



GENERAL CONDITIONS

OF

CONNECTION AND TRANSMISSION USE OF SYSTEM

PLEASE NOTE THAT THESE GENERAL CONDITIONS SHALL BE AMENDED FROM TIME TO TIME. PLEASE ALWAYS CHECK THAT YOU HAVE THE LATEST PUBLISHED VERSION AVAILABLE FROM WWW.EIRGRID.COM

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GENERAL CONDITIONS

Applicable to both Transmission Connection Agreements and
Transmission Use of System Agreements
(or each Agreement individually where specified).

1 INCORPORATION

The GENERAL CONDITIONS set out herein form part of the TRANSMISSION CONNECTION AGREEMENT as the context requires hereinafter referred to as the “Connection Agreement” and are incorporated into the Connection Agreement. The GENERAL CONDITIONS set out herein form part of the TRANSMISSION USE OF SYSTEM AGREEMENT as the context requires hereinafter referred to as the “Use of System Agreement” and are incorporated into the Use of System Agreement.

2 INTERPRETATION

The rules of interpretation and definitions set out herein form part of the Connection Agreement and/or the Use of System Agreement as the context requires. In (and throughout) the Connection Agreement or the Use of System Agreement unless the context otherwise requires:

- a) the singular shall include the plural and vice versa;
- b) any gender reference shall be deemed to include references to the masculine, feminine and neuter genders;
- c) words importing persons or parties shall include any individual, body corporate, firm, corporation, joint venture, trust, unincorporated association, organisation or partnership 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;
- d) all references to legislation, regulations, Directives, orders, directions, instruments, codes or other enactments shall include all amendments, modifications and replacements thereof;
- e) unless otherwise specified:
 - i) any reference in the Agreement or the General Conditions or the Offer Letter (where applicable) to a “Clause” is a reference to a Clause contained in that Agreement or the General Conditions or the Offer Letter (including the Schedules);
 - ii) any reference in a Schedule to a “Section” or “Paragraph” is a reference to a Section or Paragraph contained in that Schedule; and
 - iii) any reference to a “Schedule”, “Attachment” or “Appendix” is a reference to a Schedule, Attachment or Appendix to that Agreement;
- f) any reference to another agreement or document, or any deed or other instrument, (including the Grid Code, the Metering Code, the Trading and Settlement Code or the ESB Safety Rules) 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;

- g) terms which are defined in the Grid Code, the Metering Code, the Trading and Settlement Code or the Act and which are not otherwise defined in this part to the Agreement or the General Conditions or the Offer Letter shall have the meanings ascribed to them in the relevant code or the Act;
- h) any reference to a day, month or year shall be construed as reference to a calendar day, month or year, as the case may be;
- i) terms not defined in the Agreement; the General Conditions; the Offer Letter; the Grid Code; the Metering Code; the Trading and Settlement Code; or the Act shall have the meaning commonly used in electric utility practice or the English language, as appropriate;
- j) wherever in the Connection Agreement, there is a reference with respect to a Customer to “being connected to” or having “use of” the ESB Transmission System (or any similar form of words) such Agreement shall, save where the context otherwise requires, be read as if there were added after such references the words “and having access rights to use the All Island Transmission Networks” (or such similar form of words as the context requires) pursuant to CER Direction to EirGrid dated 31 July 2007 entitled “Directions on Agreements to Use All-Island Transmission Networks” (or such similar form of words as the context requires) and where with respect to a Customer there is a reference to “supply electricity to” or “taking electricity from” the ESB Transmission System this shall be read as if there were added thereafter the words “and/or the All Island Transmission Networks” (or such similar words as the context requires);
- k) the words "include" or "including" wherever used in the Agreement or the General Conditions or the Offer Letter are to be construed without limitation to the generality of the preceding words;
- l) unless otherwise specified in the Offer Letter where reference is made to a sum of money in the Agreement, including without limitation the Security, such sum shall be deemed to be indexed with effect from 1st January in each year commencing on the 1st January falling after the date of the relevant Agreement, to reflect the actual (not underlying) change in consumer prices over the previous twelve (12) months in accordance with the CPI 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 20 Business Days of the relevant year, as determined in accordance with the Dispute Resolution Procedure;

- m) where reference is made to an amount or sum, it is to an amount or sum denominated in euro.

2.1 Table of Contents and Headings

The table of contents and headings are inserted for ease of reference only and shall be ignored for the purpose of the construction of the Agreement or the General Conditions or the Offer Letter.

2.2 Defined Terms

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

2.3 Inconsistencies

For the avoidance of doubt, in the event of inconsistency between the provisions of the Connection Agreement and industry codes or inconsistencies within the Connection Agreement itself the following order of precedence shall prevail:-

- (a) The Grid Code;
- (b) The Offer Letter;
- (c) The Connection Agreement or the Use of System Agreement, as appropriate, including the General Conditions but excluding the Offer Letter;
- (d) The Trading and Settlement Code and the Metering Code.

3 DEFINITIONS

In the Connection Agreement, Use of System Agreement, General Conditions or the Offer Letter, the following expressions shall, save where the context or subject matter may otherwise require, have the following meanings:

“Approved Rating” means an A2 or an A+ rating of long-term debt given by Moody's and/or Standard & Poor's, or another equivalent internationally recognised credit rating agency reasonably satisfactory to the Company;

“Act” means the Electricity Regulation Act 1999 as amended from time to time including all subordinate legislation arising therefrom;

“Affected Customer” means a Customer who after acceptance of its Offer Letter is affected by an Offer Letter issued by the Company to another customer whose price and/or completion schedule and/or technical proposal in its Offer Letter are influenced by the price and/or completion schedule and/or technical proposals set out in the Offer Letter accepted by the Customer;

“Affected Party” means a party of the Connection Agreement who is delayed in carrying out any of its works including its Commissioning Tests and/or Grid Code Tests prior to the Commissioning Tests Completion Date;

“Affiliate” 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;

“Agreement” means as appropriate the Transmission Connection Agreement and/or the Transmission Use of System Agreement.

“All-Island Transmission Networks” means the ESB Transmission System together with the “transmission system” defined in the licence granted to the Northern Ireland System Operator under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992;

“Allocated Equipment Charge” means the charge payable by the Customer to the Company in respect of the provision of the Allocated Equipment as set out in the Offer Letter;

“Allocated Equipment” means Plant and/or Apparatus allocated in accordance with CER policy, other than the Site-Related Connection Equipment, provided and installed by the Company, or to be provided and installed, by the Company which is utilised by both the Customer in relation to the Facility and either Party in relation to use of the ESB Transmission System or another customer in relation to its facility;

“Apparatus” means an item of equipment in which electrical conductors are used, supported or of which they may form part and includes meters, lines and appliances used or intended to be used for carrying electricity for the purpose of supplying or using electricity;

“Application” means an application by the Customer for connection or modification of a connection in accordance with the Connection Offer Process;

“Assumption” means an assumption listed under the heading “Assumptions” in the Offer Letter;

“Business Day” means any day other than a Saturday, a Sunday or a public holiday in Ireland;

“Calendar Month” means the time period commencing at 00.00 hrs local time on the first day of any month and ending at 24.00 hrs local time on the last day of the same month;

“Capacity Certificate” means the certificate to be given by the manufacturer of the Generation Unit(s) and provided to the Company;

“Capacity Test” means the tests to be undertaken by the Customer to satisfy the Company that the Facility has met the tests required to allow the MEC Capacity Bond to be released by the Company;

“Charges” means the charges outlined in Clauses 7.8, 7.9 and 7.11 of the General Conditions taken together and any other costs described in the Offer Letter or the Agreement;

“Commencement of Construction Date” means the date set out by the Customer in the Customer’s Letter in accordance with the terms of the Agreement and the Offer Letter;

“Commercial Metering” means equipment installed by the Company to record the data required to facilitate the settlement of trades in electricity;

“CER” means the Commission for Energy Regulation under the Act;

“Commissioning” means activities involved in undertaking the Commissioning Tests or implementing the Commissioning Instructions or the testing of any item of the Customer's equipment required pursuant to the Grid Code and the Connection Agreement prior to connection or re-connection in order to determine that it meets all requirements and standards for connection to the ESB Transmission System at the date of testing and also to determine the new values of parameters to apply to it following a material alteration or modification and in addition those activities involved in undertaking the Commissioning Tests or implementing the Commissioning Instructions as the context requires;

“Commissioning Instructions” means instructions detailing the sequence of events which must be followed when Energising for the first time;

“Commissioning Tests” means the Company's Commissioning Tests and the Customer's Commissioning Tests;

“Commissioning Tests Completion Date” means the date on which the Company notifies the Customer that the Joint Commissioning Tests have been properly and satisfactorily completed;

“Commissioning Tests Completion Date Longstop Date” means a day that is three hundred and sixty five (365) days after the Connection Works Completion Date;

“Commissioning Tests Completion Period” means the period specified to be the Commissioning Tests Completion Period in the Offer Letter;

“Communications and Control Room” means the Communications and Control Room provided or to be provided by the Customer as part of the Transmission Station Compound Works;

“Companies Acts” means the Companies Acts 1963 to 2003 inclusive;

“Company's Commissioning Tests” means such tests on the Company’s Connection Equipment as are required by Prudent Electricity Utility Practice (including, without limitation, those required by the manufacturer's instructions) to ensure that the Company’s Connection Equipment can be operated as designed such that the Company’s Connection Equipment is fit to be Energised;

“Company’s Connection Equipment” means the Site-Related Connection Equipment and the Allocated Equipment provided by the Company and owned by ESB or the Company;

“Company's Connection Works” means the provision of the Company's Connection Equipment and/or other work required by the Company to connect the Customer to the ESB Transmission System and shall include Deep Reinforcement Works in all instances except where the Customer's 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's Connection Works shall include the Short Circuit Driven Deep Reinforcement Works in all instances;”

“Company's Equipment” means any Plant or Apparatus provided by the Company and owned by ESB or the Company, which forms part of the Network;

“Company's Premises” means all land and buildings of the ESB Transmission System including, without limitation, the Transmission Station Compound once it has been conveyed in accordance with the Connection Agreement;

“Competent Authority” 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 the Republic of Ireland or of the European Union which has jurisdiction over any of the Parties to and the subject matter of this Agreement and shall include the CER and shall not include a court or tribunal of competent jurisdiction;

“Conditions Precedent” means the conditions precedent set out in the General Conditions and/or the Agreement;

“Confidential Information” has the meaning given in the General Conditions and the Offer Letter;

“Connection” means connection of the Facility to the ESB Transmission System;

“Connection Agreement” means the written agreement between the Customer and the Company which allows a Customer's Facility to connect and remain connected to the ESB Transmission System for the purpose of transporting electricity to and/or from the Facility through the ESB Transmission System;

“Connection Charge” means the charges in accordance with the CER's policy for Connection to the ESB Transmission System payable by the Customer to the Company and identified as such in the Offer Letter;

“Connection Charge Bond” means the bond to be provided to the Company by a bank or financial institution with an Approved Rating, in the form set out in the Connection Agreement or any replacement or substitute thereof approved by the Company and received by the Company which has not expired or been cancelled or released by the Company;

“Connection Date” means the date of completion of the proper implementation of the Commissioning Instructions in respect of every part of the Customer’s Equipment to the Company’s satisfaction;

“Connection Liability Amount” has the meaning set out in Schedule 2 of the Connection Agreement;

“Connection Liability Cap” has the meaning set out in Schedule 2 of the Connection Agreement;

“Connection Offer Process” means the Company’s published process to offer connections to and use of the ESB Transmission System as amended from time to time;

“Connection Point” means the physical point or points at which the Facility is joined to the ESB Transmission System and represents the ownership boundary between the Facility and the ESB Transmission System;

“Connection Works” means the Company’s Connection Works and the Customer’s Connection Works;

“Connection Works Completion Date” means the date on which the Company is satisfied that the Connection Works have been completed to the extent necessary to allow all Commissioning Tests to be performed;

“Connection Works Completion Period” means the period of time to complete the Connection Works;

“Consents” means any one or more, as the context requires, of planning and other statutory consents, wayleaves, easements, or other interests in, or rights over, land, or any other consents, approvals, route approvals or permissions of any kind required for the purposes of the Connection Agreement (including a Customer's generation authorisation or licensing arrangements but excluding fuel supply consents, if applicable) granted or issued without any appeals period, unacceptable conditions, judicial review or other legal proceedings pending;

“Consents Issue Date” or “CID” means the date on which both the Company and the Customer have obtained the Consents relating to the Connection Works and the Facility and which they are obliged to use prudent and commercial endeavours to obtain;

“Consents Issue Date Longstop Date” or “CID Longstop Date” means the date falling five hundred and forty five (545) days after the Scheduled Consents Issue Date, subject to extension as agreed between Parties;

“Construction Programme” means the construction programme referred to in the Connection Agreement;

“Consumer Price Index” or “CPI” means the “All Items” index in the Consumer Prices Index maintained by the Republic of Ireland's Central Statistical Office;

“Contestable Components” means those aspects of the Connection Works excluding ESB Essential Component Works which the Customer has a right to construct in accordance with Regulation 33 of the European Communities (Internal Market in Electricity) Regulations, 2000 (SI 445/2000) and CER directions under Section 34(1) of the Act;

“Customer” means a party to the Agreement except the Company;

“Customer's Commissioning Tests” means such tests on the Customer's Equipment as are required by Prudent Electricity Utility Practice (including, without limitation, those required by the manufacturer's instructions) to ensure that the Customer's Equipment can be operated as designed such that the Customer's Equipment is fit to be Energised;

“Customer's Connection Works” means those works to be undertaken and building services and equipment to be provided by the Customer under the Connection Agreement, including (without limitation) installation of the equipment in accordance with the Connection Agreement and the Transmission Station Compound Works;

“Customer's Equipment” means all the Plant and Apparatus owned, leased or licensed by the Customer in connection with the Facility;

“Customer's Letter” means the letter in the form set out in the Offer Letter;

“Customer's Premises” means any land and buildings owned or controlled by the Customer on or in which any of the Company's Equipment or the Customer's Equipment is to be installed or is for the time being situated;

“Customer's Switching Station Site” means that part of the Customer's Premises immediately adjacent to the Transmission Station Compound and identified as such in the Site Diagram;

“Declaration of Fitness” means in respect of any distinct part of the Customer's Equipment (as determined by the Company) which is capable of being separately Energised and that the Commissioning Tests have been properly completed to the satisfaction of the Company;

“Decommissioning and Reinstatement Bond” means the bond to be provided to the Company by a bank or financial institution with an Approved Rating, in the form set out in the Connection Agreement or any replacement or substitute thereof approved and received by the Company, which has not expired or been cancelled or released by the Company;

“Decommissioning and Reinstatement Charge” means the charge payable by the Customer to the Company for the cost of decommissioning and removal of the Company's Connection Equipment and Transmission Station and for reinstatement of the site set out as such in the Offer Letter;

“Deemed Firm Date” means either the date set out in the Customer’s Letter, or established by the CER following a referral to the CER pursuant to paragraph 9 of the Firm/Non-Firm Direction;

“Deep Operational Date” means the date on which the Company is satisfied that the Operational Date has been achieved and the Deep Reinforcement Works are satisfactorily completed;

“Deep Reinforcement Equipment” means Plant and/or Apparatus provided and installed, or to be provided and installed, by the Company on the ESB Transmission System relating to or which could affect the Facility;

“Deep Reinforcement Works” means the provision and installation of the Deep Reinforcement Equipment by the Company;

“De-Energise” means the movement of any isolator, breaker or switch whereby no active power or reactive power can be transferred to or from the Facility through the Customer's Plant and Apparatus, and **“De-Energised”** and **“De-Energising”** shall be construed accordingly;

“Default Interest Rate” means Euribor plus two percentage points (2%);

“Defaulting Party” means any act, default or omission on the part of the other Party or the Defaulting Party’s employees agents, contractors or sub-contractors;

“Demand” means the demand for active power and/or reactive power;

“Directive” means any present or future legislation, statutory instrument, directive, requirement, instruction, order, direction or rule of any Competent Authority binding on either or both of the Company and the Customer (including any directive, requirement, instruction, direction, order or rule amending any licence required by either of the Parties in connection with the performance of this Agreement) and includes any modification, extension or replacement therefore then in force;

“Disconnect” means the removal of all or any of the Site-Related Connection Equipment by the Company in such a way that the Customer may not provide or receive a supply of electricity to or from the ESB Transmission System and the terms **“Disconnection”**, **“Disconnected”**, **“Disconnecting”** and like terms shall be construed accordingly;

“Dispatch” means the issue by the Company of instructions to the Customer in respect of operation of Generation Units under their control, and **“Dispatched”** and other like terms shall be construed accordingly;

“Dispute” means a difference or dispute of whatsoever nature arising between the Parties arising out of or in connection with the Agreement;

“Dispute Resolution Procedure” means the procedure set out in Clause 12 of the General Conditions;

“Due Date” means the settlement of each invoice in full within fourteen (14) Business Days of the date of the invoice;

“Eirgrid” means Eirgrid plc. the licensed transmission system operator which is responsible for, amongst other things, the planning, development, operation and maintenance of the ESB Transmission System, and for scheduling and dispatch;

“Emergency” means circumstances which in the opinion of the Company exist such that:

- (a) the safety of the Network is at risk;
- (b) the safe conveyance of electricity in the Network is at risk; or
- (c) there exists a danger to life or property as a consequence of (a) or (b);

“Encumbrance” means any mortgage, lien, pledge, 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” and **“Energisation”** means the movement of any isolator, breaker or switch so as to enable active power and reactive power to be transferred to and from the Facility through the Customer's Plant and Apparatus and **“Energisation,” “Energised”, “Energising”** shall be construed accordingly;

“Equivalent Agreement” means the connection agreement that the Customer would have had with the Other TSO if the point of connection was in Northern Ireland, if the Customer had applied to the Other TSO for a connection agreement, and the Other TSO entered into such an agreement in accordance with its licence;

“Equivalent Waiver” means an undertaking by NIE not to bring any claim in negligence, other tort, or otherwise howsoever against the Customer in respect of any act or omission of the Customer in relation to the subject matter of this Agreement, save in respect of claims against the Customer under any contract to which the Customer and NIE are (from time to time) party or in respect of fraudulent misrepresentation or death or personal injury resulting from the negligence of the Customer;

“ESB” means the Electricity Supply Board or its successors in title;

“ESB Essential Component Works” means those aspects of the Connection Works which the Company shall execute in its sole discretion for reasons relating to safety, security and/or reliability of the ESB Transmission System;

“ESB Distribution System” means the system consisting (wholly or mainly) of electric lines, transformers and switchgear which are owned or operated by ESB and used for the distribution of electricity from grid supply points or generation units or other entry points to the point of delivery to customers or other users

and any Plant and Apparatus and meters owned or operated by ESB in connection with the distribution of electricity but not including any part of the ESB Transmission System.

“**ESB Safety Rules**” as defined in the Grid Code;;

“**ESB Transmission System**” means the system consisting (wholly or mainly) of high voltage electric lines owned by ESB and operated by the Company for the purpose of the transmission of electricity from one Power Station to a sub-station or to another Power Station or between sub-stations including any Plant and Apparatus and meters owned by ESB (or the Company) and operated by the Company in connection with the transmission of electricity;

“**Euribor**” means the percentage rate per annum determined by the Banking Federation of the European Union for such period(s) as the Company may reasonably determine and displayed on the appropriate page of the Telerate screen. If the page is replaced or the service ceases to be available, the Company shall specify another page or service displaying the appropriate rate after consultation with the CER;

“**Event of Default**” means any one of the events, conditions or happenings as set out in Clause 9 of the General Conditions;

“**Expert**” means an expert appointed in accordance with the Dispute Resolution Procedure;

“**Facility**” means the primary equipment at the Site together with its auxiliary equipment, stocks, buildings and property at the Site, including equipment to be installed at the Customer's side of the Connection Point necessary to effect Connection;

“**Firm/Non-Firm Direction**” means the Commission for Energy Regulation’s Direction 01/72 on “Firm and Non-Firm Access to the Transmission System” dated 19 June 2001, as amended;

“**First Quoted Maximum Export Capacity**” means the maximum export capacity quoted to the Customer in the first Offer Letter accepted by the Customer;

“**Force Majeure**” has the meaning given in Clause 11 of the General Conditions;

“**General Conditions**” means the general terms and conditions of the Agreement as amended from time to time by the Company and such amendments approved by the CER in accordance with Section 34 of the Electricity Regulation Act 1999, as amended;

“**Generation Unit**” or “**Unit**” means the generating unit(s) which is/are to be installed at the Site and which forms the basis of the Customer's connection requirements under the Agreement;

“Grid Code” means the conditions, procedures, provisions and codes governing the planning and operation of the ESB Transmission System and the scheduling and dispatch of generation, prepared by the Company in accordance with section 33 of the Act, and which the Customer is required to adhere to under the terms of the Connection Agreement;

“Grid Code Test” means a test which is conducted as described in the Grid Code and which must be carried out prior to the Operational Date;

“Independent Engineer” means the person identified as the Independent Engineer in the Connection Agreement or such other firm of engineers as may from time to time be appointed pursuant to the terms of General Conditions;

“Index” or **“Indexed”** means unless otherwise specified in the Offer Letter, where reference is made to a sum of money in the Connection Agreement, including without limitation the Security, such sum shall be deemed to be indexed with effect from 1st of January in each year commencing on the 1st of January falling after the date of any agreement to reflect the actual (not underlying) change in consumer prices over the previous twelve (12) months in accordance with the CPI 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 20 Business Days of the relevant year, as determined in accordance with the Dispute Resolution Procedure;

“Influencing Connections” means any Offer Letter for a connection issued by the Company to and accepted by another customer of the Company in advance of the acceptance of the offer in the Offer Letter by the Customer that influences the price schedule and technical proposals set out in the Offer Letter;

“Interface Undertaking” has the meaning defined in Schedule 11 of the Connection Agreement;

“IPC Licence” means an integrated pollution control licence required for the Facility and obtained from the Irish Environmental Protection Agency;

“Joint Commissioning Tests” means the simultaneous conduction of Commissioning Tests by both Parties;

“Joint Commissioning Test Date” means the date of commencement of each Joint Commissioning Test;

“Key Parameters” means the mandatory parameters set out in Schedule 3 of the Connection Agreement which must be fulfilled by the Customer in order to connect and use the ESB Transmission System;

“Legal Claim” means any claim by a third party in accordance with the General Conditions;

“Lenders” means the parties who will make loans, credit facilities or funding arrangements available to the Customer for the purpose of or in connection with the Project, including any agent bank and any security agent;

“Maximum Export Capacity” means the maximum permissible amount of electricity to be exported onto the ESB Transmission System at the Connection Point expressed in MW as set out in the Connection Agreement or a connection agreement in relation to the ESB Distribution System. Where such values require conversion from MVA or kVA to MW as appropriate a factor of 0.95 kW/kVA shall be used;

“Maximum Export Capacity Bond” or **“MEC Capacity Bond”** means the bond to be provided to the Company by a bank or financial institution with an Approved Rating in the form set out in the Connection Agreement in relation to Maximum Export Capacity or any replacement or substitute thereof approved and received by the Company which has not expired or been cancelled or released by the Company;

“Maximum Import Capacity” means the maximum permissible amount of electricity to be imported from the ESB Transmission System at the Connection Point expressed in kVA as set out in the Connection Agreement or a connection agreement in relation to the ESB Distribution System. Where such values require conversion from MW or kW to kVA as appropriate a factor of 0.95 kW/kVA shall be used;

“Maximum Import Capacity Bond” or **“MIC Capacity Bond”** means the bond to be provided to the Company by a bank or financial institution with an Approved Rating in the form set out in the Connection Agreement in relation to Maximum Import Capacity or any replacement or substitute thereof approved and received by the Company which has not expired or been cancelled or released by the Company;

“Maximum Sum” means the amount of the Connection Charge Bond that the Customer shall provide to the Company less an amount equal to the Connection Charge (excluding, for the avoidance of doubt, any interest for late payment) paid by the Customer up to the relevant date;

“MEC Capacity Bond Amount” has the meaning given in the Offer Letter;

“Metering” means the Commercial Metering and the Operational Instrumentation and all associated equipment as described in the Grid Code;

“Metering Code” 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;

“MIC Capacity Bond Amount” has the meaning given in the Offer Letter;

“Modification” means any replacement, renovation, modification, alteration or construction:

- (a) in the case of the Company, in respect of the ESB Transmission System (including to its manner of operation) a need for the Company

to effect any works in respect of, or to alter the manner of operation of, the Network, which in either case involves the Company;

- (b) in the case of the Customer, in respect of the Facility (including to its manner of operation), a need for the Customer to effect any works in respect of, or to alter the manner of operation of, the Facility which in either case involves the Customer; and
- (c) in the case of another customer connected to the ESB Transmission System, in respect of that customer's facility (including to its manner of operation) a need for that customer to effect any works in respect of, or to alter the manner of operation of that customer's facility which in either case involves that other customer;

“Network” means the ESB Transmission System and the ESB Distribution System taken together;

“NIE” means Northern Ireland Electricity plc;

“Non-Firm Peaking Plant Direction” means the Commission for Energy Regulation’s Direction “Short-term Peaking Generation Connection Offers” dated 17 October 2005;

“Non-Firm Renewables Direction” means the Commission for Energy Regulation’s Direction 05/107 “Renewable Connection Offers and Transmission Reinforcement Works” dated 8 July 2005;

“Non-Performing Party” means a Party which is unable to perform all or any of its obligations by reason of Force Majeure;

“Offer Letter” means the Offer Letter a copy of which is set out in Schedule 1 of the Connection Agreement and/or such replacement or additional letters issued by the Company. For the avoidance of doubt (where applicable) the Offer Letter shall be a consolidation of the Quotations Letter (with options) issued by the Company to the Customer and the Customer’s Letter responding to the Company’s Quotations Letter (with options) identifying which option it would prefer;

“On-Going Service Charge” means the charges payable by the Customer to the Company established in accordance with the CER’s policy for on-going services rendered by the Company in respect of the Company’s Connection Equipment and set out as such in the Offer Letter;

“Operating Instructions” means the detailed instructions which meet as a minimum the requirements of the ESB Safety Rules on the switching sequences to be followed for voluntary, fault and emergency switching in the Transmission Station and the Customer’s Equipment and identifying the representatives of the Company and the Customer who will attend the Transmission Station and/or Facility during emergencies;

“Operational Certificate” means the notification issued by the Company which indicates that the Capacity Test (if applicable) and the Grid Code Tests have been completed and that the Facility has complied with the 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 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;

“Operational Consents” mean those route approvals and other forms of Consent that are given to the Company by any person including a relevant Competent Authority during the Company's Connection Works and Deep Reinforcement Works programme;

“Operational Date” means the date on which the Company is satisfied that the 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;

“Operational Instrumentation” means the equipment required for the measurement, processing and communication to the Company of the parameters of the Customer's Equipment and the Company's Connection Equipment;

“Ordinary Interest Rate” means Euribor plus one percentage point (1%);

“Other Charges” means such other charges which are published by the Company from time to time relating to matters affecting the electricity industry and which the Company is entitled to recover (in whole or in part) including without limitation, by way of statute, statutory instrument, regulatory provision or regulatory direction;

“Other Transmission System” as defined in the Grid Code;

“Other TSO” as defined in the Grid Code;

“Outline Specification” means the preliminary drawings and specifications to facilitate the Customer in applying for Consents;

“Party” means a party to the Agreement;

“Party Liable” has the meaning given in Clause 10 of the General Conditions;

“Party Not Liable” has the meaning given in Clause 10 of the General Conditions;

“Pass Through Charges” means charges payable by the Customer to the Company as set out and identified as such in the Offer Letter and/or arising under Clause 17.10 of the General Conditions;

“Plant” means fixed and movable items used in the generation and/or supply and/or transmission of electricity, other than Apparatus;

“Power Station” means the installation comprising the Generation Unit(s);

“Premises” means the Customer's Premises or the Company's Premises as the context requires;

“Project” means the design, construction, completion and commissioning of the Facility in order to connect the Facility to the ESB Transmission System and the subsequent operation and maintenance of the Facility;

“Prudent Electricity Utility Practice” means those standards, practices, 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;

“Quarter” means a period of three consecutive Calendar Months commencing on a Quarter Day save in respect of the first Quarter which shall commence on the Operational Date and end on the day preceding the first Quarter Day following that date;

“Quarter Day” shall be the 1st January, 1st April, 1st July and 1st October in any year;

“Quotations Letter (with options)” means the letter setting out the available construction options in respect of the Connection and which forms part of the Offer Letter;

“Related Agreements” means the construction contract, the operating and maintenance contract, and the fuel supply contract;

“Relevant Act or Omission” means any act or omission by a Relevant Person that is a breach of a Relevant Agreement, or that would (in the case of the Other TSO only) have been a breach by an Equivalent Agreement;

“Relevant Agreement” means, in respect of:

- (a) NIE, any agreement for connection to and/or use of the Distribution System to which NIE is party, and/or the Transmission Interface Agreement; and
- (b) the Other TSO, any agreement in its jurisdiction for connection to and/or use of the All-Island Transmission Networks to which the Other TSO is party;

“Relevant Person” means NIE and the Other TSO;

“Representative” means an officer appointed by either the Company or the Customer who is duly authorised to act on behalf of the appointing party;

“Reviewing Party” means a party to the Connection Agreement to whom it appears that the actual progress of the design, construction, commission and

Testing of the other party's Connection Works does not conform with the Construction Programme;

“Scheduled Commissioning Tests Completion Date” means the last day of the Commissioning Tests Completion Period, or any substitute date as otherwise agreed between the Parties;

“Scheduled Consents Issue Date” means the Company's estimate of the date that the Consents Issue Date may be achieved;

“Scheduled Deep Operational Date” means the Company's estimate of the date that the Operational Date will be achieved and the Deep Reinforcement Works will be completed;

“Scheduled Operational Date” means the Company's estimate of the date that the Operational Date will be achieved;

“Scheduled Operational Date Longstop Date” means the date falling three hundred and sixty five (365) days after the date of the Scheduled Operational Date;

“Scheduled Transmission Station Compound Works Completion Period” means the Company's estimate of the period required to complete the Transmission Station Works;

“Scheduled Works Completion Date” means the last day of the Connection Works Completion Period, or, any substitute date as otherwise agreed between the Parties;

“Security” means the security requirements set out in Clause 24 of the General Conditions;

“Shallow Connection Capacity” if applicable means the capacity in MW available from the Operational Date as provided for in the Offer Letter or as otherwise agreed between the Parties;

“Short Circuit Driven Deep Reinforcement Works” has the meaning given in the Offer Letter;

“Site” means the site at which the Facility is to be constructed including the lands, spaces, roads and any surface and wayleaves relating to the Project;

“Site Conditions” all ecological, geological, geophysical, archaeological, hydrological or environmental conditions affecting the Site;

“Site-Related Connection Equipment” means Plant and/or Apparatus provided and installed, or to be provided and installed, by the Company and/or the Customer in order to connect the Customer's Equipment relating to the Facility to the ESB Transmission System;

“Site Responsibility Schedule” means the Schedule prepared by the Company reflecting the details agreed between the Company and the Customer in

respect of the Site detailing the division of responsibilities at the interface site in respect of ownership, control, operation, maintenance and safety;

“Specified Amount” means the amount payable under the MEC Capacity Bond where the Customer has failed the Capacity Test and/or the Capacity Certificate test;

“System Operator Agreement” has the meaning given to it in the Licence;

“Term” in the case of a Connection Agreement shall have the meaning set out in Clause 20.1 and set out specifically in the Offer Letter and in the case of a Transmission Use of System Agreement as set out therein;

“Testing” means testing carried out by the Company under the Grid Code and **“Test”** shall be construed accordingly;

“Trading and Settlement Code” means the code of that name which sets out the rules for the market settlement and the responsibilities of the parties to the code;

“Transmission Interface Agreement” means the agreement of that name between the Other TSO and Northern Ireland Electricity plc.;

“Transmission Station(s)” means all and any part of the Company’s Equipment which is housed in the Transmission Station Compound(s), together with the Transmission Station Compound itself and the Communications and Control Room;

“Transmission Station Compound(s)” means any land(s) and buildings of the Company provided, or to be provided, by the Customer, to accommodate any part of the Company’s Equipment and the Communications and Control Room;

“Transmission Station Compound Works” means the works to be undertaken by the Customer as required by the Company in relation to the Transmission Station(s) and the Communications and Control Room which includes but are not limited to buildings, roadways, switchgear foundations, building services, cable ducts and troughs, fencing, final stoning, power supplies, telephone, water supplies, sewerage disposal and site drainage;

“Transmission Station Compound Works Completion Date” means the date on which the Customer has completed the Transmission Station Compound Works;

“Transmission Use of System Charges” means the charges payable in accordance with the approved tariff of the Company’s Transmission Use of System tariff in respect of demand and/or generation utilisation, as that tariff may from time to time be amended by the Company and published in the Company’s tariff statement as the context requires;

“Use of System Agreement” means the Agreement setting out the terms and conditions for use of the ESB Transmission System;

“User” means a Customer who is licensed under Section 14 of the Electricity Regulation Act 1999 and is eligible to use the ESB Transmission System and therefore liable to pay for usage thereof by entering into a Use of System Agreement or Connection Agreement;

“Value Added Tax” or **“VAT”** means the value added tax chargeable under the provisions of the Value Added Tax Act 1972 or any tax on the supply of goods and or services which may hereafter replace or supplement value added tax;

“Works” means the permanent and temporary works required for the design, construction, completion and commissioning of the Facility.

4 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

4.1 Representations and Warranties of the Customer

The Customer represents and warrants to the Company in respect of Clauses 4.1 and 4.2 on an on-going basis throughout the Term that:

- 4.1.1 **Authority for Agreement:** the Customer has full power and authority to enter into and perform the Agreement and the execution and performance of the Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which the Customer is a party or any judgement, order, statute or regulation which is applicable to the Customer;
- 4.1.2 **Misrepresentation:** no representation or warranty made by or on behalf of the Customer and contained in the Agreement and no statement contained in any submission to the Company, declaration or other instrument made or to be made by or on behalf of the Customer in connection with the Agreement contains or will contain any false or misleading representation of a material fact, or omits or will omit to state a material fact necessary to prevent such statements, in the light of the circumstances under which they are to be made, from being misleading.

4.2 Representations, Warranties and Undertakings of the Company

The Company represents and warrants to the Customer as at the date of the Agreement that the Company has full power and authority to enter into and perform the Agreement and the execution and performance of the Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which the Company is a party or any judgement, order, statute or regulation which is applicable to the Company.

4.3 Prohibition on Connection of Other Premises

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 associated with the Connection Point

5 VARIATION - NEW INDUSTRY STRUCTURE AND REGULATORY REGIME

5.1 Change of effect of the Agreement

If, after execution of the Agreement, there shall be enacted and brought into force any legislation, Directive, rule, regulation, direction, statutory instrument or order of any Competent Authority arising therefrom providing for:

- 5.1.1 the further reorganisation of the electricity industry in the Republic of Ireland or any material part of it; or
- 5.1.2 the further facilitation of the introduction of third party interests into the affairs of the electricity industry in the Republic of Ireland or any part of it; or
- 5.1.3 the amendment or variation of any policy of the Company or the manner in which the Transmission 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, direction, statutory instrument or order and most closely reflects 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 same.

5.2 Determination by the CER

If any variation proposed under Clause 5.1 has not been agreed by the Parties within three (3) months of it being proposed (the Parties acting as soon as reasonably practicable) either Party may refer to the CER for determination and the Parties agree to abide by and to give effect to the CER's determination, if necessary by entering into an agreement supplemental to the Agreement.

5.3 Direction by the CER

The Parties agree to effect any change to the Agreement required by any direction given by the CER under Sections 34 or 35 of the Act relating to connection and use of system agreements of this type.

5.4 Effective date of changes

Such changes shall have effect upon the date upon which the legislation and/or Directive, rule, regulation, direction, statutory instrument or order, or change in the Grid Code, in question is brought into force with such transitional arrangements as shall be reasonable and as are in compliance with the new legislation, Directive, rule, regulation, direction, statutory instrument or order, or change in the Grid Code referred to in Clause 5.1 and 5.3.

6 COMPLIANCE WITH INDUSTRY CODES

6.1 Parties to comply with the Grid Code

The Customer undertakes to construct the Facility in compliance with the Grid Code and thereafter each of the Parties undertakes to comply with the Grid Code to the extent that the same is applicable to it and acknowledges for the purposes of Clause 9.1.2 that any breach of the Grid Code shall be deemed to be a material breach of the Agreement.

6.2 Contravention of Limits or Standards in the Grid Code

If the Customer, in contravention of standards and/or limits specified in the Grid Code, makes a supply of electricity to, or takes a supply of electricity from, the ESB Transmission System which materially affects or impairs voltage or frequency regulation or materially impairs the supply of electricity to the Company or other persons supplied from the ESB Transmission System, the Customer shall indemnify and hold harmless the Company against any losses, damages or costs incurred by the Company or claims made by third parties against the Company in respect of such an occurrence.

6.3 Parties to comply with the Trading and Settlement Code

Each of the Parties undertakes to comply with the Trading and Settlement Code to the extent that the same is applicable to it and acknowledges for the purposes of Clause 9.1.2 that any breach of the Trading and Settlement Code shall be deemed to be a material breach of the Agreement.

6.4 Parties to comply with the Metering Code

Each of the Parties undertakes to comply with the Metering Code to the extent that the same is applicable to it and acknowledges for the purposes of Clause 9.1.2 that any breach of the Metering Code shall be deemed to be a material breach of the Agreement.

6.5 Amendments to the Grid Code, Trading and Settlement Code and Metering Code

The Customer acknowledges and agrees that under the powers conferred on it by the Act any amendments made by the CER to the Grid Code, the Trading and Settlement Code or the Metering Code are binding on the Customer. The Customer shall be liable for any costs and expenses arising therefrom.

7 CALCULATION AND PAYMENT OF CHARGES

7.1 Obligation to pay

The Customer shall pay to the Company, in accordance with this Clause 7, all Charges and other monies payable by the Customer to the Company in connection with the Agreement.

7.2 Invoice

In respect of each payment of Charges or other monies to be made by the Customer to the Company in connection with the Agreement, the Company shall deliver to the Customer an invoice showing the amounts payable by the Customer.

7.3 Due Date

Unless otherwise agreed, the Customer shall settle each invoice in full within ten (10) Business Days of the date of the invoice (the “Due Date”) by making payment to the bank account specified in the Agreement, or such alternative bank account as the Company may from time to time notify to the Customer.

7.4 Recovery and interest

If any amount payable by one Party to the other under the Agreement has not been paid on or before the Due Date, the Party to whom payment is due may institute proceedings for recovery from the other Party. The Party to whom payment is due shall in addition to any other remedies be paid interest on the amount unpaid by the other Party from the Due Date to the date of actual payment and whether before or after judgment at the Default Interest Rate (or if the other Party has, acting in good faith, notified the Party to whom payment is due that the amount (or a part thereof) is bona fide in dispute, then at the Ordinary Interest Rate in the case of that amount (or part) which is bona fide in dispute), with such interest being calculated on the basis of the number of days elapsed and a 365 day year and compounded monthly in arrears until paid.

7.5 Failure to pay

Without prejudice to the terms of Clause 7.4, where at any time the Customer has failed to make a payment to the Company on or before the Due Date, the Company shall serve a notice on the Customer notifying the Customer of its failure to make such payment. Fifteen (15) Business Days after service of this notice, the Company will be entitled to suspend the performance of its obligations under the Connection Agreement or Use of System 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.

7.6 Payment

All sums payable by one Party to the other in connection with the Agreement whether of Charges, interest or otherwise shall (except to the extent otherwise required by law) be paid in full, free and clear of and without deduction set off or deferment in respect of sums the subject of any disputes or claims whatsoever, save for sums which by agreement between the Parties may be so deducted or set-off. If any sum paid by one Party to the other is not due and payable, the payee shall refund such sum to the payer. Interest on the refunded amount shall be paid at the Ordinary Interest Rate; such interest to be calculated from the date payment was made to the date of actual repayment.

7.7 Alternative Payment terms

The Company may agree alternative payment terms with the Customer which may include requirements for Security to cover such payments. In this event the payments shall be made by the Customer immediately following receipt of an invoice from the Company in respect of such payments, or as otherwise agreed between the Parties.

7.8 Charges related to Connection

The charges related to Connection to the ESB Transmission System which a Customer shall pay under the Connection Agreement are:-

- (a) Connection Charge
- (b) Allocated Equipment Charge
- (c) On-Going Service Charge
- (d) Decommissioning and Reinstatement Charge
- (e) Pass Through Charges

7.9 Charges related to Use of System

The charges related to use of the ESB Transmission System which a Customer shall pay under the Use of System Agreement or as required by the Connection Agreement are:

- 7.9.1 Demand - from the Connection Date the Customer shall, in its capacity as a User, pay the Company for its use of the ESB Transmission System in accordance with the applicable tariff schedule of the Company's published Transmission Use of System tariff (or such other approved tariff, if appropriate), as that tariff may from time to time be amended by the Company and published in the Company's tariff statement.
- 7.9.2 Generation - from the Connection Date the Customer shall, in its capacity as a User, pay the Company for its use of the ESB Transmission System in accordance with the applicable tariff schedule of the Company's published Transmission Use of System tariff (or such other approved tariff, if appropriate), as that tariff may from time to time be amended by the Company and published in the Company's tariff statement.

7.10 Applicability of Use of System Charges

- 7.10.1 Where the Customer is a User as defined in the General Conditions the Customer shall pay the Company for its use of the ESB Transmission System in accordance with the applicable tariff schedule of the Company's published Transmission Use of System tariff (or such other approved tariff, if appropriate), as that tariff may from time to time be

amended by the Company and published in the Company's tariff statement.

7.10.2 Where the Customer is not a User as defined in the General Conditions the Customer shall provide evidence to the Company's satisfaction that the Customer has arranged for a User to pay the Company for the Customer's use of the ESB Transmission System in accordance with the applicable tariff schedule of the Company's published Transmission Use of System tariff (or such other approved tariff, if appropriate), as that tariff may from time to time be amended by the Company and published in the Company's tariff statement.

7.10.3 For the avoidance of doubt the applicability of Use of System Charges shall be set out by the Company in the Offer Letter.

7.11 Other Charges

The Other Charges which are payable by the Customer under this Agreement shall be notified to the Customer in writing in advance.

7.12 Company Bank Account Name and Number:

EirGrid plc.

90-14-90 24887224

Bank Of Ireland

Lower Baggot Street

Dublin 2

Republic of Ireland

8 BREACH OF THE AGREEMENT

8.1 Notification of breach

If the Customer shall be in breach of any of the provisions of the Agreement or the Grid Code or the Trading and Settlement Code or the Metering Code then the Company shall as soon as reasonably practicable after it becomes aware of the breach in good faith notify the Customer of the breach advising it whether in its opinion the breach can be remedied and the timescale for the remedy and giving sufficient details thereof to the Customer 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 Grid Code or the Trading and Settlement Code or the Metering Code, it shall notify the Company of the likely possible breach giving sufficient details thereof to enable the Company to assess the importance of the breach.

8.2 Notice to remedy

After the occurrence of a breach of any provision of the Agreement or the Grid Code by the Customer, the Company may:

- 8.2.1 where the breach in the opinion of the Company is capable of remedy, give notice to the Customer requiring the Customer within twenty (20) Business Days after receipt of such notice to remedy the breach or within any longer period as may be agreed between the Company and the Customer; or
- 8.2.2 where the breach in the opinion of the Company is incapable of remedy, give notice to the Customer specifying the reasons why the breach is incapable of remedy and requiring the Customer within five (5) Business Days after receipt of such notice to undertake to the Company not to repeat the breach.

8.3 Requirement to notify

If the Customer becomes aware of any breach by the Company of the Agreement or the Grid Code, Trading and Settlement Code or Metering Code then it shall notify the Company of the breach and shall discuss the breach in good faith. If the Company becomes aware of any likely possible breach of the Agreement or the Grid Code or the Trading and Settlement Code or the Metering Code it shall notify the Customer of the likely possible breach giving sufficient details thereof to enable the Customer to assess the importance of the breach.

8.4 Discussions between Parties

If the Company serves a notice pursuant to Clauses 8.1 and 8.2, the Customer shall (without prejudice, to the Company's rights under Clauses 8.1 and 8.2) 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 Grid Code, Trading and Settlement Code or the Metering Code.

9 EVENTS OF DEFAULT

9.1 Events of Default

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

- 9.1.1 if as a consequence of a breach of the Grid Code, the Trading & Settlement Code, the Metering Code or the Agreement the Facility was De-Energised and the breach remains unremedied for a period of six (6) months following the date of such De-Energisation, the Company (at any time while the breach continues) by notice in writing to the Customer declares that such breach is an Event of Default; or
- 9.1.2 except for a breach referred to in Clauses 9.1.1, 9.2.1 or 9.2.2, a failure to comply with or operate in conformity with any provisions of the Agreement 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 unremedied for the period provided for in the Agreement or if none is provided then thirty (30) Business Days following the date on which the Customer is given notice of the default by the Company; or

- 9.1.3 if an order of the High Court is made or an effective resolution passed for its insolvent winding up or dissolution; or
- 9.1.4 if a receiver of the whole or any material part of its assets or undertaking is appointed or if an examiner (within the meaning of the Companies (Amendment) Act 1990) is appointed to it; or
- 9.1.5 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
- 9.1.6 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); or
- 9.1.7 notwithstanding the terms of Clause 20, 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 five (5) Business Days thereafter) any monies due to the Company under the Agreement, other than payments which are subject to a bona fide dispute between the Parties, by the Due Date for payment or fails to provide, procure or maintain any Security and/or obtain and maintain insurances required by the Agreement and such monies remain unpaid, or a replacement Security is not put in place or insurances are not maintained, within thirty (30) Business Days of the date on which the Company gives the Customer notice of the default; or
- 9.1.8 if by a transfer or allotment of shares or amendment of articles of association or by some other act or deed the effective control of the Customer changes or passes to any person not having effective control as at the date of any of agreements forming part of the Agreement (without the prior written consent of the Company which shall not be unreasonably withheld), and as a result of that change of control, the credit worthiness of the Customer is materially reduced.

9.2 Events of Default specific to the Connection Agreement

The following events or circumstances shall be Events of Default by the Customer of the Connection Agreement:

- 9.2.1 if there is a failure of a Key Parameter and the Company by notice in writing to the Customer declares that such failure is an Event of Default; or

- 9.2.2 if a termination event under Clause 20 has occurred and the Company by notice in writing, declares that such breach is an event of default; or
- 9.2.3 if at any time the Customer ceases the flow of electricity to or from the Facility as the case may be for a period in excess of six months; or
- 9.2.4 if at any time after the implementation of the Commissioning Instructions there is not a current and enforceable agreement between the Customer and a licensed supplier for the supply of electricity to the Facility; or
- 9.2.5 if at any time after implementation of the Commissioning Instructions, the Customer has failed to obtain or maintain any licences, authorisations or other approvals required by a Competent Authority for the generation of electricity.

9.3 Notice of Termination

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

9.4 Referral to the CER

The Company shall advise the Customer in writing of the Customer's right to refer the proposed termination to the CER for determination in accordance with the Act.

If the Customer exercises its right to refer a proposed termination of the Connection Agreement by the Company to the CER then the Company will not proceed with, or proceed further with, any action or claim either relating to or arising out of its right to terminate the Connection Agreement until such time as the CER has issued its determination in respect of such referral.

10 LIMITATION OF LIABILITY

10.1 No Liability for Force Majeure

Except to the extent provided in Clause 11, neither Party shall be liable for any breach of this Agreement directly or indirectly caused by Force Majeure.

10.2 Rights against Third Parties

In consideration of the rights conferred upon the Customer under the Connection Agreement, including under clause 10.3, the right of the Customer to claim in negligence, other tort, or otherwise howsoever against a Relevant Person in respect of any act or omission of that Relevant Person in relation to the subject matter of the Relevant Agreement is hereby excluded and the Customer agrees not to pursue any such claim: provided that:

- 10.2.1 nothing in this clause 10.2 shall restrict the Customer's ability to claim against a Relevant Person under any contract to which the Customer and

such Relevant Person are (from time to time) party, or in respect of fraudulent misrepresentation or death or personal injury resulting from the negligence of a Relevant Person; and

- 10.2.2 such exclusion and agreement in respect of NIE shall only apply in respect of those periods in which the Transmission Interface Agreement contains the Equivalent Waiver.

10.3 All-Island liability

Any Relevant Act or Omission which causes physical damage to the Plant, Apparatus or other property of the Customer shall, for the purposes of determining Company's liability under the Connection Agreement, constitute an act or omission of the Company in breach of the Connection Agreement: provided that the liability of the Company under this Agreement, in respect of such act or omission of:

- 10.3.1 the Other TSO, shall not exceed the lower of (a) the monetary cap referred to in the Connection Agreement and (b) the monetary cap that applies to the Other TSO's liability under the Equivalent Agreement; and of
- 10.3.2 NIE, shall not exceed the lower of (a) the monetary cap referred to in the Connection Agreement, and (b) the monetary cap that applies to NIE's liability under the Transmission Interface Agreement.

10.4 Monetary Cap

For the avoidance of doubt and for the purpose of determining the Customer's liability under this Agreement, any liability of the Company (in respect of any acts or omissions of the Customer in breach of this Agreement that cause physical damage to the Plant, Apparatus or other property of a Relevant Person) or to the Other TSO under the System Operator Agreement, will be a reasonably foreseeable consequence of a breach of this Agreement by the Customer in respect of which the Company will be entitled to recover damages from the Customer: provided that the liability of the Customer under this Agreement in respect of damage to the property of:

- 10.4.1 the Other TSO, shall not exceed the lower of (a) the monetary cap referred to in the Connection Agreement, and (b) the monetary cap that applies to the Customer's liability under the Equivalent Agreement; and
- 10.4.2 NIE, shall not exceed the lower of (a) the monetary cap referred to in the Connection Agreement, and (b) the monetary cap that applies to NIE's liability under the Transmission Interface Agreement.

10.5 Tortious waiver

In respect of the Other TSO, the Company shall obtain a waiver from the Other TSO in favour of (and enforceable by) the Customer through the System Operator Agreement in respect of any claim the Other TSO may have in

negligence, other tort, or otherwise howsoever against the Customer in respect of any act or omission of the Customer in relation to the subject matter of the Connection Agreement: and the Company shall ensure that such waiver includes agreement by the Other TSO not to pursue such claim, provided that the Company need not obtain such person's waiver of any claim such person may have against the Customer under any contract to which the Customer and such person are (from time to time) party or in respect of fraudulent misrepresentation or death or personal injury resulting from the negligence of the Customer.

10.6 Other

Upon reasonable notice, the Company shall provide to the Customer such information in relation to the form (but not the commercial content) of the Relevant Agreements as the Customer may reasonably request, including as to the monetary caps on liability thereunder.

10.7 Waivers

If any of the provisions in any Relevant Agreement relating to any waiver by a party to that Relevant Agreement in respect of claims against either Party is or becomes or is declared invalid, unenforceable or illegal by the courts of any jurisdiction or by order of the Commission of the European Communities or of any relevant statutory or regulatory body, then the Parties shall meet to discuss the amendments needed to be made to this Agreement to reflect that the waiver does not then exist and shall, where such amendments cannot be agreed, refer the matter to the Commission for Energy Regulation for final determination (and subsequently amend this Agreement to in accordance with such determination).

10.8 Liability for Breach and Physical Damage only (under the Connection Agreement)

This Clause 10.8 shall apply only to Customers connected to the ESB Transmission System under the Connection Agreement:-

Subject to Clause 10.14 and Clause 10.16 and except as provided for in this Clause 10.8 and Clauses 10.9 to 10.11 inclusive and excluding any other Security provision of the Agreement, neither Party ("Party Liable") nor any of its officers, employees or agents shall be liable to the other Party ("Party Not Liable") 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 in respect of:

- 10.8.1 physical damage being occasioned to the property of the Party Not Liable, its officers, employees or agents; or
- 10.8.2 the liability of the Party Not Liable 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 10 being referred to as a "Legal Claim"),

provided that the liability of either Party in respect of all such losses, damages, claims, liabilities, costs or expenses shall not exceed in any year the Connection Liability Amount and further provided that the overall aggregate liability of either Party during the term of the Connection Agreement shall not exceed the Connection Liability Cap.

10.9 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 twenty (20) Business Days of receiving notice from the Party Not Liable requesting it to do so, unconditionally agreed 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 an indemnity supported by 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 10.8) 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.

10.10 Liability

Nothing in the Agreement shall exclude or limit the liability of the Party Liable for death or personal injury resulting directly from the negligence of the Party Liable or any of its officers, employees and agents and the Party Liable shall indemnify and keep indemnified the Party Not Liable, its officers, employees and agents from and against any losses, damage, claims, liabilities, costs or expenses which the Party Not Liable, its officers, employees and agents may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liable or the negligence of any of its officers, employees or agents acting in the course of their duties for the Party Liable (such claim hereafter in this Clause 10 being referred to as an "Injury Claim").

10.11 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 twenty (20) 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 an indemnity supported by 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 Liable may become liable in respect of the Injury Claim. The Party Not Liable shall, at the request of the Party Liable, afford all reasonable assistance for the purpose of contesting the Injury 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.

10.12 No liability for economic loss etc.

Subject to Clauses 10.10 and 10.14 and any provision of the Agreement which provides for Security arrangements, 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:

- 10.12.1 any loss of profit, loss of revenue, loss of use, loss of contract (other than this Agreement), loss of sales arrangements or loss of goodwill; or
- 10.12.2 any indirect or consequential loss, incidental or special damages (including punitive damages); or
- 10.12.3 loss resulting from the liability of the other Party to any other person howsoever and whensoever arising save as provided for in Clauses 10.8 and 10.10.

10.13 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 this Agreement and undertakes not to enforce any of the same except as expressly provided herein.

10.14 Severability

Each of the provisions of this Clause 10 shall:

- 10.14.1 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

10.14.2 survive termination of this Agreement.

10.15 Privity of Contract

Each of the Parties agrees that the other Party holds the benefit of Clauses 10.8, 10.10 and 10.12 for itself and as trustee and agent for its officers, directors, employees and agents.

10.16 No limitation on enforcement of obligations

For the avoidance of doubt:-

10.16.1 nothing in this Clause 10 shall prevent or restrict either Party enforcing any obligation (including suing for a debt) owed to it under or pursuant to the Agreement;

10.16.2 nothing in the Connection 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 as should be 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; and

10.16.3 each Party acknowledges and agrees that the provisions of this Clause 10 are fair and reasonable having regard to the circumstances as at the date hereof.

11 FORCE MAJEURE

Force Majeure: means any event (which for the purposes of the Agreement shall mean any event or circumstance, or number of events or circumstances, or combination thereof) in Ireland not within the reasonable control of a Party and which could not have been prevented or the consequences of which could not have been prevented by Prudent Electricity Utility Practice and which has the effect of preventing a Party from complying with its obligations under the Agreement, including:

- (a) acts of terrorists;
- (b) war declared or undeclared, blockade, revolution, riot, insurrection, civil commotion, invasion or armed conflict;
- (c) sabotage or acts of vandalism, criminal damage or the threat of such acts;
- (d) extreme weather or environmental conditions including lightning, 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;

- (e) any change of legislation, governmental order, restraint or Directive having the effect of preventing or delaying the construction, commissioning or testing of the Connection Works or the Facility, shutting down or reducing the output of the Facility or interrupting the supply of fuel 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;
- (f) 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;
- (g) 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 electricity industry strike within the Republic of Ireland;
- (h) the inability at any time or from time to time of the ESB Transmission System to accept electricity generated by the Customer or the inability of the Network to supply electricity to the Customer;
- (i) 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;
- (j) the inability of the supplier of fuel to the Facility to provide fuel due to circumstances which would entitle the supplier of fuel to claim relief under force majeure provisions of the relevant fuel supply agreement.

Provided that Force Majeure shall not include:

- (aa) lack of funds and/or the inability of a Party to pay;
- (bb) mechanical or electrical breakdown or failure of machinery or plant owned or operated by the Customer or owned by ESB and operated by the Company other than as a result of the circumstances identified in (a) to (j) above;
- (cc) any of the events referred to in the General Conditions resulting in modifications of the Agreement;
- (dd) a strike or any other form of industrial action not falling within paragraph (f) or (g) above; or
- (ee) the inability of the Customer to secure and maintain appropriate fuel supply contracts and fuel transportation commitments for the Project.

11.1 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 Connection Agreement and/or the General Conditions 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:

- 11.1.1 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 shall furnish reports at such intervals as the other Party may reasonably request, with respect thereto during the period of Force Majeure;
- 11.1.2 the Non-Performing Party shall use all reasonable endeavours to remedy this inability to perform and to resume full performance of its obligations under the Agreement;
- 11.1.3 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;
- 11.1.4 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;
- 11.1.5 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
- 11.1.6 insofar as possible the Non Performing Party shall seek to mitigate the consequences of the Force majeure occurrence.

This Clause 11 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 Party having the difficulty.

12 DISPUTE RESOLUTION PROCEDURE

12.1 Notification of a Dispute

Subject to Clause 5.2, which shall apply where there is a Dispute relating to the variation of the Agreement either Party may notify the other Party of any

occurrence or discovery of any item or event which the notifying Party acting in good faith considers to be a Dispute under or in connection with the Agreement.

12.2 Appointment of Company Representative

Each Party shall, by notice to the other Party within fifteen (15) Business Days of a notification under Clause 12.1, appoint, a representative with expertise or experience in the area in which the Dispute arises to represent them and to meet with the other representative within twenty (20) Business Days of the date on which notification of the Dispute under Clause 12.1 was sent to the other Party, to attempt in good faith to satisfactorily resolve the Dispute.

12.3 Dispute Resolution

Without prejudice to Clause 12.4, if a Dispute arising under the Agreement is not resolved by the representatives appointed pursuant to Clause 12.2 to a Party's satisfaction within fourteen (14) Business Days of their meeting, except where expressly provided to the contrary, the remaining provisions of this Clause 12 shall apply. Provided that where the Agreement so provides or the parties agree, or the Dispute is of a technical nature (including, under the engineering, mechanical or electrical or a dispute under Clause 20) in respect of a Connection Agreement then the Dispute shall be referred to an Expert, pursuant to Clause 12.6. If the Parties are in disagreement as to whether a Dispute not resolved under Clause 12.2 should be referred to an arbitrator or an Expert, the Independent Engineer will on the application of either Party direct that the Dispute be determined by an arbitrator or, as appropriate, an Expert.

12.4 Arbitration

In the event of dispute between the Company and the Customer (other than a matter to be resolved pursuant to Clause 12.6) concerning the interpretation of any provision of the Agreement or the performance of any of the terms of the Agreement such matter or matters in dispute shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one arbitrator, selected by the Parties, or if the Parties shall fail within the thirty (30) days from either Party referring the dispute to arbitration to select a mutually acceptable arbitrator, then the President of the International Chamber of Commerce in Dublin shall be authorised to make such selection at the request of either Party. The language of the arbitration shall be English and the place of the arbitration shall be Dublin, Ireland. The Parties shall be entitled to call witnesses and shall have the right of cross-examination.

12.5 Joinder

If any dispute to be referred to arbitration under the Agreement (other than a matter to be resolved pursuant to Clause 12.6) raises issues which are, in the opinion of the Customer, substantially the same as or connected with issues raised in a dispute (a "related dispute") between the Customer, the Company

or any of the counterparties to Related Agreements (and their successors in title and assigns) which has not already been referred to arbitration and where the relevant Related Agreement contains arbitration provisions substantially the same (*mutatis mutandis*) to this Clause then:

- (a) the dispute under the Agreement shall if the Customer so requires be referred to an arbitrator appointed by agreement of all the parties to the dispute or failing agreement within twenty (20) Business days of the Customer notifying the other parties to the dispute of its requirement, by an arbitrator appointed by the President of the International Chamber of Commerce to determine the related dispute; and
- (b) the arbitrator shall have power to make such discretion and awards in the same way as if the rules of the Superior Courts of Ireland as to joining one or more defendants or third parties or consolidating actions were applicable to the Parties and to the arbitrator;

or, if the dispute under the Agreement has already been referred to arbitration under this Clause, then any related dispute may be joined or consolidated with the dispute under the Agreement.

12.6 Referral to the Expert under the Connection Agreement

The following provisions shall apply between the Parties with respect to any matter, difference or dispute under a Connection Agreement which is to be referred to an Expert:

- (a) The Expert shall in the case of a technical dispute arising prior to the Connection Works Completion Date, be the Independent Engineer and otherwise shall be appointed by the Parties, or in default of agreement upon such appointment within seven (7) days of a Party notifying the other Party of its decision to refer the matter to an Expert, the Expert shall be appointed by the President for the time being of the Institution of Engineers of Ireland in the case of a technical dispute and the President for the time being of the Institute of Chartered Accountants in Ireland in the case of a financial dispute.
- (b) The Parties will refer matters, differences or disputes in issue between them to the appropriate Expert as determined by the reasonable agreement of the Parties. If the Parties do not agree upon whether the dispute is a technical or financial dispute within seven (7) days of a Party notifying the other Party of its decision to refer the matter to an Expert, the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in Ireland.
- (c) The Expert will resolve or settle such matter or dispute in such manner as he shall in his absolute discretion see fit. The Expert shall be requested to reach his decision within thirty (30) days of the matter being referred to him. Any decision of the Expert shall be final and binding on the Parties.

- (d) Unless otherwise determined by the Expert, the costs of the Expert in settling or determining such matter or dispute shall be borne equally by the Parties.

12.7 Performance to Continue During Dispute

Performance of the Agreement shall continue during arbitration proceedings or any other dispute resolution mechanism pursuant to Clause 12. No payment due or payable by the Company or the Customer shall be withheld on account of a pending reference to arbitration or other dispute resolution mechanism except to the extent that such payment is the subject of such dispute.

For the avoidance of doubt, nothing in the Agreement is intended to prejudice the Customer's right under Section 34 of the Act to refer a dispute to the CER for determination.

13 CONFIDENTIALITY

13.1 Confidential Information

Each Party shall each 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, 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. In particular, but without limitation, the Customer shall not use or disclose any Confidential Information for the purpose of obtaining for the Customer or any Affiliate of the Customer or for any other person any contract or arrangement for the purchase or supply of electricity to any person without the prior consent of the Company.

13.2 Excluded Information

For the purposes of this Clause 13.2, the term Confidential Information shall not include information which:

- 13.2.1 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 13.2.1; or
- 13.2.2 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 13.2.2; or
- 13.2.3 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; or

- 13.2.4 is published by, or the publication of which is required or approved by a Competent Authority; or
- 13.2.5 is general information in respect of an Application in accordance with the Connection Offer Process and as further set out in the Offer Letter.

13.3 Disclosure of Confidential Information

Notwithstanding the provisions of Clause 13.1, Confidential Information may be disclosed:

- 13.3.1 by either Party 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 or for the purpose of negotiating a related further agreement provided that:
 - (a) the recipient agrees to keep the Confidential Information confidential on terms no less onerous than contained in this Clause 13, 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;
- 13.3.2 by either Party as may be ordered or required by any applicable law or a Competent Authority;
- 13.3.3 by either Party as may be required by 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, and the Party making the disclosure 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 and details of the persons to whom the Confidential Information is to be, or has been, disclosed. Where a copy of such disclosure has been supplied prior to making the disclosure, the other Party may give comments on that disclosure to the Party proposing to make it. The Party proposing to make the disclosure shall, if reasonably practicable in the time available, consult with the other Party as to any such comments and consider whether the disclosure is to be amended to take into account the comments;
- 13.3.4 by either Party as may be required to comply with the requirements of the Grid Code, Trading and Settlement Code, Metering Code or the Agreement;
- 13.3.5 by either Party as may be required by a Court, arbitrator or administrative tribunal or an expert in the course of proceedings before it to which the disclosing Party is a party;
- 13.3.6 by either Party as may be agreed in writing by the Parties prior to disclosure by the Party disclosing such Confidential Information;

- 13.3.7 by either Party as may be necessary to comply with any obligation under any licence granted to it relevant for the purposes of the Agreement; or
- 13.3.8 by the Company as may be necessary to enable the Company to operate the Network and carry out its obligations in relation thereto in each case in accordance with Prudent Electricity Utility Practice including, without limitation, in relation to the application by any person for connection to the ESB Transmission System or any amended Offer Letters to deal with changes which have arisen from a failure of the Assumptions and/or changes in Charges (including Pass Through Charges) and/or Security provided that the Company shall limit the disclosure of such Confidential Information, so that only Confidential Information which is necessary for such purposes is disclosed by the Company.

13.4 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 or expiry 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.

13.5 Survival

The provisions of this Clause 13 shall survive the termination or other expiration of the Agreement for a period of five (5) years.

13.6 Identification of Confidential Information

The Customer and the Company shall, insofar as is reasonably practicable, ensure that any copies of the Confidential Information, whether in hard copy or computerised form, will clearly identify the Confidential Information as confidential.

13.7 Public Announcements

Subject to Clause 13.3, no public announcement or statement regarding the signature, performance or termination of, or otherwise in relation to the Agreement shall be issued or made by a Party unless the other Party shall have first been furnished with a copy of the proposed announcement or statement and shall have approved it (such approval not to be unreasonably withheld or delayed).

14 ASSIGNMENT, SUB-CONTRACTING

14.1 Assignment by Customer

Subject to Clauses 14.2 and 14.4, the Customer may not assign or transfer any of its rights or obligations under the Agreement without the prior written consent of the Company who, in considering whether or not to give that

consent, may take into account the creditworthiness, relevant experience (and in respect of Connection Agreements the technical capabilities of the intended assignee and whether the Customer is also assigning the Project and the Facility to the assignee) and any other relevant matters having regard to the obligations of the Customer under the Agreement, but such consent shall nevertheless (taking into account those factors) not be unreasonably withheld, delayed nor made subject to unreasonable conditions.

14.2 Assignment by Customer to an Affiliate

Subject to Clause 14.4 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 (if required by the Company). Where the Agreement is so assigned to an Affiliate:

- 14.2.1 without prejudice to Clause 14.1, such Affiliate may not itself assign or transfer the Agreement under this Clause 14.2 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 (if required by the Company); and
- 14.2.2 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 (if required by 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 14.2.1 or Clause 14.2.2.

14.3 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 legal successor to the Company insofar as it relates to the Company's performance of its obligations under the Agreement.

14.4 Conditions on Assignment

Every assignment permitted by this Clause 14 shall be conditional upon the assignee expressly assuming the assignor's obligations under the Connection Agreement and, in the case of an assignment by the Customer, the assignment not impairing the Security given by the Customer to the Company under the Agreement.

14.5 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 (including, without limitation, activities envisaged by the Grid Code) without the prior consent of the other Party. Such sub-contracting by a Party of the performance of any obligations or duties under the Agreement shall not relieve that Party from liability for performance of such obligation or duty.

14.6 Encumbrances

Notwithstanding the provisions of this Clause 14 and subject to the rights of the other Party, either Party may enter into arrangements which create an Encumbrance to Lenders over the Agreement, the amounts payable under the Agreement or any other assets owned and/or operated by the Party entering into the Encumbrance required for the performance of the Agreement by way of security to Lenders. 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.

15 TAXES

15.1 Prices exclusive of value added taxes

All Charges and monies payable under the Agreement are exclusive of any applicable Value Added Tax (or other similar tax), sales tax or other lawful taxes or levies applicable by reason of the performance of the Agreement and 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 those sums.

16 NOTICES

16.1 Notices to be in writing

Except for notices to be given pursuant to the Grid Code (as to which, for the avoidance of doubt, the procedures provided for in the Grid Code shall apply) any notification, notice, submission, demand, consent, request or other communication given by one Party to the other under the Connection Agreement shall be in writing. Oral communications given during an Emergency shall be followed as soon as practicable by confirmatory written notices.

16.2 Method of delivery

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

16.3 Time of delivery

Any notification, notice, submission, demand, consent, request, or other communication so delivered, posted or transferred shall be deemed to have been given:

16.3.1 in the case of personal delivery, when delivered;

16.3.2 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

16.3.3 in the case of facsimile 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 at the place of receipt,

otherwise on the next following Business Day.

16.4 Address

Any such notification, notice, submission, demand, consent request, or other communications 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 the Agreement.

16.5 Change of Address

Either Party may, by notice to the other, given in compliance with this Clause 16.5, change the address or the person to which such notifications, notices, submissions, demands consents requests or other communications are to be sent or delivered.

17 MISCELLANEOUS

17.1 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.

17.2 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 any event no 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. If using all reasonable endeavours the Parties are unable within thirty (30) Business Days of first meeting to agree such terms then the matter shall be referred to an Expert pursuant to the Dispute Resolution Procedure. The Expert shall determine the changes to the Connection Agreement that are necessary to return the Parties (so far as is practicable) to the positions each would have had under the Agreement if the invalidity, unenforceability or illegality had not occurred. The Parties shall comply with the Agreement, as amended. Pending resolution of the necessary changes that need to be made, neither Party shall be deemed to be in breach of its obligations under the Agreement.

17.3 Waivers of Rights

No delay, omission or forbearance by either Party in exercising any right, power, privilege or remedy under the Agreement or the Grid 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.

17.4 No warranty

Under the Connection Agreement, neither by inspection (if any), non-rejection, approval, consents, the giving of a Declaration of Fitness, an Operational Certificate, or a modification connection certificate, 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 Works or the Customer's Equipment and the Company shall not be responsible for, nor have any liability to the Customer arising therefrom.

17.5 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 this Agreement by which rights or obligations are expressed to continue after expiry or termination of this Agreement.

17.6 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.

17.7 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. Subject to the Interface Undertaking, 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.

17.8 Representatives

The Company and the Customer will each appoint as their representative an officer (and an alternate for that officer) who is duly authorised to act on behalf of the appointing Party for the purposes of administering the Agreement and whom the other Party may consult at all reasonable times, and whose instructions, requests and decisions shall be binding on the appointing Party as to all matters pertaining to the Agreement (the "Representative"). Such Company or Customer representatives may not alter or amend the Agreement. Within five (5) Business Days of the date of the Agreement each Party shall notify the other Party of the designation of its company representative and that person's alternate and, thereafter, shall promptly notify the other Party of any subsequent change in such designation.

17.9 No Third Party Beneficiaries

The Agreement is intended solely for the benefit of the Parties to them. 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.

17.10 Change in Law

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. If at any time following the date of the Agreement a Change of Law increases the cost to the Company of performing its obligations under the Agreement, the terms of the Agreement shall be adjusted promptly to ensure that the Company is not prejudiced as a result of that Change in Law. For the purposes of this Clause 17.10 "Change of 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.

17.11 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.

17.12 Variation to General Conditions

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

18 ENTIRE AGREEMENT

18.1 Entire Agreement

The Agreement contains and expressly refers to the entire agreement between the Parties with respect to its subject matter and expressly excludes any warranty, condition or other undertaking implied at law or by custom and supersedes all previous agreements and understandings between the Parties (other than as provided for in the Agreement) with respect to its subject matter and each of the Parties acknowledges and confirms that it does not enter into the Agreement in reliance on any representation, warranty or other undertaking by the other Party not fully reflected in the Agreement.

19 GOVERNING LAW AND JURISDICTION

19.1 Governing Law

The Agreement shall be interpreted, construed and governed by the laws of the Republic of Ireland.

- 19.1.1 Subject to the terms of Clause 9.4 and the Dispute Resolution Procedure any dispute shall unless the parties otherwise agree be subject to the non-exclusive jurisdiction of the Courts of the Republic of Ireland.
- 19.1.2 Each Party further agrees that a finding, conclusion or determination of the CER or an arbitrator or expert, in accordance with the Dispute Resolution Procedure, or any judgment in any proceedings brought under or pertaining to the Agreement and or the General Conditions in the Courts of the Republic of Ireland shall be conclusive and binding upon such Party and may be enforced in the Courts of any other jurisdiction.

CONNECTION AGREEMENT CONDITIONS

Conditions applicable to Connection Agreements

20 TERM AND TERMINATION OF THE CONNECTION AGREEMENT

Clause 20 shall apply under the Connection Agreement only in respect of Customers who have signed a Connection Agreement with the Company.

20.1 Term

The term (“Term”) of a Connection Agreement means, subject to this Clause 20 of the General Conditions, normally a period of twenty (20) years starting from the Operational Date. The Term shall be specifically set out in the Offer Letter subject to Clauses 20.2 or 20.3 as appropriate.

20.2 Extension of Term

In the event that the Term of the Connection Agreement is extended beyond the term originally contemplated then the Company shall recalculate all charges set out in Clause 7.8 and Clause 7.11 to reflect the extension of the Term so that the Company may recover its ongoing costs in relation to the extension of the Term including, without limitation, those capital costs incurred by the Company in relation to the continued provision (whether by way of replacement or refurbishment) of the Company’s Connection Equipment (or any part thereof). The recalculation of all charges shall be at the discretion of the Company.

20.3 Reduction of Term

In the event that Term of the Connection Agreement is modified in accordance with Clause 21 then the Company shall recalculate all charges set out in Clause 7.8 and Clause 7.11 to reflect the reduction of the Term of the Connection Agreement. The recalculation of all charges shall be at the discretion of the Company.

20.4 Payments on Termination

Upon termination of the Connection Agreement, and without prejudice to any other subsisting rights of either Party, the Customer shall following receipt of the Company’s invoice therefore immediately pay to the Company in accordance with the provisions of this Clause 20:

- 20.4.1 an amount equal to any Charges payable in respect of the period prior to termination which have not been paid by the Customer; and
- 20.4.2 in respect of the Term an amount equal to the Charges which would have been payable by the Customer over the Term (if it had continued for the duration of the Term) less:

- 20.4.2.1 an amount equal to the Charges (excluding, for the avoidance of doubt, any interest for late payment) paid by the Customer up to the date of termination;
- 20.4.2.2 an amount equal to the amount which the Company reasonably determines would have been spent by the Company on purchasing the Company's Connection Equipment which it had not contracted to purchase as at the date of termination;
- 20.4.2.3 an amount equal to the amount which the Company determines would have been spent by the Company on purchasing Company's Connection Equipment for which it had contracted as at the date of termination, in circumstances where the Company, following termination, cancels the contract, less any costs incurred by the Company under that contract and/or in consequence of its cancellation;
- 20.4.2.4 any other monies owing to the Company either arising from termination or otherwise under the Connection Agreement.

Such amount shall be paid in accordance with the provisions of Clause 7 following receipt of the Company's invoice therefor provided that if the amount is negative the Company shall refund to the Customer that negative amount as soon as is reasonably practicable. Where the Company is in the course of preparing for or carrying out the Company's Connection Works the Company may cease such preparations or discontinue carrying out such works as soon as is reasonably practicable for the Company.

20.5 Alternative Use/Disposal

The Company shall, following termination of the Connection Agreement use all reasonable endeavours to find an alternative use for, or dispose of, the Company's Connection Equipment no later than one year after such termination. The Company shall refund to the Customer:

- 20.5.1 an amount equal to the value (or the Company's estimate thereof) of any part of the Company's Connection Equipment used (or to be used) for any alternative use (less (i) any capital expenditure incurred by the Company to refurbish such part of the Company's Connection Equipment for that alternative use (and any cost of funding the same) and (ii) the Company's storage and handling costs (as reasonably determined by the Company) in respect of that equipment (or the Company's estimate thereof));
- 20.5.2 the proceeds (or the Company's estimate thereof) of the disposal of any part of the Company's Connection Equipment (less (i) the Company's costs and expenses (or the Company's estimate thereof) in complying with its obligations under this Clause 20) and (ii) the Company's storage and handling costs (as reasonably determined by the Company) in respect of that equipment (or the Company's estimate thereof)).

20.6 Notice of De-Energisation and Disconnection

Subject to Clause 20, where the Connection Agreement has been terminated by the Company it may give notice of De-Energisation and Disconnection to the Customer whereupon the following provisions will apply:

20.6.1 the Company acting in accordance with Prudent Electricity Utility Practice shall De-Energise and Disconnect the Facility and the Company and the Customer shall make arrangements between them to remove any of the Company's Connection Equipment from the Customer's Switching Station Site 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 as required by a Competent Authority; and

20.6.2 the Customer shall be obliged to pay to the Company immediately the full amount of any monies outstanding which shall include any Charges and any other monies owing to the Company either arising from termination or otherwise under the Connection Agreement.

20.7 Survival

The provisions of this Clause 20 shall survive termination of the Connection Agreement. The relevant provisions of the Connection Agreement shall survive expiry or termination of the Connection 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 Connection Agreement. The expiry or termination of the Connection 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 Connection Agreement (including, without limitation any proceedings which have been commenced under Clause 12) or any other agreement between the Parties in which rights or obligations are expressed to continue after expiry or termination of the Connection Agreement.

20.8 Termination Due to lack of Consents (excluding Operational Consents)

If the Consents Issue Date does not occur by the Consents Issue Date Longstop Date because either Party has not obtained the Consents (excluding the Operational Consents), the Customer or the Company may terminate the Connection Agreement by giving notice of termination to the other Party whereupon the Connection Agreement shall terminate if the other Party is satisfied that a failure of Consents (excluding the Operational Consents) has occurred despite the terminating Party's best efforts to secure the Consents (excluding the Operational Consents) acting in accordance with Prudent Electricity Utility Practice, on the expiry of three (3) Business Days following delivery of such notice. If a Party is not satisfied that a failure of Consents (excluding the Operational Consents) has occurred then that Party may refer the matter to resolution by an Expert in accordance with the provisions of Clause 12.

20.9 Termination due to lack of Operational Consents

If an Operational Consent required by the Company is not obtained within a reasonable period of time to enable the Company complete the Company's Connection Works within the Connection Works Completion Period, then subject to the provisions of Clause 6.4 of the Connection Agreement, either Party may terminate the Connection Agreement by notice to the other Party.

20.10 Payments on Termination

Without prejudice to any other subsisting rights of either Party, where termination occurs under Clause 20, the Customer shall immediately on such termination pay the Company the costs and/or expenses reasonably incurred by the Company in obtaining and endeavouring to obtain Consents under the Connection Agreement and in meeting any conditions attached to such Consents and any other costs or expenses reasonably incurred by the Company.

20.11 Termination due to abandonment

Subject to the abandonment of the Project prior to the Operational Date or if earlier, the occurrence of the Commissioning Tests Completion Date Longstop Date, the Company may declare an Event of Default to terminate the Connection Agreement at any time by giving notice of termination to the Customer whereupon the Connection Agreement shall terminate, if the Customer is satisfied that an abandonment of the Project has occurred or that the Commissioning Tests Completion Date Longstop Date has occurred. If a Party is not satisfied that an abandonment of the Project has occurred or that the Commissioning Tests Completion Date Longstop Date has occurred, then that Party may refer the matter for resolution by an Expert in accordance with Clause 12.

Without prejudice to any other subsisting rights of either Party, the Customer shall immediately on such termination pay the Company any outstanding Charges as set out in the Connection Agreement and in the Offer Letter.

20.12 Customer Termination

The Customer may terminate the Connection Agreement at any time after the Operational Date (other than for default of the Customer) by giving two (2) years notice of termination to the Company whereupon the Connection Agreement shall terminate on the expiry of the two year notice period. Without prejudice to any other subsisting rights of either Party, if the Connection Agreement is terminated pursuant to this Clause 20, the Customer shall immediately on such termination pay the Company any outstanding Charges.

20.13 Failure of Key Parameters

Where there is a failure of a Key Parameter, the failure shall be an Event of Default by the Customer and the Connection Agreement shall terminate. The Customer shall pay the Charges and the Company shall draw down the MEC Capacity Bond Amount or the Specified Amount (as appropriate) under the MEC Capacity Bond. If the Customer is not satisfied that there has been a failure of a Key Parameter, then the Customer may refer the matter for resolution by an Expert in accordance with Clause 12.

21 MODIFICATIONS TO CONNECTIONS

This Clause 21 shall apply to Customers connected to the ESB Transmission System under the Connection Agreement only.

21.1 Restriction on Modifications

No Modification may be made by or on behalf of either Party except in accordance with the terms of this Clause 21 and the Connection Offer Process and subject always to the provisions of the Grid Code.

21.2 Customer Modification

If the Customer wishes to make a Modification to the Connection the Customer shall complete and submit to the Company an application for a Modification in accordance with the Connection Offer Process. The Company will consider the application for a Modification and respond with an Offer Letter to the Customer in accordance with the Connection Offer Process.

21.3 Company Modification

The following provisions shall apply to a Modification of all or part of the ESB Transmission System by the Company:

21.3.1 Notification by Company:

If the Company wishes to make a Modification it shall notify to the Customer such details of the proposed Modification as are reasonably required by the Customer to evaluate the implications of the proposed Modification for the Facility;

21.3.2 Modification Discussions:

If required by the Customer, the Parties shall meet to discuss in good faith the implications of the proposed Modification for the Facility, in particular, any works in respect of, or any alteration in operation of, the Facility which the Customer shall, in accordance with Prudent Electricity Utility Practice, carry out as a result of the proposed Modification;

21.3.3 No Compensation:

Provided that the Modification made by the Company is in accordance with Prudent Electricity Utility Practice, the Company shall have no obligation to compensate the Customer for any works undertaken by the Customer in respect of the Facility or any alteration in the manner of its operation as a consequence of the Company's Modification and shall not be liable, in any way whatsoever, to the Customer for any loss, costs, inconvenience or other detrimental consequences of whatever nature incurred by the Customer.

21.4 Obligation to Assist

Whether any works in respect of, or alterations in operation of, the Facility are to be made at the request of the Company or the Customer, the Company undertakes to the Customer to provide such advice and assistance as the Customer reasonably requests and which is within the Company's reasonable capability to provide to enable the Customer to adequately assess the implications of those works or alterations including, without prejudice to the generality of the foregoing, the feasibility of the works or alterations. Except as provided in Clause 21.5, the Company's obligation to provide advice and assistance pursuant to this Clause 21.4 is subject to the Company receiving payment of its reasonable costs on terms to be agreed in advance between the Parties where such costs are not governed by the Connection Offer Process. The Company shall as far as is reasonably practicable provide the Customer with an estimate of its likely costs in advance of such costs being incurred.

21.5 Costs of Assistance

If any works in respect of, or alterations in operation of, the Facility, may be required by Prudent Electricity Utility Practice as a result of a Modification proposed by the Company, then the Company shall provide advice and assistance referred to in Clause 21.4 free of charge.

21.6 Modifications by other Customers

Where another customer requests a modification to a connection that affects the Customer's Connection or Facility the provisions of Clause 21.3 shall apply (*mutatis mutandis*) with the other customer making the request through the Company.

22 DE-ENERGISATION UNDER THE CONNECTION AGREEMENT

This Clause 22 shall apply only to Customers connected to the ESB Transmission System under the Connection Agreement.

22.1 Exercise of Rights

The Company shall exercise its rights under the Connection Agreement to De-Energise in accordance with Prudent Electricity Utility Practice and the Operating Instructions and it shall subsequently Energise as soon as reasonably practicable after:

- 22.1.1 in the case of a De-Energisation under Clause 22.6, the Company is satisfied that the circumstances leading to De-Energisation will not be repeated; and
- 22.1.2 in the case of any other De-Energisation, the circumstances leading to De-Energisation cease to exist subject to the Company being satisfied as to the completion of any testing required under Clause 22.9.1 and otherwise in accordance with Prudent Electricity Utility Practice and the Operating Instructions.

22.2 Right to De-Energise

De-Energisation may be effected at any time and from time to time if and to the extent that the Company, acting in accordance with Prudent Electricity Utility Practice, considers it necessary. In particular (without limiting the generality of the immediately preceding sentence), De-Energisation may occur as provided for under the Grid Code or in any of the following circumstances:

- 22.2.1 on the occurrence of Force Majeure, if acting in accordance with Prudent Electricity Utility Practice, the Company considers that the circumstances require it; and/or
- 22.2.2 for the purpose of making new connections to the Network; and/or
- 22.2.3 for the purpose of locating a fault on and/or maintenance and/or repair and/or replacement of the whole or part of and/or modification of and/or addition and/or testing those parts of the Network which are necessary to sustain parallel operation of the Facility and the Network; and/or
- 22.2.4 if necessitated by an Emergency on or adjacent to the Network or the need to mitigate the effects of any material danger or financial loss to any person or property associated with or adjacent to the Network.

22.3 Operational Requirements of Customer

In making any decision as to De-Energisation under the Connection Agreement, and prior to effecting any such De-Energisation, the Company shall in accordance with Prudent Electricity Utility Practice (unless De-Energisation is effected pursuant to Clauses 22.5, 22.6, 22.7 or 22.8), have due regard to the operational requirements of the Customer and will give the Customer such length of notice as is reasonably practicable, unless:

- 22.3.1 Force Majeure prevents it from so doing; and/or
- 22.3.2 De-Energisation must be effected immediately by reason of an Emergency or pursuant to the provisions of the Grid Code.

22.4 Liability

The Company shall have no liability whatsoever to the Customer arising from De-Energisation permitted by this Clause 22.

22.5 De-Energisation Consequent to a Breach of the Grid Code

If the Customer fails to comply with an obligation of the Customer under the Grid Code and the failure, in the Company's opinion, has a detrimental material effect on the Network, then notwithstanding the provisions of Clause 9 the Company may De-Energise upon the expiry of at least twenty-four (24) hours prior notice to the Customer.

22.6 De-Energisation Consequential to a Breach of the Connection Agreement

If:

- 22.6.1 the Customer fails to comply with the terms of any valid notice served on it by the Company in accordance with Clause 8.2.1 or is in breach of any undertaking given in accordance with Clause 8.2.2; or
- 22.6.2 five (5) Business Days have elapsed since the date of any valid notice served on the Customer in accordance with Clause 8.2.2 and no undertaking has been given by the Customer in accordance with Clause 8.2.2; or
- 22.6.3 an Event of Default has occurred,

the Company may De-Energise upon the expiry of at least two (2) Business Days prior notice to the Customer.

22.7 De-Energisation without Notice

If a breach of the nature referred to in Clause 8, or an Event of Default, places the Company in breach of any legal or statutory or regulatory obligation, the Company may De-Energise immediately and without notice to the Customer and notwithstanding the provisions of Clause 8.

22.8 De-Energisation at the Request of the Customer

The Company shall De-Energise (at the cost of the Customer) when instructed to do so in writing by the Customer as soon as reasonably practicable.

22.9 Costs of De-Energisation

If De-Energisation is effected pursuant to Clauses 22.5, 22.6, 22.7 or 22.8 (but not otherwise) then:

- 22.9.1 the Company may, at its discretion, carry out or require that the Customer carries out such testing of the Customer's Equipment as the Company determines to be appropriate which shall be undertaken at the expense of the Customer; and
- 22.9.2 the Customer shall pay in full to the Company all reasonable costs, expenses and liabilities incurred in connection with, and indemnify the

Company (in a form satisfactory to the Company) against and agree to take over all claims made/or likely to be made against the Company arising from the De-Energisation including the sums for which the Customer is responsible under Clause 22.9.1 and any other costs associated with the De-Energisation for which the Customer is liable under the Connection Agreement. All such costs, expenses and liabilities are payable by the Customer, whether or not De-Energisation occurs, and shall in any event be payable prior to any subsequent Energisation.

The Company shall provide, at the request of the Customer, reasonable details of any costs, expenses, liabilities or claims for which the Customer is liable under this Clause 22.9.

23 INSURANCES UNDER THE CONNECTION AGREEMENT

The following Clause 23 shall apply under the Connection Agreement.

23.1 Customer's Insurance Coverages

The Customer shall take out and maintain or procure the taking out and maintenance of:

- (a) at all times from the date on which the Customer commences any works in relation to the Facility until, and including, the Connection Date, the insurances set out in the Connection Agreement; and
- (b) at all times from, but excluding, the Connection Date, the insurances set out in the Connection Agreement;

in both cases in accordance with the levels set out in the applicable Schedule of the Connection Agreement and which insurances, where set out in the applicable Schedule, shall be extended to cover the Company's personnel and persons authorised by the Company while they are present at the Facility. For the avoidance of doubt, to the extent that the Customer obtains any insurance in accordance with the requirements of one of the other Related Agreements which insurance meets the requirements of insurance to be obtained under the Connection Agreement, then the Customer shall have met its obligations under the Connection Agreement.

Evidence of Insurance Cover

- (a) The Customer shall furnish to the Company copies of insurance policies effecting the insurance referred to in this Clause 23 in terms (including levels of excess, limits of cover and territory) reasonably acceptable to the Company and from time to time (at the request of the Company) shall furnish proof that all relevant premia have been paid, that the relevant policy or policies remain in existence and that the Company's interest is endorsed thereon.

- (b) If at any time the Customer considers that any of the insurances specified in this Clause 23 can only be obtained at unreasonable commercial rates of premium, it may, by notice in writing to the Company, request that the Parties should meet in order to discuss alternative risk financing options.
- (c) To the extent that the Customer is of the opinion that instead of insuring on the commercial market alternative arrangements would be adequate to meet the requirements of the Customer, the Customer may not later than twenty-one (21) Business Days before the next renewal date and thereafter annually notify the Company of its proposals and subject to satisfying the Company with respect to the proposed arrangements, then the Company may permit the Customer to self-insure or to use a captive insurer as the case may be.

23.2 Insurance Coverages

The level of each insurance set out in the Connection Agreement shall be reviewed:

- (a) on the review date specified in the Connection Agreement for that insurance;
- (b) if the Customer becomes aware of a happening or event which, in accordance with Prudent Electricity Utility Practice, requires the level of any insurance in the Connection Agreement to be reviewed (in which case the Customer shall notify the Company of that happening or event); or
- (c) if the Company notifies the Customer that it has become aware of a happening or event which, in accordance with Prudent Electricity Utility Practice, requires the level of any insurance in the Connection Agreement to be reviewed.

The Parties shall, within the twenty (20) Business Day period following the requirement for a review of insurances arising under this Clause 23.2, meet and consult in good faith, as to the then appropriate levels of insurance in accordance with Prudent Electricity Utility Practice. If within that period the Parties reach agreement in writing as to the levels of insurance which thereafter applies for each insurance set out in the Connection Agreement then the applicable insurance rates of the Connection Agreement shall be deemed to be amended in accordance with such agreement. If within that twenty (20) Business Day period the Parties do not reach such agreement as to the levels of insurance to thereafter apply, then the Company may notify its determination (acting reasonably) as to the appropriate levels of insurance for each insurance set out in the Connection Agreement in accordance with Prudent Electricity Utility Practice.

23.3 Company's Insurance

The Company shall, on request from the Customer made not more than once in any calendar year, provide to the Customer reasonable details as to

insurances held by the Company which are, in the opinion of the Company (acting reasonably), relevant to the Connection Agreement.

24 SECURITY UNDER THE CONNECTION AGREEMENT

The following Clause 24 shall apply as a precondition to the Connection Agreement only in respect of Customers connected to the ESB Transmission System.

24.1 Connection Charge Bond

24.1.1 As Security for the payment of the Connection Charge, the Customer shall procure that the Company receives a bond or bonds (from a financial institution of not less than the Approved Rating) being in all material respects in the same form as is set out in the applicable Schedule of the Connection Agreement as Security for the fulfilment by the Customer of its Connection Charge obligations under the Connection Agreement. The expiry date of the Connection Charge Bond shall not be less than six (6) months) after the Operational Date or not be less than twelve (12) months after the Scheduled Operational Date Longstop Date and shall be for such amount as is required under the Connection Agreement being not greater than the Maximum Sum.

24.1.2 Where:

24.1.2.1 the uncalled amount of all Connection Charge Bonds is less than the Maximum Sum; or

24.1.2.2 the status of the corporate entity or the financial institution from whom the Company has received a Connection Charge Bond is reduced below the Approved Rating,

the Company may where Clause 24.1.2.1 applies make, and where Clause 24.1.2.2 applies shall be deemed to have made, a further request in accordance with Clause 24.1.1, whereupon the Customer shall forthwith procure that the Company receives a bond, or a further or replacement bond on, and subject to, the terms and conditions of Clause 24.1.1 such that the uncalled amount of all Connection Charge Bonds (excluding any bond to which Clause 24.1.2.2 applies) equals, where Clause 24.1.2.1 applies, such amount as is notified by the Company in its request, being an amount not greater than the Maximum Sum and, where Clause 24.1.2.2 applies such amount as was notified by the Company in its last request under this Clause 24.1, being an amount not greater than the Maximum Sum. The Company shall, as soon as the Customer has met its obligations under this Clause 24.1.2 in relation to any bond to which Clause 24.1.2.2 applies release or cancel such bond.

The Company shall recalculate the amount of the Connection Charge Bond every March and September (or at such other times as

the Company may notify the Customer) and shall advise the Customer in writing of any change in bond coverage required arising from such recalculation.

24.1.3 The Customer may at any time (including where the uncalled amount of all Connection Charge Bonds exceeds the Maximum Sum) by notice to the Company require that any Connection Charge 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 bond, or a further or replacement bond on, and subject to, the terms and conditions of Clause 24.1.1 such that the uncalled amount of all Connection Charge Bonds equals the lesser of the last amount notified by the Company in a request under this Clause 24.1 and the Maximum Sum.

24.2 MIC Capacity Bond

24.2.1 The Customer acknowledges that there are constraints on the Network that require that the Customer seeks a quotation solely for its Maximum Import Capacity in relation to the Facility contracted to be delivered by the Operational Date and that it does not seek to reserve additional capacity on the Network for later developments of the Facility or otherwise. The Customer further acknowledges that the offer made by the Company in the Offer Letter once accepted will have a direct impact on the Company and the Company shall be entitled to draw down the Specified Amount under the MIC Capacity Bond where the Customer terminates the agreement under Clause 20 or as applicable under Clause 24.2.3.

24.2.2 Where a Generation Unit is part of the Customer's Facility, the Company at its sole discretion may waive the requirement for the MIC Capacity Bond.

24.2.3 Non-Utilisation of additional Maximum Import Capacity

24.2.3.1 The Customer may request a reduction in Maximum Import Capacity on 18 months notice after the Connection Date (or as otherwise determined by CER policy) in the event that the Customer does not require or use the additional Maximum Import Capacity reserved by the Customer without incurring any liability to the Company.

24.2.3.2 In the event that the Customer wishes to reduce the Maximum Import Capacity prior to the passing of eighteen (18) months from the Connection Date the Company may charge the Customer for the loss of Transmission Use of System revenue for the period up to eighteen (18) months from the Connection Date.

24.2.3.3 The Company is entitled to draw down on the MIC Capacity Bond if the Customer fails to pay for the loss of the Transmission Use of System revenue within one (1) month of the Company issuing the invoice for the loss of the Transmission Use of System revenue.

24.2.3.4 If another customer wishes to use the unused capacity not required by the Customer during the 18 month period from the Connection Date, the Company will draw down on the MIC Capacity Bond for the unused capacity during the 18 month period from the Connection Date but will refund any sums due in proportion to the amount of usage by any other customer.

24.2.4 The Customer shall procure that the Company receives a bond or bonds (from a financial institution of not less than the Approved Rating) being in all material respects in the same form as is set out in the applicable Schedule of the Connection Agreement, as Security for the fulfilment by the Customer of its MIC obligations under the Connection Agreement. The expiry date of the MIC Capacity Bond shall not be less than two (2) years from the Operational Date and shall be for such amount as is required under the Connection Agreement.

24.2.5 Where the status of the corporate entity or the financial institution from whom the Company has received the MIC Capacity Bond is reduced below the Approved Rating, the Company shall be deemed to have made a further request in accordance with Clause 24.2.4 whereupon the Customer shall forthwith procure that the Company receives a bond, or a further or replacement bond on, and subject to, the terms and conditions of Clause 24.2.4, such that the uncalled amount of all bonds (excluding any bond to which Clause 24.2.4 applies) equals such amount as was notified by the Company in its last request under this Clause 24.2.5. The Company shall, as soon as the Customer has met its obligations under this Clause 24.2.5 in relation to any bond to which Clause 24.3.4 applies (which has been superseded) release or cancel such bond.

24.2.6 The MIC Capacity Bond Amount is determined by the Company in accordance with the following formula:

$$X * Y * 18 \text{ months}$$

Where:

X = the incremental Maximum Import Capacity requested by the Customer in their Application in MW

Y = the monthly network capacity charge rate for Demand as set out the Company's tariff statement as applicable to the Customer in €/MW/month.

The Company shall recalculate the MIC Capacity Bond Amount every March and September (or at such other times as the Company may notify the Customer) and shall advise the Customer in writing of any change in bond coverage required arising from such recalculation.

- 24.2.7 The Company may at any time (including where the uncalled amount of the MIC Capacity Bond is insufficient to meet its requirements under Clause 24.2.6) by notice to the Customer require that any MIC Capacity Bond be replaced or changed by an amount advised to the Customer in writing by the Company whereupon the Customer shall do so within five (5) Business Days.

24.3 MEC Capacity Bond

- 24.3.1 The Customer acknowledges that there are constraints on the Network that require that the Customer seeks a quotation solely for its Maximum Export Capacity in relation to the Facility contracted to be delivered by the Scheduled Operational Date and that it does not seek to reserve additional capacity on the Network for later developments of the Facility or otherwise. Where the Customer fails to pass the Capacity Tests or fails to submit a Capacity Certificate in accordance with the Connection Agreement or fails to submit a Capacity Certificate for the Maximum Export Capacity, the Company shall be entitled to draw down the Specified Amount under the MEC Capacity Bond.
- 24.3.2 The Customer further acknowledges that the offer made by the Company in the Offer Letter once accepted will have a direct impact on the Company and that termination of the Connection Agreement by the Customer in the circumstances detailed in Clause 20 herein will necessitate a draw down of the MEC Capacity Bond Amount under the MEC Capacity Bond.
- 24.3.3 As Security therefore for the commitment of the Customer to complete certain of its obligations under the Connection Agreement, the Customer shall procure that the Company receives a bond or bonds (from a financial institution of not less than the Approved Rating) being in all material respects in the same form as is set out in the applicable Schedule of the Connection Agreement. The expiry date of the MEC Capacity Bond shall not be less than six (6) months after the Operational Date or not less than twelve (12) months after the Scheduled Operational Date Longstop Date and shall be for such amount as is requested by the Company.

24.3.4 Where the status of the corporate entity or the financial institution from whom the Company has received the MEC Capacity Bond is reduced below the Approved Rating, the Company shall be deemed to have made a further request in accordance with Clause 24.3.3, whereupon the Customer shall forthwith procure that the Company receives a bond, or a further or replacement bond on, and subject to, the terms and conditions of Clause 24.3.3, such that the uncalled amount of all bonds (excluding any bond to which this Clause 24.3.4 applies) equals such amount as was notified by the Company in its last request under this Clause 24.3.4. The Company shall, as soon as the Customer has met its obligations under this Clause 24.3.4 in relation to any bond to which this Clause 24.3.4 applies (which has been superseded) release or cancel such bond.

24.3.5 The MEC Capacity Bond Amount is determined by the Company in accordance with the following formula:

$$A * C$$

Where:

$$A = \text{€}10,000.00/\text{MW}$$

C = the larger of either the First Quoted Maximum Export Capacity or the Maximum Export Capacity, as applicable.

The Company shall recalculate the MEC Capacity Bond Amount every March and September (or at such other times as the Company may notify the Customer) and shall advise the Customer in writing of any change in bond coverage required arising from such recalculation.

24.3.6 The amount of money that is recoverable by the Company from the Customer as a result of the failure of the Customer either (a) to pass the Capacity Test or (b) to meet its Capacity Certificate obligations shall be the difference between: $A * C$ and $A * X$

Where X = either (1) the maximum export capacity of the Generation Unit(s) as determined by the results of the Capacity Test or (2) the maximum export capacity stated in the Capacity Certificate or if none then zero. There difference between $A * C$ and $A * X$ shall be the Specified Amount.

24.3.7 The Company may at any time (including where the uncalled amount of the MEC Capacity Bond is insufficient to meet its requirements under Clause 24.3.5) by notice to the Customer require that any MEC Capacity Bond be replaced or changed by an amount advised to the Customer in writing by the Company whereupon the Customer shall do so within five (5) Business Days.

24.4 Decommissioning and Reinstatement Bond

24.4.1 As Security for the payment of the Decommissioning and Reinstatement Charge, the Customer shall prior to implementation of the

Commissioning Instructions procure that the Company receives a bond or bonds (from a financial institution of not less than the Approved Rating) being in all material respects in the same form as is set out in the applicable Schedule of the Connection Agreement (the expiry date of which is not less than twelve (12) months, nor more than 48 months from its date of issue) and being for such amount as is notified by the Company in its request, such being an amount not greater than the Decommissioning and Reinstatement Charge.

24.4.2 Where:

24.4.2.1 the uncalled amount of all Decommissioning and Reinstatement Bonds is less than the Decommissioning and Reinstatement Charge; or

24.4.2.2 the status of the corporate entity or financial institution from whom the Company has received a Decommissioning and Reinstatement Bond is reduced below the Approved Rating,

the Company shall be deemed to have made, a request for bond or a further bond and the Customer shall forthwith procure that the Company receives a bond, or a further or replacement bond on, and subject to, the terms and conditions of Clause 24.4.1 such that the uncalled amount of all Decommissioning and Reinstatement Bonds (excluding any bond to which Clause 24.4.2.2 applies) equals, where Clause 24.4.2.1 applies, such amount as is notified by the Company being an amount not greater than the Decommissioning and Reinstatement Charge, and where Clause 24.4.2.2 applies such amount as was notified by the Company in its last notification being an amount not greater than the Decommissioning and Reinstatement Charge. The Company shall, as soon as the Customer has met its obligations under this Clause 24.4.2 in relation to any bond to which Clause 24.4.2.2 applies release or cancel such bond.

24.4.3 The Customer may, at any time by notice to the Company require that any Decommissioning and Reinstatement 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 bond, or a further or replacement bond on, and subject to, the terms and conditions of Clause 24.4.1 such that the uncalled amount of all Decommissioning and Reinstatement Bonds equals the lesser of the last amount notified by the Company and the Decommissioning and Reinstatement Charge.

24.5 Reduction in rating

The Customer shall as soon as it becomes aware of the same or it becomes a matter of public knowledge notify the Company in the event that the status of the corporate entity or financial institution from whom the Company has received a Connection Charge Bond or a Decommissioning and Reinstatement Bond is reduced below the Approved Rating.

24.6 Replacement prior to expiry

If, twenty (20) Business Days prior to the expiry date of a Connection Charge Bond, a MIC Capacity Bond, a MEC Capacity Bond or a Decommissioning and Reinstatement Bond, the Customer has not met all its obligations to the Company:

- 24.6.1 in the case of a Connection Charge Bond, to pay the total Connection Charge;
- 24.6.2 in the case of a MIC Capacity Bond, to complete the Connection and utilize and pay for the Maximum Import Capacity in accordance with the provisions of the Connection Agreement; and
- 24.6.3 in the case of a MEC Capacity Bond, to complete the Connection and provide the Maximum Export Capacity in accordance with the provisions of the Connection Agreement; and
- 24.6.4 in the case of a Decommissioning and Reinstatement Bond, to pay the Decommissioning and Reinstatement Charge,

the Customer shall procure that the Company receives a replacement bond forthwith (and in any event no later than ten (10) Business Days prior to the expiry of the relevant 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 one (1) year after the expiry date of the existing bond and such replacement bond shall for all purposes be treated as if it were a Connection Charge Bond, a MIC Capacity Bond, MEC Capacity Bond or a Decommissioning and Reinstatement Bond, as the case may be.

24.7 Obligation to procure

Every obligation of the Customer under this Clause 24 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.

24.8 Demand under Connection Charge Bond

In the event that the Customer fails to make any payment of the Connection Charge in accordance with the provisions of the Connection Agreement, the Company shall make a demand for payment under any Connection Charge Bond of an amount equivalent to the Connection Charge the Customer has failed to pay.

24.9 Demand under MEC Capacity Bond

In the event that the Customer fails to comply with the relevant provisions of this Agreement with respect to the Capacity Certificate and/or the Capacity Tests and/or non completion of the Connection, the Company can make a demand for payment under any MEC Capacity Bond in the amount of the Specified Amount and/or the MEC Capacity Bond Amount, as appropriate. In the event that the Customer fails to achieve the Operational Date by the Scheduled Operational Date Longstop Date, the Company will be entitled,

subject to obtaining the approval of the CER, to draw down on the MEC Capacity Bond.

24.10 Demand under MIC Capacity Bond

In the event that the Customer fails to comply with the relevant provisions of this Agreement and/or non completion of the Connection, the Company shall make a demand for payment under any MIC Capacity Bond in accordance with Clause 24.2.3.

24.11 Demand under Decommissioning and Reinstatement Bond

In the event that the Customer fails to make payment of the Decommissioning and Reinstatement Charge in accordance with the provisions of the Connection Agreement, the Company shall make a demand for payment under any Decommissioning and Reinstatement Bond.

24.12 Redelivery of Security

Following termination of this Agreement the Company shall:

- 24.12.1 once all the Connection Charge has been paid in accordance with the Connection Agreement release or cancel any Connection Charge Bond;
- 24.12.2 once the Operational Date has been achieved, then no later than six (6) months thereafter, release or cancel the MEC Capacity Bond;
- 24.12.3 once the Decommissioning and Reinstatement Charge has been paid in accordance with this Agreement release or cancel any Decommissioning and Reinstatement Bond.

24.13 Further Security

If the credit rating of the issuer of any Connection Charge Bond, the MIC Capacity Bond, MEC Capacity Bond or Decommissioning and Reinstatement Bond falls below the Approved Rating, the Company may require the Customer to replace such issuer with an entity possessing a credit rating which is equal to or exceeds the Approved Rating.

USE OF SYSTEM AGREEMENT CONDITIONS

Conditions applicable to Use of System may be found in the document entitled Connection Agreement and the document entitled General Conditions of Connection and Use of System. Additional terms and conditions may be developed in future.

[To be developed]