



**Draft Post Go-Active Licence
Modifications to:**

**SONI's Licence to act as SEM Operator
NI Supply Licences and
NIE's Licence to Participate in
Transmission and**

**A draft of the PSO Agreement for
Northern Ireland**

Consultation Paper

AIP-SEM-07-461

7th September 2007

Summary

Two sets of licence changes are proposed in this document.

The first set of changes relates to the production of the Market System Development Plan by SONI acting as Market Operator. Changes are proposed to SONI's licence to act as SEM Operator in order to align its obligations relating to the production of the Market System Development Plan with the equivalent obligations placed on Eirgrid in its Market Operator licence.

The second set of changes relates to the putting in place of PSO Agreements in Northern Ireland. At Go-Active it was envisaged that a single PSO Agreement would be put in place between NIE (T&D) and all NI Suppliers under which NIE would collect (or make) payments relating to the NI PSO. It is now proposed that the PSO Agreements should be a series of bilateral agreements between NIE T&D and each supplier. A number of changes are proposed to Supply licences and the licence to participate in transmission held by NIE T&D in order to reflect this slightly different approach.

This document also invites comments on NIE T&D's draft of the PSO Agreement proposed for Northern Ireland.

Table of Contents

1	Introduction	1
2	Proposed Licence Changes	2
2.1	Condition 16 of SONI's SEM Operator Licence, "Market System Development Plan"	2
2.2	PSO Agreements	3
3	Consultation on the Draft form of the PSO Agreement	6
4	Next Steps and Views Invited	7

APPENDIX A - Draft PSO Agreement

1 Introduction

On the 3rd July, the Northern Ireland Authority for Utility Regulation (the Authority) issued notices modifying the electricity transmission, electricity supply and electricity generation licences for Northern Ireland. These modifications were made, with the consent of the Department of Enterprise, Trade and Investment (DETI), pursuant to its powers under Article 3 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 and Regulation 60 of the Electricity Regulations (Northern Ireland) 2007.

The purpose of this document is to consult on some further modifications proposed to be made ahead of SEM Go-Live to the conditions to apply in a number of Northern Ireland licences from SEM Go-Live. In particular, the affected licences are:

- Supply licences of all Suppliers
- SONI's licence to act as SEM Operator
- NIE's licence to participate in transmission.

In addition, the Authority has received a draft of the proposed PSO Agreement from NIE T&D, this being the document under which NIE T&D would collect its PSO revenues.

Comments are invited on both the proposed licence changes and on the draft PSO Agreement.

2 Proposed Licence Changes

2.1 Condition 16 of SONI's SEM Operator Licence, "Market System Development Plan"

The Northern Ireland Authority for Utility Regulation (the "Authority") is of the view that it would be appropriate for the licence obligations on SONI as market operator in condition 16 of its SEM Operator Licence to be more closely aligned with the equivalent obligations placed on Eirgrid in condition 4 of Eirgrid's ROI Market Operator licence.

Whilst conditions 16 and 4 of SONI's SEM Operator licence and Eirgrid's Market Operator licence respectively deal with the Market System Development Plan, in the case of Eirgrid, paragraph 4 of the licence condition explicitly requires the licensee to engage in a consultation on the plan and to report on the results of the consultation when submitting the plan to the Commission for approval. Furthermore, paragraph 6 of condition 4 makes it explicit that the Commission may issue directions to Eirgrid in respect of matters to be specified in the Market System Development Plan and the review and revision by the licensee of the plan. These specific provisions are not included in the equivalent condition 16 of SONI's SEM Operator licence.

In general it is expected that Eirgrid and SONI will follow a single process to prepare and consult upon the Market System Development plan and that this single process will have the effect of discharging the two separate licence obligations on each of the licensees acting jointly as a "single market operator". As a consequence, the Authority is of the view that it would be appropriate to amend SONI's licence to act as SEM Operator to align more closely the provisions of condition 16 with the equivalent provisions of condition 4 of Eirgrid's Market Operator licence.

The Authority therefore proposes to amend condition 16 of SONI's SEM Operator licence to read as follows:

"Condition 16. Market System Development Plan

1. Where required by the Authority, and within such timeframe as the Authority may reasonably request, the Licensee shall, in conjunction with the Republic of Ireland Market Operator Licensee, prepare and submit to the Authority for approval a plan (the "**Market System Development Plan**") for the development of the Single Electricity Market Trading and Settlement System over the following two calendar years.

2. The Licensee shall, in conjunction with the Republic of Ireland Market Operator Licensee, revise the Market System Development Plan at least annually in order that the information set out in the Market System Development Plan continues to be accurate in all material respects and shall submit all revisions it to the Authority for approval.
3. **The Licensee shall:**
 - (a) engage in a public consultation process, including any other form of consultation that the Authority may direct, before submitting the Market System Development Plan to the Authority for approval; and
 - (b) report in writing to the Authority on the results of that process not later than when submitting the Market System Development Plan to the Authority for approval.
4. Where (and to the extent) required by the Authority, the Licensee shall amend the Market System Development Plan and shall submit such amended plan to the Authority for approval.
5. Where, and to the extent, required by the Authority, the Licensee shall publish the Market System Development Plan on the web-site for the Single Market Operation Business.
6. **The Authority may from time to time give directions to the Licensee in respect of:**
 - (a) the matters to be specified in the Market System Development Plan; and
 - (b) the review and revision by the Licensee from time to time of the Market System Development Plan,

and the Licensee shall comply with directions given by the Authority under this paragraph.”

2.2 PSO Agreements

At Go-Active, a number of licence changes were made in Northern Ireland which would take effect at SEM/Directive Go-Live and which related to revised arrangements associated with the collection of the PSO in Northern Ireland. In particular, it was envisaged that NIE T&D would enter into a PSO Agreement with all suppliers in order to collect (or pay) the relevant PSO payments.

In support of these arrangements, paragraph 6 of Condition C of Chapter 1 of NIE’s licence to participate in transmission states that:

“Without prejudice to the Authority's ability to designate, as the PSO Agreement under Condition 24A of Chapter 3, such document as the Authority considers appropriate (having undertaken such consultation as the Authority considers appropriate), the Licensee shall submit to the Authority, by 1 September 2007 (or such later date as the Authority may direct), a draft PSO Agreement for the Authority's consideration.”

Furthermore, Condition 21 of Chapter 3 of Supply licences states:

“The Licensee shall enter into, and at all times remain a party to, the PSO Agreement in its capacity as an Electricity Supplier”.

For the purposes of these conditions, the definition of PSO Agreement states that the term:

“means the agreement of that title designated as such by the Authority, as it may from time to time be modified in accordance with its terms. “

It is now proposed (for reasons of practicality and expediency of implementation) that instead of putting in place a multilateral PSO agreement, a standard form of bilateral PSO agreements should be put in place between NIE T&D and each supplier and that minor consequential amendments should therefore be made to supply licences and to the licence to participate in transmission held by NIE T&D in order to reflect the revised approach.

The specific licence changes proposed to support this revised approach are:

Change the definition of PSO Agreement in Condition 1 of Chapter 3 of Supply licences to read:

“means an agreement of that title with the Transmission Owner in the form approved from time to time by the Authority.”

In NIE's licence to participate in transmission, paragraph 6 of condition C of Chapter 6 would be amended to read as follows:

“Without prejudice to the Authority's ability to approve under Condition 24A of Chapter 3 such form of PSO Agreement as the Authority considers appropriate (having undertaken such consultation as the Authority considers appropriate), the Licensee shall submit to the Authority, by 1 September 2007 (or such later date as the Authority may direct), a draft form of PSO Agreement for the Authority's consideration.”

Furthermore, also in NIE's licence to participate in transmission, paragraphs 1 and 2 of condition 24A would be amended to read as follows:

- “1. The Licensee shall (as part of the Distribution Business and in respect of each relevant person) enter into, at all times remain a party to, and comply with the provisions of, an agreement in the form described in paragraph 2 (each a “PSO Agreement”).
2. Each PSO Agreement shall be in the form approved from time to time by the Authority and designed to secure that the Licensee is entitled to recover the PSO Charges (as from time to time modified) from the relevant persons.”

A number of consequential changes are also required where the term “PSO Agreement” is replaced with the term “PSO Agreements”. This change is proposed in:

Condition 24A – paragraphs 4 and 8(b).

Annex 1 – paragraphs 1, 2 and in the three instances in paragraph 9.

Annex 2 – paragraph 1.

In paragraph 9 the definition of “PSO Agreements” would be changed to read: “means the agreements of that name established pursuant to Condition 24A”

3 Consultation on the Draft form of the PSO Agreement

In accordance with, paragraph 6 of condition C of Chapter 6 of NIE's licence to participate in transmission, NIAUR has received a draft of the proposed form of the PSO Agreement from NIE. A copy of this draft agreement is included in Appendix A to this consultation document.

NIAUR invites comments on the proposed form of the PSO Agreement as submitted by NIE.

4 Next Steps and Views Invited

Views are invited on any of the matters covered in this paper, including the proposed licence changes and the draft form of the PSO Agreement.

Responses will be published on the AIP website, unless they are marked as confidential. Respondents are asked to put any confidential material in appendices, such that the main body of the response can still be published.

Responses, marked “Response to Consultation on Market System Development Plan and PSO”, should be sent by Monday 24 September. The RAS would prefer responses to be sent by email to Barbara.Cantley@niaur.gov.uk, but responses can be posted to:

Barbara Cantley
Northern Ireland Authority for Utility Regulation
Queens House
14 Queen Street
Belfast
BT1 6ER

Following consideration of the comments received, and subject to the comments, it is intended that modification notices will be issued by the Authority to effect any appropriate licence changes prior to SEM Go-Live.

APPENDIX A
Draft PSO Agreement

Dated

200

NORTHERN IRELAND ELECTRICITY plc

and

[NAME OF SUPPLIER]

PSO AGREEMENT

**Version submitted to NIAUR pursuant to Transition Licence
Obligations**

31 August 2007

Table of Contents

1. General Conditions and Definitions	1
2. Calculation and Payment of Charges	5
3. Security	7
4. Events of Default	9
5. Termination of Agreement	10
6. Limitation of liability	11
7. Notices	12
8. Third Party Rights	12
Schedule 1: Contract details	i
1. Details of the Supplier (the User under this Agreement)	i
2. Address for notices to the Supplier	i
3. Address for notices to the Company	i

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 Distribution Use of System 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. The General Conditions form part of and are incorporated into this Agreement, subject to any variations set out in this Agreement;

“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, as applicable, 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.

“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 terms approved by the Company;
“NI Distribution System”	has the meaning given to “distribution system” in the 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: <ul style="list-style-type: none"> (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 Company’s prevailing 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;
“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 Electricity (Northern Ireland) Order 1992.

2. Calculation and Payment of Charges

- 2.1 Each Party shall pay to the other Party the PSO Charges plus Value Added Tax pursuant to this clause 2.
- 2.2 PSO Charges payable under this clause 2 shall be calculated in accordance with the Transmission Licence and the Schedule of Charges referred to therein. Where in any month the PSO Charge is positive, the User (in that month the “Payer”) shall pay the Company (in that month the “Payee”), and where in any month the PSO Charge is negative, the Company (in that month the “Payer”) shall pay the User (in that month the “Payee”) the PSO Charges in accordance with this clause 2.
- 2.3 PSO Charges are subject to change without notice in accordance with changes to the PSO Charges under the Transmission Licence.
- 2.4 PSO Charges shall be calculated using the procedures established by Industry Arrangements where applicable or otherwise as established by the Company and approved by the Authority and notified to the User from time to time, for the purposes of calculation of charges under this Agreement.
- 2.5 The Company may, to the extent permitted by its Licence or other Industry Arrangements (as applicable to the charges in question), revise its charges or the basis of their calculation.
- 2.6 As soon as reasonably practicable after the end of each Charging Period the Company shall deliver to the User an account showing the PSO Charges payable in respect of that Charging Period and any adjustments.
- 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 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 due date of the dispute;
 - (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 2.8, 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 2.8, 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 2.8, 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 2.8; 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 2.8, 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 For the purposes of this clause, the following words and phrases shall have the meaning set opposite them:

- Charging Period means the period of a calendar month during a year.
- Interest Rate for the purposes of this Agreement the relevant interest rate shall be 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 Licence.

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 of the date on which charges become payable 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 3.3, 3.4 and 3.5.

- 3.2 If the User does not comply with this clause 3, the Company may in its discretion by notice to the User given at any time terminate this Agreement with effect from the date specified in the notice.
- 3.3 The Security Cover amount that the User is required to provide and maintain shall be determined by the Company from time to time. The amount of the Security Cover shall be calculated in accordance with the relevant sections of the Company's payment security policy, as prevailing from time to time.
- 3.4 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 3.3 (whether due to recalculation by the Company, changes to the relevant sections of the Company's payment security policy, drawings or anticipated drawings on the Security Cover by the Company or any other reason). The User must within 5 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 3.3.
- 3.5 The User may notify the Company that it considers that the amount of its Security Cover is more than is required under clause 3.3 and ask for it to be reduced to the level required under clause 3.3. The Company must not unreasonably refuse such a request, having regard to clause 3.3.
- 3.6 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.
- 3.7 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 5 Business Days of the occurrence of the relevant event referred to in clauses 3.7(a) to 3.7(c).

- 3.8 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.
- 3.9 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;
 - (b) an event of default (as defined in clause 4 of this Agreement) occurs in relation to the User;
 - (c) the User fails to provide Security Cover as required under this clause 3 or otherwise comply with its obligations under this clause 3.
- 3.10 If any of the circumstances in clauses 3.9(a) to 3.9(c) occurs, then all other amounts in respect of charges and other 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 does not pay any valid account for charges within one month of its date, whether or not the Company has issued a payment reminder in respect of the unpaid account;
 - (b) the User fails to perform or comply with any obligations under this Agreement 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 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 and 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 payable (if any) upon or in connection with the termination of this Agreement as specified in the Schedule of Charges; 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.

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
