

**SCHEDULE 10**  
**CONSTRUCTION, COMMISSIONING AND**  
**CONNECTION**

**Contestable**

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*This schedule shall apply where Customers have elected that the Company shall not execute the Contestable Components.*

*For the avoidance of doubt the Parties acknowledge and agree that:-*

- *the Company shall undertake the Company's Connection Works and where appropriate the Deep Reinforcement Works as defined in the definitions section of the General Conditions to the Connection Agreement and as more particularly set out in the Offer Letter; and*
- *the Customer shall undertake the Customer's Connection Works as defined in the definitions section of the General Conditions to the Connection Agreement and as more particularly set out in the Offer Letter.*

## **1 SITE SURVEY, CONDITIONS AND RESPONSIBILITY**

### **1.1 Site Survey and Investigation**

[Not Used].

### **1.2 Site Conditions**

The Customer acknowledges that it selected the Site at which the Facility and the Connection Works for the shallow connection are to be constructed and accordingly the Customer accepts full responsibility for the conditions of the Site and of any land required for the Company's Site-Related Connection Equipment (including but not limited to any toxic contamination) and agrees that the existence of any such condition which adversely affects the performance by:

- 1.2.1 the Customer of its obligations under the Connection Agreement shall not excuse any delay by the Customer in meeting its obligations under the Connection Agreement or give rise to any other right for the Customer under the Connection Agreement;
- 1.2.2 the Company of its obligations under the Connection Agreement shall excuse any delay by the Company in meeting its obligations under the Connection Agreement, and in the event that any such condition causes the Company to incur increased costs (as determined by the Company, acting reasonably) in meeting its obligations under the Connection Agreement in relation to the Company's Connection Works then the Connection Charge shall be increased by the amount of those increased costs (so determined).

### **1.3 Site Responsibility Schedule**

- 1.3.1 As soon as reasonably practicable a Site Responsibility Schedule shall be prepared by the Company (reflecting the details agreed between the Company and the Customer) in respect of the Site pursuant to the Connection Agreement and signed by both Parties by way of confirmation of its accuracy, detailing the division of responsibilities at the interface site in respect of ownership, control, operation, maintenance and safety. The

Customer shall provide to the Company upon request all such information as is required by the Company to enable it to prepare the Site Responsibility Schedule prior to the commencement of Works.

- 1.3.2 An ownership diagram shall be included in the Site Responsibility Schedule incorporating numbering, nomenclature and labelling. Apparatus to be shown and the preferred graphical symbols to be used shall be in accordance with the Company's standard practice.
- 1.3.3 A copy of the Site Responsibility Schedule and the ownership diagram shall be retained by the Company and by the Customer.
- 1.3.4 The Customer shall notify the Company of any changes at or relating to the Site which may affect the Site Responsibility Schedule or ownership diagram and the Company shall carry out any necessary updating and the principles set out in Paragraph 1.3.1 shall apply to such updating.
- 1.3.5 The Site Responsibility Schedule shall detail the demarcation of the responsibility for safety of persons carrying out work or testing at the Site on circuits which cross the Site at any point.
- 1.3.6 Safety procedures for all personnel working on or in close proximity of Transmission System Plant and Apparatus are governed by the ESB Safety Rules.

## **2 CARRYING OUT OF THE WORKS**

### **2.1 Company's Consents**

- 2.1.1 The Company shall, immediately following satisfaction of the appropriate Conditions Precedent set out in the Connection Agreement, use prudent and commercial endeavours to obtain all such Consents (not being Operational Consents) as shall be required by the Company for the purposes of the Company's Connection Works no later than the CID Longstop Date (and shall thereafter maintain the same).
- 2.1.2 Where the Facility is a Power Station subject to Firm/Non-Firm Direction or the Non-Firm Renewables Direction or the Non-Firm Peaking Plant Direction although the obtaining and timing of Consents for the Deep Reinforcement Works are not required for the Operational Date they will be required for the Scheduled Deep Operational Date.
- 2.1.3 The Company shall use prudent and commercial endeavours to obtain all such Operational Consents as shall be required by the Company for the purposes of the Company's Connection Works during the Connection Works Completion Period. Where an Operational Consent is delayed the Company shall notify the Customer accordingly, advising it of any delays and/or costs that will arise by reason of the delay in the issue of an Operational Consent, and the Connection Works Completion Period shall be extended pro rata for the delay.

- 2.1.4 Where the Facility is a Power Station subject to the Firm/Non-Firm Direction or the Non-Firm Renewables Direction or the Non-Firm Peaking Plant Direction the Company shall use reasonable endeavours to obtain all such Consents (including Operational Consents) as shall be required by the Company for the purposes of carrying out and completing the Deep Reinforcement Works in the event that Deep Reinforcement Works are required.
- 2.1.5 For the avoidance of doubt, nothing in this Paragraph 2.1 shall require the Company to obtain any Consent which the Customer is required to obtain pursuant to Paragraph 2.2.

## **2.2 Customer's Consents**

The Company shall in accordance with Paragraph 2.4, if it has not already done so, within thirty (30) Business Days following satisfaction of the appropriate Conditions Precedent provide the Customer with the Outline Specification to include the functional specification and protection specification for the Connection to facilitate the Customer in applying for Consents for the Customer's Connection Works. The Customer shall, immediately following satisfaction of the appropriate Conditions Precedent use its prudent and commercial endeavours to obtain all such Consents as shall be required for the purposes of the Customer's Connection Works (as shall be necessary to enable the Connection Works to be completed) no later than the CID Longstop Date and as otherwise required for the purposes of the Connection Agreement (and shall thereafter maintain the same). Prior to the Customer submitting any application for Consents the Customer shall submit the application to the Company for its approval and, only after the Customer has incorporated all the Company's comments, suggestions and/or amendments into the application may the Customer formally submit the application for Consents to the relevant authorities. The Customer acknowledges and agrees that any comments, suggestions and/or amendments made by the Company to the Customer in connection with applications for Consents do not in anyway create any liability whatsoever for the Company. In making any application for Consents the Customer shall include in such applications a reference to any applications for planning permission consents which have been made by the Company and which have been notified to the Customer by the Company.

## **2.3 Advice and Assistance**

Each Party, at its own expense, shall give advice and assistance to the other Party to the extent reasonably required by the other Party in the furtherance of their obligations under Paragraphs 2.1, 2.2 and 2.7. Each Party shall, as provided for in Paragraph 2.7, keep the other Party appraised (in reasonable detail) of its progress towards its satisfaction of its obligations under Paragraph 2.1 or 2.2 respectively. Further, each Party shall, without delay, notify the other Party on completion of their respective obligations under Paragraph 2.1 and 2.2 and the Customer shall provide to the Company such details as the Company may reasonably require of such Consents obtained by the Customer.

## **2.4 Connection Works Design and Programme**

- 2.4.1 As soon as reasonably practicable, and in any event within twenty (20) Business Days of the date of the Connection Agreement, the Parties shall meet in good faith, to discuss and agree a programme for progressing of the Connection Works to the Connection Works Completion Date consistent with the Offer Letter and the following provisions:
- 2.4.1.1 The Company will specify its requirements and advise of required standards within a reasonable timeframe and may request site surveys from the Customer to assist this process;
  - 2.4.1.2 The Customer will specify its proposed designs consistent with the Company's requirements and in accordance with all Irish and EU Safety regulations and shall assume the duties of the Project Supervisor Design as specified under the Safety, Health and Welfare at Work Act, 1989 and all subsequent modifications and regulations arising under or in relation to same;
  - 2.4.1.3 The Company will review the Customer's designs and advise of amendments necessary to meet the Company's requirements notwithstanding any review or comment made by the Company with respect to the Customer's design, the Customer shall be responsible for any failure to comply with and/or achieve the Company's requirements and for any errors, omissions or discrepancies whatsoever and howsoever arising therein;
  - 2.4.1.4 The Customer shall comply with all the requirements of the Company.
- 2.4.2 The Customer shall assume full responsibility for the design of the Customer's Connection Works. Approval by the Company shall not relieve the Customer of any obligations under this Connection Agreement.
- 2.4.3 The Parties shall liaise during the carrying out of the Connection Works.
- 2.4.4 Each Party shall, throughout the construction programme, promptly provide the other Party with such information as that Party, acting reasonably, may require from time to time with respect to their respective Connection Works or otherwise in connection with this Connection Agreement so as to enable the Party requiring the information to meet its obligations and/or enforce its rights to supervise under this Connection Agreement.

## **2.5 Construction and Quality Assurance**

- 2.5.1 The Customer shall construct the Customer's Connection Works in accordance with the requirements of the Company as set out in the Company's specification and in the Customer's approved design.
- 2.5.2 The Customer shall construct the Customer's Connection Works in accordance with all Irish and EU Safety regulations and shall assume the duties of the Project Supervisor Construction specified under the Safety, Health and Welfare at Work Act, 1989 and all subsequent modifications and regulations arising under or in relation to same.

2.5.3 In order to demonstrate that the Customer's Connection Works comply with the Company's requirements the Customer shall provide the following facilities to the Company:

- 2.5.3.1 A copy of the Customer's quality and test plan for implementation of the Customer's Connection Works;
- 2.5.3.2 Rights to attend any factory acceptance test or site acceptance test for major plant, as selected at the option of the Company. The Customer shall provide due notification of any such selected tests as they occur throughout the project and true copies of all documentation relevant to the tests;
- 2.5.3.3 Rights to request true copies of relevant documentation of any acceptance test (factory or site) that the Company has elected not to attend;
- 2.5.3.4 Rights to inspect work in progress and relevant documentation;
- 2.5.3.5 Rights to attend all pre-commissioning tests and receive copies of records of all pre-commissioning tests carried out;
- 2.5.3.6 Rights to request the Customer to carry out additional tests in cases where the Company considers the specified tests to be inadequate or in cases where the initial test has been failed.

2.5.4 The Customer shall also provide the following information:

- 2.5.4.1 Copies of all as-built documentation and other information necessary to commission the Works;
- 2.5.4.2 Copies of the Safety File (as provided for in the Safety, Health and Welfare at Work Act, 1989 and all subsequent modifications and regulations arising under or in relation to same) and any other documentation required to facilitate take over of the required elements of the Customer's Connection Works.

2.5.5 The Customer shall conform with all reasonable requests from the Company to make appropriate changes to aspects of the construction where, in the opinion of the Company, the said construction is not in conformance with the Company's requirements.

## **2.6 Variations to design and Construction Programme**

The Company may, having advised the design under Paragraph 2.4 and Paragraph 2.7.4 and the agreed Construction Programme, further advise the Customer that in order to meet its obligations under the Connection Agreement it requires changes to that design and/or the Construction Programme. In this event the Parties will consult as to the changes required, and the design and the Construction Programme will be amended as determined by the Company (acting reasonably) and having regard to such consultation and in the event of a dispute as to whether the Company has so acted reasonably the matter shall be determined in accordance with the Dispute Resolution Procedure of the General Conditions. The reasonable costs and expenses arising from such variation shall be for the account of the Customer unless arising from the negligence of the Company.

## **2.7 Project Monitoring, Programme and Progress Reports**

The Parties shall, within twenty (20) Business Days of the date of the Connection Agreement and acting in good faith, meet to discuss what further project monitoring provisions shall apply to the Connection Agreement. Subject always to the Company's overall rights to supervise the Customer's Connection Works, the Parties shall use their best endeavours to agree in writing on such further project monitoring provisions, and having so agreed shall comply with such provisions and in the event of a disagreement the matter will be determined by the Independent Engineer pursuant to Paragraph 2.12.

### **2.7.1 Advice and Assistance**

In accordance with the terms of Paragraph 2.3 above the Parties shall continuously liaise during the carrying out of the Connection Works, Commissioning and the Project and (unless the Connection Agreement provides otherwise) provide each other with reasonable advice and assistance at any reasonable time and without charge with regard to their respective Connection Works and Commissioning and reasonable on-load Testing.

### **2.7.2 Meetings**

Either Party may request the other Party to the Connection Agreement to engage in meetings more frequently than as provided for in Paragraph 2.7.8. The Parties agree they will engage in telephone meetings or discussions within a period of five (5) Business Days from the initial request in writing from either the Customer or the Company for such a meeting. Thereafter, unless the telephone meeting or discussion has resolved the issue of concern to the Party who initiated the contact, both Parties agree to attend at a meeting at a mutually convenient location to discuss further and work towards a resolution of the issue of concern.

### **2.7.3 Provision of Information**

Each Party shall, throughout the Term, promptly provide the other Party with such information as that Party, acting reasonably, may require from time to time with respect to their respective Connection Works, Commissioning and the Project or otherwise in connection with the Connection Agreement so as to enable the Party requiring the information to meet its obligations under the Connection Agreement.

### **2.7.4 Construction Programme**

Within thirty (30) Business Days following the Consents Issue Date, or such later date as arises under the Connection Agreement each Party shall provide to the other Party three (3) copies of the programme for the design, construction, commissioning and testing of that Party's Connection Works. The programme referred to in this Paragraph 2.7.4 shall be in a form agreed by the Parties (the "Construction Programme") and shall be consistent in all respects with the Connection Agreement but shall where appropriate contain less detail in relation to the Deep Reinforcement Works.



#### 2.7.5 Progress Reports

From the date of execution of the Connection Agreement until the Connection Date, each Party shall provide to the other regular progress reports detailing the Party's progress towards constructing and providing that Party's Connection Works and meeting its obligations under the Connection Agreement at such intervals shall be mutually agreed between the Parties.

#### 2.7.6 Contents of Reports

The reports to be provided under Paragraph 2.7.5 shall cover in reasonable detail steps taken or to be taken to obtain Consents under Paragraph 2.2, the relevant aspects of the design, construction, commissioning and Testing of that Party's Connection Works and highlighting actual or potential departures from the Construction Programme. The progress reports shall state the proposed measures to be taken by the Party concerned to overcome such departures or to resolve any grounds for potential dispute or disagreement.

#### 2.7.7 Form of Reports

The form of the progress reports referred to in Paragraph 2.7.5, and of any other reports as may be required under Paragraph 2.7.5 shall be such as to provide a comprehensible explanation to the other Party in reasonable detail.

#### 2.7.8 Progress Meetings

In addition to the obligation to provide the reports required under Paragraph 2.7.5 the representatives (or their alternates) of the Company and the Customer appointed in accordance with the General Conditions, together with such other representatives of the Parties who may be appropriate in the circumstances shall meet at regular intervals mutually agreed between the Parties and at least once per quarter from the date of execution of the Connection Agreement until the Connection Date to discuss progress of their respective Connection Works and compliance with the Party's respective obligations under the Connection Agreement and, in particular, any interface issues between the Parties.

#### 2.7.9 Delays

Should it appear to one Party (the "Reviewing Party") at any time that the actual progress of the design, construction, commissioning and Testing of the other's Connection Works does not conform with the Construction Programme then the Reviewing Party shall be entitled to require the other Party to submit to the Reviewing Party a report identifying the reasons for the delay and/or to produce and submit to the Reviewing Party for its review a revised programme showing the order of procedure and periods consistent with actual progress and necessary to ensure compliance with the Construction Programme and completion of:

- 2.7.9.1 the design and construction of the other Party's Connection Works to the extent necessary to allow all the Commissioning Tests to be performed by the Scheduled Works Completion Date; and
- 2.7.9.2 the other Party's Commissioning Tests by the Scheduled Commissioning Tests Completion Date.

## **2.8 Customer's Technical Parameters**

- 2.8.1 The Customer shall submit to the Company details of proposed changes in the technical parameters of major plant and the proposed layout of such plant and its related equipment from the details as outlined in the Application to the extent that this affects the Connection or compliance with the Grid Code as soon as it becomes aware, or ought reasonably to have become aware of them, and thereafter the Customer shall submit to the Company as soon as practicable details of any further proposed material changes thereto. Proposed material changes in the technical parameters under this Paragraph shall be within the range of no greater than five percent (5%) or no less than ten percent (10%) of the Maximum Export Capacity if applicable. The Company may request additional information if necessary to enable the Company review such technical parameters or any proposed changes to them. Where the review by the Company leads the Company to consider that the changes affect the Connection Works or do not comply with the requirements of the Grid Code, the Company may raise objections to the proposed technical parameters or any proposed changes to them with the Customer within twenty (20) Business Days of receipt or such later time as may be reasonable in the circumstances. The Company shall advise the Customer of the effect of the change for the purposes of the Connection Agreement, whether it be a variation of Charges and/or costs under Clause 5.4, an amended Offer under Clause 6.4, or otherwise.
- 2.8.2 Where the Company has notified the Customer that the change gives rise to a variation in the Charges and/or costs under Clause 5.4 or an amended offer under Clause 6.4, or other change of the terms of the Connection Agreement, the Customer shall have a period of twenty (20) Business Days from the date of receipt of such notification from the Company to advise the Company whether or not it wishes to proceed with the change. Where the Customer elects in writing to the Company to proceed with the change, the Company agrees to facilitate the Customer subject to payment by the Customer of all costs and expenses arising therefrom and adjustments to the Construction Programme for the impact of the change and the time taken in its resolution. Failure to elect shall be deemed to be a decision by the Customer not to proceed with the change.
- 2.8.3 Notwithstanding any review by the Company of any information submitted by the Customer under this Paragraph 2.8, the Customer's obligations under the Connection Agreement shall not be relieved, absolved or otherwise modified and the Company shall have no liability whatsoever in relation to its approval or otherwise of any designs or information submitted to it by the Customer.

## **2.9 Increased Costs**

The Company shall be entitled to make adjustments to the Connection Charge so as to provide reasonable compensation to the Company for any increased or additional costs incurred by it (being costs of a nature ordinarily incurred by the Company, including employment costs) in carrying out the Company's Connection Works or the Company's Commissioning Tests caused by non-performance by the Customer of any obligations under the Connection Agreement.

## **2.10 Works to be in accordance with Construction Programme etc.**

Both Parties shall be obliged to design, procure, construct, install, commission and test their respective Connection Works and, where appropriate, Deep Reinforcement Works in accordance with the terms of the Connection Agreement, the Construction Programme, and any design furnished under Paragraph 2.4 and 2.7.4.

## **2.11 Connection Works Completion Date**

The Company shall, as soon as it is satisfied that the Connection Works Completion Date is reached, notify the Customer to that effect specifying the date on which such completion occurred. If the Customer disputes that the Connection Works have been so completed, or the date on which such completion occurred, the Customer may, within five (5) Business Days of receiving the Company's notification, refer the dispute to the Independent Engineer who shall determine whether the Connection Works have been so completed and/or the date on which such completion occurred, as the case requires. If the Independent Engineer determines that the Connection Works were so completed on a date other than the date specified in the Company's notification, then the date so determined by the Independent Engineer shall be the Connection Works Completion Date. If the Independent Engineer determines that the Connection Works have not been so completed then the provisions of this Paragraph 2.11 shall once again apply as if the Company had not given a notification hereunder.

## **2.12 Independent Engineer**

The Parties agree that the Independent Engineer shall act as an expert and not as an arbitrator and shall decide those matters referred or reserved to the Independent Engineer under the Connection Agreement by reference to Prudent Electricity Utility Practice using the Independent Engineer's skill, experience and knowledge and with regard to such other matters as the Independent Engineer in the Independent Engineer's sole discretion considers appropriate. The Parties shall supply the Independent Engineer with such documents and information as the Independent Engineer may request. When considering any matter referred or reserved to the Independent Engineer, such documents and information to be supplied within such time limit as the Independent Engineer may specify in the Independent Engineer's request (subject to any extension of time granted at the absolute discretion of the Independent Engineer). The Independent Engineer shall use the Independent Engineer's best endeavours to give the Independent Engineer's decision upon the question referred within fifteen (15) Business Days following its referral

(subject to any extension of time determined by the Independent Engineer at the absolute discretion of the Independent Engineer). The Parties shall share equally the fees and expenses of the Independent Engineer.

In the event that the Independent Engineer ceases to perform the duties as required, then the Parties shall jointly appoint such firm of engineers as they may agree for the purposes of fulfilling the role of the Independent Engineer under the Connection Agreement. The Independent Engineer will be deemed to have ceased to perform his duties if he abandons his post or fails to use best endeavours or does not render a decision on a matter referred to him within a reasonable time. Failing such agreement within five (5) Business Days of either Party serving the other with written notice to concur with the appointment of a firm of engineers, a firm of engineers of international repute shall, on application by either Party in writing to the President, for the time being of the Institution of Engineers of Ireland, be appointed by the President for the purposes of fulfilling the role of the Independent Engineer under the Connection Agreement. The President shall be requested to appoint such a firm of engineers within ten (10) Business Days of such application.

### **2.13 Intellectual Property Rights**

In advance of the commencement of the Commissioning Tests, notwithstanding Clause 13.4 of the General Conditions, where the Contestable Components are to be transferred to TAO, all copyright and other intellectual property rights in the As-Built Records and in any other relevant information, documentation or data which may be reasonably requested by the Company shall be vested in and belong to the Company. The Customer shall not use the As-Built Records for any purpose other than in connection with the Contestable Components or grant a licence of any such intellectual property rights to any third party, without the prior written consent of the Company.

In the event the Contestable Components are retained by the Customer, the Customer shall be deemed, immediately after the Customer's pre-commissioning tests, to give the Company a non-terminable transferable non-exclusive licence to copy, use and communicate the As-Built Records, including making and using modifications of them. The licence shall:

- a) Apply in perpetuity.
- b) Entitle any person in proper possession of the relevant part of the Contestable Components to copy, use and communicate the As-Built Records for the purposes of controlling, operating and/or regulating the Network and Customer's Equipment.
- c) Entitle the Company to provide copies of as-laid maps and drawings showing the Contestable Components to third parties without the consent of the Customer.

## **3 CONSEQUENCES OF DELAYS**

### **3.1 Delays**

If prior to the Commissioning Tests Completion Date, an Affected Party shall be delayed in carrying out any of the Affected Party's works (including, for the

purposes of this Paragraph 3 the Affected Party's Commissioning Tests and Grid Code Tests) by reason of:

- 3.1.1 any act, default or omission on the part of the Defaulting Party or the Defaulting Party's employees, agents, contractors or sub-contractors;
- 3.1.2 in the case of the Company being the Affected Party, any Consent required under Paragraph 2.1 or in the case of the Customer being the Affected Party, any Consent required under Paragraph 2.2, ceasing to be in force, or any condition of such a Consent preventing the Affected Party from performing its obligations save where such condition is the consequence of the negligent actions or omissions of the Affected Party;
- 3.1.3 in the case of the Company, a delay of the nature referred to in Paragraph 1.2; or
- 3.1.4 an event of Force Majeure (to the extent that the Affected Party is relieved of its obligations under the General Conditions),

the Affected Party shall be entitled to have such later date or dates fixed as the Scheduled Works Completion Date and/or (as the case may be) the Scheduled Commissioning Tests Completion Date as may be fair and reasonable in the circumstances provided that the Affected Party notifies the Defaulting Party in writing of such act, default or omission, or event of Force Majeure, within five (5) Business Days of the Affected Party becoming aware of the occurrence giving rise to the delay, together with an estimate of the proposed delay which it will cause the Affected Party. Either Party may refer a dispute between the Parties over what is a fair and reasonable new date to be fixed in the circumstances to an Expert for determination in accordance with the Dispute Resolution Procedure set out in the General Conditions. Once the new date or dates are fixed (by agreement between the Parties or by determination of the Expert) the Construction Programme shall be deemed to be amended as appropriate.

### **3.2 Notification of Delay**

If either Party shall have reason to believe that it is being delayed or will be delayed in carrying out that Party's Connection Works for any reason (whether it is one entitling it to the fixing of a new date under Paragraph 3.1 or not) it shall notify the other Party in writing within five (5) Business Days of its becoming aware of the occurrence giving rise to the delay and of the extent of the actual and/or anticipated delay.

### **3.3 Consequences of Delay for Parties**

Each Party agrees to use all reasonable endeavours to complete the Connection Works by the Scheduled Works Completion Date.

- 3.3.1 Where the Customer has not used all reasonable endeavours to meet its obligations and such failure has resulted in the Connection Works not being completed by the Scheduled Works Completion Date and/or the Scheduled Commissioning Tests Completion Date and/or the Scheduled Transmission Station Compound Works Completion Date then the Customer shall be liable to pay to the Company the costs and/or expenses reasonably incurred by the Company arising from such delays.

- 3.3.2 Except in the circumstances detailed in Paragraph 3.1 or for reasons of Force Majeure, where it appears to the Customer at any time that the actual progress of the design, construction, Commissioning and Testing of the Company's Connection Works is not achieving a major milestone listed in the Construction Programme and provided both parties have already referred to the matter at issue to the Independent Engineer and the Company has failed to comply with the directions of the Independent Engineer the Customer shall be entitled to require the Company to submit to the Customer a report identifying the reasons for the delay and/or to produce and submit to the Customer for its review (where practicable to do so) a revised programme showing the order of procedure and periods consistent with actual progress and necessary to ensure compliance with the programme submitted under Paragraph 2.7 ("Revised Programme").
- 3.3.3 If the Company shall fail to implement the Revised Programme so that it meets any of the major milestones listed therein for a period of thirty (30) Business Days (other than for circumstances outside its reasonable control or otherwise provided for in the Connection Agreement) then the Customer's remedies against the Company for non performance of the Essential Component Works are:-
- 3.3.3.1 refer the matter to the CER and the CER may direct the Company to forthwith perform the Essential Component Works; and/or
  - 3.3.3.2 seek an order for specific performance together with a mandatory injunction in the Courts against the Company for failure to perform the Essential Component Works.

## **4 COMMISSIONING AND CONNECTION**

### **4.1 Discussions on Commissioning, Grid Code and Capacity Tests**

- 4.1.1 As soon as reasonably practicable, but no later than sixty (60) Business Days before the Scheduled Connection Works Completion Date, and in any event no later than the latest date for such meeting specified in the Construction Programme, the Parties shall meet to discuss, in good faith:
- 4.1.1.1 what Commissioning Tests and what Grid Code Tests are required;
  - 4.1.1.2 which Commissioning Tests are to be conducted by each Party, and which Grid Code Tests the Company reasonably requires to witness and/or requires notification as to the results;
  - 4.1.1.3 any requirements of the Parties which must be met before they can carry out their respective Commissioning Tests and, in the case of the Customer, the Grid Code Tests;
  - 4.1.1.4 whether there are any distinct parts of the Customer's Equipment which are capable of being separately Energised;
  - 4.1.1.5 which of one Party's Commissioning Tests must be conducted simultaneously with Commissioning Tests of the other Party; and
  - 4.1.1.6 the Capacity Test if applicable.

- 4.1.2 As soon as reasonably practicable following such meeting, and in any event within ten (10) Business Days of receiving a notice from the other Party (given after the meeting) requiring details of the Party's Commissioning Tests and, in the case of the Company's notice, the Grid Code Tests and if applicable the Capacity Test, each Party shall notify to the other Party reasonable details of the Commissioning Tests and, in the case of the Customer's notification, the Grid Code Tests and if applicable the Capacity Test it proposes to carry out.
- 4.1.3 The Company (acting reasonably) may, within twenty (20) Business Days of receipt of such details from the Customer, notify to the Customer further Customer's Commissioning Tests and/or Grid Code Tests and/or if applicable the Capacity Tests which the Company requires the Customer to carry out on the Customer's Equipment, and the Customer shall be obliged to perform such tests as part of the Customer's Commissioning Tests and/or Grid Code Tests and/or if applicable the Capacity Tests (as the case may be).

## **4.2 Notice of Requirement to Witness**

Each Party shall, within thirty (30) Business Days of the other Party's notice giving details as to the Commissioning Tests and, in the case of the Customer's notice, the Grid Code Tests and if applicable the Capacity Test it proposes to carry out, notify the other Party as to:

- 4.2.1 which of the other Party's Commissioning Tests and, in the case of the Company's notification, the Grid Code Tests and if applicable the Capacity Test it reasonably requires to witness whereupon the other Party shall allow the representatives of the Party giving notice access to its Premises to witness (and, in the case of the Customer's Commissioning Tests, the Grid Code Tests and if applicable the Capacity Test, verify) such Commissioning Tests, Grid Code Tests and if applicable the Capacity Test; and
- 4.2.2 which of the other Party's Commissioning Tests and, in the case of the Company's notification, the Grid Code Tests and if applicable the Capacity Test it requires the results of whereupon the other Party shall, following completion of the test and without delay, notify reasonable details of the test results to the Party giving notice.

## **4.3 Notice of Further Tests**

In the event that, subsequent to a notice given under Paragraph 4.1.2 a Party proposes to carry out a Commissioning Test or, in the case of the Customer, a Grid Code Test and/or if applicable the Capacity Test for which reasonable details were not given in that notice the Party shall, without delay, give to the other Party reasonable details of that Commissioning Test or, in the case of the Customer, the Grid Code Test (as the case may be) it proposes to carry out. The other Party may, within five (5) Business Days of such a notice, notify the proposing Party that it reasonably requires to witness that test or that it requires the results of the test whereupon Paragraph 4.2 shall apply in respect of that test as if it had been so included in the other Party's notice given under Paragraph 4.2.

#### **4.4 Joint Testing**

The Company shall, as soon as reasonably practicable, notify (acting reasonably and having regard to the Parties discussions under Paragraph 4.1.1.5) the Customer as to which Joint Commissioning Tests must be conducted. In addition the Company shall, (acting reasonably and without delay), once the Company is satisfied that all the Company's Commissioning Tests (other than Joint Commissioning Tests) and that all the Customer's Commissioning Tests (other than Joint Commissioning Tests) in respect of any distinct (as determined by the Company, acting reasonably and having regard to the Party's discussions under Paragraph 4.1.1.4) part of the Customer's Equipment which is capable of being separately Energised, have been properly and satisfactorily completed (or that none are required in respect of that part) notify to the Customer the date of commencement of each Joint Commissioning Test Date relevant to that part, which date shall be as soon as reasonably practicable thereafter. Each Joint Commissioning Test shall commence on the relevant Joint Commissioning Test Date.

#### **4.5 Notice of Customer's Commissioning Tests**

In setting the timing of the Customer's Commissioning Tests, the Grid Code Tests and if applicable the Capacity Test, the Customer shall comply with the requirements of the Grid Code and if applicable the Capacity Test as to testing prior to the Operational Date. Where a Customer's Commissioning Test or a Grid Code Test or if applicable the Capacity Test involves a requirement for Dispatch, the Customer shall not carry out such Commissioning Test or Grid Code Test or if applicable the Capacity Test except as Dispatched in accordance with the Grid Code. Where a Customer's Commissioning Test or a Grid Code Test and if applicable the Capacity Test does not involve a requirement for Dispatch the Customer shall, without limitation to the general obligation set out in this Paragraph 4.5, separately give the Company reasonable advance notice (being not less than fifteen (15) Business Days) of the time and date of carrying out the Customer's Commissioning Tests (other than Joint Commissioning Tests) and the Grid Code Tests. The date and time of such tests shall be re-confirmed not less than three (3) Business Days before the time of carrying out such tests. In the event that, having given such confirmation, the Customer (acting reasonably) determines that such tests must be carried out prior to the time and date previously confirmed because of exceptional circumstances outside his control, then provided the Customer gives the Company reasonable notice of the re-scheduled tests, it shall not be deemed to have failed to give the Company the notices required. In the event of failure by the Customer to give either of the notices required, the Company may notify the Customer that it requires the Customer to repeat or re-schedule any Commissioning Test or Grid Code Test or if applicable the Capacity Test not so notified, whereupon the Customer shall repeat or re-schedule such test having first (in the case of repetition) given the advance notices required by this Paragraph 4.5.

#### **4.6 Repetition of Tests**

The Customer shall also (at the Customer's expense, and having first carried out such modifications to the Customer's Equipment as are necessary for the



Customer's Commissioning Tests and/or the Grid Code Tests and/or if applicable the Capacity Tests (as the case may be) to be properly and satisfactorily completed and having given in respect of such repetitions or further tests the notice required by Paragraph 4.5 to be given to the Company) undertake such repetitions of, or further, Customer's Commissioning Tests and/or Grid Code Tests and/or if applicable the Capacity Tests (as the case may be) as are required by the Company (acting reasonably) so that the Company may satisfy itself that the Customer's Commissioning Tests and/or Grid Code Tests and/or if applicable the Capacity Test (as the case may be) have been properly and satisfactorily completed.

#### **4.7 Notice of Company's Commissioning Tests**

The Company shall give the Customer reasonable advance notice (being not less than fifteen (15) Business Days) of the time and date of carrying out the Company's Commissioning Tests (other than Joint Commissioning Tests). The time and date of the Company's Commissioning Tests will be confirmed not less than three (3) Business Days before the time of carrying out such tests. In the event that, having given such confirmation, the Company (acting reasonably) determines that such tests must be carried out prior to or after the time and date previously confirmed, then provided the Company gives the Customer reasonable notice of the re-scheduled tests, it shall not be deemed to have failed to give the Customer the notice required. In the event of failure by the Company to give such notice, the Customer may notify the Company that it requires the Company to repeat or re-schedule any Commissioning Test not so notified, whereupon the Company shall repeat or re-schedule such test having first given the advance notice required by this Paragraph 4.7.

#### **4.8 Commencement of Commissioning Tests**

Without limiting the other provisions of this Paragraph 4, to the extent that each Party has not done so already, each Party shall commence its Commissioning Tests and proceed to carry them out in accordance with the Connection Agreement, forthwith after the Connection Works Completion Date.

#### **4.9 Declaration of Fitness**

The Customer will arrange to have a Declaration of Fitness issued to the Company in respect of any distinct (as determined by the Company, acting reasonably and having regard to the Parties discussions under Paragraph 4.1.1.4) part of the Customer's Equipment which is capable of being separately Energised prior to the implementation of the Commissioning Instructions or at a time to be agreed with the Company.

#### **4.10 Notification of Commissioning Instructions**

The Company shall in respect of each part of the Customer's Equipment for which a Declaration of Fitness is to be issued under Paragraph 4.9 and in consultation with the Customer, develop and notify to the Customer the Commissioning Instructions. The Commissioning Instructions shall be completed and notified to the Customer (subject to the Customer having co-operated fully with the Company in developing and implementing the

Commissioning Instructions (which the Customer agrees to do)) not later than the date on which the Declaration of Fitness issues in respect of that part. Both Parties shall be bound to comply with the Commissioning Instructions and for the avoidance of doubt no part of the Customer's Equipment shall be Energised other than by implementation of the Commissioning Instructions.

#### **4.11 Notification of Operating Instructions**

The Company shall in consultation with the Customer, develop, and notify to the Customer the Operating Instructions. The Operating Instructions shall be completed and notified to the Customer (subject to the Customer having co-operated fully with the Company in developing the Operating Instructions (which the Customer agrees to do)) not later than the date on which the Company has issued a Declaration of Fitness in respect of every part of the Customer's Equipment and the Company's Site-Related Connection Equipment. Both Parties shall be bound to comply with the Operating Instructions, which shall come into force on the Connection Date.

#### **4.12 Commissioning Tests Completion Date**

The Company shall notify the Customer when, in its opinion, the Commissioning Tests Completion Date has been reached provided that the Commissioning Tests Completion Date shall not occur prior to the date on which the Company is satisfied that all Commissioning Tests to be carried out pursuant to this Paragraph 4 (other than Joint Commissioning Tests) have been properly and satisfactorily completed.

#### **4.13 Implementation of Commissioning Instructions**

Subject to the Clause 2.4 of the Connection Agreement, the Parties shall, as soon as reasonably practicable, following (but not before) the later of:

- (a) the date on which the Company notifies the Customer that the Company's Commissioning Tests (other than the Joint Commissioning Tests) have been properly and satisfactorily completed (which the Company shall do without delay once it is satisfied as to such completion); and
- (b) the making of a Declaration of Fitness under Paragraph 4.9; and
- (c) the notification of the Commissioning Instructions under Paragraph 4.10,

implement the Commissioning Instructions in respect of the relevant part of the Customer's Equipment (as the case may be).

#### **4.14 Connection Date**

The Company shall, as soon as reasonably practicable notify the Customer specifying the Connection Date following the date of completion on which the Commissioning Instructions have to the Company's satisfaction been properly implemented in respect of every part of the Customer's Equipment.

#### **4.15 Capacity Testing / Maximum Export Capacity**

This Paragraph 4.15 is only applicable to Customers generating electricity and exporting it to the Transmission System.

- 4.15.1 The Customer warrants that it has declared a true and correct Maximum Export Capacity as detailed in Schedule 2 of the Connection Agreement and represents to the Company that it intends to use all reasonable endeavours to complete the Facility by the Scheduled Operational Date.
- 4.15.2 The Customer understands and agrees that the Company will require the Customer to undertake the Capacity Tests in respect of the Maximum Export Capacity to verify the export capacity of the Facility. The Customer undertakes to carry out such tests as may be required by the Company to meet this requirement.
- 4.15.3 Where, however, the Customer fails the Capacity Tests as defined in the General Conditions, the Customer shall be liable to the Company to pay the Specified Amount and the Company shall be entitled to draw down the MEC Bond to this effect, in accordance with the provisions of the General Conditions.

#### **4.16 Operational Certificate**

The Operational Certificate indicates that the Capacity Tests as applicable have been completed and that the Facility has complied with the Grid Code Tests at commissioning. It does not indicate compliance by the Facility including the Customer's Equipment with the Grid Code on a continuous basis thereafter. The Company will issue the Operational Certificate as soon as reasonably practicable and in any event no longer than ten (10) Business Days following the Operational Date.

#### **4.17 Effect of Operational Certificate**

The Customer shall not at any time prior to the Operational Date operate the Facility so as to pass electricity on to the Transmission System through the Connection Point or take electricity from the Transmission System through the Connection Point, except as required for the implementation of the Commissioning Instructions, for the purposes of carrying out the Grid Code Tests or for the purpose of carrying out tests on the Generation Unit(s) or as otherwise agreed with the Company. Upon receipt of the Operational Certificate, the Customer may operate the Facility so as to pass electricity on to the Transmission System through the Connection Point or take electricity from the Transmission System through the Connection Point in accordance with the terms of the Connection Agreement, the Grid Code and the Trading and Settlement Code if applicable, subject to the provisions governing Shallow Connection Capacity set out in the Connection Agreement, the Grid Code and the Trading and Settlement Code.

#### **4.18 Deep Operational Date**

This Paragraph 4.18 is only applicable to Customers whose Facility is a Power Station which is subject to the Firm/Non-Firm Direction or the Non-Firm Renewables Direction or the Non-Firm Peaking Plant Direction.

When the Company is satisfied that the Deep Operational Date has been achieved, the Company will as soon as reasonably practicable and in any event no longer than ten (10) Business Days thereafter notify the Customer, specifying the time and date the Deep Operational Date was achieved.

#### **4.19 Notification of Personnel Contact Details**

The Customer is obliged to provide the Company with the relevant contact details of the personnel authorised to issue Declarations of Fitness on behalf of the Customer and the personnel authorised to undertake switching on behalf of the Customer. If there is any change to the contact details of these personnel, the Customer shall notify the Company of these changes immediately.

## **5 TRANSFER OF ASSETS**

### **5.1 Transfer of Ownership**

The Customer agrees to convey to the TAO for a nominal sum of €1 a freehold interest (if the Customer does not own the freehold, a leasehold interest for a period of not less than 100 years) and grant the necessary wayleave(s) and/or easement(s) to the TAO in those components of the Connection Works as identified in the Offer Letter together with any and all equipment fixed to the land in accordance with the terms of Schedule 12 of the Connection Agreement. The TAO will consider (in line with CER/09/138) a leasehold interest of less than one hundred (100) years on a case by case basis.

For the avoidance of doubt, the Company shall, on behalf of the TAO, ensure that the Customer executes such conveyance as indicated above.

### **5.2 Warranties to the Company**

The Customer warrants to the Company that:

- 5.2.1 All assets constructed by the Customer and subsequently transferred by the Customer to the TAO under the terms of Paragraph 5.1 shall be constructed in accordance with the Connection Agreement and any defects therein shall be remedied by the Customer; and
- 5.2.2 All assets constructed by the Customer and subsequently transferred by the Customer to the TAO under the terms of Paragraph 5.1 shall be fit for the purposes for which they are intended as set out in the Connection Agreement and shall be of merchantable quality and free from defects for a period of twenty four (24) months from the Handover Agreement Effective Date; and
- 5.2.3 All electrical and mechanical works relating to the assets constructed by the Customer and subsequently transferred by the Customer to the TAO under the terms of Paragraph 5.1 shall be free from defects for a period of twelve (12) months from the Handover Agreement Effective Date; and
- 5.2.4 All civil works relating to the assets constructed by the Customer and subsequently transferred by the Customer to the TAO under the terms of Paragraph 5.1 shall be free from defects for a period of five (5) years from the Handover Agreement Effective Date; and
- 5.2.5 All assets constructed by the Customer and subsequently transferred by the Customer to the TAO under the terms of Paragraph 5.1 shall be free from

- corrosion for a period of five (5) years from the Handover Agreement Effective Date; and
- 5.2.6 The warranty periods referred to in this Paragraph 5.2 shall be extended by the same period as the respective original warranty and to commence from the date of the rectification of the default should any defect arise within the original warranty period herein provided for and such extension shall apply only to that part of the Contestable Components, Terminal Sub-Station or associated Equipment where the defect has arisen; and
- 5.2.7 The Contestable Components, Terminal Sub-Station and associated Equipment and the sites on which they are located shall be in a good state of repair and condition and shall be fit for purpose and shall be free from all environmental hazards including but not limited to contamination, groundwater pollution, flooding, subsidence, heave or landslip for a period of ten (10) years from the Handover Date; and
- 5.2.8 After Handover of the Site-Related Connection Equipment in accordance with Clause 23.2 of the Connection Agreement General Conditions the Company shall only make a claim against the Customer in relation to a breach of the warranties set out in this Paragraph 5.2 if, and to the extent that, the events giving rise to the breach result directly from negligence of the Customer and/or the Customer is entitled to claim under Manufacturer's Warranties (as defined in Paragraph 5.2.9 below); and
- 5.2.9 The Customer shall obtain manufacturer's warranties from the manufacturer in respect of the Contestable Components (including each and every component part of the Contestable Components) and all other assets constructed by the Customer which may transfer to ESB ("the Manufacturer's Warranties"). The Customer shall ensure that the Manufacturer's Warranties are and remain valid for the warranty periods set out in this Paragraph 5.2.