliance Audit Programme, developed by the Compliance Manager, to ensure that NIE at all times remains compliant with the obligations of Condition 12. The Compliance Audit Programme will ensure that the Compliance Manager addresses the need to monitor the continued effectiveness of compliance with this plan.

### **3. Criteria for Independence**

#### **3.1 Legal structure**

NIE is a company within Viridian Group Limited (Viridian). From 1 November 2007, NIE comprises the Transmission Owner Business, the Distribution Business and the Land Bank Business. For the purposes of Condition 12, the Transmission Owner Business and the Distribution Business are regarded as one business - the Transmission and Distribution Business (T&D).

Following the divestment of SONI by NIE in 2009 NIE is now completely separate both legally and operationally from the transmission system operator business in Northern Ireland.

NIE is legally separate from all other businesses within the Viridian Group.

#### **3.2 Resources**

Condition 12 (paragraph 3(a)) requires NIE to ensure that T&D is provided with the premises, systems, equipment, facilities, property, personnel, data and management resources that are necessary for efficient and effective managerial and operational independence from any Associated Business.

NIE prepares annual budgets and five year plans. As an integral part of this process, all departmental managers bring forward their discrete budget requirements in terms of the systems, equipment, facilities, property, personnel, data and management resources that are necessary for its efficient and effective managerial and operational independence. These are validated by the Directors of NIE and incorporated into the annual budget and five year plans.

The adequacy of financial resources and facilities is certified annually to the Authority by a director of NIE and NIE's external auditors in accordance with Condition 3 of the Licence.

#### **3.3 Acquisition of Shares**

Condition 12 (paragraph 3(b)) of the Licence states that NIE shall ensure that it does not hold or acquire shares in a holding company of the Licensee or in any electricity undertaking engaged in the generation or supply of electricity on the Island of Ireland.

At the date of this plan, NIE does not hold any shares in any holding company or in any electricity undertaking engaged in the generation or supply of electricity on the island of Ireland. Safeguards preventing any future acquisitions are contained within the Memorandum of Understanding (MoU) between Viridian and NIE that contains guidelines relating to the corporate relationship between the two companies. No provision within the MoU may be construed in a manner which would prevent NIE operating in compliance with its Licence. A copy of the MoU is included at Appendix 2 of this Compliance Plan.

The MoU requires that the directors of NIE must not, without prior consultation with Viridian, "Acquire, purchase or subscribe for any shares, debentures, mortgages, assets or securities (or any interest therein) in any company, trust or other body other than as set out in the annual business plans ...". Any acquisition of shares, which is prohibited by Condition 12, would amount to a breach of the Licence and, therefore, would not be contemplated by NIE. Even if it was contemplated, it would not be approved by Viridian since that action would, in effect, be within the scope of the legally enforceable undertaking given by Arcapita (NIE's ultimate controller). This undertaking requires that Arcapita and its subsidiaries, which include Viridian, will refrain from any action that would be likely to cause NIE to be in breach of its licence.

The Compliance Manager will every six months, as part of the Compliance Audit Plan, ensure that this obligation continues to be met.

#### 3.4 Decision making

Condition 12 (paragraph 3(c)) of the Licence states that NIE shall ensure that decisions for which it is responsible relating to the operation, maintenance and/or development of the total system (or any part of it) are taken by those persons who are directors of NIE or who are employed by, and are engaged in, the operation and management of, the Transmission and Distribution Business (and no others). Provision is made within this requirement for Viridian to exercise its corporate governance role in relation to NIE.

NIE is managed by a separate Board which has effective decision-making rights with respect to those assets under its control necessary for network operation, maintenance and development.

For an explanation of the arrangements for corporate governance, please refer to Section A: Corporate Governance in Part II of this Compliance Plan.

Continued compliance with these requirements on decision making will be validated as part of the Compliance Audit Programme.

#### 3.5 Premises, property and equipment

Condition 12 (paragraph 3(d)(i)) requires NIE to ensure that any Associated Business does not use or have access to premises or parts of premises occupied by persons engaged in the management or operation of the T&D Business. (This requirement is relaxed where access is allowed to electricity undertakings generally). Paragraph 3(d)(iii) requires NIE to ensure that any Associated Business does not use or have access to equipment, facilities or property employed for the management or operation of the T&D Business (unless the Authority approves such use or access).

NIE has completed a review to ensure compliance with the restriction on sharing premises, and a number of employees have been relocated as a result of the review. Four NIE locations are occupied by more than one business and additional access controls have been put in place to ensure work areas are completely segregated (see Appendix 3).

In all of NIE's premises strict controls are in place to prevent unauthorised access to NIE offices. This is achieved through the use of individually controlled electronic passes, such that only NIE employees have unrestricted access to buildings or parts of buildings utilised exclusively by NIE. Visitors to NIE premises do not have general access; they must report directly to the relevant NIE personnel who are responsible for granting access and supervising them whilst they are on the premises. It is our intention that as part of the review of adherence to the Compliance Plan, the internal auditors will test these controls on-site.

Electrical contractors, including NIE Powerteam, may require more general access to NIE premises. This is essential to enable NIE to carry on its business efficiently. NIE Powerteam is engaged in network construction, maintenance and connection work exclusively on behalf of NIE. It is not an Associated Business, it has no business dealings with generators or suppliers and consequently its relationship with NIE does not lessen NIE's independence from businesses engaged in the generation or supply of electricity on the island of Ireland.

Subject to the comment at paragraph 3.6 below, it is confirmed that no assets of NIE, including property and equipment, are provided for the use of any Associated Business.

The Compliance Manager is responsible for monitoring compliance with the licence restrictions on sharing of premises, property and equipment. All queries in this regard will be directed to him for resolution.

Continued compliance with the restrictions on premises, property and equipment will be validated as part of the Compliance Audit Programme.

### 3.6 Systems

Condition 12 (paragraph 3(d)(ii)) requires NIE to ensure that any Associated Business does not have access to systems for the recording, processing or storage of data to which persons engaged in the management or operation of the T&D Business also have access (unless the Authority approves such use or access).

Detailed IT Security Policy and Procedures are in place to maintain security and confidentiality of business data. These procedures are actively communicated to all users and rigorously enforced.

A review assessing the degree of sharing of IT systems has highlighted that the Quarterly Billing System and associated applications are used by both NIE Energy Supply (for the purposes of domestic retail billing) and T&D (for the purposes of Use of System billing, field work and meter reading). This arrangement has been approved by the Authority as an interim solution for the NI 2007 programme. Discussions with the Authority are continuing on the implementation of an "enduring solution" which would effect full separation of IT systems. There are individual logins and passwords for users of the T&D and NIE Energy systems and the associated access privileges ensure that NIE Energy employees cannot login to the T&D systems and vice versa.

The systems for recording, processing or storage of data are strictly controlled and safeguards have been put in place to ensure that any Associated Business cannot access NIE data. Corporate IT systems which share a common platform (including electronic systems, telephone lines, email systems and computer servers) have security measures in place to ensure the confidentiality of electronic data and voice communications.

IT security policies and procedures are in place to ensure the correct and secure operation of computer and network facilities. Access to data is controlled by monitoring system access and use. Security is built into IT and manual systems at the development stage to prevent loss, unauthorised modification or misuse of data. Security measures are programmed into the relevant hardware or software. This includes the use of unique username and password for each authorised person. Passwords, known only to authorised persons, require enforced changes every 35 days.

Access to non-standard business applications requires a work request to be authorised by the Compliance Manager and within those business applications further levels of access control may be in place.

An "IT Leavers" procedure operates to ensure that, upon leaving the company, the individual's IT accounts are disabled.

In all premises processing and storing IT, information is protected. This shall be achieved by a combination of access control to the areas, intruder detection and physical control of the equipment. Access shall remain limited to authorised employees only, particularly in sensitive areas. Access permission must be reviewed regularly.

Reviews of the security of IT Systems together with their audit are an essential part of monitoring the credibility and compliance with procedures and shall be undertaken on at least an annual basis or if there are any major changes to the business, technology, legislation or the markets in which the business operates.

Changes have been made to the SAP system to restrict individual business's access to their own data.

As explained in Section 3.7 below, as part of NIE's escalation plan to deal with major storms, employees are deployed from Associated Businesses to assist as required,

principally to answer telephone calls from customers who report that they are off supply. Such staff do not have access to information that is commercially sensitive. Specifically, the escalation call agents only have access to the 'Storm' version of the NIE customer contact system, or a back-up system in the event of failure of the NIE customer contact system. Neither system identifies who the customer's supplier is. There is no access to customers' billing information, consumption history or demand details. The only contact information available to call agents is network fault history, which is not considered to be commercially sensitive.

Continued compliance with the restrictions on use of and access to IT systems will be validated as part of the Compliance Audit Programme.

### 3.7 Services of persons

Condition 12 (paragraph 3(d)(iv)) requires NIE to ensure that Associated Businesses do not use or have access to the services of persons who are (whether or not as their principal occupation) engaged in the management or operation of the T&D Business (unless the Authority approves such use or access).

In order to provide the best possible service to customers in emergency situations e.g. in the event of a major storm causing widespread damage to the T&D system, NIE will continue to deploy personnel from Associated Businesses as appropriate, principally to answer telephone calls from customers reporting that they are off supply. As confirmed in section 3.6 above such personnel have no access to commercially sensitive information held by NIE. For a more detailed explanation of the contingency process see Appendix 4.

For an explanation of the arrangements for common services, please refer to Section B: Common Services in Part II of this Compliance Plan.

### 3.8 Directors

Condition 12 (paragraph 3(e)) requires that, as far as is legally possible, NIE ensures that any of its directors is not at the same time also a director of a company which carries on an Associated Business engaged in the supply or generation of electricity.

A review of directorships was completed and changes made to ensure compliance with this requirement. No director of NIE is currently a director of an Associated Business engaged in supply or generation of electricity.

The safeguard which ensures continued compliance is formally set out in the MoU between Viridian and NIE which specifically states *"The Viridian Board shall appoint the Directors of NIE (and may remove any Director of NIE), subject to the requirements of the Licence, and detail the terms under which they shall hold office. The appointment of Directors will be in compliance with the criteria set out in the Licence and the appointment of any Director notified in advance to the Authority as required"*.

Viridian's actions in appointing directors are covered by the undertaking given by Arcapita (as NIE's ultimate controller), that it, and its subsidiaries, which includes Viridian, will refrain from any action that would be likely to cause NIE to be in breach of its licence.

For further details on the appointment of directors please refer to paragraph 6 of Section A: Corporate Governance in Part II of this Compliance Plan.

### 3.9 Register of NIE employees and staff transfers

Condition 12 (paragraph 3(f)) of the Licence requires that NIE shall maintain an up-to-date register of all persons engaged by the Transmission and Distribution Business. Paragraph 3(e) places restrictions on staff transfers to an Associated Business engaged in generation or supply.

A register has been established of all persons employed by NIE, detailing name, job title, department, work location and, where relevant, leaver or transfer date. The register also identifies individuals who have potential access to commercially sensitive information. It is maintained and updated monthly by the Compliance Manager. Under NIE's internal procedures the HR Manager is required to provide details to the Compliance Manager of all new employees or those employees who have tendered their resignation from NIE or seek transfer to an Associated Business engaged in supply or generation.

In each and every case the Compliance Manager and the HR Manager will determine the action to be taken when an individual is leaving T&D and transferring to an Associated Business to ensure that adherence to the conditions specified in paragraph 3(e) of Condition 12 are met. In so far as is legally possible NIE will require a period of "gardening leave" that will prevent any person who has ceased to be engaged in the management or operation of the T&D Business from being engaged in the activities of any Associated Business that is engaged in the generation or supply of electricity until the expiry of an appropriate time from the date on which he ceased to be engaged by the T&D Business. If an employee has been engaged in the management of the T&D Business, gardening leave of at least 3 months will apply. If an employee has been engaged in the operation of the T&D Business the period of gardening leave will be 3 months, or otherwise agreed on a case-by-case basis with the Authority. The Authority will be advised of all proposed transfers. In addition to the "gardening leave" requirement, relevant staff will be required to sign an undertaking that they will not divulge protected information received during their employment with NIE.

It is not common practice to transfer or second NIE staff to other Viridian businesses. It is a matter for individual NIE employees to decide whether they wish to apply for vacant posts in any affiliated business that is engaged in the generation or supply of electricity, in which case the requirements in paragraph 3(e) of Condition 12 are applicable and the staff transfer procedure set out in Appendix 1 shall apply.

NIE will follow the procedure outlined in Appendix 1, however, in the event of the procedure being successfully challenged, for example where it may infringe the employment rights of an individual, alternative arrangements may need to be made in consultation with the Authority. NIE will involve the Authority in the oversight and application of the procedure and, in practice, NIE will agree with the Authority the steps to be taken on a case-by-case basis, should such an eventuality arise.

#### **4. Other provisions**

Condition 12 (paragraph 10) directs NIE to ensure that persons engaged in the management and operation of the T&D Business are made aware of the practices, procedures, systems and rules of conduct set out in the Compliance Plan and that they have the necessary information and facilities to comply with their respective obligations as provided for in the Compliance Plan. Persons engaged in the management and operation of the T&D Business should also be aware of the disciplinary procedures that may be activated should they fail to comply with their obligations under the Compliance Plan.

NIE has established, and is establishing, the following arrangements to ensure compliance with these requirements. These include the following:

- Staff awareness guidelines.
- Staff training.
- Confidentiality clauses in contracts of employment.
- Awareness on restrictions on staff transfers.
- Awareness on restrictions on access to IT systems.

- Awareness on restrictions on access to premises.
- Confidentiality clauses in contracts and industry documents.

Effective from 1 November 2007, induction training of new staff includes a briefing on regulatory obligations, which emphasises the licence requirements relating to protected information. Training sessions have been and will continue to be delivered as and when necessary. A programme of "refresher" briefings for relevant senior staff is already in place. As a further step, the revised guidelines referred to above are being issued to relevant NIE staff.

Each employee's contract of employment requires the employee to observe NIE's requirements on confidentiality and protection of information. A breach of the licence requirements on protected information would be subject to appropriate disciplinary action.

Discussions will continue with the Authority and the Consumer Council to ensure that the website remains compliant with the licence requirements, whilst at the same time assisting customers in their search for information.

## **5. Audit Arrangements and Compliance Investigations**

PricewaterhouseCoopers (PwC) will be engaged as internal auditors to assist in the audit of NIE's procedures supporting compliance with Condition 12 of its licence. The scope of the audits and the review of the audit findings will be agreed with NIE's Compliance Manager. The Compliance Manager will review and, if required, develop NIE's procedures for monitoring and validating compliance in conjunction with its auditors. NIE will seek, from its auditors, a letter of assurance independently confirming compliance with Condition 12.

## **6. Monitoring, Reporting and Reviewing**

As a senior manager, the Compliance Manager has access to all staff, premises, systems, information, documentation, equipment, facilities and other resources required to fulfil the duties of Compliance Manager.

The Compliance Manager will submit to the Authority, by 30 June each year, a compliance report covering the year ended 31 March in the same year. The report will cover all aspects identified in paragraph 14 of Condition 12.

In the event that NIE and/or the Compliance Manager become aware of any actual or suspected breach of Condition 12, the Compliance Manager will report the matter to the Authority with immediate effect.

The Compliance Manager will carry out a review of the Compliance Plan at least annually and also if NIE becomes aware of any matter which has (or may have) a material impact on the managerial and operational independence of the T&D Business. The purpose of the review being to ensure NIE's continued compliance with Condition 12 and that the information set out in the plan continues to be accurate in all material respects. Revisions to the plan will be submitted to the Authority for approval.

## **PART II – CORPORATE GOVERNANCE AND COMMON SERVICES**

The following parts of this Compliance Plan cover matters relating to (i) Corporate Governance and (ii) Common Services.

## Section A: Corporate Governance

### 1. Corporate Structure

- 1.1 NIE is a direct subsidiary of Viridian Group Limited (“**Viridian**”).
- 1.2 NIE has a number of Associated Businesses (as defined in Condition 12 of the Licence), including in particular businesses that hold other types of electricity licences (in Northern Ireland and/or the Republic of Ireland), namely –
- (a) NIE Energy Limited – authorised by licence to supply electricity in Northern Ireland (the licence also regulates the Power Procurement Business);
  - (b) Viridian Energy Supply Limited (trading as Energia) – authorised by licence to supply electricity in Northern Ireland;
  - (c) Huntstown Power Company Limited – the holder of an electricity generation licence in the Republic of Ireland;
  - (d) Viridian Power Limited - the holder of an electricity generation licence in the Republic of Ireland;
  - (e) Viridian Energy Limited - the holder of an electricity supply licence in the Republic of Ireland.
- 1.3 This Compliance Plan will cease to have effect if NIE ceases to be part of a group that includes a business (other than the Power Procurement Business) which requires a generation licence or a supply licence.

### 2. Interpretation and Application

- 2.1 All references to Viridian Representatives in this Section A shall be taken to encompass a reference to (i) Viridian; (ii) any (executive or non-executive) director of Viridian (other than where the relevant director is also a director of NIE and is acting in his capacity as a director of NIE); and (iii) any person employed, engaged or appointed by, or authorised to act on behalf of, Viridian.
- 2.2 All references to NIE Representatives shall be taken to encompass a reference to (i) NIE; (ii) any (executive or non-executive) director of NIE; and (iii) any person employed, engaged or appointed by and acting on behalf of NIE.
- 2.3 Any obligation imposed on NIE under legislation the Licence direction or any document designated by the Authority shall over-ride any obligation or provision of this Compliance Plan. NIE will inform the Authority in writing where it believes this to be the case, together with its reasons.

### 3. Governance Arrangements

- 3.1 The Board of Directors of NIE (the “**NIE Board**”) will at all times be responsible for the day-to-day management and operation of NIE. Under the supervision of the NIE Board, the Executive Committee of the NIE Board (the “**Executive Committee**”), comprising only executive members of the NIE Board and senior managers employed by NIE, may undertake much of the day-to-day business and management and operation of NIE.

- 3.2 NIE will ensure that no Viridian Representative participates in the corporate governance of NIE other than to such extent as is permitted by this Compliance Plan.
- 3.3 NIE has agreed a **Memorandum of Understanding** (the “**MoU**”) with Viridian which sets out the extent to which Viridian may engage or participate in the corporate governance of NIE.
- 3.4 The MoU forms part of this Compliance Plan and is set out at Appendix 2.
- 3.5 NIE will ensure that Viridian Representatives may participate in the corporate governance of NIE only to the extent needed in order for Viridian to comply with its legal duties and obligations as a holding company of NIE and to ensure that Viridian’s economic and management supervision rights in respect of the return on NIE’s assets are protected and in any event only in respect of the following matters –
- (a) Approving and overseeing NIE’s annual financial plans and statements and providing such financial resources and financial facilities as are necessary, including setting global limits on NIE’s indebtedness – as set out in **section 4** below.
  - (b) Conducting a system of internal control as set out in **section 5** below.
  - (c) Appointing and removing directors of NIE – as set out in **section 6** below.
  - (d) Price controls – as set out in **section 7** below.
  - (e) Decision making – as set out in **section 8** below.
- 3.6 For the avoidance of doubt, Viridian Representatives may receive and access information about NIE relating to the matters listed in paragraph 3.5 above, in accordance with section 9 below.
- 3.7 The Chief Executive Officer of Viridian (CEO) may attend meetings of the NIE Board and the Executive Committee:
- (a) subject always to compliance with paragraph 8.1; and
  - (b) provided that he does not, as a Viridian Representative do anything as a consequence of such attendance to render Viridian in breach of the terms of the Non Disclosure Agreement in place between Viridian and NIE.
- 3.8 NIE will monitor compliance with this Compliance Plan and use reasonable endeavours to ensure that no NIE Representative accepts or complies with any instructions or guidelines in relation to the regulated activities of NIE that may be given or issued by a Viridian Representative outwith what is permitted in this Compliance Plan.
- 3.9 NIE has, in accordance with Condition 12, procured from Viridian a legally enforceable undertaking under which Viridian has undertaken not to exercise its corporate governance role in relation to NIE other than in a manner calculated to ensure that such exercise does not restrict, prevent or distort competition in the supply or generation of electricity on the island of Ireland (the Undertaking). The Undertaking will remain in force for as long as NIE remains the holder of the Licence and Viridian remains a holding company.
- 3.10 The terms and conditions of the undertaking are without prejudice to NIE’s obligations contained in this Compliance Plan and/or the Licence.
- 3.11 NIE will:

- (a) use reasonable endeavours to ensure that to the extent this Compliance Plan provides for restrictions or obligations on a Viridian Representative, that Viridian will comply with such restrictions and obligations;
- (b) notify the Authority without undue delay where it believes or becomes aware that Viridian is in breach of the Compliance Plan in relation to those restrictions or obligations referred to in paragraph 3.11(a) above;
- (c) take such steps as may be reasonably available to it and are necessary to ensure that the breach referred to in paragraph 3.11(b) above is remedied;
- (d) as soon as is reasonably practicable and without undue delay, report to the Authority on the steps taken and the outcome of such steps; and
- (e) on request provide such further information to the Authority as the Authority may reasonably require to investigate and assess NIE's compliance with the Compliance Plan.

3.12 NIE will notify the Authority immediately where it becomes aware that the Undertaking referred to in paragraph 3.9 above has ceased to be legally enforceable.

#### **4. Financial Plans**

4.1 NIE will prepare its financial plans and may consult with Viridian Representatives on elements of its financial plans where, and only to the extent that, the nature of the relevant financial plans could reasonably be considered to have a material effect on Viridian's investment in NIE, including the following elements:

- (a) Profit and loss account;
- (b) Balance sheet;
- (c) Cash flow statement including projected revenue;
- (d) Calculation of forecast regulated revenue entitlement;
- (e) Summary of operating costs and capital expenditure (including the aggregate of network and non-network expenditure reconciled to the regulatory allowance and the capex plan agreed with the Authority);
- (f) Annual and longer term funding requirements; and
- (g) High level key performance indicators (KPIs) for the following subjects (only, subject to 4.2 below): EBITDA; net capex; performance against guaranteed and overall standards; substantiated complaints to the Consumer Council; call handling performance; CML/CC for transmission and distribution; planned CML to facilitate construction and maintenance work; CML mitigation through live line working and the deployment of mobile generation; employee numbers; lost time accidents; employee absenteeism; and global targets for procurement savings.

4.2 The Compliance Manager's annual report will provide details of any proposed additions to the KPIs referred to in 4.1(g) above.

4.3 Nothing in paragraph 4.1 shall constrain NIE in obtaining advice in relation to its financial plans as provided for under the Common Services section (Section B) of this Compliance Plan.

- 4.4 Unless otherwise approved by the Authority in writing, participation by Viridian Representatives other than persons providing advice to NIE under the Common Services Agreement in exchanges on financial plan matters with the Authority shall be limited to the matters set out in paragraph 4.1 above.
- 4.5 NIE may seek the approval of the Viridian Board on its annual financial plan and any within-year variations thereto to the extent referred to in paragraph 4.1 above. Other than that, NIE will of its own volition, decide on its annual financial plans.
- 4.6 Where the Viridian Board requires amendments to be made to the annual financial plans submitted for its approval the Compliance Manager will report such amendments to the Authority as soon as reasonably practicable and without undue delay. To the extent that such amendments would be reasonably likely to restrict, prevent or distort competition on the island of Ireland, for example to make an investment decision which would give an unfair commercial advantage to an Associated Business, or which otherwise would result in preventing NIE from complying with its Licence or the Order, NIE shall refuse to make such amendments.
- 4.7 The authority of the NIE Board and the NIE Executive Committee to discharge NIE's licensed activities within the annual financial plans when approved by Viridian shall not be constrained by Viridian and Viridian's financial limits of authority approved by the Viridian Board shall reflect this.
- 4.8 With the exception of the global limits on NIE's indebtedness set by Viridian, NIE will not accept or agree to accept, any limits or restrictions on its financial plans (including through the imposition of a Viridian policy) which would, or would be likely to, prevent it from undertaking its licensed activities.

## **5. Internal Control/Risk Management**

- 5.1 NIE will ensure that, other than to the extent specifically permitted by this Compliance Plan, internal control of NIE shall be exercised only by the NIE Board and its Executive Committee.
- 5.2 NIE will ensure that its internal and external auditors provide the results of their audits or reviews in the first instance only to the NIE Board or its Executive or Audit Committees. This shall not prevent the internal and external auditors discussing their findings with NIE management in the course of their audit activities.
- 5.3 NIE may provide, or authorise the provision of, such results to Viridian Representatives having first excised any information that is proscribed by paragraph 9.3 of this Compliance Plan.
- 5.4 NIE may provide Viridian Representatives with information relating to –
- (a) its performance against its annual financial plan(s); and
  - (b) any matter that has been identified by NIE's risk assessment team/manager or by NIE's internal and external auditors as presenting a significant risk to NIE's business,

only to the extent set out in this Compliance Plan.

- 5.5 Subject to paragraph 9.1 below and without prejudice to paragraph 5.4 above, NIE Representatives may participate in meetings of the Viridian Risk Management Committee to report on risk management processes, procedures and risks within NIE, but in so reporting shall not discuss or otherwise divulge information relating to any risk that may have been identified by NIE to the extent that such information is restricted from being disclosed under paragraph 9.3 of section A of this Compliance Plan or the Licence.

## **6. Appointment of Directors**

- 6.1 The Directors of NIE may be appointed and removed by Viridian. Any such appointment will be made in accordance with the requirements of the Licence. The Directors of NIE as at the date of this Compliance Plan are listed in each year in the annual compliance report submitted to the Authority.
- 6.2 NIE will notify the Authority of any proposed new appointment of a Director as soon as it is known together with the proposed date of appointment.
- 6.3 Subject to the requirements of company law, each NIE Director will at all times when acting in that capacity act solely in the interests of NIE.
- 6.4 NIE shall ensure that the remuneration of a NIE Director is not linked to or otherwise dependent on the performance of any Associated Business or the performance of Viridian (other than through the performance of NIE or NIE Powerteam Limited) and will, to the extent that it is performance related, be linked solely to the performance of NIE and NIE Powerteam.

## **7. Price Control Matters**

- 7.1 NIE may consult with Viridian Representatives on price control matters where, and only to the extent that, the nature or potential outcome of the relevant discussions and negotiations with the Authority could reasonably be considered to have a material effect on Viridian's investment in NIE, including the following matters –
- (a) Regulated revenue entitlement;
  - (b) Global capex and global opex;
  - (c) Efficiency factors and assumptions on costs savings;
  - (d) Quantum of RAB;
  - (e) Rate of return; and
  - (f) Regulatory precedents in GB and elsewhere.
- 7.2 Nothing in paragraph 7.1 shall constrain NIE in obtaining advice in relation to price control matters as provided for under the Common Services section (Section B) of this Compliance Plan.
- 7.3 Unless otherwise approved by the Authority, participation by Viridian Representatives other than persons providing advice to NIE under the Common Services Agreement in exchanges on price control matters with the Authority shall be limited to the matters set out in paragraph 7.1 above.
- 7.4 NIE may seek the endorsement of the Viridian Board to NIE's decision to accept or reject the Authority's final price control proposals to the extent of the areas referred to in paragraph 7.1 above. Other than that, NIE will of its own volition, determine whether to accept or reject the Authority's final price control proposals.
- 7.5 To the extent that the Viridian Board requires amendments to be made to the decisions on price control matters in areas other than those set out in paragraph 7.1 which would be reasonably likely to restrict, prevent or distort competition on the island of Ireland, or which otherwise would directly result in preventing NIE from complying with its Licence or the Order, the Compliance Manager will report such amendments to the Authority as soon as reasonably practicable and without undue delay.

## 8. Decision Making

- 8.1 Except as permitted in this Compliance Plan, NIE Representatives will not seek, or be required to obtain, approval from any Viridian Representative in respect of decisions relating to the operation, maintenance and/or development of the transmission or distribution system of NIE. These decisions will be taken only by NIE Representatives.
- 8.2 In respect of decisions relating to the internal control and corporate governance of NIE, on behalf of NIE an NIE Representative may:
- (i) consult and involve NIE's Company Secretary who may be a Viridian Representative (but who shall not at the same time be the Company Secretary of Viridian or of an Associated Business engaged in the generation or supply of electricity in the island of Ireland), and
  - (ii) seek or require approval from a Viridian Representative to the extent that such approval is limited to the following issues:
    - (a) amending corporate policies, objectives, strategic or business plans or performance targets for NIE in a manner which could give rise to a material adverse impact on the value of NIE;
    - (b) decisions which relate to -
      - (i) Altering in any material way the nature of NIE and/or its business except where failure to do so would cause NIE to be in breach of its licence obligations.
      - (ii) Deciding on matters in relation to the funding of NIE (which may include equity investment, short-term and long-term borrowings from Viridian and external sources, and working capital, guarantees and indemnities).
      - (iii) Giving any guarantee, covenants or indemnity to secure the liabilities or obligations of any person, firm or company, or approve any guarantees which NIE, its subsidiaries, associate or joint venture companies require for their business other than within monetary guarantee, bond and indemnity limits agreed in annual financial plans and as provided under Viridian Treasury policy.
      - (iv) Appointing or dismissing a Director (other than an alternate director) of NIE or relieving the Chairman, Managing Director or Finance Director of NIE of their duties in that role.
      - (v) The disposal of any subsidiary company or of any shares in any subsidiary company.
      - (vi) Acquiring, purchasing or subscribing for any shares, debentures, mortgages, assets or securities (or any interest therein) in any company, trust or other body other than as set out in annual financial plans.
      - (vii) Entering into any onerous or unusual joint venture, partnership or profit sharing arrangement with any person, firm or company.
      - (viii) Issuing any unissued shares for the time being in the capital of NIE or creating or issuing any new shares or giving or agreeing to give any option in respect of any shares.

- (ix) Declaring or paying any dividends or other distributions in respect of any of its issued share capital otherwise than as agreed by Viridian.
- (x) Entering into any scheme or arrangement with its creditors or doing or permitting or suffering to be done any act or thing whereby NIE may be wound up (whether voluntarily or compulsorily).
- (xi) Entering into any contract or transaction which exceeds the financial limits set out in the annual financial plan(s).
- (xii) Entering into any transaction or arrangement or creating any contract or obligation to pay money or money's worth to any officer or employee of NIE (other than remuneration for his employment within NIE) or to any private company partnership or firm in which said officer or employee has an interest or to any person as a nominee or associate of any such officer or employee (including any renewal thereof or any variation of the terms of any existing contract or obligation).
- (xiii) Acquiring any assets subject to any charge or other encumbrance materially affecting the value thereof.
- (xiv) Selling, transferring, leasing, assigning or otherwise disposing of any material part of the undertaking, property and or assets of NIE (or any interest therein) or contracting so to do, otherwise than in the ordinary and proper course of business.
- (xv) Creating any pension scheme for employees or executives other than a Viridian approved pension scheme.
- (xvi) Making, approving or paying any fees, pensions or other emoluments to any director or former director of NIE.
- (xvii) Incurring, in any financial year, any capital expenditure in excess of 10% over the annual budgeted capital expenditure set out in NIE's annual financial plan for that financial year.
- (xviii) Agreeing major regulatory matters including price control reviews (as described further in section 7 of this Compliance Plan) which could have a material effect upon the value of NIE.
- (xix) Entering into any prosecution, defence or settlement of arbitration or litigation where the damages or legal costs could give rise to a material adverse impact on the value of NIE.
- (xx) Conducting any panel of inquiry into a major issue affecting NIE or reporting on its findings.
- (xxi) Any other matter to the extent authorised by the Authority.

8.3 The Compliance Manager will monitor the times that NIE seeks approval or consults with a Viridian Representative under or in accordance with paragraph 8.2 above and will include the results of such monitoring in the annual report to the Authority.

## 9. Information Flows and Restrictions

9.1 A NIE Representative will not disclose or otherwise divulge any protected information to any Viridian Representative except to the extent permitted under the Licence and this section 9. Such disclosing and divulging is permitted where such protected information is or has been made available to a grouping of industry participants (such grouping being wider than a grouping comprised solely of companies within the Viridian Group of companies) or to industry participants as a whole, or is otherwise in the public domain, and the restrictions in this section 9 shall be read and construed so as not to restrict such permission.

9.2 Without prejudice to the provisions of the Licence and the other parts of this section 9, a NIE Representative may only provide information on such matters which are within the scope of information specified or described in this section and where it is necessary for Viridian Representatives to receive such information in order to participate in the corporate governance of NIE as permitted under paragraph 3.5 above.

9.3 NIE will not by virtue of paragraph 9.2 above or paragraph 9.4 below disclose or divulge to any Viridian Representative who is engaged in the management or operation of an Associated Business, any information which –

- (a) is commercial information about the activities, business or affairs of one or more specific existing or prospective generator, supplier, customer (unless that person consents); or
- (b) relates to any individual transmission and/or distribution investment project or infrastructure reinforcement,

except where approved in advance and in writing by the Authority.

9.4 The scope of information that NIE may provide to any Viridian Representative under this Compliance Plan includes the following –

- (a) Regulatory Matters – high level information relating to NIE’s transactions with the Authority, the SEM Committee, DETI or the Consumer Council in which the subject matter reasonably could be considered to have the potential to affect Viridian’s investment in NIE;
- (b) Financial - financial reporting information relating to -
  - (i) matters which may require approval by Viridian under the annual financial plan or Treasury Policy and under Viridian’s financial limits of authority (being for matters not included in NIE’s annual financial plan);
  - (ii) annual and five year financial plans (as described in paragraph 4.1) and related high-level commentary;
  - (iii) management accounts (P&L, Balance Sheet, Cash flow; updates on KPIs; monthly summary of expenditure commitments approved by the NIE Executive Committee in excess of £2.5m (provided the expenditure is within the annual financial plans approved by the Viridian Board) and related high-level commentary;
  - (iv) cash flow forecasts;
  - (v) interim and year-end accounts analysis including accounting disclosure notes;

- (vi) compliance with covenants associated with financing arrangements;
- (vii) preparation of tax returns;
- (c) Internal Control – information relating to -
  - (i) audit reports subject to paragraph 5.3;
  - (ii) risks reported in accordance with paragraphs 5.4 and 5.5; and
  - (iii) Health & Safety plan, customer service performance and storm readiness.
- (d) Decision Making – information relating solely/exclusively to the list of matters set out in paragraph 8.2 above and only to the extent necessary for decisions to be made in relation to those matters.
- (e) IT - application development plans for inclusion in Group IT strategy.

9.5 NIE will put in place and comply with arrangements and shall use reasonable endeavours to ensure that Viridian complies with such arrangements which ensure that any information disclosed to Viridian Representatives shall not be disclosed further without NIE's consent other than in accordance with the provision of Condition 10 of the Licence.

9.6 NIE will put in place and comply with arrangements and shall use reasonable endeavours to ensure that Viridian complies with such arrangements which ensure that Viridian Representatives do not disclose or use any information provided or disclosed to them by NIE for the purpose of obtaining any unfair commercial advantage for Viridian or any affiliate or related undertaking of Viridian.

## Section B: Common Services

### 1. Overview

- 1.1 NIE will not procure or use the services of persons whose services are also procured or used by any Associated Business and/or by Viridian other than to the extent set out in this Section B Common Services of the Compliance Plan.
- 1.2 In the case of Viridian Representatives (as defined in Section A) who provide Group Common Services to NIE, nothing in paragraph 9 of Section A shall restrict the scope of information that may be provided to such persons for the purposes of providing the relevant services, provided that the provision of such information is reasonably required for the provision of such services.

### 2. External Advisors

- 2.1 NIE will not procure the services of an external advisor, or appoint an external advisor to provide services to it, other than in accordance with the following principles –

- (a) Concurrent Engagements: NIE will not engage or appoint an external advisor that is at the same time engaged or appointed by an Associated Business (with the exception of the Power Procurement Business) or by Viridian, to advise the Associated Business or Viridian on matters relating directly to its generation or supply of electricity in the Island of Ireland where his engagement or appointment by NIE could give that Associated Business or Viridian an unfair commercial advantage. In order to provide transparency on such approach, NIE will maintain a Conflicts Log which will record how it manages issues arising in relation to concurrent engagements, and which will be made available to the Authority on request. The Conflicts Log entries will be summarised each year in the annual report submitted to the Authority.
- (b) Past Engagements: NIE will not engage, appoint or instruct an external advisor in relation to any matter where that advisor has, at any time over the previous three months, advised (i) any Associated Business (with the exception of the Power Procurement Business) or (ii) Viridian, on matters relating directly to its generation or supply of electricity in the Island of Ireland where his engagement or appointment by NIE could give that Associated Business or Viridian an unfair commercial advantage. In order to provide transparency on such approach, NIE will maintain a Conflicts Log which will record how it manages issues arising in relation to past engagements, and which will be made available to the Authority on request. The Conflicts Log entries will be summarised each year in the annual report submitted to the Authority.
- (c) Future Engagements: NIE will require that any external advisor engaged or appointed by it does not *either* at any time during which he remains so engaged or appointed *or* within three months of such engagement or appointment being terminated:
- (i) take up or accept any engagement or appointment with any Associated Business (with the exception of the Power Procurement Business); or
- (ii) take up or accept any engagement or appointment with Viridian,
- on matters directly relating to the Associated Business' or Viridian's generation or supply of electricity in the Island of Ireland where his engagement or appointment could give that Associated Business or Viridian an unfair commercial advantage. In order to provide transparency on such

approach, NIE will maintain a Conflicts Log which records how it manages issues arising in relation to future engagements, and which will be made available to the Authority on request. The Conflicts Log entries will be summarised each year in the annual report submitted to the Authority.

unless in each case it has prior to such engagement or appointment demonstrated to the reasonable satisfaction of the Authority that:

- (iii) it has put in place arrangements which facilitate compliance with Condition 10(5) of the Licence; and either
- (iv) the appointment does not or is not likely to conflict with the requirements of Condition 12 of the Licence; or
- (v) the restrictions are unnecessary in the circumstances of the case.

2.2 In paragraph 2.1 above, “external advisor” means any individual who is not an employee of NIE or Viridian.

### **3. Group Common Services**

3.1 Except as provided in paragraphs 3.2 and 3.3 below, NIE will not procure any services from a Viridian Common Services Representative, or appoint any Viridian Common Services Representative, to provide services to it. A “Viridian Common Services Representative” is a person employed by Viridian.

3.2 NIE may procure from any Viridian Common Services Representative, or appoint any Viridian Common Services Representative to provide, the following services:

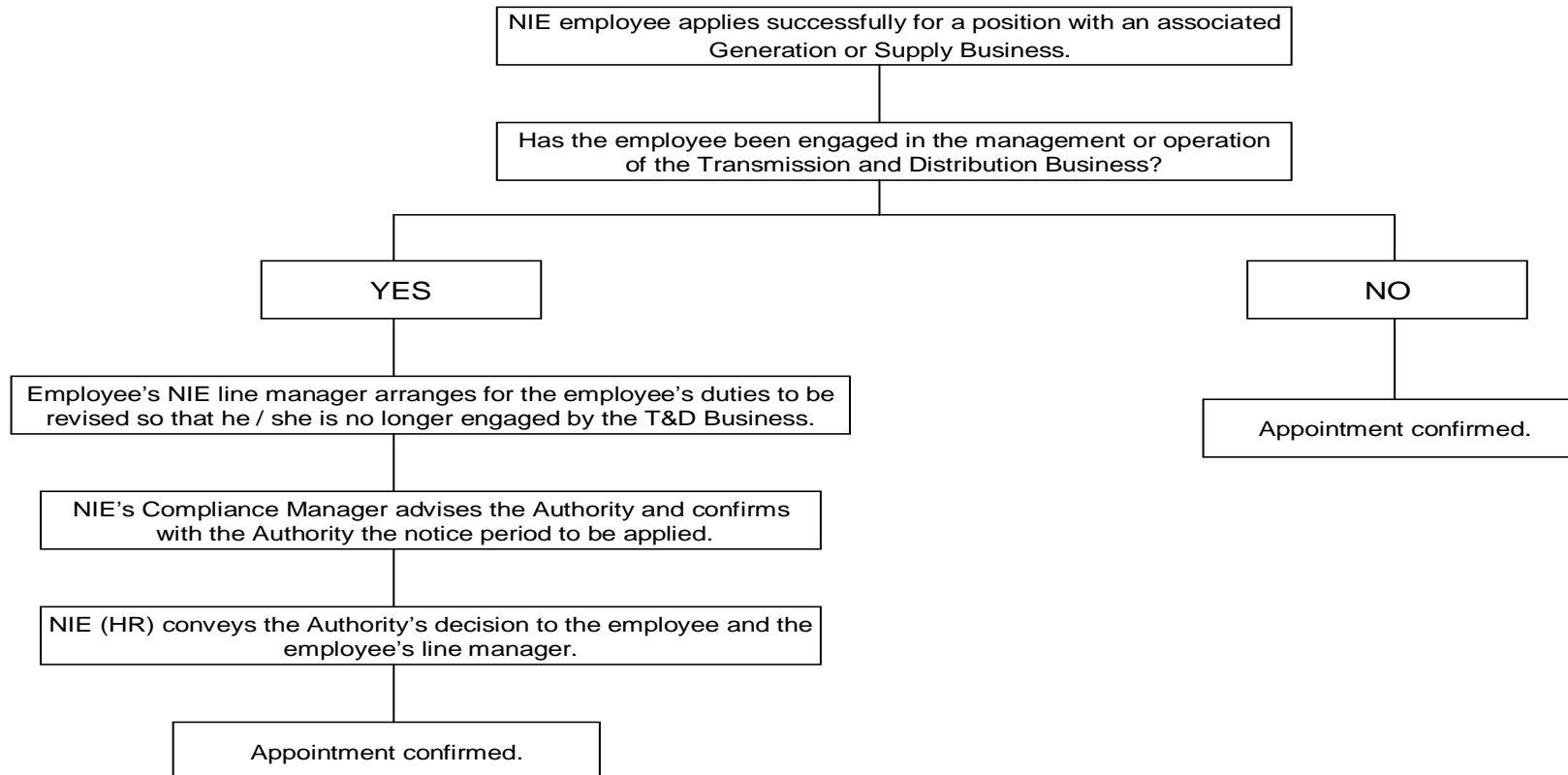
- (a) Finance – the provision of general accounting advice, taxation advice, operating and maintaining the SAP accounting system as it relates to NIE, investment services, financial risk management services execution and set up of currency and commodity swaps, and the administration of payments to suppliers of goods and services;
- (b) Company Services – the provision of company secretariat services in respect of maintenance of company statutory books, reports and records and statutory obligations of NIE as an incorporated company;
- (c) Human Resources - the provision of services relating to management development, succession, performance and career development, employee health and welfare, recruitment, employment legislation and best practice, including for example disciplinary and grievance procedures, and equal opportunities. Also provision of payroll administration and administration of employee benefits;
- (d) Safety – the provision of safety advice and compliance services including statutory reporting.
- (e) IT – the provision of advice and assistance, including helpdesk, on the IT infrastructure of NIE including application strategy and technology procedures and standards, support for the management of outsourced technology services, on IT investment projects including project management and assurance support, and on IT security, business continuity and disaster recovery services;
- (f) Pensions Management – the provision of services relating to the administration of the group pension scheme of which NIE is a member.
- (g) Insurance Services – The provision of services relating to the access to and administration of insurance arrangements.

- 3.3 NIE may procure from any Viridian Common Services Representative the following services;
- (a) Legal – the provision of legal services; and
  - (b) Regulatory – the provision of services related to matters regulated under the Licence and related documents,
- but in each case shall ensure that it does so in accordance with the principles set out in paragraph 2.1 above (where the reference to external advisor shall be read as a reference to Viridian Common Services Representative) Provided always that a Viridian Common Services Representative who provides services to NIE described in sub-paragraph (b) above shall not also provide such services to an Associated Business (with the exception of the Power Procurement Business).
- 3.4 The services referred to in paragraphs 3.2 and 3.3 above are collectively referred to in this Compliance Plan as Group Common Services.
- 3.5 Where NIE procures any of the Group Common Services it will procure them under a legally binding Common Services Agreement (**CSA**).
- 3.6 NIE will ensure that each CSA includes terms:
- (a) that require any person providing NIE with the services permitted under paragraphs 3.2 and 3.3 above, to ensure that he does not disclose any information obtained by or provided to him by virtue of him providing such services, to any other Viridian Representative other than as permitted for corporate governance purposes under paragraph 9 of Section A of the Compliance Plan or where the Viridian Representative is another Viridian Common Services Representative and they are working together to provide a particular service.
  - (b) that require compliance by every person providing the relevant Group Common Service(s) with the requirements of the Licence, including in particular Condition 10 of the Licence and Condition 12 of the Licence (in so far as it relates to the provision of services under the CSA).
  - (c) that provide that the Non Disclosure Agreement (between NIE and Viridian under which Viridian is obliged not to use the information disclosed to it for the purposes of obtaining any commercial advantage for any Associated Business) will apply to any information exchanged under or for the purposes of services provided under the CSA.
- 3.7 NIE will include a provision in the CSA which requires that in providing Group Common Services to NIE (and to any Associated Business) Viridian will ensure that they are provided at rates which are reflective of the services being provided and which avoid cross-subsidies.
- 3.8 NIE will not enter into a CSA which –
- (a) prohibits or otherwise prevents NIE from complying with the Licence; or
  - (b) prohibits or otherwise prevents NIE from managing and operating the T&D business on an independent basis, including without limitation compliance with this Compliance Plan.
- 3.9 As soon as reasonably practical after this Compliance Plan has been approved NIE will not employ, or otherwise take any personnel related responsibility for, any person involved in the provision of any Group Common Services to NIE or of any equivalent services provided to any Associated Business. This shall not apply to any person involved in the provision of Regulatory Services to the Power Procurement Business. The personnel providing Group Common Services to NIE under a CSA shall not at the same time be employed by any Associated Business.

- 3.10 NIE will not provide to any Associated Business any services which constitute the operation or management of that Associated Business save to the extent that the Authority consents to such provision.
- 3.11 NIE will require Viridian to ensure that any person involved in the provision of Group Common Services to NIE:
- (a) is made fully aware of the requirements of Condition 10 of the Licence and the systems, processes and procedures to be followed with regard to the disclosure and use of protected information;
  - (b) receives appropriate training on the requirements of Condition 10 (and in particular paragraph 5 thereof) of the Licence and the systems, processes and procedures put in place by NIE and/or Viridian to ensure compliance with the requirements;
  - (c) is subject to a clause in his employment contract which reflects the restrictions on disclosure and use of protected information as provided for in Condition 10 (and in particular paragraph 5 thereof) of the Licence;
  - (d) is, for a period of 3 months, or such other period as may be agreed with the Authority on a case by case basis, prevented from being allowed to transfer to or be engaged by an Associated Business where that person has had access to commercially sensitive protected information relating to NIE;
  - (e) is permitted to use or access premises or systems of NIE and of any Associated Business only to the extent required for the provision of the Group Common Services in accordance with the applicable CSA.

# Appendix 1

## NIE Licence Condition 12, paragraph 3(e) – Staff Transfer Procedure



## Appendix 2

### MEMORANDUM OF UNDERSTANDING

### BETWEEN VIRIDIAN GROUP LIMITED AND NORTHERN IRELAND ELECTRICITY plc

The formal and legal requirements for Northern Ireland Electricity plc (NIE) are set out in NIE's Articles of Association. This Memorandum of Understanding (Memorandum) contains guidelines relating to the corporate relationship which will exist between NIE and its beneficial shareholder Viridian Group Limited (Viridian).

**No provision contained in this Memorandum shall be construed in a manner to prevent NIE from operating in compliance with its Transmission Licence (Licence) including the obligation to comply with a Compliance Plan approved by the Northern Ireland Authority for Utility Regulation (Authority) in accordance with Condition 12 of the Licence (Compliance Plan).**

#### **1 Governance Arrangements**

- 1.1 The NIE Board will at all times be responsible for the day-to-day management and operation of NIE. Under the supervision of the NIE Board, the Executive Committee of the NIE Board (Executive Committee), comprising only executive members of the NIE Board and senior managers employed by NIE, may undertake much of the day-to-day business and management and operation of NIE. (All references in this Memorandum to NIE Representatives shall be taken to encompass a reference to (i) NIE; (ii) any (executive or non-executive) director of NIE; and (iii) any person employed, engaged or appointed by and acting on behalf of NIE).
- 1.2 Neither Viridian nor (i) any (executive or non-executive) director of Viridian (other than where the relevant director is also a director of NIE and is acting in his capacity as a director of NIE); and (ii) any person employed, engaged or appointed by, or authorised to act on behalf of, Viridian (collectively Viridian Representatives) shall participate in the corporate governance of NIE other than to such extent as is set out in this Memorandum.
- 1.3 Viridian Representatives shall participate in the corporate governance of NIE but only to the extent needed in order for Viridian to comply with its legal duties and obligations as a holding company of NIE and to ensure that Viridian's economic and management supervision rights in respect of the return on NIE's assets are protected and in any event only in respect of the following matters –
- (a) Approving and overseeing NIE's annual financial plans and statements and providing such financial resources and financial facilities as are necessary, including setting global limits on NIE's indebtedness – as set out in section 2 below.
  - (b) Conducting a system of internal control as set out in section 3 below.
  - (c) Appointing and removing directors of NIE – as set out in section 4 below.

- (d) Price controls – as set out in section 5 below.
  - (e) Decision making – as set out in section 6 below.
- 1.4 For the avoidance of doubt, Viridian Representatives may receive and access information about NIE relating to the matters listed in section 1.3, in accordance with section 7 below.
- 1.5 The Chief Executive Officer of Viridian (CEO) may attend meetings of the NIE Board and the Executive Committee:
- (a) subject always to compliance with section 6.1; and
  - (b) provided that he does not, as a Viridian Representative do anything as a consequence of such attendance to render Viridian in breach of the terms of the Non Disclosure Agreement in place between Viridian and NIE.
- 1.6 Viridian shall exercise its corporate governance role in relation to NIE in accordance with the undertaking given by it under Condition 12 of the Licence.

## **2 Financial Plans**

- 2.1 NIE will prepare its financial plans and shall consult with Viridian Representatives on elements of its financial plans where, and only to the extent that, the nature of the relevant financial plans could reasonably be considered to have a material effect on Viridian's investment in NIE, including the following elements:
- (a) Profit and loss account;
  - (b) Balance sheet;
  - (c) Cash flow statement including projected revenue;
  - (d) Calculation of forecast regulated revenue entitlement;
  - (e) Summary of operating costs and capital expenditure (including the aggregate of network and non-network expenditure reconciled to the regulatory allowance and the capex plan agreed with the Authority);
  - (f) Annual and longer term funding requirements; and
  - (g) High level key performance indicators (KPIs) for the following subjects: EBITDA; net capex; performance against guaranteed and overall standards; substantiated complaints to the Consumer Council; call handling performance; CML/CC for transmission and distribution; planned CML to facilitate construction and maintenance work; CML mitigation through live line working and the deployment of mobile generation; employee numbers; lost time accidents; employee absenteeism; and global targets for procurement savings.
- 2.2 NIE shall seek the approval of the Viridian Board on its annual financial plan and any within-year variations thereto to the extent referred to in section 2.1. Other than that, NIE will of its own volition, decide on its annual financial plans.

2.3 The authority of the NIE Board and the NIE Executive Committee to discharge NIE's licensed activities within the annual financial plans when approved by Viridian shall not be constrained by Viridian and Viridian's financial limits of authority approved by the Viridian Board shall reflect this.

2.4 With the exception of the global limits on NIE's indebtedness set by Viridian, NIE will not accept or agree to accept, any limits or restrictions on its financial plans (including through the imposition of a Viridian policy) which would, or would be likely to, prevent it from undertaking its licensed activities.

### **3. Internal Control/Risk Management**

3.1 NIE shall provide, or authorise the provision of, the results of audits by its internal and external auditors to Viridian Representatives having first excised any information that is proscribed by section 7.2.

3.2 NIE shall provide Viridian Representatives with information relating to –

- (a) its performance against its annual financial plan(s); and
- (b) any matter that has been identified by NIE's risk assessment team/manager or by NIE's internal and external auditors as presenting a significant risk to NIE's business,

only to the extent set out in the Compliance Plan.

3.3 Subject to section 7.1 and without prejudice to section 3.2, NIE Representatives shall participate in meetings of the Viridian Risk Management Committee to report on risk management processes, procedures and risks within NIE, but in so reporting shall not discuss or otherwise divulge information relating to any risk that may have been identified by NIE to the extent that such information is restricted from being disclosed under section 7.2 or the Licence.

### **4. Appointment of Directors**

4.1 The Viridian Board shall appoint the directors of NIE (and may remove any director of NIE), subject to the requirements of the Licence, and detail the terms under which they shall hold office. The appointment of directors will be in compliance with the criteria set out in the Licence and the appointment of any director notified in advance to the Authority as required. The legal responsibilities of the directors and the required division of powers between shareholders and directors are set out in NIE's Articles of Association.

### **5. Price Control Matters**

5.1 NIE shall consult with Viridian Representatives on price control matters where, but only to the extent that, the nature or potential outcome of the relevant discussions and negotiations with the Authority could reasonably be considered to have a material effect on Viridian's investment in NIE, including the following matters –

- (a) Regulated revenue entitlement;
- (b) Global capex and global opex;

- (c) Efficiency factors and assumptions on costs savings;
- (d) Quantum of RAB;
- (e) Rate of return; and
- (f) Regulatory precedents in GB and elsewhere.

5.2 NIE shall seek the endorsement of the Viridian Board to NIE's decision to accept or reject the Authority's final price control proposals to the extent of the areas referred to in section 5.1. Other than that, NIE will of its own volition, determine whether to accept or reject the Authority's final price control proposals.

## 6. Decision Making

6.1 Except as permitted by the Compliance Plan, NIE Representatives will not seek or be required to obtain approval from any Viridian Representative in respect of decisions relating to the operation, maintenance and/or development of the transmission or distribution system of NIE. These decisions will be taken only by NIE Representatives.

6.2 In respect of decisions relating to the internal control and corporate governance of NIE, on behalf of NIE an NIE Representative shall:

- (i) consult and involve NIE's Company Secretary (who may be a Viridian Representative but who shall not at the same time be the Company Secretary of Viridian or of an Associated Business engaged in the generation or supply of electricity in the island of Ireland), and
- (ii) require approval from a Viridian Representative to the extent that such approval is limited to the following issues:
  - (a) amending corporate policies, objectives, strategic or business plans or performance targets for NIE in a manner which could give rise to a material adverse impact on the value of NIE;
  - (b) decisions which relate to -
    - (i) Altering in any material way the nature of NIE and/or its business except where failure to do so would cause NIE to be in breach of its licence obligations.
    - (ii) Deciding on matters in relation to the funding of NIE (which may include equity investment, short-term and long-term borrowings from Viridian and external sources, and working capital, guarantees and indemnities).
    - (iii) Giving any guarantee, covenants or indemnity to secure the liabilities or obligations of any person, firm or company, or approve any guarantees which NIE, its subsidiaries, associate or joint venture companies require for their business other than within monetary guarantee, bond and indemnity limits agreed in annual financial plans and as provided under Viridian Treasury policy.

- (iv) Appointing or dismissing a Director (other than an alternate director) of NIE or relieving the Chairman, Managing Director or Finance Director of NIE of their duties in that role.
- (v) The disposal of any subsidiary company or of any shares in any subsidiary company.
- (vi) Acquiring, purchasing or subscribing for any shares, debentures, mortgages, assets or securities (or any interest therein) in any company, trust or other body other than as set out in annual financial plans.
- (vii) Entering into any onerous or unusual joint venture, partnership or profit sharing arrangement with any person, firm or company.
- (viii) Issuing any unissued shares for the time being in the capital of NIE or creating or issuing any new shares or giving or agreeing to give any option in respect of any shares.
- (ix) Declaring or paying any dividends or other distributions in respect of any of its issued share capital otherwise than as agreed by Viridian.
- (x) Entering into any scheme or arrangement with its creditors or doing or permitting or suffering to be done any act or thing whereby NIE may be wound up (whether voluntarily or compulsorily).
- (xi) Entering into any contract or transaction which exceeds the financial limits set out in the annual financial plan(s).
- (xii) Entering into any transaction or arrangement or creating any contract or obligation to pay money or money's worth to any officer or employee of NIE (other than remuneration for his employment within NIE) or to any private company partnership or firm in which said officer or employee has an interest or to any person as a nominee or associate of any such officer or employee (including any renewal thereof or any variation of the terms of any existing contract or obligation).
- (xiii) Acquiring any assets subject to any charge or other encumbrance materially affecting the value thereof.
- (xiv) Selling, transferring, leasing, assigning or otherwise disposing of any material part of the undertaking, property and or assets of NIE (or any interest therein) or contracting so to do, otherwise than in the ordinary and proper course of business.
- (xv) Creating any pension scheme for employees or executives other than a Viridian approved pension scheme.

- (xvi) Making, approving or paying any fees, pensions or other emoluments to any director or former director of NIE.
- (xvii) Incurring, in any financial year, any capital expenditure in excess of 10% over the annual budgeted capital expenditure set out in NIE's annual financial plan for that financial year.
- (xviii) Agreeing major regulatory matters including price control reviews (as described further in section 5 above) which could have a material effect upon the value of NIE.
- (xix) Entering into any prosecution, defence or settlement of arbitration or litigation where the damages or legal costs could give rise to a material adverse impact on the value of NIE.
- (xx) Conducting any panel of inquiry into a major issue affecting NIE or reporting on its findings.
- (xxi) Any other matter to the extent authorised by the Authority.

## 7. Information Flows and Restrictions

- 7.1 A NIE Representative will not disclose or otherwise divulge any protected information to any Viridian Representative except to the extent permitted under the Licence and the Compliance Plan. Such disclosing and divulging is permitted where such protected information is or has been made available to a grouping of industry participants (such grouping being wider than a grouping comprised solely of companies within the Viridian Group of companies) or to industry participants as a whole, or is otherwise in the public domain.
- 7.2 NIE will not disclose or divulge to any Viridian Representative who is engaged in the management or operation of an Associated Business, any information which—
- (a) is commercial information about the activities, business or affairs of one or more specific existing or prospective generator, supplier, customer (unless that person consents); or
  - (b) relates to any individual transmission and/or distribution investment project or infrastructure reinforcement,
- except where approved in advance and in writing by the Authority.
- 7.3 Subject to section 7.2 and the other restrictions contained in the Compliance Plan, NIE shall provide the following information to Viridian:
- (a) Regulatory Matters – high level information relating to NIE's transactions with the Authority, the SEM Committee, DETI or the Consumer Council in which the subject matter reasonably could be considered to have the potential to affect Viridian's investment in NIE;

- (b) Financial - financial reporting information relating to -
  - (i) matters which may require approval by Viridian under the annual financial plan or Treasury Policy and under Viridian's financial limits of authority (being for matters not included in NIE's annual financial plan);
  - (ii) annual and five year financial plans (as described in section 2.1) and related high-level commentary;
  - (iii) management accounts (P&L, Balance Sheet, Cash flow; updates on KPIs; monthly summary of expenditure commitments approved by the NIE Executive Committee in excess of £2.5m (provided the expenditure is within the annual financial plans approved by the Viridian Board) and related high-level commentary;
  - (iv) cash flow forecasts;
  - (v) interim and year-end accounts analysis including accounting disclosure notes;
  - (vi) compliance with covenants associated with financing arrangements;
  - (vii) preparation of tax returns;
- (c) Internal Control – information relating to -
  - (i) audit reports subject to section 3.1;
  - (ii) risks reported in accordance with section 3.2 and 3.3; and
  - (iii) Health & Safety plan, customer service performance and storm readiness.
- (d) Decision Making – information relating solely/exclusively to the list of matters set out in section 6.2 and only to the extent necessary for decisions to be made in relation to those matters.
- (e) IT - application development plans for inclusion in Group IT strategy.

7.5 Any information disclosed to Viridian Representatives shall not be disclosed further without NIE's consent other than in accordance with the provision of Condition 10 of the Licence.

7.6 Viridian Representatives shall not disclose or use any information provided or disclosed to them by NIE for the purpose of obtaining any unfair commercial advantage for Viridian or any affiliate or related undertaking of Viridian.

## **8. Implementation and other matters**

8.1 The NIE Board and the Executive Committee agree that they shall insofar as it shall be lawful for them so to do and subject to their fiduciary duties and NIE's Licence including the obligation to comply with the Compliance Plan exercise all voting rights or such other powers of control available to them in relation to NIE so as to comply with this Memorandum.

- 8.2 NIE shall carry on its business within the confines of the financial plans agreed by Viridian in accordance with section 2.
- 8.3 The NIE Board shall appoint an Audit Committee and shall ensure that the activities of NIE (and any subsidiaries) will be subject to regular audits by external auditors and internal auditors, each appointed by NIE.
- 8.4 NIE shall maintain commercially appropriate financial, accounting and legal procedures and systems and ensure that complementary procedures and systems are maintained by any subsidiaries, and in particular, but without limiting the generality of the foregoing, NIE shall:-
- (i) Strictly comply with the provisions of its Articles of Association and deliver all appropriate returns to the Companies Registration Office within the statutory time limits.
  - (ii) Subject to the Compliance Plan engage auditors in consultation with Viridian.
  - (iii) Submit annual tax computations as required for Viridian assessment purposes.
- 8.6 The NIE Board shall convene and hold meetings as required in accordance with agenda. The Executive Committee shall convene for full regular meetings in accordance with agenda. NIE shall ensure that all decisions within the scope of its authority are properly recorded within the minutes of its Board and Executive Committee and those of its subsidiaries.
- 8.7 NIE shall keep all its property and assets of an insurable nature insured as agreed with Viridian against loss or damage by fire, flooding, lighting, aircraft, storm and tempest, disease, and normal risks in accordance with good commercial practice normally insured against by enterprises carrying on a similar business and shall likewise effect public and employer's liability insurance and such other insurances as shall be agreed with Viridian and produce the policies and all endorsements issued in relation thereto for all such insurance to Viridian for inspection on demand and duly pay or cause to be paid the premiums and other sums of money payable in respect of all such insurance and if required produce to Viridian on demand the receipt for the same and any certificates required by Viridian concerning the scope, effectiveness and continuance of all such insurances.
- 8.8 NIE shall ensure that all rents, rates, duties and assessments payable by it shall be paid promptly.
- 8.9 NIE shall ensure that the monies provided by Viridian are used solely in accordance with its financial plans agreed by Viridian in accordance with section 2.
- 8.10 NIE shall notify without delay Viridian of any default by NIE in any of its obligations which could reasonably be considered to have a material affect on Viridian's investment in NIE.

## Appendix 3

### NIE Work Locations

<b>Location</b>	<b>Businesses on Site</b>	<b><u>Additional security measures in place?</u></b>
<b>Fortwilliam House</b> Edgewater Road Belfast	NIE only	No
<b>Dargan</b> Dargan Road Belfast	NIE only	No
<b>Craigavon</b> Carn Industrial Estate Portadown	NIE only	No
<b>Antrim</b> Antrim Technology Park Antrim	NIE only	No
<b>Coleraine (Escalation)</b> Bushtown Road Coleraine	NIE only (un-manned)	No
<b>Ballynahinch (Escalation)</b> Crabtree Road Ballynahinch	NIE only (un-manned)	No
<b>Newry (Escalation)</b> Carnbane Industrial Estate Newry	NIE only (un-manned)	No
<b>Heron Avenue</b> Heron Ave Belfast	NIE only	No
<b>Omagh</b> Deverney Road Omagh	NIE PES NIEE (Supply)	Yes
<b>Ballymena</b> Pennybridge Ind. Estate Ballymena	NIE NIEE (Supply)	Yes

<b>Campsie</b> Courtauld Way Londonderry	NIE PES	Yes
<b>Silverwood</b> Silverwood Road Lurgan	NIE only	No
<b>Enniskillen</b> Tempo Road Enniskillen	NIE only	No
<b>Newtownards</b> Glenford Way Newtownards	NIE only	No
<b>Sydenham Business Park</b> Heron Avenue Belfast	NIE PES	Yes

Where locations are shared, measures have been taken to completely segregate non-NIE businesses from NIE offices and work sites. In addition to the physical separation of businesses i.e. completely separate office / floor space, additional electronic access control proximity card readers (requiring individual personal security passes) were installed to prevent unauthorised access between businesses.

The Compliance Manager will advise the Authority of any additions, deletions or amendments to the information above as part of the annual reporting requirement.

## **Appendix 4**

### **Contingency Process**

The Authority recognises that in emergency situations it may be necessary and appropriate for NIE to deploy personnel from Associated Businesses, who will have no access to commercially sensitive information, principally to answer telephone calls from customers reporting that they are off supply.

Non-NIE employees will be utilised only in emergency escalations.

In normal operational mode, NIE has 24-hour coverage through the use of a dedicated team of call handlers in Craigavon who deal with all customer enquiries and reports of supply faults. Should a minor escalation occur during normal working hours, other Craigavon office-based employees will be called upon to provide additional call handling support. In addition, a weekly rota of standby call handlers is available to provide support outside normal working hours.

Should the escalation become severe enough to require additional call handlers, the list of volunteer call handlers will be utilised. Initially, NIE employees will be contacted. However if the escalation becomes more severe, other employees from Powerteam Electrical Services, Corporate and NIEE (Supply) will be asked to volunteer for call handling duty.

The vast majority of call handling volunteers come from an administrative background and physical access to the call handling IT systems will be provided by the on-duty Call Handling Co-ordinator or one of the dedicated call handling supervisors. Logs are maintained of all volunteer call handlers utilised during an escalation.

Upon close-down of the escalation, the on-duty Call Handling Co-ordinator or one of the dedicated call handling supervisors, will ensure that all call handling IT systems are closed down.