

Dated

200

NORTHERN IRELAND ELECTRICITY plc

and

[NAME OF SUPPLIER]

PSO AGREEMENT

SEM Go Live Version

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THIS AGREEMENT is made the day of 2007

BETWEEN:

- (1) **NORTHERN IRELAND ELECTRICITY plc** whose registered office is at 120 Malone Road, Belfast, BT9 5HT, company number NI026041, (hereinafter called “**the Company**” which expression shall include its permitted successors and assigns); and
- (2) **THE SUPPLIER** identified in Schedule 1 whose company number is in Schedule 1 having its registered address at the place identified in Schedule 1 (hereinafter called “**the User**” which expression shall include its permitted successors and assigns).

WHEREAS

- A. Due to the introduction of new legal and regulatory arrangements in Northern Ireland, the User requires arrangements with the Company for payment of charges in relation to the public service obligation costs as approved pursuant to the Company’s licence.
- B. This Agreement is required to be entered into, maintained and complied with by the Company under the Transmission Licence and required to be entered into and maintained by the User under the User’s Supply Licence.

IT IS HEREBY AGREED as follows:

1. General Conditions and Definitions

- 1.1 The General Conditions shall apply to and be incorporated into this Agreement subject to any variations set out in this Agreement. In the event of any conflict between the General Conditions and provisions of this Agreement, the provisions of this Agreement shall prevail.
- 1.2 In this Agreement, unless the context requires otherwise, capitalised words and phrases have the meaning given to them in the General Conditions and the following words and phrases have the meaning set out next to them:

“**Agreement**” means this PSO Agreement, as amended and restated from time to time;

“**Approved Credit Status**” means:

- (a) a long term credit rating of not less than A- by Standard and Poor’s Corporation or a rating not less than A3 by Moody’s Investors Service (or such other credit rating as the Company may from time to time specify

based on the relevant sections of the Company's prevailing payment security policy); or

- (b) such credit status which, in the opinion of the Company, provides equivalent comfort as that set out in paragraph (a) above;

“Authority”

means the Northern Ireland Authority for Utility Regulation established under the Energy (Northern Ireland) Order 2003;

“Deposit Account”

means a deposit account at a bank in the UK that satisfies the criteria outlined in the definition of Qualifying Issuer where:

- (a) the account is in the joint name of the Company and the User;
- (b) interest on the amount deposited in the account accrues for the benefit of the User, after any deduction for any tax or bank charges;
- (c) the Company and the User have irrevocably instructed the bank to make payments to the Company against the sole signature of the Company;
- (d) the bank has agreed that the amounts deposited in the account must not be set off or otherwise applied by the bank in respect of any indebtedness of the User or any other person; and
- (e) amounts (other than interest) standing to the credit of the account will not be paid to the User without the prior written agreement of the Company;

“General Conditions”

means the “Conditions Applicable to Electricity Agreements entered into with Northern Ireland Electricity plc”, as amended from time to time;

“Industry Arrangements”

means:

- (a) the Order and any direction or instruction issued under the Order, and any deemed agreement under the Order;

- (b) any standard, code, code of practice or associated instrument or agreement or other instrument or document established pursuant to the Order or any licence granted under the Order with which the Company and/or the User is required to comply or enter into and (for the avoidance of doubt) includes those instruments or documents referred to by name elsewhere in this Agreement; and
- (c) the Trading and Settlement Code and any agreed procedures under that Code.

“Interest Rate”

means the higher of the base rate of the Bank of Ireland from time to time plus 3% or such other rate as may be specified in the Transmission Licence.

“Letter of Credit”

means an unconditional irrevocable stand-by letter of credit issued on behalf of the User by a Qualifying Issuer, in sterling and in favour of the Company, allowing for partial drawings and providing for payment to the Company by the Qualifying Issuer forthwith on demand at a branch of the issuing Qualifying Issuer and otherwise on either (at the User’s option) the terms set out in the Payment Security Policy or other terms reasonably approved by the Company;

“NI Distribution System”

has the meaning given to “distribution system” in the Transmission Licence;

“Payment Security Policy”

has the meaning given to that expression in the Transmission Licence;

“PSO Charges”

has the meaning given to that term in the Transmission Licence;

“Qualifying Amount”

has the meaning given to it in clause 2.10;

“Qualifying Issuer”

means a legal person which either:

- (a) possesses a current A- rating or better awarded by Standard and Poor’s Rating Services or a current A3 rating or better awarded by Moody’s Investors Service (or such other credit rating as the Company may specify from time to time based on the relevant sections of the Payment Security Policy) in respect of its most recent

unsecured (and unsubordinated) long term debt issue on any capital market or, if those agencies should both cease to publish such ratings, possesses an equivalent rating from another ratings agency of equal repute; or

- (b) is otherwise approved by the Company and is permitted to accept deposits pursuant to Part IV of the Financial Services and Markets Act 2000,

provided that if any person previously possessing the rating set out in (a) above should cease to possess such rating or, being admitted to be a Qualifying Issuer by virtue only of approval pursuant to paragraph (b), should be the subject of a notice by the Company to the User to the effect that the issuer has, in the reasonable opinion of the Company, suffered a material adverse change in its financial condition since its approval, such person shall cease to be a Qualifying Issuer;

“Security Cover”	means security cover (if any) provided by the User to the Company under clause 3;
“SEM Go-Live”	shall have the meaning given to that expression in the Transmission Licence;
“Supplier”	means the holder of a Supply Licence;
“Supply Licence”	means a licence to supply electricity granted under the Electricity (Northern Ireland) Order 1992; and
“Transmission Licence”	means the licence granted to the Company under the Order.

2. Calculation and Payment of Charges

- 2.1 Subject to clause 2.13, this Agreement shall come into effect from the later of SEM Go-Live and the date of this Agreement.
- 2.2 Each Party shall pay to the other Party an amount in respect of the PSO Charges (plus Value Added Tax) calculated in accordance with this clause 2, the Transmission Licence and the schedule of PSO Charges referred to therein.
- 2.3 Where in any month the PSO Charge is positive, the User (in respect of that month the **“Payer”**) shall pay the Company (in respect of that month the **“Payee”**), and where in any month the PSO Charge is negative, the Company (in respect of that

month the “Payer”) shall pay the User (in respect of that month the “Payee”) the amount required in accordance with this clause 2.

- 2.4 PSO Charges are subject to change without notice in accordance with changes to the PSO Charges under the Transmission Licence.
- 2.5 Such matters as may determine the amount payable by either Party under this clause 2, including the amount of electricity supplied by the User in Northern Ireland from time to time, shall be calculated using the procedures established by Industry Arrangements where applicable or otherwise as established by the Company and approved by the Authority (following such consultation as the Authority considers appropriate) and notified to the User from time to time.
- 2.6 As soon as reasonably practicable after the end of each calendar month the Company shall deliver to the User an account showing the PSO Charges payable in respect of that calendar month and any adjustments in respect of previous months.
- 2.7 On any occasion upon which the PSO Charges payable by the Payer under this Agreement have not been calculated in accordance with this Agreement (including the Transmission Licence) adjustments shall be made by the Company and included in the relevant account. Where:
 - (a) the adjustment discloses an overcharge, the Payee shall repay to the Payer the amount by which the Payer has been overcharged together with interest at the at the base rate of the Bank of Ireland from time to time plus 1% calculated from the due date of the invoice containing the overcharge until the date of repayment; or
 - (b) the adjustment discloses an undercharge, the Payer shall pay to the Payee the amount by which the Payer has been undercharged together with interest at the base rate of the Bank of Ireland from time to time plus 1% calculated from the due date of the invoice that should have included the undercharge until the date of payment.
- 2.8 The Payer shall pay each account in full within 10 Business Days of its date and the Payee shall be entitled to charge interest on the amount unpaid after expiry of the said 10 days at the interest rate specified in this clause 2 compounded on a quarterly basis.
- 2.9 If the User wishes to raise a bona fide dispute in relation to an account, then:
 - (a) the User must provide written notice of the dispute, the reason for the dispute and the amount in dispute to the Company;
 - (b) the Payer must pay the amount in dispute on or before the due date of the account, except where the amount in dispute is a Qualifying Amount;
 - (c) if the amount in dispute is a Qualifying Amount then the Payer need not pay the Qualifying Amount unless and until it is agreed or determined that

the amount in dispute is payable. The Payer must still pay the amount not in dispute on or before the relevant due date;

- (d) the Parties shall use all reasonable endeavours to resolve the dispute in good faith;
- (e) where the dispute remains unresolved after 20 Business Days of the User notifying the Company of the dispute pursuant to paragraph (a), either Party may refer the dispute to resolution in accordance with the General Conditions.

2.10 A “**Qualifying Amount**” is an amount that exceeds five percent (5%) of the total amount stated to be payable by the Payer to the Payee in the account in dispute.

2.11 If it is agreed or determined pursuant to clause 2.9:

- (a) that the whole of the amount in dispute is payable by the Payer, and the Payer has paid such amount in accordance with clause 2.9, then no further action need be taken;
- (b) that the whole or any part of the amount in dispute is not payable by the Payer, and the Payer has paid such amount in accordance with clause 2.9, then the Payee will refund such amount to the Payer within 10 Business Days of the date of resolution or determination of the dispute, together with interest at the base rate of the Bank of Ireland from time to time plus 1% calculated from the later of (i) the date the account was paid to the Payee and (ii) the date the Payee received notice of the dispute pursuant to clause 2.9;
- (c) that the whole or any part of the amount in dispute is payable by the Payer, and the Payer has not paid such amount in accordance with clause 2.9, then the Payer shall pay such amount to the Payee within 10 Business Days of the date of resolution or determination of the dispute, together with interest at the base rate of the Bank of Ireland from time to time plus 1% calculated from the date the relevant amount fell due for payment under clause 2.9; and
- (d) that the whole of the amount in dispute is not payable by the Payer, and the Payer has not paid such amount in accordance with clause 2.9, then no further action need be taken.

2.12 The User must raise a dispute in relation to an amount in an account rendered by the Company pursuant to clause 2.6 within 24 calendar months of the date of the account.

2.13 Where the User has in effect a use of system agreement with the Company immediately prior to SEM Go-Live:

- (a) this Agreement shall be deemed to come into effect at SEM Go-Live (whether executed before or after SEM Go-Live); and

- (b) notwithstanding the timings specified in clause 3.1, the User shall have in place Security Cover pursuant to clause 3 from the later of the date of execution of this Agreement and SEM Go-Live.

3. Security

3.1 The User must, at any time that it does not have an Approved Credit Status, deliver to the Company, within 10 Business Days after the date on which charges begin to accrue under clause 2, and subsequently maintain Security Cover:

- (a) in the form of a Letter of Credit;
- (b) in the form of a cash deposit in a Deposit Account; or
- (c) in such other form as the Company agrees;

for payment of all monies due to the Company under this Agreement. The amount of the Security Cover is determined under clause 3.2, 3.3 and 3.4.

3.2 The Security Cover amount that the User is required to provide and maintain shall be determined by the Company from time to time in accordance with the relevant sections of the Payment Security Policy.

3.3 The Company may from time to time, by notice, require the User to increase the amount of Security Cover if the amount of the Security Cover provided by the User is less than the amount calculated for it under clause 3.2 (whether due to recalculation by the Company, changes to the relevant sections of the Company's Payment Security Policy, or drawings or anticipated drawings on the Security Cover by the Company). The User must within 10 Business Days of the notice procure that the Security Cover is increased or deliver to the Company additional Security Cover so as to comply with clause 3.2.

3.4 The User may notify the Company that it considers that the amount of Security Cover provided is more than is required under clause 3.2 and ask for it to be reduced to the level required under clause 3.2. Where the amount of Security Cover provided is in excess of the amount required by clause 3.2, the Company shall reduce or return the Security Cover in excess of the amount required within 10 Business Days of such request.

3.5 Security Cover must at all times have a validity of at least 3 months. The User must ensure that Security Cover is replaced before this requirement is breached. The User shall in any event replace Security Cover within 5 Business Days of a request from the Company to do so, if the request is made by notice given within the last 4 months of the validity of the Security Cover in place at the time the request is made.

3.6 If:

- (a) the issuer of a Letter of Credit ceases to be a Qualifying Issuer;

- (b) the bank at which a Deposit Account is held ceases to meet the Qualifying Issuer criteria; or
- (c) any condition on which the Company accepted any other form of Security Cover under clause 3.1(c) ceases to be met;

then the User must procure replacement Security Cover within 10 Business Days of the occurrence of the relevant event referred to in clauses 3.6(a) to 3.6(c).

3.7 The Security Cover (and in the case of a cash deposit, any interest accrued in respect of the cash deposit, less any bank and similar charges and any taxes deducted by the bank) will be released to the User within 10 Business Days after the later of (i) termination of this Agreement and (ii) the date when the User has paid all amounts owing by it in respect of this Agreement including interest. Release of Security Cover is without prejudice to the rights of the Company under this Agreement and does not relieve the User of any of its obligations or any liability in respect of this Agreement.

3.8 The Company may draw down on any Security Cover provided by the User without notice to the User if:

- (a) the User has not paid an amount owed to the Company by the due date under this Agreement; or
- (b) an event of default (as defined in clause 4 of this Agreement) occurs in relation to the User.

3.9 If any of the circumstances in clause 3.8 occurs, then all amounts payable by the User to the Company under this Agreement become payable forthwith upon demand by notice from the Company to the User, notwithstanding anything to the contrary in this Agreement.

4. Events of Default

4.1 An event of default occurs if:

- (a) the User has failed to pay an amount owed to the Company by the due date under this Agreement (and such failure is not remedied within 5 Business Days of notice from the Company requiring such remedy);
- (b) the User fails to perform or comply with any obligations under this Agreement (other than any obligation under Clause 2.13(b) or Clause 3) within 28 days after receipt of notice from the Company of such failure;
- (c) an order of the High Court is made or an effective resolution is passed for the insolvent winding up or dissolution of the User;
- (d) a receiver, which expression shall include an administrative receiver within the meaning of Article 5(1) of the Insolvency (Northern Ireland) Order

1989, of the whole or any material part of the User's assets or undertaking is appointed;

- (e) an administration order under Article 21 of the Insolvency (Northern Ireland) Order 1989 is made in relation to the User or a voluntary arrangement is proposed under Article 14 of that Order in relation to the User;
- (f) the User enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
- (g) the User is unable to pay its debts within the meaning of Article 103(1) or (2) of the Insolvency (Northern Ireland) Order 1989, save that such sections shall have effect as if for £750 there was inserted £10,000 (and the User shall not be deemed to be unable to pay its debts if any demand for payment is being contested in good faith by the User with recourse to all appropriate measures and procedures);
- (h) the User ceases to hold a Supply Licence; and/or
- (i) the User is in breach of its obligations under clause 2.13(b) or under clause 3.

4.2 The Company may give notice of termination to the User once an event of default under clause 4.1 occurs, whereupon this Agreement shall terminate (save that, in the case of an event of default under clause 4.1(i), such notice shall only be effective where the Authority has consented to such termination).

4.3 On termination of this Agreement, the Company shall be entitled to De-energise all Points of Supply registered to the User or, where supplier of last resort arrangements are in effect, otherwise to deal with the Points of Supply in accordance with those arrangements.

5. Termination of Agreement

5.1 The User may terminate this Agreement by giving written notice of termination, specifying the date, being not less than 28 days after the date of the termination notice, with effect from which the User wishes to terminate this Agreement. Notwithstanding the date specified in the User's notice of termination, termination shall only be effective if and when the User ceases to have a Supply Licence in accordance with the terms of the licence.

5.2 Upon termination of this Agreement the Payer shall pay to the Payee:

- (a) all PSO Charges payable in respect of the period up to termination;

- (b) all PSO Charges if any payable upon or in connection with the termination of this Agreement as specified in the schedule of PSO Charges referred to in the Transmission Licence; and
- (c) except to the extent already covered under clause 5.2(a), all charges accrued as at the date of termination of this Agreement whether or not invoiced by the Payee as at the date of termination of this Agreement.

6. Limitation of liability

Clause 3 (Limitation of Liability) of the General Conditions shall be replaced by the following:

- 3.1 Subject to clause 3.3, neither Party nor its officers, employees or agents shall, in relation to this Agreement, be liable to the other Party for any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; any special, indirect or consequential loss; or loss resulting from the liability of such other Party to any other person howsoever and whenever arising.
- 3.2 Subject to clause 3.3 and without prejudice to clause 3.1, each Party (the "Party Liable") and its officers, employees and agents shall be liable to the other Party under or in respect of this Agreement only for loss or physical damage to the other Party's property arising directly from a breach of this Agreement and which at the date of this Agreement was reasonably foreseeable as likely to result in the ordinary course of events from such breach. The liability of the Party Liable under this clause 3.2 shall not exceed, per event or incident or series of related events or incidents, the amount of £1 million less any sums payable by the Party Liable under any other agreement entered into between the Parties in respect of such loss or damage suffered by the other Party or a third party, or their respective officers, employees or agents.
- 3.3 Nothing in this Agreement limits or excludes liability that cannot, by law, be limited or excluded, including liability for death or personal injury caused by the negligence of a Party or that Party's officers, employees or agents or for the fraud or fraudulent misrepresentation of a Party or that Party's officers, employees or agents.
- 3.4 Subject to clause 3.3, and clause 4 (Saving for statutory powers), the rights and remedies provided by this Agreement to the Parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of this Agreement, including without limitation any rights either Party may possess in tort which shall include without limitation actions brought in negligence and/or nuisance.

- 3.5 Each Party agrees that the other Party holds the benefit of sub-clauses 3.1 to 3.4 inclusive for itself and as trustee and agent for its officers, employees and agents.
- 3.6 If any provision or sub-provision of this clause 3 or the application of any such provision or sub-provision is or becomes or is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject or by any other Competent Authority, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement (including the other provisions and sub-provisions of this clause 3) which shall continue in full force and effect and shall continue to bind the Parties notwithstanding such invalidity, unenforceability or illegality.
- 3.7 Nothing in this clause 3 shall affect the rights of either Party to enforce and collect a debt arising under the terms of this Agreement against the other Party.

7. Notices

All notices under this Agreement shall be sent to the addresses detailed in Schedule 1 to this Agreement.

8. Third Party Rights

A person who is not a Party to this Agreement has no right, and is not intended by the Company or the User to have any right, under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this clause does not affect any right or remedy of a third party which exists or is available apart from that Act.

9. Miscellaneous

- 9.1 The Parties acknowledge that amendments to this Agreement require the prior written approval of the Authority and that the Parties may only agree an amendment to this Agreement where the Authority has notified the Parties in writing that such amendments may be made. The Parties shall provide the Authority with such information as it may direct in order to inform its decision under this sub-paragraph 9.1
- 9.2 Where the Parties are unable to reach agreement pursuant to clause 9.1 (and without prejudice to the requirement to obtain the Authority's approval to any amendment), any Party may promptly refer the matter as a dispute for determination by the Authority. The Parties shall comply with such determination and any direction in relation to such dispute as the Authority may make after taking such steps as the Authority may deem fit in order to make such direction (including, without

limitation, seeking representations from the Parties and any other person and consulting on any potential amendment to this Agreement).

Signed by the duly authorised representatives of the Parties as an agreement on the date first written above

SIGNED by (name))

for and behalf of the)
SUPPLIER named in Schedule 1)

in the presence of:)

.....
Signature

.....
Signature of witness

.....
Name

.....
Position

SIGNED by (name))

for and on behalf of **NORTHERN**)
IRELAND ELECTRICITY plc)

in the presence of:)

.....
Signature

.....
Signature of witness

.....
Name

.....
Position

**Schedule 1:
Contract details**

1. Details of the Supplier (the User under this Agreement)

Name of Supplier	
Registered Address of Supplier	
Company Number of Supplier	

2. Address for notices to the Supplier

Address for notices	
Attention	
Telephone number	
Facsimile number	

3. Address for notices to the Company

Address for notices	120 Malone Road Belfast BT9 5HT
Attention	Company Secretary
Telephone number	02890 661100

Facsimile number	02890 689269
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