|  |
| --- |
| **MODIFICATION PROPOSAL FORM** |
| **Proposer***(Company)* | **Date of receipt***(assigned by Secretariat)* | **Type of Proposal***(delete as appropriate)* | **Modification Proposal ID***(assigned by Secretariat)* |
| **Airtricity Ltd** | **22 July 2011** | **Standard** | **Mod\_23\_11** |
| **Contact Details for Modification Proposal Originator** |
| **Name** | **Telephone number** | **Email address** |
| **Deborah Murray** | **01738 457728** | **Deborah.murray@sse.com** |
| **Modification Proposal Title** |
| **Additional clause for Standard Letter of Credit** |
| **Documents affected***(delete as appropriate)* | **Section(s) Affected** | **Version number of T&SC or AP used in Drafting** |
| **T&SC** | **Appendix A: Standard Letter of Credit**  | **Version 9** |
| **Explanation of Proposed Change***(mandatory by originator)* |
| This document proposes the insertion of a clause into the conditions set out within the current version of the T&SC Appendix A: Standard Letter of Credit to ensure that future Letters of Credit comply with the current view of best banking practice. |
| **Legal Drafting Change***(Clearly show proposed code change using* ***tracked*** *changes, if proposer fails to identify changes, please indicate best estimate of potential changes)* |
| MARKET OPERATOR EURO/STERLING IRREVOCABLE STANDBY LETTER OF CREDIT TEMPLATEApplicant: ……………..Issuing Bank: …………..Advising Bank/SEM Bank: …………….Beneficiary: “EirGrid plc and SONI Limited, trading as SEMO”, being the Market Operator under the SEM Trading and Settlement Code. Dear Sirs,We, the Issuing Bank, hereby issue our irrevocable Standby Letter of Credit No……. by order of …………….. (applicant), for a maximum total amount of EUR/Sterling……………. (in words………) which expires at the counters of the Advising Bank on [insert date] subject to extension as described below.In this Letter of Credit and in the Beneficiary Statement (except where the context otherwise requires or there is an express provision to the contrary) the following expressions shall have the following meanings:"Beneficiary Statement" means a statement in the form of the Appendix attached hereto;“Expiry Date” means the last date on which this Letter of Credit may be presented for value at the Issuing Bank being the XX Day of Month 20XX;"Same Day Value" means that the relevant funds shall be available to the Beneficiary on the same day as the funds transfer has been authorised by us without any loss of value arising between such authorisation and the funds being available for use by the Beneficiary;“SEM” means the wholesale Single Electricity Market for the island of Ireland;“SWIFT” means the worldwide financial messaging network of The Society for Worldwide Interbank Financial Telecommunication;"Trading and Settlement Code" means the trading arrangements for the SEM established in Northern Ireland pursuant to section 23 of the Northern Ireland (Miscellaneous Provisions) Act 2006 and the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 and in Ireland pursuant to section 9BA(1) of the Electricity Regulation Act 1999 and as designated pursuant to regulations made under section 9BA(2)(a) of the Electricity Regulation Act 1999 (Ireland); This irrevocable Standby Letter of Credit is available by payment at sight against presentation to the Advising Bank of a Beneficiary Statement.Conditions:1. Partial drawings are allowed.2. This Letter of Credit shall expire on the Expiry Date and our obligations under this Letter of Credit shall also expire on that date. 3. The Beneficiary Statement must be made on original letterhead paper of the Beneficiary and signed on its behalf, and must be presented to the Issuing Bank on or before the Expiry Date. 4. Upon receipt of a signed Beneficiary Statement in compliance with the above conditions the Advising Bank is required promptly to notify us by SWIFT of receipt of such Beneficiary Statement and inform us of the relevant details of such Beneficiary Statement. Provided such notification is received by us no later than 14:00 hrs on any weekday on which banks are open for business in Dublin and Belfast, we shall make payment under this Standby Letter of Credit for Same Day Value on that day or if received after 14.00hrs on the next such weekday in accordance with such notification and shall confirm payment by notifying the Advising Bank by SWIFT.5. Where we, the Issuing Bank are also the Advising Bank, we may revise the above notification requirements as appropriate provided that this shall in no way affect the obligation on us to make payment under this Standby Letter of Credit.6. All Issuing Bank charges are for the account of the Applicant. 7. All Advising Bank charges are for the account of the Beneficiary.8. This Standby Letter of Credit is personal to you and your rights hereunder, including the right to receive proceeds to this Standby Letter of Credit, are not assignable.Except where otherwise expressly stated, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits latest version on the date of the issuance of this Letter of Credit [MOST RECENT VERSION TO BE INSERTED WITH EACH LETTER OF CREDIT].We the Issuing Bank hereby waive any right to set off or counterclaim whatsoever against any amounts payable under this Standby Letter of Credit in respect of any claims we may have against the Beneficiary and such amounts shall be paid free and clear of all deductions or withholdings whatsoever.This Letter of Credit shall be governed by and construed in accordance with the laws of Northern Ireland and the parties submit to the exclusive jurisdiction of the Courts of Ireland and the Courts of Northern Ireland for all disputes arising under, out of, or in relation to this Letter of Credit.Yours faithfully[Issuing Bank]by (Authorised Signatory) APPENDIX[Market Operator letterhead]We, the Market Operator under the Trading and Settlement Code (the “Beneficiary”) hereby state that [insert applicant’s name] is in default of its obligation to pay pursuant to the Trading and Settlement Code (to which the applicant is a party) under paragraph [ insert details] and as a result we hereby demand …………..[insert amount being claimed] under Standby Letter of Credit number…….... issued by …………[insert name of Issuing Bank]. Payment in respect of this Beneficiary Statement shall be effected immediately to [insert relevant account details]. We confirm that the signatory(ies) to this Beneficiary Statement are empowered to sign and make this Beneficiary Statement on behalf of the Beneficiary.Terms defined in the Standby Letter of Credit referred to above have the same meaning when used in this Beneficiary Statement. |
| **Modification Proposal Justification***(Clearly state the reason for the Modification)* |
| This modification proposal has been made following advice from the provider of the Airtricity Letter of Credit, Lloyds TSB. In the period since the current Standby Letter of Credit was issued to SEMO, banking practice has changed and Lloyds has advised that the above clause must now be included within any Standby Letters of Credit issued by them in order to comply with more stringent financial regulations. It is understood that Lloyds TSB is not alone in asking for this clause to be inserted, suggesting there is a wider held belief that the draft Letter of Credit set out within the T & SC no longer complies with the current view of best practice within the banking sector. |
| **Code Objectives Furthered***(State the Code Objectives the Proposal furthers, see Section 1.3 of T&SC for Code Objectives)* |
| 2. to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner; |
| **Implication of not implementing the Modification Proposal***(State the possible outcomes should the Modification Proposal not be implemented)* |
| Should this Modification Proposal not be implemented there may be delays putting in place Standby Letters of Credit through our Banks. Additionally, failure to adopt the proposal, would also imply that the draft Standby Letter of Credit issued by SEMo will continue to be out of line with current best practice. |
| **Working Group***(State if Working Group considered necessary to develop proposal)* | **Impacts***(Indicate the impacts on systems, resources, processes and/or procedures)* |
| No. | No impact on systems, resources, processes or procedures that we are aware of. The only impact may be the legal status of the proposed clause in the LoC. |
| ***Please return this form to Secretariat by email to*** ***modifications@sem-o.com*** |

**Notes on completing Modification Proposal Form:**

1. **If a person submits a Modification Proposal on behalf of another person, that person who proposes the material of the change should be identified on the Modification Proposal Form as the Modification Proposal Originator.**
2. **Any person raising a Modification Proposal shall ensure that their proposal is clear and substantiated with the appropriate detail including the way in which it furthers the Code Objectives to enable it to be fully considered by the Modifications Committee.**
3. **Each Modification Proposal will include a draft text of the proposed Modification to the Code unless, if raising a Provisional Modification Proposal whereby legal drafting text is not imperative.**
4. **For the purposes of this Modification Proposal Form, the following terms shall have the following meanings:**

**Agreed Procedure(s): means the detailed procedures to be followed by Parties in performing their obligations and functions under the Code as listed in Appendix D “List of Agreed Procedures”.**

**T&SC / Code: means the Trading and Settlement Code for the Single Electricity Market**

**Modification Proposal: means the proposal to modify the Code as set out in the attached form**

**Derivative Work: means any text or work which incorporates or contains all or part of the Modification Proposal or any adaptation, abridgement, expansion or other modification of the Modification Proposal**

**The terms “Market Operator”, “Modifications Committee” and “Regulatory Authorities” shall have the meanings assigned to those terms in the Code.**

**In consideration for the right to submit, and have the Modification Proposal assessed in accordance with the terms of Section 2 of the Code (and Agreed Procedure 12), which I have read and understand, I agree as follows:**

**1. I hereby grant a worldwide, perpetual, royalty-free, non-exclusive licence:**

* 1. **to the Market Operator and the Regulatory Authorities to publish and/or distribute the Modification Proposal for free and unrestricted access;**
	2. **to the Regulatory Authorities, the Modifications Committee and each member of the Modifications Committee to amend, adapt, combine, abridge, expand or otherwise modify the Modification Proposal at their sole discretion for the purpose of developing the Modification Proposal in accordance with the Code;**
	3. **to the Market Operator and the Regulatory Authorities to incorporate the Modification Proposal into the Code;**

**1.4 to all Parties to the Code and the Regulatory Authorities to use, reproduce and distribute the Modification Proposal, whether as part of the Code or otherwise, for any purpose arising out of or in connection with the Code.**

**2. The licences set out in clause 1 shall equally apply to any Derivative Works.**

**3. I hereby waive in favour of the Parties to the Code and the Regulatory Authorities any and all moral rights I may have arising out of or in connection with the Modification Proposal or any Derivative Works.**

**4. I hereby warrant that, except where expressly indicated otherwise, I am the owner of the copyright and any other intellectual property and proprietary rights in the Modification Proposal and, where not the owner, I have the requisite permissions to grant the rights set out in this form.**

**5. I hereby acknowledge that the Modification Proposal may be rejected by the Modifications Committee and/or the Regulatory Authorities and that there is no guarantee that my Modification Proposal will be incorporated into the Code.**