



## **General Conditions for Connection of Industrial and Commercial Customers and Generators to the Distribution System**

*Applying to:*

- *Import Customer Connections of Capacity of 100 kVA or Greater.*
- *Embedded Generators.*
- *Autoproducers and CHP Producers*

**Document No: DTIS-150200-AXY**  
**Issued by: Distribution System Operator**

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## 1.0 Definitions and Interpretation

### 1.1 Definitions

In the Agreement the following words and expressions shall, unless the subject matter or context otherwise requires or is inconsistent therewith, bear the following meanings:

<b>“Act”</b>	means the Electricity Regulation Act, 1999.
<b>“Active Power”</b>	means the product of the voltage and the in-phase component of alternating current measured in units of watts or multiples thereof.
<b>“Affiliate”</b>	means in relation to a Party, any holding company or subsidiary or any subsidiary of a holding company of the relevant Party, in each case within the meaning of the Companies Acts. 1963-2009.
<b>“Agreement”</b>	Means the Connection Agreement (including all the Schedules and Appendices thereto) and which incorporates the Quotation Letter and these General Conditions for Connection of Industrial and Commercial Customers and Generators to the Distribution System.
<b>“Apparatus”</b>	means an item of equipment in which electrical conductors are used, supported or of which they may form a part and includes meters, lines and appliances used or intended to be used for carrying electricity for the purpose of supplying or using electricity.
<b>“Application”</b>	Means an application by the Customer for connection to the Distribution System and includes any subsequent request for modification.
<b>“As-Built Records”</b>	means the calculations, computer programs and other software, maps, drawings, manuals (including but not limited to safety and training), models and other documents recording the Contestable Components and/or Terminal Substation and appropriate access rights and wayleaves and easements (if applicable) constructed by or on behalf of the Customer.
<b>“Autoproducer”</b>	means a person who has entered into a Connection Agreement with the DSO or TSO and generates and consumes electricity in a Single Premises, or on whose behalf another person generates electricity in the Single Premises, essentially for the first person’s own consumption in that Single Premises.

<b>“Business Day”</b>	means any day other than a Saturday, a Sunday or a public holiday in Ireland.
<b>“Capacity Bond”</b>	means the bond referred to in Clause 7.2 of the Connection Agreement in the form set out in Schedule 2A of these General Conditions.
<b>“Capacity Test”</b>	Means the tests to be undertaken by the Customer to satisfy the Company that the Facility has met the requirements to allow the Capacity Bond to be released by the Company.
<b>“Capital Contribution”</b>	Means the capital payment to be made in order to deliver a connection. The Capital Contribution includes pass through costs but does not include ongoing charges or bonds.
<b>“Charges”</b>	means all charges and monies payable by the Customer to the Company under the Agreement.
<b>“CHP Producer”</b>	as defined under the Act, means the simultaneous production of utilisable heat and electricity from an integrated thermo-dynamic process where the overall process operating efficiency, based on the gross calorific value of the fuel used and defined as the ratio of energy output usefully employed to the energy input, is greater than 70% and where the integrated thermo-dynamic process satisfies such technical, operational, economic and environmental criteria as may be specified by the Minister from time to time, following consultation with the Commission.
<b>“Commission”</b>	means the Commission for Energy Regulation established by the Act as amended by the Gas (Interim) (Regulation) Act 2002 or any successor body.
<b>“Commissioning”</b>	means the final process of testing pursuant to the Agreement as required by the Distribution Code prior to connection or re-connection in order to determine that the Customer’s Connection Equipment meets all requirements and standards for connection to the Distribution System at the date of testing and also to determine the new values of parameters to apply following a material alteration or modification and <b>“Commissioning Tests”</b> shall be construed accordingly.
<b>“Company”</b>	means ESB Networks DAC and any legal successors in title.

<b>“Company’s Connection Equipment”</b>	means Plant and/or Apparatus which form part of the Network and to be provided and installed by the Company under the Agreement and owned by ESB or the Company.
<b>“Company’s Connection Works”</b>	means the provision of the Company’s Connection Equipment and the works to be undertaken by the Company under the Agreement and required to connect the Customer to the Network.
<b>“Company’s Premises”</b>	means any land or buildings of the Company or ESB in which any of the Customer’s Equipment is to be installed or is for the time being situate.
<b>“Competent Authority”</b>	means any local or national or supra national agency, authority, department, inspectorate, ministry, official or public or statutory person (whether autonomous or not) or regulatory authority of Ireland or of the European Union which has jurisdiction over any of the Parties to and the subject matter of the Agreement, including the Commission but excluding a court or tribunal of competent jurisdiction.
<b>“Connection Agreement”</b>	Means the agreement for connection of the Customer’s Facility to the Distribution System.
<b>“Connection Assets”</b>	means those assets for which the Customer has been charged as part of the Connection Charge. These can be assets which form part of the Company’s Connection Works or assets which are already built but for which the Facility may be liable.
<b>“Connection Agreement Effective Date”</b>	Means the date following Commissioning from which the Company will provide and maintain the import and export capacities specified in the Agreement.
<b>“Connection Agreement Effective Longstop Date”</b>	means twenty four (24) calendar months after the Connection Agreement Effective Date.
<b>“Connection Charges”</b>	means those Charges identified as such in the Quotation Letter and which include annual charges and bonds.
<b>“Connection Point”</b>	means the physical point or points at which the Facility is joined to the Distribution System and represents the ownership boundary between the Facility and the Distribution System.

<b>“Connection Works”</b>	means the Company’s Connection Works and the Customer’s Connection Works together.
<b>“Consents”</b>	means any one or more planning and other statutory consents, wayleaves, easements or other interests in or rights over land or any other consents, approvals or permissions of any kind required for the purposes of the Agreement (excluding Customer’s authorisations or licences granted under the Act) granted or issued without any appeals period or legal proceedings pending.
<b>“Construction Programme”</b>	means the programme for the portion of the Company’s Connection Works and the Customer’s Connection Works which are interdependent – in particular the provision of ducting and the completion of the Terminal Sub-Station (if applicable). The key dates in the Construction Programme are as set out in the Quotation Letter.
<b>“Consumer Price Index” or “CPI”</b>	Means the “All Items” index in the Consumer Prices Index maintained by the Republic of Ireland’s Central Statistical Office.
<b>“Contestable Components”</b>	Means those aspects of the Connection Works excluding Essential Component Works which the Customer has requested to construct in accordance with Regulation 2 of European Communities (Internal Market in Electricity) Regulations, 2009 (SI 226/2009) and Commission Directions under Section 34(1) of the Act and to which the Company has agreed.
<b>“Customer”</b>	means the occupier of the premises to which electrical power is provided at the Connection Point by a Supplier or a Generator exporting electrical power via the Connection Point, connected to the Distribution System pursuant to the Agreement.
<b>“Customer’s Connection Works”</b>	means the works to be undertaken and Equipment to be provided by the Customer under the Agreement, including but without limitation, the Terminal Sub-Station (if applicable).
<b>“Customer’s Equipment”</b>	means all Plant and Apparatus owned or controlled by the Customer in connection with the Facility and including, where applicable, Contestable Components until such time as they are transferred to ESB or the Company.

<b>“Customer’s Premises”</b>	means any Single Premises of the Customer on or in which: <ul style="list-style-type: none"><li>- any of the Company’s Equipment or the Customer’s Equipment is to be installed or is for the time being situated, and</li><li>- where the Customer is an Autoproducer or CHP Producer, any equipment by whomever owned or controlled which is capable of being used for the consumption or generation of electricity metered in the name of the Customer is to be installed or is for the time being situated.</li></ul>
<b>“Decommissioning and Reinstatement Charge”</b>	means those Charges identified as such in the Agreement.
<b>“Dedicated Works”</b>	means any of the Company’s Connection Works which are dedicated to the Customer’s connection and do not constitute Shared Works.
<b>“De-Energise”</b>	means the deliberate prevention of the flow of electricity between the Distribution System and the Facility through the Connection Point for any purpose other than a System Outage. The terms <b>“De-Energisation”</b> and <b>“De-Energising”</b> and like terms shall be construed accordingly.
<b>“Deep Operational Date”</b>	means the date on which the Company is satisfied that the Operational Date has been achieved and all Deep Reinforcement Works are satisfactorily completed.
<b>“Deep Reinforcement Works”</b>	means the provision and installation of Plant and/or Apparatus on the Network relating to or which could affect the Facility.
<b>“Deep Works Completion Period”</b>	means the time period from the date of receipt of Second Stage Payment from all group members to when Deep Reinforcement Works are expected to be complete. This time period is indicative only.
<b>“Demand”</b>	means, unless otherwise stated, the demand expressed in MW or MVA <sub>r</sub> for Active Power and Reactive Power respectively.
<b>“Direct Line”</b>	has the meaning given under the Act as amended by statutory instrument S.I. No.445 of 2000, S.I. No.60 of 2005 and S.I. 226 of 2009.
<b>“Directive”</b>	means any present or future legislation, statutory instrument, directive, requirements, instruction, order, direction or rule of any Competent Authority

binding on either Party and includes any modification, extension or replacement therefor in force.

**“Disconnect”** means the removal of all or any of the Company's Connection Equipment in such a way that the Customer may not import or export electricity to or from the Distribution System and the terms **"Disconnection"**, **"Disconnected"**, **"Disconnecting"** and like terms shall be construed accordingly.

**“Dispatch”** means an instruction given by the System Operator in relation to a Generator Unit which is Dispatchable which relates to the required level of Output of Active Power or mode of Operation. The term System Operator has the meaning given to it in the Trading and Settlement Code.

**“Distribution Code”** means the regulations made by the Company setting out the distribution code pursuant to Section 33 of the Act, and approved by the Commission, as from time to time revised, amended, supplemented or replaced with the approval of or at the insistence of the Commission.

**“Distribution Data Registration Code”** means that part of the Distribution Code dealing with data registration.

**“Distribution System”** means all electric lines of ESB and includes any electric plant, transformers and switchgear of ESB which is used for conveying electricity to Final Customers including any Direct Line acquired by the Distribution System Owner and for the avoidance of doubt, including the Company's Connection Equipment.

**“Distribution System Operator (DSO)”** means the Company as operator of the Distribution System and licensed pursuant to Section 14(1)(g) of the Act.

**“Distribution System Owner (DAO)”** means ESB as owner of the Distribution System and licensed pursuant to Section 14(1)(k) of the Act.

**“Distribution Use of System Agreement”** means an agreement for use of the Distribution System between the Company and a third party subject to payment of use of system charges to the Company.

**“Encumbrance”** means any pledge, mortgage, lien, assignment by way of security, charge, hypothecation, security



interest, title retention or any other security agreement or arrangement having the effect of conferring security, or other form of encumbrance and "**Encumber**" and like terms shall be construed accordingly.

- "Energise"** means the movement of any isolator, breaker or switch or the insertion of any fuse so as to enable Active Power and Reactive Power to flow from and to the Facility through the Company's Connection Equipment and the terms "**Energisation**", "**Energising**" and "**Re-Energise**" and like terms shall be construed accordingly.
- "Equipment"** means Plant and/or Apparatus.
- "ESB (or "the Board")"** Means Electricity Supply Board which expression shall include where the context so admits or requires its assigns and legal successors in title under any restructuring of ESB by the Government of the Republic of Ireland.
- "Essential Component Works"** means those aspects of the Connection Works which the Company shall construct in its sole discretion for reasons relating to safety, security and/or reliability of the Distribution System.
- "ETCI"** means the Electro Technical Council of Ireland.
- "Event of Default"** means any one of the events, conditions or happenings as set out in **Clause 16.1**.
- "Facility"** means all Equipment to be installed at the Customer's side of the Connection Point, including protection and any other Equipment necessary to effect connection required by the Distribution Code.
- "Final Customer"** as defined under the Act, means a person being supplied with electricity at a Single Premises for consumption on those premises.
- "Force Majeure"** means any one or more of the events, conditions or happenings as set out in **Clause 19.1**.
- "Generating Plant"** means a Power Station including any Generating Unit therein.
- "Generating Unit"** means any Apparatus which produces electricity.
- "Generator"** means the Customer, if licensed to generate electricity under section 14(1)(a) of the Act, or, if

	the Customer is an Autoproducer or CHP Producer, whether or not he is so licensed.
<b>“Good Industry Practice”</b>	means the standard of practice, methods and procedures conforming to safety and legal requirements which are attained by exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances.
<b>“Grid Code”</b>	means the conditions, procedures, provisions and codes governing the planning and operation of the Transmission System and the scheduling and dispatch of generation pursuant to Section 33 of the Act and approved by the Commission, as from time to time revised, amended, supplemented or replaced with the approval of or at the insistence of the Commission.
<b>“High Voltage”</b>	has the meaning given in the Distribution Code.
<b>“Influencing Connections”</b>	means any offer issued for a connection to the Network that influences the price schedule and technical proposals set out in the Agreement. Under the Group Processing Approach influencing connections include connection offers issued to members of a group or sub-group with whom the Customer shares Connection Assets or costs.
<b>“Interface Undertaking”</b>	has the meaning defined in Clause 15 and Schedule 4 of the Connection Agreement.
<b>“kVA”</b>	means Kilovoltampere.(1,000 voltamperes).
<b>“kVA<sub>r</sub>”</b>	means Kilovoltampere reactive (1,000 voltamperes reactive).
<b>“kW”</b>	means Kilowatt (1,000 watts).
<b>“Liability Amount”</b>	Means €130,000 per occurrence, unless the greater of the Maximum Import Capacity or the Maximum Export Capacity of the Facility is less than 100kVA in which case the Liability Amount means €13,000.
<b>“Liability Cap”</b>	means an aggregate amount €385,000.00, unless the greater of the Maximum Import Capacity or the Maximum Export Capacity of the Facility is less than 100 kVA in which case the Liability Amount means €38,500.00.

<b>“Low Voltage”</b>	has the meaning given in the Distribution Code.
<b>“Maximum Export Capacity”</b>	means the maximum permissible amount of electricity to be exported onto the Distribution System at the Connection Point expressed in kVA and referred to as being the “Maximum Export Capacity” in Schedule 1 to the Connection Agreement.
<b>“Maximum Import Capacity”</b>	means the maximum permissible amount of electricity to be imported from the Distribution System at the Connection Point expressed in kVA and referred to as being the “Maximum Import Capacity” in Schedule 1 to the Connection Agreement.
<b>“Medium Voltage”</b>	has the meaning given in the Distribution Code.
<b>“Metering Code”</b>	Means the code of that name which specifies the minimum technical design and operational criteria to be complied with for metering and data collection equipment and associated procedures as required under the Trading and Settlement Code.
<b>“Metering Equipment”</b>	means meters, time switches, measurement transformers, metering protection and isolation equipment, circuitry and their associated data, storage and data communications equipment and wiring.
<b>“MVA”</b>	means Megavoltampere (1,000,000 voltamperes).
<b>“MVA<sub>r</sub>”</b>	means Megavoltampere reactive (1,000,000 voltamperes reactive).
<b>“MW”</b>	means Megawatt (1,000,000 watts).
<b>“Network”</b>	Means the Distribution and Transmission System taken together.
<b>“Operating Agreement”</b>	means the Agreement dated 22 December 2008 made between ESB and DSO in accordance with Regulation 6 of S.I. 280 of 2008.
<b>“Operational Certificate”</b>	means the notification issued by the Company which indicates that the Capacity Test (if applicable) and the Distribution Code test and Grid Code tests have been completed and that the Facility has complied with the Distribution and Grid Code tests at commissioning (but does not indicate compliance on a continuous basis thereafter by the Facility including the Customer's

	Equipment with the Distribution and Grid Code) and is issued as soon as reasonably practicable and in any event no longer than ten (10) Business Days following the Operational Date.
<b>“Operational Date”</b>	means the date on which the Company is satisfied that the Distribution Code test and Grid Code tests and the Capacity Tests (if applicable) for every part of the Customer’s Equipment have been properly and satisfactorily completed and all monies payable have been paid to the Company.
<b>“Performance Guarantee”</b>	means a guarantee to be given by the Customer to the Company guaranteeing the full and proper performance by an Affiliate to which the Agreement is to be assigned by the Customer, of all obligations imposed on the Customer pursuant to the Agreement.
<b>“Party”</b>	means as the context requires the Customer or the Company.
<b>“PES”</b>	means the holder of a licence under section 14(1)(h) of the Act of 1999.
<b>“Planning Permission Date”</b>	means the date on which the planning permissions necessary for the Company’s Connection Works have been achieved, scope of work designs have been completed and invoice for Second Stage Payment has been issued.
<b>“Planning Permission Longstop Date”</b>	means twenty four (24) calendar months after the Scheduled Planning Permission Date.
<b>“Plant”</b>	means fixed and movable items used in the generation and/or supply and/or distribution of electricity, other than Apparatus.
<b>“Quotation Letter”</b>	means the quotation issued by the Company to the Customer, and accepted by the Customer, relating to connection of the Facility to the Distribution System and the Connection Works (see Appendix 2 of the Connection Agreement) and/or any replacement or additional letters issued in accordance with the Agreement.
<b>“Reactive Power”</b>	means the product of voltage and current and the sine of the phase of the angle between them which is normally measured in kVAr or MVar.

<b>“Remote Disconnection Facility”</b>	means any equipment or assemblage of equipment needed to give effect to the Distribution Code requirements as appropriate to the offer, which are concerned with the ability of the relevant System Operator to remotely disconnect or otherwise control the output of, or collect stipulated data from the site.
<b>“Scheduled Connection Agreement Effective Date”</b>	means the indicative date advised by the Company in the Quotation Letter for achievement of the Connection Agreement Effective Date.
<b>“Scheduled Planning Permission Date”</b>	means the Company’s estimate of the date that the ‘Planning Permission Date’ may be achieved.
<b>“Shared Asset Bond”</b>	means the bond referred to in Clause 7.3 of the Connection Agreement in the form set out in Schedule 2B of these General Conditions.
<b>“Shared Asset Costs”</b>	means the shared asset costs identified in Appendix 2 of the Quotation Letter.
<b>“Shallow Works Completion Period”</b>	means the time period from the date of receipt of second stage payment from all group members to the Connection Agreement Effective Date. This time period is indicative only.
<b>“Shared Works”</b>	means any of the Company’s Connection Works which are common to, or associated with, connection works for any other customer (or works under any other Connection Agreement), including where any of the associated connection assets, works or costs are common to any other customer connection.
<b>“Single Premises”</b>	means one or more buildings or structures, occupied and used by a person, where each building or structure is adjacent to, or contiguous with, the other building or structure.
<b>“Supplier”</b>	means a person licensed to supply electricity to the Customer under Section 14 (1) (b), (c) (d) or (h) of the Act who supplies electricity to the Customer under the Supply Agreement.
<b>“Supply Agreement”</b>	means an agreement between the Supplier and the Customer for the supply of electricity to the Facility.
<b>“Term”</b>	means an initial period of twenty (20) years, or such other term agreed between the Parties as provided in the Company’s prevailing commercial

policy as approved by the Commission, starting from the date of connection of the Facility under the Agreement and consecutive periods of one (1) year thereafter unless terminated in accordance with the terms of the Agreement.

**“Terminal Sub-Station”**

means the sub-station, including, without limitation, the sub-station compound (if any), to be provided in accordance with the Agreement to accommodate any part of the Company’s Equipment.

**“Transmission System”**

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

**“Transmission System Operator (TSO)”**

means Eirgrid plc as operator of the Transmission System and licensed pursuant to Section 14(1)(e) of the Act.

**“Transmission System Owner (TAO)”**

means ESB as the owner of the Transmission System and licensed pursuant to Section 14(1)(f) of the Act.

**“TUoS Agreement”**

means, where applicable, the agreement between the TSO and Customer for the use of the Transmission System.

**1.2 Interpretation**

In the Agreement and unless the context otherwise requires:

- 1.2.1 the singular shall include the plural and vice versa;
- 1.2.2 any gender reference shall be deemed to include references to the masculine, feminine and neuter genders;
- 1.2.3 words importing persons or parties shall include individuals, firms and corporations, joint ventures, trusts, unincorporated associations and organisations, partnerships and any other entity, in each case whether or not having a separate legal

personality and all references to persons shall include their legal successors and permitted assignees;

- 1.2.4 all references to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;
- 1.2.5 unless otherwise specified
  - a) any reference in the Agreement to a "Clause" is a reference to a Clause contained in the Agreement and any reference in the General Conditions to a "Clause" is a reference to a Clause in the General Conditions unless otherwise stated; and
  - b) any reference to a "Schedule" is a reference to a Schedule to the Agreement unless otherwise stated;
- 1.2.6 any reference to another agreement or document, or any deed or other instrument, shall be construed as a reference to that other agreement, or document, deed or other instrument as the same may have been, or may from time to time be, amended, varied, supplemented, substituted or novated;
- 1.2.7 terms which are defined in the Distribution Code and which are not otherwise defined in the Agreement shall have the meanings ascribed to them in the Distribution Code;
- 1.2.8 any reference to a month or year shall be construed as reference to a calendar month or year, as the case may be;
- 1.2.9 terms not defined in either the Agreement or in the Distribution Code shall have the meaning commonly used in electric utility practice or the English language, as appropriate;
- 1.2.10 where reference is made to a sum of money "Indexed" such sum shall be deemed to be altered, with effect from 1 January in each year commencing on the first 1 January falling after the date of the Agreement, to reflect the actual (not underlying) change in consumer prices over the previous 12 months in accordance with the Consumer Prices Index or, if such index shall cease to exist or fail to be published within a reasonable period or if there is a material change in the basis of such index, such other similar index of consumer prices as the Parties may agree or, in the absence of agreement within twenty (20) Business Days of the

relevant 1 January, as determined in accordance with Clause 18.0 ;

1.2.11 where reference is made to an amount or sum, it is to an amount or sum denominated in Euros unless otherwise stated.

### **1.3 Table of Contents and Headings**

The table of contents and Clause headings are inserted for ease of reference only and shall be ignored for the purpose of the construction of the Agreement.

### **1.4 Defined Terms**

All terms which have been defined in the Agreement shall have their initial letters in capital typescript whenever and wherever they appear in the Agreement.

### **1.5 Inconsistencies**

In the event of inconsistency between the provisions of the Agreement and the Distribution Code, the provisions of the Distribution Code shall prevail to the extent of such inconsistency unless the contrary intention is explicit. In the event of inconsistency between the Agreement and any other agreement between the Parties relating to connection to the Distribution System, the Agreement shall prevail to the extent of such inconsistency unless the contrary intention is explicit.

## **2.0 Assignment and Subcontracting**

### **2.1 Assignment by Customer**

Subject to **Clauses 2.2** and **2.4**, the Customer may not assign or transfer any of its rights or obligations under the Agreement without the prior written consent of the Company, not to be unreasonably withheld.

### **2.2 Assignment by Customer to an Affiliate**

Subject to **Clause 2.4**, the Customer may at any time assign or transfer all its rights and obligations under the Agreement to an Affiliate provided that the Customer first enters into a Performance Guarantee in a form satisfactory to the Company. Where the Agreement is so assigned to an Affiliate:

2.2.1 without prejudice to Clause 2.1, such Affiliate may not itself assign or transfer the Agreement under this Clause 2.2 except to the person who was the Customer on the date of the Agreement or to another Affiliate of that person provided that the person who was the Customer on the date of the Agreement first



enters into a Performance Guarantee in a form satisfactory to the Company; and

- 2.2.2 such Affiliate shall cease to be entitled to enforce the terms of the Agreement on its ceasing to be an Affiliate and shall immediately, prior to so ceasing, assign the Agreement to either the person who was the Customer on the date of the Agreement, or to another Affiliate of such person provided that the person who was the Customer on the date of the Agreement first enters into a Performance Guarantee in a form satisfactory to the Company;

and these provisions shall apply mutatis mutandis to any other Affiliate of the person who was the Customer on the date of the Agreement and to whom the Agreement is assigned under **Clause 2.2.1** or **Clause 2.2.1**.

### **2.3 Assignment by Company to an Affiliate**

The Company may at any time assign or transfer all of its rights and obligations under the Agreement to an Affiliate or to another person who by statute becomes a legal successor to the Company.

### **2.4 Conditions on Assignment**

Every assignment permitted by this **Clause 2.0** shall be conditional upon the assignee expressly assuming the assignor's obligations under the Agreement and, in the case of an assignment by the Customer the assignment not impairing any bond or other security given by the Customer to the Company under the Agreement unless the assignee provides a bond or other security in the same terms as that provided by the Customer to the Company.

### **2.5 Sub-Contracting**

Either Party shall have the right to sub-contract or delegate the performance of any of its obligations or duties arising under the Agreement without the prior consent of the other Party. Such sub-contracting by the Company or the Customer of the performance of any obligations or duties under the Agreement shall not relieve the Company or the Customer (as the case may be) from liability for performance of such obligation or duty.

### **2.6 Encumbrances**

Notwithstanding the provisions of this **Clause 2.0**, either Party may enter into arrangements which create an Encumbrance by way of security to any bank or financial institution over the Agreement, the amounts payable under the Agreement or any other assets owned by the Party creating an Encumbrance required for the performance of the Agreement. The Party creating the Encumbrance shall notify the other

Party of reasonable details of the arrangements within ten (10) Business Days of the creation of any such Encumbrance.

### **3.0 Charges**

- 3.1** The Customer shall pay to the Company all Charges and other monies payable by the Customer to the Company pursuant to this Clause 3.0 and Schedule 1 to these Conditions.
- 3.2** The Customer shall pay each invoice in full within twenty (20) Business Days of the date of the invoice. The Company shall be entitled to charge interest on any amount unpaid after the expiry of the said twenty (20) Business Days from such date to the date of actual payment and whether before or after judgement, at the rate specified in Schedule 1 to these Conditions, compounded on a monthly basis.
- 3.3** Without prejudice to the terms of **Clause 3.2** where at any time prior to the Connection Agreement Effective Date the Customer has failed to make a payment to the Company by the due date therefore, the Company shall serve a notice on the Customer and twenty (20) Business Days after service of this notice, the Company shall be entitled to suspend the performance of its obligations under the Agreement until the date of actual payment and all time limits with which the Company is required to comply shall be extended by the period of suspension.
- 3.4** All sums payable by the Customer to the Company under the Agreement shall be paid in full, free and clear of and without any deduction, set-off or deferment whatsoever.

### **4.0 AUTOPRODUCERS and CHP PRODUCERS**

#### **4.1 Designation of Autoproducer**

Where the Maximum Import Capacity ("MIC") and the Maximum Export Capacity ("MEC") entitle the Customer to the status of Autoproducer or CHP Producer in accordance with Direction CER/03/237 issued by the Commission in September 2003, the Customer shall be deemed the Autoproducer or CHP Producer irrespective of whether the Customer himself generates the electricity consumed and, where relevant, exported or arranges that another person carry out that generation on his behalf. Any electricity imported into or exported from the Customer's Premises will be attributed to the Customer.

#### **4.2 Connection Agreement**

No connection agreement will be entered into by the Company with a generator who is contracted to a Customer who is an Autoproducer or CHP Producer to produce on the Customer's Premises electricity which is consumed by the Customer, whether or not all of that electricity is consumed by the Customer. A connection agreement will be offered only to the Customer. The contractual and other arrangements between the Customer and such a generator must reflect that position.

**4.3** A Customer who is an Autoproducer or CHP Producer is subject to the following supplementary conditions.

4.3.1 Where the required information as specified in the Application Form has not been furnished to the DSO and the requirements in the 'Conditions Governing Connection to the Distribution Network' document, have not been complied with in full, in respect of any Generating Unit which generates electricity exported or consumed by an Autoproducer or CHP Producer, the Connection Agreement Effective Date will not occur and the MEC attributed to the Autoproducer or CHP Producer will be of no force or effect.

4.3.2 The MEC should be equal to or less than the installed Generator Capacity.

4.3.3 If the Autoproducer's or CHP Producer's import demand is found to be greater than the MIC by 10% or more then the customer will need to agree a new MIC and if the appropriate MIC is greater than the MEC it follows that this Autoproducer or CHP Producer would then revert to being treated the same as any other demand customer as per the direction. If the Autoproducer or CHP Producer fails to apply for and accept terms for an appropriate MIC within two (2) months of being notified of an exceeded MIC, the MIC penalty will come back into effect for any further instances of exceeded MIC.

## **5.0 Distribution Code**

**5.1** Each Party undertakes with the other to comply with all provisions of the Distribution Code applicable to it throughout the Term. In particular (but without limitation to the generality of the foregoing) the Customer undertakes to submit data to the Company as required by the Distribution Data Registration Code.

**5.2** If the Customer imports or exports electricity from or to the Distribution System which causes the voltage or frequency regulation of the Distribution System or the supply of electricity to the Customer or others to be outside the standards required by the Distribution Code or in the Company's reasonable opinion is likely to do so, the Customer shall be deemed to be in breach of the Agreement and shall at its own expense remedy the situation within a reasonable time of the Company giving notice to the Customer, failing which the Company may De-energise and shall not Re-energise until the situation has been remedied. The Customer shall indemnify and hold harmless the Company from and against any losses, damages or cost incurred by the Company or claims made against the Company by third parties in respect of such an occurrence.

## **6.0 Variation**

**6.1** Subject to **Clause 6.4** no variation of the Agreement shall be effective unless made in writing and signed on behalf of both Parties.

- 6.2** Either Party may at any time give notice to the other proposing that the Agreement be varied.
- 6.3** If the variation proposed under this **Clause 6.0** has not been agreed by the Parties within one (1) month of its being proposed, either Party may refer the matter to the Commission for determination and the Parties shall abide by and give effect to the Commission's determination.
- 6.4** If there shall be enacted and brought into force legislation and/or any Directive, rule, regulation, statutory instrument or order of any Competent Authority arising therefrom or change in the Distribution Code or the Metering Code, providing for the further reorganisation of all or part of the electricity industry in Ireland or the facilitation of the introduction of third party interests to the affairs of such electricity industry or the amendment or variation of any policy of the Company or the manner in which the Distribution System and any agreements or protocols related thereto are organised which necessitates a variation to the Agreement, the Parties shall effect such changes as are reasonably necessary so as to ensure that the operations contemplated by the Agreement shall be conducted in a manner which is consistent with the effect of the new legislation, Directive, rule, regulation, statutory instrument or order, or change in the Distribution Code or the Metering Code and most closely reflect the intentions of the same with effect from the date thereof, provided that any such amendment will be of no greater extent than is required by reason of the new legislation, Directive, rule, regulation, statutory instrument or order, or change in the Distribution Code or the Metering Code.
- 6.5** The Parties agree to effect any change to the Agreement required by any direction given by the Commission relating to an agreement of this type.

## **7.0 Rights Over Land and Access Conditions**

- 7.1** The Customer shall, at the cost and expense of the Customer, grant to the Company all Consents that the Customer is empowered to give as are required by the Company for the installation, operation, repair, maintenance, inspection and removal of the Company's Equipment situated on or in any land or buildings in which the Customer has a proprietary interest or which are controlled by the Customer. Any such Consent shall be granted on such terms and conditions as are reasonably acceptable to the Company having regard to the terms and conditions on which similar Consents have previously been granted to the Company.
- 7.2** The Customer shall permit the Company's employees, subcontractors, agents or invitees at times to be agreed between the Parties, both during the Term and after the termination of the Agreement to enter those parts of the Customer's Premises to carry out connection or modification works or to operate, read meters, inspect or test the Metering Equipment, work on the Company's Equipment or the Facility or Disconnect or De-Energise the Connection Point or for any other purpose required for the operation of the Distribution System or to enable the Company to fulfil its obligations under the terms of the Agreement or as authorised to take under law, including with limitation

by the European Communities Regulations. The Company shall be given safe and unobstructed access. All rights of access for the Company under the Agreement shall include the right to bring on such vehicles, plant, machinery and materials as shall be necessary to carry out the functions in respect of which the right of access is granted, and shall be exercisable free of charge. The Company shall use all reasonable endeavours when present on the Customer's Premises to co-operate with the Customer and to comply with all reasonable directions as to safety and security given by the Customer.

## **8.0 Security**

- 8.1** In the case of generator customer with an MEC greater than 5MW, the Customer shall provide a Capacity Bond as provided for under the Quotation Letter in the form set out in Schedule 2A to these Conditions. The Capacity Bond must be provided from a financial institution with a long-term credit rating of at least A- (Standard and Poors Corporation) or A3 (Moody's Investors Services). Where the status of a financial institution from whom the Company has received the Capacity Bond is reduced below an A-/A3 Rating the Customer shall within fifteen (15) business days procure that the Company receives a further or replacement Capacity Bond on, and subject to, the terms and conditions set out in this Clause 8.1.

This new Capacity Bond condition does not invalidate Capacity Bonds existing before CRU direction CER/09/138 issued. Where the Customer has a Capacity Bond in effect prior to CRU direction CER/09/138, the Customer may contact the Company before expiry of the Customer's existing Capacity Bond to agree what options are available on renewal.

- 8.2** Where a connection asset has a limited life and a low prospect of re-use leading to a potential requirement for decommissioning and reinstatement, a charges bond may be required as security for the payment of Decommissioning and Reinstatement Charges ("Charges Bond"). The bond shall be in a form to be approved by the Company. Where a bond is required, the details will be included in the Agreement. The conditions applying to such a Charges Bond are as set out in this **Clause 8.0**.
- 8.3** The Customer shall upon request from the Company, forthwith procure that the Company receives a Charges Bond from a financial institution with a long term credit rating of at least A- (Standard and Poor Corporation) or A3 (Moody's Investors Services) (the Expiry Date of which shall be not less than twelve (12) months from its date of issue) and having a face value of such an amount as is requested by the Company, up to a maximum of the total Decommissioning and Reinstatement Charges (the "Maximum Sum").
- 8.4** In the event that this Agreement has not been terminated before the Expiry Date of the relevant Charges Bond the Customer shall enter into a new Bond in a form to be agreed by the Company for another twelve months commencing on the Expiry Date of the relevant Charges Bond

- 8.5** Where the uncalled amount of the Charges Bond is less than the Maximum Sum or the status of a financial institution from whom the Company has received the bond is reduced below an A3/A- Rating the Customer shall within fifteen (15) business days procure that the Company receives a further or replacement bond on, and subject to, the terms and conditions of **Clause 8.2** and 8.3 such that the uncalled amount of all bonds equals such amount as is notified by the Company in its request, being an amount not greater than the Maximum Sum.
- 8.6** If twenty (20) Business Days prior to the Expiry Date of the Charges Bond the Customer has not met all its obligations to pay to the Company all outstanding Decommissioning and Reinstatement Charges, the Customer shall procure that the Company receives a replacement bond on, and subject to, the same terms and conditions as that existing bond, save that the Expiry Date of the replacement bond shall be twelve (12) months after the Expiry Date of the existing bond. Every obligation of the Customer under this Clause to procure that the Company receives a bond shall include an obligation to ensure that such bond is enforceable by the Company against the issuer of the same.
- 8.7** In the event that the Customer fails to make any payment of the Decommissioning and Reinstatement Charges, in accordance with the provisions of the Agreement the Company shall be entitled to make a demand for payment of the outstanding amount under the Charges Bond. Once the Decommissioning and Reinstatement Charges have been paid in accordance with the Agreement the Company shall release and/or cancel the Charges Bond
- 8.8** The Customer may at any time by notice to the Company require that a bond be cancelled or released whereupon the Company shall do so within twenty (20) Business Days provided that the Customer first procures that the Company receives a further or replacement bond on, and subject to, the terms and conditions of this **Clause 8.0**.
- 8.9** The Customer shall immediately notify the Company in the event that the status of a financial institution from which the Company has received a bond is reduced below an A-/A3 Rating.
- 8.10** Where the Customer is a member of a subgroup having Shared Works the Customer and each customer within such subgroup shall provide a Shared Asset Bond as provided for under the Quotation Letter in the form set out in Schedule 2B of the General Conditions. The Shared Asset Bond must be provided from a financial institution with a long-term credit rating of at least A- (Standard and Poors Corporation) or A3 (Moody's Investors Services). Where the status of a financial institution from whom the Company has received the Shared Asset Bond is reduced below an A-/A3 Rating the Customer shall within fifteen (15) business days procure that the Company receives a replacement Shared Asset Bond on, and subject to, the terms and conditions set out in this Clause 8.10 and clause 5.1.3 of the Quotation Letter.

## **9.0 De-energisation and Breach of Agreement**

### **9.1 Right to De-Energise**

The Customer may be De-Energised at any time and from time to time if and to the extent that the Company acting in accordance with Good Industry Practice considers it necessary or where it is necessary for the safety and security of the Network. In particular (without limiting the generality of the foregoing) De-Energisation may occur as provided for under the Distribution Code or in any of the following circumstances:-

- 9.1.1 If the Company is instructed to do so by the Supplier, TSO, ESB or the Commission or pursuant to the terms of the Trading and Settlement Code;
- 9.1.2 On the occurrence of Force Majeure if, acting in accordance with the Distribution Code, the Company considers that the circumstances require it;
- 9.1.3 If the Customer no longer has the right to remain connected under Clause 2.0 of the Agreement;
- 9.1.4 If the Customer is in breach of the Agreement or the Distribution Code and (if such breach is capable of remedy and does not place the Company in breach of any legal or statutory or regulatory obligation) such breach remains un-remedied for the period provided in the Agreement or if none is provided then twenty (20) Business Days following the date upon which the Customer is given notice by the Company;
- 9.1.5 If an Event of Default has occurred;
- 9.1.6 If the Company is otherwise permitted to do so under the terms of the Agreement or the Distribution Code (including without limitation, for demand control purposes);
- 9.1.7 If the Company is entitled to do so by law.
- 9.1.8 To enable the Company to inspect, alter, test, maintain, repair, replace, remove or add to any part of or make new connections to the Network;
- 9.1.9 If the Company considers it necessary to avoid danger to persons or damage to property;
- 9.1.10 To enable the Company to restore supplies to other Customers connected to the Distribution System;
- 9.1.11 At the Customer's written request provided that the Customer pays to the Company any reasonable costs incurred by the Company in De-Energisation and any subsequent Re-Energisation.

## 9.2 Notification of De-Energisation

The Company shall endeavour to give the Customer reasonable notice of its intention to De-Energise except:

- 9.2.1 Where a notice period is otherwise specified in the Agreement or the Distribution Code;
- 9.2.2 Where Clause 9.1.4 or 9.1.5 applies, the Company shall give the Customer two (2) Business Days notice of its intention to De-Energise unless the breach places the Company in breach of any legal or statutory or regulatory obligation in which case the Company may De-Energise immediately and without notice;
- 9.2.3 Where Clause 9.1.9 applies, the Company reserves the right to De-Energise forthwith.

## 9.3 No Liability

The Company shall have no liability whatsoever to the Customer arising from De-Energisation permitted by this Clause 9.0.

## 9.4 Notification of Breach

If the Customer shall be in breach of any of the provisions of the Agreement or the Distribution Code then the Customer shall as soon as reasonably practicable after it becomes aware of the breach in good faith notify the Company of the breach advising the Company whether in its opinion the breach can be remedied and the timescale for the remedy and giving sufficient details thereof to the Company to enable it to assess the importance of the breach. If the Customer becomes aware of any likely possible breach of the Agreement or the Distribution Code, the Customer shall notify the Company of the likely possible breach advising the Company of the steps the Customer is proposing to take to prevent such breach from occurring and giving sufficient details thereof to the Company to enable it to assess the importance of the breach.

## 9.5 Discussions between Parties

If the Company serves a notice on the Customer pursuant to **Clause 9.1.4**, the Company and the Customer shall (without prejudice to the Company's rights under **Clause 9.1.4**) discuss in good faith and without delay the nature of the breach in an attempt to establish as quickly as practicable a mutually acceptable way of ensuring future compliance by the Customer with the relevant provision of the Agreement or the Distribution Code.

## 9.6 Re-Energisation

The Company shall Re-energise as soon as reasonably practicable where the circumstances leading to De-Energisation no longer apply after giving reasonable notice of its intention to Re-Energise to the



Customer and to the Supplier.  
Note: Following the tripping of a circuit breaker by a protection device, automatic re-closing of the circuit breaker will occur (where enabled) without any notice after the pre-set auto-reclose 'dead time' has elapsed on the protection device that caused the trip.

## **10.0 Limitation on Demand and Export**

- 10.1** The Customer shall not import or export electricity through the Connection Point exceeding the MIC or the MEC (as applicable) as agreed from time to time, without the prior written consent of the Company.
- 10.2** If the MIC or the MEC is exceeded, the Company may give notice to the Customer setting out details and requesting the Customer to remedy the situation within twenty (20) Business Days of receipt of the notice, failing which the Company reserves the right to De-Energise and shall not Re-Energise until such time as the Customer satisfies the Company that the MIC or the MEC (as applicable) will not be exceeded when the connection is renewed or arrangements have been made for an alteration or modification of the Agreement.
- 10.3** Where the MIC or the MEC is exceeded, the Customer shall whether or not subsequent Re-Energisation occurs and in any event prior to any subsequent Re-Energisation, pay to the Company the reasonable additional costs, expenses and liabilities incurred by the Company in connection with the De-Energisation, including the costs of any consequent De-Energisation and subsequent Re-Energisation.

## **11.0 Outages**

- 11.1** Scheduled Network outages will be necessary from time to time to facilitate such events as (but is not limited to) Network maintenance, improvements and diversions, connections to new Customers and clearance of hazards. Unscheduled Network outages may also occur from time to time due to (but not limited to) problems arising on the Network and circumstances deemed unsafe and/or dangerous to ESB or the System Operator and the Company shall bear no liability for any loss caused by reason of the scheduled or unscheduled outages.

## **12.0 Prohibition on Connection of Other Premises**

- 12.1** The Customer may not connect or take any action with a view to connecting any other premises, whether owned or controlled by the Customer or by another person, and whether generating or consuming electricity or doing both of these, to the Company's Connection Equipment or the Customer's Equipment, and may not permit or act in collusion with any other person to allow such other person or any third party receive a supply of electricity recorded on the Metering Equipment associated with the Connection Point.

### **13.0 Interference with Equipment**

**13.1** Each Party shall not, and shall ensure that its agents, employees and invitees do not, interfere in any way the other Party's Plant and/or Apparatus (including without limitation Metering Equipment) without the consent of the other Party except where emergency action has to be taken by either Party to protect the health and safety of persons or by the Company to protect the Distribution System or otherwise as permitted by the Agreement.

### **14.0 Customer's Equipment**

**14.1** The Customer acknowledges that the Company may use switchgear with high speed, slow speed automatic and/or manual (remote or local) reclosing facilities, that the Customer's Equipment and the Facility should be designed so as not to suffer damage through the operation of such facilities, and that the Company shall bear no liability for any damage howsoever caused by the operation of such facilities.

### **15.0 Metering**

**15.1** The Company shall provide and maintain in accordance with the Metering Code, the Metering Equipment at each Connection Point.

**15.2** Without prejudice to the Company's remedies under **Clauses 9** and **16.0** of these Conditions, the Customer shall not interfere or permit any interference with the Metering Equipment and shall indemnify the Company in respect of any costs incurred by the Company as a result of any such interference.

**15.3** In the event that either Party has grounds for believing that the Metering Equipment is operating outside the agreed margins of error, that Party shall forthwith notify the other Party of those grounds and the Metering Equipment will be checked by the Company in accordance with the Metering Code. If following a test of the Metering Equipment:

- (a) It is found that the Metering Equipment is operating outside the agreed margins of error the Metering Equipment shall be re-calibrated or replaced and the cost of such test and re-calibration or replacement shall be paid by the Company;
- (b) It is found that the Metering Equipment is operating within the agreed margins of error the cost of such examination and test shall be paid by the Customer if the Customer had requested the Company to carry out such tests on the Metering Equipment.

### **16.0 Termination of the Agreement**

#### **16.1 Events of Default:**

The following events or circumstances in respect of the Customer shall be Events of Default by the Customer:

- 16.1.1 if a breach of the Agreement or the Distribution Code which led to De-Energisation remains un-remedied at the expiry of six (6) months after the date of such De-Energisation by the Company, and the Company (at any time while the breach continues after the expiry of such six (6) month period) by notice in writing to the Customer declares that such breach is an Event of Default; or
- 16.1.2 except for a breach referred to in **Clause 16.1.1**, a failure to comply with or operate in conformity with any provisions of the Agreement or breach of the Distribution Code where such failure is a material breach of the Agreement (being one which materially affects the Customer's ability to perform its obligations under the Agreement) and (if such failure is capable of remedy) such failure remains un-remedied for the period provided for in the Agreement or if none is provided then twenty (20) Business Days following the date on which the Customer is given notice of the default by the Company; or
- 16.1.3 if the Customer repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
- 16.1.4 if an order of the High Court is made or an effective resolution passed for its insolvent winding up or dissolution; or
- 16.1.5 if a receiver (which expression shall include an examiner within the meaning of the Companies (Amendment) Act, 1990) of the whole or any material part of the Customer's assets or undertaking is appointed; or
- 16.1.6 if it enters into any scheme of arrangement (other than for the purpose of a solvent reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Company); or
- 16.1.7 if it is unable to pay its debts within the meaning of Section 214 of the Companies Act, 1963 (and the Customer shall not be deemed to be unable to pay its debts if any demand for payment is being contested in good faith by the Customer with recourse to all appropriate measures and procedures). For the purpose of this **Clause 16.7**, Section 214 of the Companies Act, 1963 shall have effect as if for "€1,269" there was substituted "€63,487" or such higher figure as the Company may determine (with the prior approval of the Commission) by notice in writing to the Customer; or
- 16.1.8 notwithstanding the terms of **Clause 16.1.2**, if the Customer fails to pay (other than by inadvertent error in funds transmission which is discovered by the Company, notified to the Customer and corrected within two (2) Business Days thereafter) any Charges due to the Company under the Agreement, howsoever arising, by the due date for payment or fails to provide, procure

or maintain any bond other security and/or obtain and maintain insurances required by the Agreement; or

16.1.9 if at any time after Energisation there is not a current and enforceable Supply Agreement in place.

### **16.2 Notice of Termination:**

Once an Event of Default has occurred the Company may give notice of termination to the Customer whereupon the Agreement shall terminate forthwith upon the delivery of such notice. The Company shall have no liability to the Customer by reason of exercising such right of termination.

### **16.3 Termination by the Customer:**

The Customer may terminate the Agreement at any time by giving not less than three (3) months notice of termination to the Company whereupon the Agreement shall terminate.

## **17.0 Effect of Termination**

### **17.1 Termination after the Connection Agreement Effective Date**

Upon termination of the Agreement after the Connection Agreement Effective Date for any reason, and without prejudice to any other subsisting rights of either Party, the Customer shall following receipt of the Company's invoice therefor immediately pay to the Company:

17.1.1 an amount equal to any Charges payable in respect of the period prior to termination which have not been paid by the Customer;

17.1.2 any other monies owing to the Company either arising from termination or otherwise under the Agreement.

### **17.2 Termination before the Connection Agreement Effective Date**

Upon termination of the Agreement before the Connection Agreement Effective Date for any reason, and without prejudice to any other subsisting rights of either Party, the Customer shall following receipt of the Company's invoice therefor immediately pay to the Company the lesser of:

17.2.1 the Connection Charges not already paid and:

17.2.2 any other costs incurred by the Company or committed by the Company and not recovered either arising from termination or otherwise under the Agreement. For the avoidance of doubt this shall exclude project costs (if any) in respect of Connection Works not attributable to the Customer. Where the amount calculated under this Clause **17.2.2** is less than the monies

already paid by the Customer in respect of the Connection Charges, the Company shall pay an amount equal to the difference to the Customer.

### **17.3 Alternative Use / Disposal**

In the event of termination prior to the Connection Agreement Effective Date, the Company shall, following termination of the Agreement, re-use all recovered standard equipment. For the purposes of **Clause 17.2.2**, re-used equipment shall be valued at the Company's standard price. The Company shall use all reasonable endeavours to dispose of the balance of the Company's Connection Equipment (if any), no later than one (1) year after such termination. If the Company fails to dispose of such Equipment the Customer may undertake to find a buyer and the Company will use all reasonable endeavours to facilitate the Customer in so doing.

### **17.4 Recalculation of Charges payable on Termination**

If the amount in **Clause 17.2.2** is calculated by reference to any estimated amount by the Company, the amount payable under **Clause 17.2.2** shall be recalculated by the Company (and notified to the Customer, by way of an invoice of a payment as due to be made by the Customer) once the actual amount is ascertained and the amount originally calculated as being payable under **Clause 17.2** shall be adjusted accordingly and any Party which has underpaid or been overpaid shall forthwith pay the amount of the balance yet to be paid or the balance comprising the overpayment (as the case may be). In cases where the Customer has overpaid, the Company shall also pay interest to the Customer from the date of the payment at the rate set in **Clause 3.2**.

### **17.5 Notice of De-Energisation and Disconnection**

Subject to **Clause 17.6**, where the Agreement has been terminated by the Company it may give notice of De-Energisation and Disconnection or may give notice of Disconnection to the Customer whereupon the following provisions will apply:

17.5.1 the Company acting in accordance with Good Industry Practice shall De-Energise and Disconnect and the Company and the Customer shall by arrangements between them remove any of the Company's Connection Equipment from the Terminal Sub-Station and the Customer's Equipment from the Company's Premises within six (6) months of the date of termination or such other period as may be agreed between the Parties or required by a Competent Authority;

17.5.2 the Customer shall be responsible for the cost of reinstatement of the site within the Customer's Premises after removal of the Company's Connection Equipment, in respect of which the Company shall have no responsibility;

17.5.3 the Customer shall be obliged to pay to the Company immediately following receipt of the Company's invoice the full

amount of the monies outstanding which shall include any Charges and any other monies owing to the Company either arising from termination or otherwise under the Agreement; and

17.5.4 where the Company is in the course of preparing for or carrying out the Connection Works the Company shall cease such preparations or carrying out such works as soon as is reasonably practicable and shall use all reasonable endeavours to mitigate the consequences of termination.

#### **17.6 Entry to Terminal Sub-Station**

For the purposes of **Clause 17.5** the Company shall be allowed to enter the Customer's Premises to remove, at the Customer's expense, the Company's Connection Equipment, within the time period specified in **Clause 17.5.1**. The Company shall make good or pay compensation for any damage caused by the Company's negligence in such removal. If any of the Company's Connection Equipment remains on the Customer's Premises after the time period specified in **Clause 17.5.1** it shall be at the risk of the Company unless during that time period the Customer has restricted entry to the Customer's Premises to the Company's representatives and thereby prevented removal by the Company.

#### **17.7 Survival**

The provisions of this **Clause 17.0** shall survive termination of the Agreement. The relevant provisions of the Agreement shall survive expiry or termination of the Agreement to the extent necessary to provide for final billings, adjustments and payments of any Charges or other monies due and owing pursuant to the Agreement. The expiry or termination of the Agreement shall not affect any rights or obligations which may have accrued prior to such expiry or termination and shall not affect any continuing obligations of either of the Parties under the Agreement (including, without limitation any proceedings which have been commenced) or any other agreement between the Parties in which rights or obligations are expressed to continue after expiry or termination of the Agreement.

#### **18.0 Limitation of Liability**

##### **18.1 No Liability for Force Majeure:**

To the extent provided in **Clause 18.0** neither Party shall be liable for any breach of the Agreement directly or indirectly caused by Force Majeure.

##### **18.2 Liability for Breach and Physical Damage only:**

Except as provided in this **Clause 18.2** and **Clauses 18.3 to 18.5** and except where any other provision of the Agreement provides for an indemnity, neither Party ("Party Liable") nor any of its officers, employees or agents shall be liable to the other Party ("Party Not

Liabale") for any losses, damages, claims, liabilities, costs or expenses arising from any breach of the Agreement other than for losses, damages, claims, liabilities, costs or expenses directly resulting from such breach and which at the date hereof were reasonably foreseeable as likely to occur in the ordinary course of events from such breach in respect of:

18.2.1 physical damage being occasioned to the property of the Party Not Liabale, its officers, employees or agents; or

18.2.2 the liability of the Party Not Liabale to any other person for loss in respect of physical damage caused directly to the property of such other person as a result of such breach (a claim by a third party in respect of that liability hereafter in this **Clause 18.0** being referred to as a "Legal Claim");

shall not in respect of any one event exceed the Liability Amount provided that the liability of either Party in respect of all such losses, damages, claims, liabilities, costs or expenses shall not exceed the Liability Cap in any year of this Agreement.

### **18.3 Liability for Death or Personal Injury:**

Nothing in the Agreement shall exclude or limit the liability of the Party Liabale for death of or personal injury resulting directly from the negligence of the Party Liabale or any of its officers, employees and agents and the Party Liabale shall indemnify and keep indemnified the Party Not Liabale, its officers, employees and agents from and against any losses, damages, claims, liabilities, costs or expenses which the Party Not Liabale may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liabale or the negligence of any of its officers, employees or agents (such claim hereafter in this **Clause 18.0** being referred to as an "Injury Claim").

### **18.4 No liability for economic loss etc.:**

Subject to **Clause 18.3** and any provision of the Agreement which provides for payment obligations or an indemnity, neither Party nor any of its officers, directors, employees or agents shall in any circumstances whatsoever be liable to the other Party for:

18.4.1 any loss of profit, loss of revenue, loss of use, loss of contract (other than the Agreement) or loss of goodwill; or

18.4.2 any indirect or consequential loss, incidental or special damages (including punitive damages); or

18.4.3 loss resulting from the liability of the other Party to any other person howsoever and whensoever arising save as provided in **Clauses 18.2 and 18.3**.

### **18.5 Rights and remedies exclusive:**

The rights and remedies provided by the Agreement to the Parties are exclusive and not cumulative and exclude and are in place of all

substantive (but not procedural) rights or remedies expressed or implied and provided by common law or statute in respect of the subject matter of the Agreement, including without limitation any rights either Party may possess in tort which shall include, without limitation actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute, and releases the other Party, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in the Agreement and undertakes not to enforce any of the same except as expressly provided herein.

#### **18.6 Taking Over of Legal Claims:**

In the event of any Legal Claim being made against the Party Not Liable, the Party Liable shall be promptly notified of the Legal Claim and may at the Party Liable's own expense conduct all negotiations for the settlement of the same, and any litigation that may arise from the claim. The Party Not Liable shall not, unless and until the Party Liable has failed to, within ten (10) Business Days of receiving notice from the Party Liable requesting it to do so, unconditionally agree in writing to take over the conduct of the negotiations or litigation in respect of the Legal Claim, make any admission which might be prejudicial to the claim. The conduct by the Party Liable of such negotiations or litigation shall be conditional upon the Party Liable having first given to the Party Not Liable such reasonable security as the Party Not Liable shall from time to time notify the Party Liable that it requires to cover the amount ascertained or agreed or estimated, as the case may be, of any losses, damages, claims, liabilities, costs or expenses (subject always to the proviso to Clause 17.2) for which the Party Not Liable may become liable in respect of the Legal Claim. The Party Not Liable shall, at the request of the Party Liable, afford all reasonable assistance for the purpose of contesting the Legal Claim and shall be paid by the Party Liable (within ten (10) Business Days of the date of its invoice therefor) all reasonable expenses incurred in so doing.

#### **18.7 Taking Over of Injury Claims:**

In the event of any Injury Claim being made against the Party Not Liable, the Party Liable shall be promptly notified of the Injury Claim and may at the Party Liable's own expense conduct all negotiations for the settlement of the same, and any litigation that may arise from the claim. The Party Not Liable shall not, unless and until the Party Liable has failed to, within ten (10) Business Days of receiving notice from the Party Liable requesting it to do so, unconditionally agreed in writing to take over the conduct of the negotiations or litigation in respect of the Injury Claim, make any admission which might be prejudicial to the claim. The conduct by the Party Liable of such negotiations or litigation shall be conditional upon the Party Liable having first given to the Party Not Liable such reasonable security as the Party Not Liable shall from time to time notify the Party Liable that it requires to cover the amount ascertained or agreed or estimated, as the case may be of any losses, damages, claims, liabilities, costs or expenses for which the Party Not



Liabe may become liable in respect of the Injury Claim. The Party Not Liabe shall, at the request of the Party Liabe, afford all reasonable assistance for the purpose of contesting the Injury Claim, and shall be paid by the Party Liabe (within ten (10) Business Days of the date of its invoice therefor) all reasonable expenses incurred in so doing.

#### **18.8 Severability:**

Each of the provisions of this Clause 18.0 shall:

18.8.1 be construed as a separate and severable contract term, and if one or more of such provisions is held to be invalid, unlawful or otherwise unenforceable the other or others of such provisions shall remain in full force and effect and shall continue to bind the Parties; and

18.8.2 survive termination of the Agreement.

#### **18.9 Privity of Contract:**

Except as provided for under the Interface Undertaking in Schedule 4 of the Connection Agreement, each of the Parties agrees that the other Party holds the benefit of Clauses 18.2, 18.3 and 18.4 for itself and as trustee and agent for its sub-contractors, officers, directors, employees and agents.

#### **18.10 No limitation on enforcement of obligations:**

For the avoidance of doubt:

18.10.1 nothing in this **Clause 18.0** shall prevent or restrict either Party enforcing any obligation (including suing for a debt) owed to it under or pursuant to the Agreement; and

18.10.2 nothing in the Agreement shall make the Company liable to the Customer where the Connection Works and/or Energisation or any other obligations of the Company cannot be effected because of the inability of the Company having used all reasonable endeavours to obtain appropriate Consents necessary to enable it to carry out the Connection Works on terms reasonably acceptable to the Company or due to other circumstances outside the reasonable control of the Company.

18.10.3 each Party acknowledges and agrees that the provisions of this **Clause 18** are fair and reasonable having regard to the circumstances as at the date hereof.

#### **19.0 Force Majeure**

**19.1** Force Majeure means in relation to any event or circumstance or number of events or circumstances or combination thereof which is beyond the reasonable control of such Party (the "Non-Performing Party") and which could not have been avoided through the use of Good

Industry Practice and which results in or causes the failure of that Party to perform any of its obligations under the Agreement, including:

- 19.1.1 acts of terrorists;
- 19.1.2 war (whether declared or undeclared), threat of war, act of public enemy, blockade, revolution, riot, insurrection, public demonstration, civil commotion, invasion or armed conflict;
- 19.1.3 sabotage or acts of vandalism, criminal damage or the threat of such acts;
- 19.1.4 extreme weather or environmental conditions including lightening, earthquake, flood, wind, drought, storm, fire, landslip, accumulation of snow or ice, natural disasters and phenomena including meteorites, the occurrence of pressure waves caused by aircraft or other aerial devices travelling at supersonic speeds, impact by aircraft, volcanic eruption, explosion including nuclear explosion, radioactive or chemical contamination or ionising radiation;
- 19.1.5 any change of legislation, governmental order, restraint or Directive having the effect of shutting down or reducing the supply of electricity to the Facility or which prohibits (by rendering unlawful) the operation of the Facility and such operation cannot be made lawful by a modification to the Facility or a change in operating practice;
- 19.1.6 a strike or any other form of industrial action by persons employed by the affected Party or by an Affiliate of the affected Party or by any contractor, subcontractor or agent of the affected Party or any such Affiliate;
- 19.1.7 any strike which is part of a labour dispute of a national character occurring in the Republic of Ireland or which is part of a national electrical industry strike within the Republic of Ireland;
- 19.1.8 the inability at any time or from time to time of the Network to be capable of lawfully and safely supplying electricity to the Customer;
- 19.1.9 the act or omission of any contractor or supplier of either Party but only if due to an event which, but for the contractor or supplier not being a party to this Agreement, would have been Force Majeure;

Provided that Force Majeure shall not include:

- (a) lack of funds and/or the inability of a Party to pay;
- (b) mechanical or electrical breakdown or failure of machinery or plant owned or operated by either Party other than as a result of the circumstances identified in Clause 19.1.1 to 19.1.9 above;
- (c) any of the events referred to in Clause 6.0 resulting in modifications in this Agreement; or

- (d) a strike or any other form of industrial action not falling within paragraph Clause 19.1.6 or Clause 19.1.7 above.

## **19.2 Consequences of Force Majeure:**

Except as otherwise provided in the Agreement, where a Non-Performing Party is rendered wholly or partially unable to perform all or any of its obligations under the Agreement by reason of Force Majeure, except for an obligation to make payment of money, the Agreement shall remain in effect but the Non-Performing Party's relevant obligations and the corresponding obligations of the other Party owed to the Non-Performing Party under the Agreement which are obligations affected by Force Majeure shall be suspended provided that such suspension shall be of no greater scope and no longer duration than is required by the Force Majeure. Further:

- 19.2.1 as soon as reasonably practicable, the Non-Performing Party shall notify the other Party of the circumstances of Force Majeure, identifying the nature of the event, its expected duration, and the particular obligations thereby affected and furnish reports at such intervals as the other Party may reasonably request, with respect thereto during the period of Force Majeure;
- 19.2.2 the Non-Performing Party shall use all reasonable efforts to remedy this inability to perform and to resume full performance of its obligations under the Agreement;
- 19.2.3 no obligations of either Party that arose before the Force Majeure and which can reasonably be expected to be performed are excused as a result of Force Majeure;
- 19.2.4 forthwith after the occurrence of the Force Majeure, each Party shall use all reasonable endeavours to consult with the other as to how best to give effect to their obligations under the Agreement so far as is reasonably practicable during the period of Force Majeure; and
- 19.2.5 the Non-Performing Party on being able to resume full performance of its obligations under the Agreement, shall provide the other Party with written notice to that effect, without delay; and
- 19.2.6 insofar as possible the Non-Performing Party shall seek to mitigate the consequences of the Force Majeure occurrence.

This **Clause 19.0** shall not require the settlement of any strike, walkout, lock-out or other labour dispute on terms which, in the sole judgement of the Party involved in the dispute, are contrary to its interests. It is understood and agreed that the settlement of strikes, walkouts, lock-outs or other labour disputes shall be entirely within the discretion of the Non-Performing Party.

## **20.0 Dispute Resolution**

### **20.1 Application of this Section:**

If any dispute or difference arises between the Parties in connection with the Agreement except as provided for in the Major Users Connection Agreement under "Delays", it shall be resolved in accordance with the provisions set out in this **Clause 20.0**.

### **20.2 Notification of Dispute:**

Either Party may notify the other Party following the occurrence or discovery of any item or event which the notifying Party acting in good faith considers to be a dispute under the Agreement.

### **20.3 Appointment of Representative:**

If considered appropriate, the relevant Party may, by notice to the other Party and within fifteen (15) Business Days of a notification under **Clause 20.2**, appoint, by notice to the other Party, a senior company official with expertise or experience in the area in which the dispute arises and who has no prior direct involvement with the subject matter of the particular dispute, who may bring an expert, at the Party's own expense to represent them and meet with the representative of the other Party within fifteen (15) Business Days of the last date on which a Party receives notification of the dispute under **Clause 20.2**, to attempt in good faith to satisfactorily resolve the dispute.

### **20.4 Referral to the Commission:**

If the dispute should fail to be resolved pursuant to **Clause 20.3** within thirty (30) Business Days of the meeting referred to, then either Party may refer the dispute to the Commission for resolution.

## **21.0 Confidentiality**

### **21.1 Confidential Information:**

Each Party shall treat any and all information and data disclosed to it by the other Party in connection with the Agreement in any form whatsoever, and the Agreement itself, (the "Confidential Information") as confidential and proprietary, shall preserve the secrecy of the Confidential Information and shall not use the Confidential Information for any purpose other than solely in connection with the Agreement and shall use its reasonable endeavours to not permit any other person to so use or disclose any Confidential Information.

### **21.2 Excluded Information:**

For the purposes of this **Clause 21.0**, the term Confidential Information shall not include information which:

- 21.2.1 at the time of disclosure or at any time thereafter is in, or becomes part of, the public domain other than through a breach of the provisions of this **Clause 21.0**; or
- 21.2.2 the Party receiving the information can prove that the information was already known to it or was independently acquired or developed by it without being in breach of its obligations under this **Clause 21.0** or under any other obligation of confidentiality of the Party receiving the information; or
- 21.2.3 became available to the Party receiving the information from another source in a non-confidential manner otherwise than in breach of an obligation of confidentiality.

### **21.3 Disclosure of Confidential Information:**

Notwithstanding the provisions of **Clause 21.1**, Confidential Information may be disclosed by a Party:

- 21.3.1 to those of the shareholders, owners, directors, officers, employees, agents, consultants, contractors, advisers, investors, insurers or lenders of such Party or its Affiliates who need to know the Confidential Information for the purpose of carrying out the Agreement (and for no other purpose) provided that:
  - (a) the recipient agrees to keep the Confidential Information confidential on terms no less onerous than contained in this **Clause 21.0** ; and
  - (b) the disclosing Party shall be responsible for ensuring that the recipient observes and complies with such obligation to keep the Confidential Information confidential and shall accordingly be responsible for any failure of the recipient to do so;
- 21.3.2 as may be required to comply with the requirements of the Distribution Code or the Distribution Use of System Agreement;
- 21.3.3 by either Party as may be necessary to comply with any obligation under any licence, authorisation or permission granted to it under the Act or as required by the Act;
- 21.3.4 by the Company as may be necessary to enable the Company to operate the Distribution System and carry out its obligations in relation thereto in accordance with Good Industry Practice, provided
  - (a) that only Confidential Information which is necessary for such purpose is disclosed by the Company; and
  - (b) the Company notifies the recipient in advance of such disclosure that the information is confidential and should not be disclosed by the recipient to third parties;

21.3.5 as may be agreed in writing by the Parties prior to disclosure by the Party disclosing such Confidential Information;

21.3.6 as may be required by any of the following:

21.3.6.1 any applicable law or a Competent Authority;

21.3.6.2 a Court, arbitrator or administrative tribunal or an expert in the course of proceedings before it to which the disclosing Party is a party;

21.3.6.3 the regulations of any recognised stock exchange upon which the share capital of the Party (or any parent undertaking of the Party) is or is proposed to be from time to time listed or dealt in.

The Party making the disclosure under this **Clause 21.3.6** shall, if reasonably practicable prior to making the disclosure, and in any event as soon as reasonably practicable thereafter, supply the other Party with a copy of such disclosure or statement and details of the persons to whom the Confidential Information is to be, or has been, disclosed. Where a copy of such disclosure or statement has been supplied prior to making the disclosure, the other Party may give comments on that disclosure or statement to the Party proposing to make it.

#### **21.4 Retention of Ownership:**

All information supplied by or on behalf of a Party shall remain the sole and exclusive property of such Party and, the Agreement shall not operate to transfer ownership or any interest whatsoever therein, and the other Party shall, if requested by the Party disclosing the information following termination of the Agreement, promptly return to such Party all documents and any copies, extracts, notes or similar materials containing or based in whole on such information.

#### **21.5 Survival:**

The provisions of this **Clause 21.0** shall survive the termination of the Agreement for a period of five (5) years.

### **22.0 Notices**

#### **22.1 Notices to be in writing:**

Except for notices to be given pursuant to the Distribution Code (as to which, for the avoidance of doubt, the procedures provided for in the Distribution Code shall apply) any notice, given by one Party to the other under the Agreement shall be in writing unless emergency conditions exist reasonably preventing such notice from being given in which case oral notice will be given, followed as soon as reasonably practical by written notice.

## **22.2 Method of delivery:**

All such written notices shall either be personally delivered or be sent by pre-paid registered post (airmail if overseas) or facsimile transfer or electronic mail transfer. Communication by facsimile or electronic mail transfer shall be confirmed by forwarding a copy of same by pre-paid registered post.

## **22.3 Time of delivery:**

Any notice, so delivered, posted or transferred shall be deemed to have been given:

22.3.1 in the case of personal delivery, when delivered;

22.3.2 in the case of pre-paid registered post, on the second day following the date of posting (or, if airmailed to or from overseas, on the fifth day following the date of posting); and

22.3.3 in the case of facsimile transfer or electronic transfer on the date of dispatch provided:

(a) such date is a Business Day; and

(b) time of dispatch is within the hours of 0900 hours and 1730 hours at the place of receipt;

otherwise on the next following Business Day.

## **22.4 Address:**

Except for notices to be given pursuant to the Distribution Code (as to which, for the avoidance of doubt, the procedures provided for in the Distribution Code shall apply), any notice, given by one Party to the other under the Agreement shall be sent or delivered to the address, and marked for the attention of the person specified in attached schedules.

## **22.5 Change of Address:**

Either Party may, by notice to the other, given in compliance with this **Clause 22.0**, change the address or the person to which such notices are to be sent or delivered.

## **23.0 Taxes**

### **23.1 Value added taxes:**

The Parties agree that an amount equal to any applicable Value Added Tax (or other similar tax), sales tax or other lawful taxes or levies lawfully chargeable in respect of the performance of the Agreement shall be payable or repayable, as the case may be, in addition to and at the same time as the Charges.

## **24.0 Miscellaneous**

### **24.1 Counterparts:**

The Agreement may be executed in two counterparts and by each Party on a separate counterpart, each of which when executed and delivered shall constitute an original, but both counterparts shall together constitute one and the same instrument.

### **24.2 Savings Section:**

If any provision of the Agreement is or becomes or is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject or by order of the relevant body of the European Union, the other provisions of the Agreement shall remain in full force and effect. However, both Parties shall meet as soon as reasonably practicable and in no event more than ten (10) Business Days after the occurrence in an effort to agree terms which to the maximum extent possible will return the Parties to the positions each would have had under the Agreement if the invalidity, unenforceability or illegality had not occurred.

### **24.3 Waivers of Rights:**

No delay, omission or forbearance by either Party in exercising any right, power, privilege or remedy under the Agreement or the Distribution Code shall operate to impair or be construed as a waiver of such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any further exercise thereof or other right, power, privilege or remedy.

### **24.4 No warranty:**

Neither by inspection, if any, non-rejection, approval, consents nor in any other way, does the Company give any warranty, express or implied, as to the adequacy, safety, or other characteristics of the Facility, the Customer's Connection Works or the Customer's Equipment and the Company shall not be responsible for nor have any liability to the Customer arising therefrom.

### **24.5 Survival of Rights and Obligations:**

The cancellation, expiry or termination of the Agreement shall not affect any right or obligations which may have accrued prior to such expiry or termination and shall not affect any continuing obligations of either of the Parties under the Agreement including obligations that, by their nature should survive such termination, cancellation or expiry or any other terms of the Agreement by which rights or obligations are expressed to continue after expiry or termination of the Agreement.

### **24.6 Independent Contractors:**

The relationship between the Company and the Customer shall be that of two independent contracting parties. Each Party shall be solely liable for the payment of all wages, taxes and other costs related to the



employment by that Party of persons to meet its obligations under the Agreement.

**24.7 No partnership etc.:**

The Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Customer and the Company. Neither the Customer nor the Company shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or to be an agent or representative of, or to otherwise bind, the other Party.

**24.8 No Third Party Beneficiaries:**

The Agreement is intended solely for the benefit of the Parties to it. Other than as specifically provided in the Agreement, nothing in the Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person or entity not a party to the Agreement.

**24.9 Statutory Powers:**

Nothing in the Agreement shall prejudice or affect the rights or powers of either Party under any statute, statutory instrument or regulation for the time being in force.

**24.10 Change in Law:**

If at any time following the date of the Agreement, a Change in Law changes the cost to the Company of performing its obligations under the Agreement, the terms of the Agreement shall be adjusted as soon as reasonably practicable to ensure that the Company is not prejudiced as a result of that Change in Law. The Company shall give the Customer reasonable notice when a charge in its costs occurs resulting from a Change in Law. For the purpose of this **Clause 24.10**, "Change in Law" means the application to the Company of any Directive which did not previously so apply or any change of or to any Directive including any Directive ceasing to apply, being withdrawn or not being renewed except a Directive by the Commission expressly excluding the effect of this **Clause 24.10**.

**24.11 Language:**

Each notification, notice, submission, demand, consent, request or other communication given by one Party to the other under the Agreement shall be in the English Language.

**24.12 Variations to General Conditions**

The Parties acknowledge and agree that the General Conditions may be amended by the Company and approved by the Commission from time to time. The Parties agree that they shall comply with the current published version of the General Conditions at all times.

## Schedule 1: Charges

**Connection Charge:** Customers seeking new connections or altered capacity levels or other variations requiring modifications to the Connection Point may incur Connection Charges. The amount of Connection Charges and the payment method is set out in the Quotation Letter.

**Operation and Maintenance Charges:** Any Operation and Maintenance annual service charges in respect of the Company's Connection Equipment and the Terminal Sub-Station payable by the Customer are as set out in the Quotation Letter.

**Decommissioning and Reinstatement Charge:** The charge payable by the Customer to the Company for the cost of decommissioning and removal of the Company's Connection Equipment and the Terminal Sub-Station and for reinstatement of the site of the Company's Connection Equipment and the Terminal Sub-Station.

**Pass Through Charges:** Pass-through Charges payable by the Customer are set out in the Quotation Letter.

**Interest Rate:** For the purposes of the Agreement, the default interest rate shall be EURIBOR plus 2 percentage (2%).

## Schedule 2A: FORM OF CAPACITY BOND

Surety Ref: [ ]

To: ESB Networks DAC,  
Clanwilliam House,  
Clanwilliam Place,  
Dublin 2.

Attention: Commercial Manager, Asset Management.

Date: [ ]

**Capacity Bond Issued pursuant to the Connection Agreement No. [ ]**  
**Sum of EUR [ ]**

**WHEREAS** [ ] Limited, whose registered office is at [ ] (hereinafter called the "Customer"), by an Agreement made between the ESB Networks DAC, whose registered office is at Clanwilliam House, Clanwilliam Place, Dublin 2 (hereinafter called the "Company"), of the one part and the Customer of the other part has entered into Connection Agreement No. [ ] (hereinafter called "the Connection Agreement") and in this connection a Capacity Bond is required in the sum of € [ ].

**BY THIS BOND** we, [ ] PLC/ Limited, whose principal place of business (registered office) is at [ ] (hereinafter called the "Surety") are held and firmly bound unto the Company in the sum of € [ ] for the payment of which sum the Surety binds itself and its assigns jointly and severally by these presents.

Sealed with our common seal and dated this [ ] day of [ ] 20[ ].

**WHEREAS** the Customer by an Agreement made between the Company of the one part and the Customer of the other part has entered into Connection Agreement No. [ ] (hereinafter called "the Connection Agreement") and in this connection a capacity bond is required in the sum of € [ ].

**NOW WE AT THE REQUEST OF THE CUSTOMER UNDERTAKE unconditionally and irrevocably** to pay to the Company an amount or amounts not exceeding an aggregate maximum of € [ ] on receipt of the Company's first demand in writing served by the Company on the Surety in the form set out in Appendix 1 to this Capacity Bond.

Any notices (including any demand) given under this Capacity Bond shall be in writing and shall be served by sending the same by registered post or leaving the same at:

If to the Surety: [ ]  
Attention: [ ]

If to the Company: ESB Networks DAC

Commercial & Regulation  
Leopardstown Road  
Foxrock  
Dublin 18

Attention: Commercial Manager, Asset Management

Either party to the Capacity Bond may change its nominated address by prior written notice to the other party. Any written notices shall be effective upon the earlier of: (i) actual receipt; and (ii) 2 days after mailing or dispatch.

No alteration in terms of the Connection Agreement nor any forbearance or forgiveness in or in respect of any matter or thing concerning the Connection Agreement on the part of the Company shall in any way release the Surety from liability under this Bond.

This Bond expires on the earlier of:-

- The date falling one year and 3 months after the Connection Agreement Effective Date, or
- Three (3) years from the date of issue of this Capacity Bond

If three (3) years from the date of issue of this Capacity Bond proves to be the earlier date, the Customer will arrange re-issue of the Capacity Bond on review of the expected Connection Agreement Effective Date six (6) months in advance of the expiry date.

The Surety shall have no liability in respect of any claim under this Bond received after that date.

This Bond shall be governed by and construed in accordance with the laws of the Republic of Ireland and shall be subject to the exclusive jurisdiction of the Irish courts.

**PRESENT** when the common seal of

**THE SURETY**

Was affixed hereto in the presence of:-

---

**Appendix 1 to Form of Capacity Bond  
Form of Demand**

To: [Surety]

Date: [Date]

**Surety Reference Number [ ], Capacity Bond dated [ ] day of [ ] 200[ ]  
(the “Capacity Bond”)**

We refer to the Capacity Bond dated [ ] and issued by you in our favour. In accordance with the terms of the Capacity Bond, we hereby make demand in the sum of EUR [ ] (and request that you pay the same immediately to [specified account]).

For **ESB NETWORKS DAC**

Dated this [ ] of [ ] 20[ ]

[Authorised signatory]

## Schedule 2B: FORM OF SHARED ASSET BOND

### Surety Ref:

To: ESB Networks DAC [Date]  
Leopardstown Road  
Foxrock  
Dublin 18

Attention: Commercial Manager, Asset Management

**Shared Asset Bond issued pursuant to the Connection Agreement No. [ ]**  
**[Maximum Sum EUR] ( "the Bond" )**

**WHEREAS** under the Connection Agreement No. [ ] (the "Connection Agreement") between ESB Networks DAC (the "Company", which expression includes its legal successors and any person to whom the Company assigns or transfers all its rights and obligations under the Connection Agreement) and [ ] (the "Customer", which expression includes its legal successors and any person to whom the Customer assigns or transfers all its rights and obligations under the Connection Agreement) it was agreed that the Customer will procure the issue of a Bond in favour of the Company in the form of this document in the sum of €[ ] ( euro).

**BY THIS BOND**, we [Insert name of bank] whose principal place of business (registered office) is at [address] (the "Surety"), are held and firmly bound unto the Company in the sum of €[ ] ( euro) for the payment of which sum the Surety binds itself and its assigns unconditionally and irrevocably as a prime obligor.

Sealed with our common seal and dated this [ ] day of [ ] 20[ ]

**NOW WE THE SURETY UNCONDITIONALLY AND IRREVOCABLY** agree as follows:-

1. In this Bond (and every Demand), unless the context otherwise requires:

“**Authorised Signatory**” means an officer of the Company having authority to execute a Demand;

“**Demand**” means a written notice of demand served by the Company on the Surety in the form set out in Appendix 1 to this Bond;

“**Expiry Date**” means three (3) years from the date of issue of this Bond;

“**Specified Amount**” means in relation to any Demand the sum specified in that Demand;

Unless expressly defined in this Bond, words and phrases defined in the Connection Agreement shall have the same meaning in this Bond (and every Demand).

2. The Surety irrevocably and unconditionally agrees that it will, on service of a Demand by the Company before the Expiry Date, pay to the Company the Specified Amount, unless in so doing the aggregate limit set out in section 3 of this Bond would be exceeded, in which case the Surety shall pay to the Company so much of the Specified Amount as may be paid without exceeding such limit.
3. The aggregate amount of all Demands and the aggregate liability of the Surety under this Bond shall not exceed €[ ] ( euro).
4. Any payment under this Bond shall be made without deduction or withholding in immediately available, fully transferable, cleared funds by transfer to an account in the Company's name the details of which shall be specified by the Company in the Demand.
5. The obligations of the Surety under this Bond shall cease on the Expiry Date, except in respect of any Demand received by the Surety prior to the Expiry Date in relation to which the Surety shall be obliged (subject to the terms of this Bond) to pay to the Company the Specified Amount and the provisions of this Bond shall survive expiration of this Bond accordingly.
6. The liability of the Surety shall not in any way be affected by:
  - 6.1 any time, indulgence or relief being given to or by the Company or the Customer concerning the Connection Agreement;
  - 6.2 any amendment or extension of or supplement to the Connection Agreement;
  - 6.3 any invalidity in, or irregularity or unenforceability of the obligations of any person under the Connection Agreement; or
  - 6.4 anything done or omitted concerning the Connection Agreement which but for this provision might constitute a legal or equitable discharge of, or defence for, the Surety.
7. Any notices (including any Demand) given under this Bond shall be in writing and shall be served by sending the same by post or leaving the same at:

If to the Surety: [ ]

Attention: [ ]

If to the Company: ESB Networks DAC  
Commercial & Renewable Regulation  
Leopardstown Road  
Foxrock  
Dublin 18

Attention: Commercial Manager, Asset Management

Either party to the Bond may change its nominated address by prior written notice to the other party. Any written notices shall be effective upon the earlier of (i) actual receipt; and (ii) 2 days after mailing or dispatch.

8. This Bond may be amended only by an instrument in writing signed on behalf of both the Surety and by the Company.
9. The Company may assign this Bond to any person to whom the Company assigns or transfers all its rights and obligations under the Connection Agreement.
10. This Bond shall be governed by and construed in accordance with the laws of the Republic of Ireland and shall be subject to the exclusive jurisdiction of the Irish Courts.

**PRESENT** when the common seal of  
**THE SURETY**  
Was affixed hereto in the presence of:-



Appendix 1 to Form of Shared Asset Bond: Form of Demand

To : [The Surety]

[Date]

**Bond reference Number [ ] dated [ ] (the "Shared Asset Bond")**

We refer to the Bond dated [ ] and issued by you in our favour. In accordance with the terms of the Bond, we hereby make demand in the sum of €[ ] (euro) (and request that you pay the same immediately to [specified account] ).

For ESB Networks DAC

Dated this [ ] of [ ] 20[ ]

[Authorised Signatory]