

# Standard Connection Agreement\*

General Conditions for Connection of Industrial and Commercial Customers and Generators to the Distribution System also apply.

[GV\_NAME\_LINE]  
[GV\_GEN\_NAME\_LINE],[GV\_SINGLE\_LINE\_ADDR\_PREM]

Connection Agreement Number: [GV\_NOTIFNUM]

## Customer Copy – Important

Please retain this for future reference.

## Return Copy – Important

This must be signed and returned with full payment.

\*Applying to:

- Customer Connections at Low and Medium Voltage of Maximum Import Capacities 100 kVA and greater (Classes A2, A3, A4)
- Customer Connections at High Voltage (Class B1)
- Embedded Generating Plant (Classes A1, A2, A3, A4, A5, B2, B3 and B4)

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**This Agreement is made**

**BETWEEN:**

(1) **ESB Networks Ltd.**, whose registered office is at Clanwilliam House, Clanwilliam Place, Dublin 2 (hereinafter called the “Company”); and

(2) **[GV\_NAME\_LINE]** whose registered office is at **[GV\_SINGLE\_LINE\_ADDR]** (hereinafter called the “Customer”).

**WHEREAS:**

The Customer has applied to the Company for and the Company has agreed to the connection of the Facility to the Distribution System (via the Company’s Connection Equipment) at the Connection Point, subject to the terms and conditions of this Agreement.

**IT IS HEREBY AGREED** as follows:

## **1.0 CONDITIONS APPLICABLE**

1.1 This Agreement incorporates and includes all of the Schedules and Appendices hereto and the Company’s General Conditions for Connection of Industrial and Commercial Customers and Generators to the Distribution System (hereinafter referred to as the “General Conditions”) and the Quotation Letter with this Agreement. Defined terms used in this Agreement shall bear the meanings given to those terms in the General Conditions.

## **2.0 AGREEMENT TO CONNECT**

2.1 Subject to the terms and conditions of this Agreement the Company agrees to the Facility being connected and remaining connected to the Distribution System at the Connection Point and the Company’s Connection Equipment and the Customer’s Equipment remaining Energised from the Connection Agreement Effective Date of the Facility for the duration of the Agreement. Site specific details of the Customer’s connection are set out in Schedule 1.

2.2 This Agreement (other than this Clause 2.0) is in all respects conditional upon and subject to the conditions set out in Schedule 3, Section 1. Conditions precedent to operation are set out in Schedule 3, Section 2.

2.3 When the conditions specified in **Clause 2.2** have been met, or waived by the Company (acting reasonably), the Company shall notify the Customer. If at any time after connection there ceases to be in effect a Supply Agreement or where applicable, a TUoS Agreement, the Company may terminate this Agreement by notice in writing to the Customer. The Customer shall immediately pay to the Company the amount calculated in accordance with **Clause 17.0** of the General Conditions and the Company shall have no liability to the Customer arising from such termination.

### 3.0 REPRESENTATIONS

- 3.1 Both Parties represent and warrant to the other on an ongoing basis throughout the Term that they have full power and authority to enter into and perform this Agreement and the execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which that Party is a party or any judgement, order, statute, or regulation which is applicable to that Party.

### 4.0 CONNECTION WORKS

*[Only applicable if new connection or extension]*

- 4.1 Each Party will carry out their own respective Connection Works in accordance with this **Clause 4.0, and the Quotation Letter**. For the avoidance of doubt, the Customer's Connection Works shall include the Terminal Sub-Station (if applicable) at no cost to the Company.
- 4.2 The Company shall prepare and provide the following specifications to the Customer:
- 4.2.1 the civil works, electrical and building services specification for the Terminal Sub-Station building and compound (if applicable) including services ("Terminal Sub-Station Works");
- 4.2.2 the requirements and design for any equipment to be provided by the Customer under this Agreement which is not already specified in the Distribution Code or the documents listed in the Annexe "Supplementary Publications" of the Distribution Code, such requirements to be reasonably consistent with the Distribution Code and Good Industry Practice.
- 4.3 Each Party shall, immediately following satisfaction of the conditions precedent to the Agreement set out in Schedule 3, use its reasonable endeavours to obtain (and maintain) all such Consents as shall be necessary to enable their respective Connection Works to be completed. Any costs or reasonable expenses incurred by the Company in obtaining such Consents or meeting any conditions attached to such Consents shall be for the account of the Customer (in addition to the Connection Charges set out in the Quotation Letter) who shall, on receipt of the Company's invoice in respect of such costs and/or expenses, pay to the Company the amount of the invoice in accordance with the payment provisions contained in **Clause 3.0** of the General Conditions (and, for the avoidance of doubt, regardless of whether the Company's Connection Works are or can be completed and/or whether Energisation has occurred or can occur). The Company (acting in accordance with Good Industry Practice) shall incur only such costs and/or expenses as are reasonably necessary in the circumstances.
- 4.4 The Customer acknowledges that the Company has quoted the costs of the Company's Connection Works to the Customer based on the assumptions set out in the Quotation Letter ("the Assumptions"). If at any time prior to completion of the Connection Works, the Company reasonably determines that any Assumption has not been, or is unlikely to be, met (for whatever reason) then without prejudice to the rights under **Clause 4.3**:
- 4.4.1.1 the Parties shall meet as soon as reasonably practicable to discuss alternative options available and the costs and expenses thereof;

- 4.4.1.2 and the Company shall prepare and submit to the Customer a revised Quotation Letter containing an alternative proposal which it is reasonably anticipated, will enable the Assumptions to be met, and/or the required Consents to be obtained but which is not, in the opinion of the Company (acting reasonably), likely to have adverse long term financial or technical implications for the Company.
- 4.4.2 If the Customer notifies the Company within twenty (20) Business Days of receiving the Company's proposal that it is agreeable to the proposal then the Quotation Letter shall be deemed to be replaced with the revised Quotation Letter and the details in Schedule 1 shall (to the extent necessary) be deemed to be amended in accordance with that revised Quotation Letter and the provisions of this **Clause 4.0** shall apply mutatis mutandis to such alternative proposal.
- 4.5 The Customer agrees to grant to the ESB at the Company's request, for a nominal amount of one Euro (€ 1), a freehold interest or if the Customer does not own the freehold, a leasehold interest for a period of not less than one hundred (100) years in the Terminal Sub-Station, such conveyance to include a specific right of way for all purposes from an adequate public road to the Terminal Sub-Station and to be completed by the Terminal Sub-Station Works Completion Date as agreed and as set out in the Undertaking and Indemnity Clauses in Appendix 1.
- 4.6 All of the Company's Connection Equipment provided (or which the Company procures the provision of) under this Agreement shall be the property of the ESB. The Customer hereby acknowledges that the said Connection Equipment and the Terminal Sub-Station shall form part of the Distribution System and may be used, without cost to the Customer, as part of the connection arrangements to other persons who are, or wish to become, the Company's customers. Should there be a reduction in connection charges to the new customer as a result, a refund to the Customer may apply under the Company's refund policy.

## **5.0 COMMISSIONING AND CONNECTION**

- 5.1- Commissioning Tests are set out in the applicable document listed in the Annexe of Supplementary Publications to the Distribution Code.
- 5.2 The Customer shall provide the Company with a Declaration of Fitness as provided under the Distribution Code when the Commissioning Tests have been properly and satisfactorily completed.
- 5.3 The Company shall notify the Customer of the Connection Agreement Effective Date as soon as practicable following receipt of the Declaration of Fitness and in any event within five (5) Business Days .
- 5.4 The Customer shall not at any time prior to the Connection Agreement Effective Date operate the Facility so as to allow the passage of electricity through the Connection Point except for the purposes of carrying out the Commissioning Tests.

## 6.0 PROJECT MONITORING AND DELAYS

6.1 Both Parties shall monitor their respective Works and regularly update the other Party on progress. Where either Party becomes aware that it is being delayed or will be adversely delayed:

6.1.1. It shall notify the other Party of the delay and the anticipated extent of the delay in writing within two (2) Business Days of becoming aware of the likely delay

6.1.2 The Parties shall agree such later date or dates as may be fair and reasonable in the circumstances. Either Party may refer a dispute between the Parties over what is a fair and reasonable new date to be fixed in the circumstances to a firm of independent engineers appointed by the Parties for determination. Once the new date or dates are fixed (by agreement between the Parties or by determination) the Construction Programme shall be deemed to be amended as appropriate.

6.1.3 Where a delay notified under Clause 6.1.1 is due to any Consent required not being obtained within 18 months of the date specified in the Quotation Letter as the Scheduled Connection Agreement Effective Date, and the Parties fail to agree a new date under Clause 6.1.2, either Party may terminate the Agreement by written notice to the other Party. Neither Party shall have any liability to the other arising from such termination, except where the Party is in breach of any of its obligations under **Clause 4.3** and subject in any event to the limitation of liability provisions.

6.2 On receiving a notice from the Customer of a delay under **Clause 6.1**, the Company shall make all reasonable endeavours to minimise or avoid any increase in costs or additional costs directly resulting from the delay. No charge in respect of such costs will be made to the Customer where the reason for the delay is:

6.2.1 any act, default or omission on the part of the Company or the Company's employees, agents, contractors or sub-contractors;

6.2.2 any Consent required ceasing to be in force, or any condition on such a Consent preventing the Customer from performing its obligations; or

6.2.3 site conditions (including but not limited to geotechnical conditions, any toxic contamination and archaeological finds) at the site for the Terminal Sub-Station to be constructed (including the lands, space, roads and any wayleave required therefor) where the Quotation Letter is based on a site survey carried out by the Company at the Customer's request and expense.

6.2.4 an event of Force Majeure.

In all other cases, the Company shall pass on such costs to the Customer by means of an invoice. The terms contained in **Clause 3.0** of the General Conditions will apply to the invoice.

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

- 6.4 Within twenty (20) Business Days of the date on which both Parties have obtained the Consents required the Customer shall submit to the Company a line diagram of the Customer's Connection Equipment and thereafter shall submit to the Company as soon as practicable details of any material changes thereto.
- 6.5 Notwithstanding any review by the Company of any information submitted by the Customer, the Customer's obligations under the Agreement shall not be relieved, absolved or otherwise modified and the Company shall have no liability whatsoever in relation to its approval or otherwise of any designs or information submitted to it by the Customer.

## **7.0 SECURITY**

- 7.1 Where in the Company's reasonable opinion a connection asset has a limited life and a low likelihood of re-use leading to a potential requirement for decommissioning and reinstatement, a Bond will be required as security for the payment of the Decommissioning and Reinstatement Charges ("Charges Bond"). The amount of the Charges Bond (if any) is specified in Schedule 1 and the Quotation Letter and subject to the provisions of **Clause 8.0** of the General Conditions.
- 7.2 For generator customers with an MEC greater than 5MW, a bond will be required as security for the Company providing an agreed export capacity to the Customer ("Capacity Bond"). The amount of the bond is specified in the Quotation Letter and is based on the Maximum Export Capacity in Schedule 1 of this agreement and subject to the provisions of **Clause 8.0** of the General Conditions.

## **8.0 MODIFICATIONS**

- 8.1 No replacement, renovation, modification, alteration or construction (including without limitation increased load, disturbing load or installation or modification of generator) of the Facility which, in the reasonable opinion of the Company, will cause the electrical standards at the Customer's Connection Point to breach those in the Distribution Code ("Modification") may be made by or on behalf of the Customer except in accordance with the terms of this **Clause 8.0** and subject always to the provisions of the Distribution Code.
- 8.2 If the Customer wishes to make a Modification it shall complete and submit to the Company a Modification application and shall give to the Company promptly, upon request by the Company, such other information in relation to the Modification as the Company shall reasonably require to consider the application. The Parties shall meet to discuss in good faith the implications of the proposed Modification and the Company shall make a Modification offer to the Customer as soon as reasonably practicable within ninety (90) business days after the date on which the Company receives the Modification application or, if later, ninety (90) business days after the date on which the Company has received all information which the Company has requested, or in either case such longer period as the Company reasonably requires in the circumstances. Please note that in the case of requests for modifications made by developers of generation facilities, certain conditions apply before a modification request can be deemed to be acceptable. These are as set out in the Joint TSO/DSO Group

Processing Approach Pricing Principles Guidelines (as amended from time to time or superseded by subsequent documentation.)

- 8.3 A Modification offer shall include:
- 8.3.1 the Company's assessment of the works in respect of, or the alteration in operation of, the Network which will be needed as a consequence of the Modification;
  - 8.3.2 the Company's assessment of the costs and expenses which will properly be incurred by the Company in effecting those works or making that alteration;
  - 8.3.3 where the Modification proposed by the Customer will, in the reasonable opinion of the Company, cause the electrical standards at the Connection Point of another Network customer (the "Affected Customer") to breach those in the Distribution Code, the Company's assessment of the works and the reasonable costs and expenses of those works in respect of, or alteration in operation of, the Affected Customer's facility (being a facility connected to the Distribution System) (the "AC Facility") needed as a result of the proposed Modification; and
  - 8.3.4 a form of supplemental agreement between the Parties governing the change resulting from the Modification (which will include an obligation by the Customer to pay the costs referred to in this **Clause 8.0**). In the case of the costs and expenses referred to in **Clause 8.3.2** the supplemental agreement will be conditional on those costs and expenses having first been paid by the Customer. The supplemental agreement shall also include an indemnity from the Customer to the Company against all losses, liabilities, costs and expense which the Company may incur as a result of a claim by an Affected Customer against the Company for any works in respect of, or alteration in operation of the AC Facility needed as a result of the proposed Modification arising directly or indirectly as a result of inaccurate or incomplete information provided to the Company by the Customer in respect of the Modification. For the avoidance of doubt the proposed Modification shall not take effect until the Parties have entered into a supplemental agreement which includes the obligations specified in this clause.
- 8.4 The Customer may, within three (3) months of receipt of the Company's Modification offer either accept the Modification offer by signing and returning to the Company the form of supplemental agreement, notify the Company that it rejects the Modification offer (in which case the matter shall be at an end and the proposed Modification cannot take effect) or give notice that the Modification offer is in dispute. If the Customer fails to take any of the steps referred to in this **Clause 8.4** within the three (3) month period referred to then it shall be deemed to have rejected the Modification offer.
- 8.5 Where an application for a Modification by another Distribution System customer ("Other Customer") contains information which clearly indicates that the Modification would cause the electrical standards at the Customer's Connection Point to breach those in the Distribution Code, the Company agrees to include in the agreement it enters into with the Other Customer in respect of the connection of the Other Customer's facility, being a facility connected to the Distribution System, provisions which in respect of the costs



and expenses of the Customer incurred as a consequence of a change to the Other Customer's facility (being a change which would be a Modification under the Agreement if it was one proposed by the Customer and the facility which the Other Customer proposes to change was the Facility) include the requirements of **Clause 8.3** and **Clause 8.4** (mutatis mutandis).

- 8.6 If at the time of making any Modification Offer to the Customer (the "Further Offer") there is either one or more outstanding quotations to connect a new Distribution System customer an outstanding modification offer (the "Existing Offer") which if accepted would affect the terms of the Further Offer, the Company shall at the time of making the Further Offer:
- 8.6.1 inform both the recipient of the Existing Offer and the Customer in writing that there is another offer outstanding which might affect them; and/or
- 8.6.2 be entitled to make the Further Offer conditional upon the Existing Offer not having been or being accepted; and
- 8.6.3 be entitled to vary the terms of the Further Offer if any Existing Offer is accepted first.
- 8.7 The Parties agree that the provisions of **Clause 5.0** shall apply (mutatis mutandis) to any Modification of the Facility or of the Customer's Connection Equipment.

## **9.0 PROTECTION**

- 9.1 The responsibilities of each Party and the procedures to be followed for protection are set out in the Distribution Connection Conditions in the Distribution Code.
- 9.2 The site-specific settings are as set out in Schedule 1. The Customer shall ensure that the Customer's control and protection equipment complies with and continues to comply with these settings.
- 9.3 Any change in settings requested by the Customer shall be the subject of a Modification to the Agreement and must be agreed in writing in advance. Subject to Good Industry Practice, the Company will not unreasonably withhold its agreement to any such Modification.

## **10.0 DE- ENERGISATION**

- 10.1 The Company may De-Energise in accordance with **Clause 9.0** of the General Conditions.

## **11.0 INSURANCES**

- 11.1 The Customer shall effect and maintain throughout the Term Public Liability Insurance with a minimum indemnity limit of €1,270,000 (one million two hundred and seventy thousand Euro). The Customer shall take out and maintain Employers Liability Insurance, where appropriate, with a minimum indemnity limit of €12,000,000 (twelve million Euro). Insurance cover effected pursuant to this clause shall include the jurisdiction of Ireland and an indemnity to the Company.

- 11.2 In accordance with Clause 15 below, the Customer shall ensure that the Public Liability insurance is procured and maintained by it extends to damage suffered by ESB and its officers, employees, agents and contractors.
- 11.3 In additions to obligation under **Clause 11.1** and 11.2 both Parties shall maintain their insurance cover at levels appropriate to Good Industry Practice and in compliance with all applicable laws throughout the Term.

## **12.0 ENTIRE AGREEMENT**

- 12.1 This Agreement (together with all documents referred to herein including without limitation the Distribution Code) constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all previous agreements and understandings between the Parties with respect to its subject matter and each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking by the other Party not fully reflected in this Agreement.

## **13.0 GOVERNING LAW**

- 13.1 The Agreement shall be interpreted, construed and governed by the laws of Ireland and both parties hereby submit to the exclusive jurisdiction of the Irish courts

## **14.0 ELECTRICITY SUPPLY ACCOUNT**

- 14.1 This Connection Agreement is for a Connection to the Electricity Distribution System only. You will also need to apply for an Electricity Supply Account. For more information and a full list of Electricity Suppliers please visit [www.energycustomers.ie](http://www.energycustomers.ie).

## **15.0 INTERFACE UNDERTAKING**

- 15.1 The Company in accordance with the terms of clause 3 of the Operating Agreement is required to ensure that the Customer gives and maintains an Interface Undertaking to the Company in the form and in accordance with the terms of Schedule 4 of this Agreement. This Interface Undertaking shall be given in favour of the Company and enforceable as a contract by the Company against the Customer for the purposes of ensuring that the legitimate interests of ESB as Distribution System Owner is protected.

**IN WITNESS WHEREOF** the hands of the duly authorised representatives of the Parties hereto on the date first above written

**ESB NETWORKS LTD**

By:

\_\_\_\_\_  
**Joe Duignan**  
**Manager, Commercial & Renewable Regulation**  
**ESB Networks Ltd.**

In the presence of:

\_\_\_\_\_

Date:

[GV\_NAME\_LINE]

By: \_\_\_\_\_

Block Capitals:

Position Held: \_\_\_\_\_

In the presence of: \_\_\_\_\_

Block Capitals:

Date: \_\_\_\_\_

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**For wind based generation applicants only:** This Agreement is for Physical Access to the Distribution System on a **Firm** Basis. Please indicate (tick the relevant box) if you wish to avail of Non-Firm Physical Access to the Transmission System (see clause 14.0 Quotation Letter)

**FIRM Distribution and FIRM Transmission access:**

**FIRM Distribution and NON-FIRM Transmission access:**

**Signed:** \_\_\_\_\_

## SCHEDULE 1: SITE SPECIFIC DETAILS

### **1. Customer Details:**

Customer Name: [GV\_NAME\_LINE]

Site Address: [GV\_SINGLE\_LINE\_ADDR\_PREM]

Contact Name/Authorised Operator: [GV\_TECH\_CONTACT]

Contact Phone No: [GV\_TECH\_PHONE]

**2. Connection Agreement Number:** [GV\_NOTIFNUM]

### **3. Meter Point Details:**

Meter Point Reference Number: [GV\_MPRN]

Metering Configuration Code: [GV\_MCCODE]

DUoS Group: [GV\_DUOS\_GROUP]

### **4. Connection Details:**

Maximum Import Capacity(kVA): [GV\_MIC\_KVA]

Maximum Export Capacity(kVA): [GV\_MEC\_KVA]

#### Characteristics of Connection:

Phase Rotation: RST

No. of Phases: 3

Connection Voltage(V): [GV\_VOLTAGE]

Frequency(Hz): 50Hz

Minimum Equipment Short Circuit Rating(kA)<sup>+</sup>: [GV\_SCL\_MIN]

Normal Short Circuit Level(MVA)<sup>#</sup>: [GV\_SCL\_NORM]  
(at Connection Point)

**5. Protection Settings:** To be advised

**6. Terminal Sub-Station – Interest Required:** Freehold

**7. Charges Bond:** To be advised

**8. Capacity Bond:** [CAP BOND]

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<sup>+</sup> Refer to Conditions Governing Connection to the Distribution System – available on our website: [www.esb.ie/esbnetworks](http://www.esb.ie/esbnetworks).

<sup>#</sup> This is the current Short Circuit Level calculated under normal feeding arrangements.

## SCHEDULE 2: ADDRESS FOR SERVICES OF NOTICES

1. **The Company Details:**

**ESB Networks Ltd.**

**Clanwilliam House, Clanwilliam Place,**

**Dublin 2**

(a) For the attention of the Company Secretary

2. **The Customer's Details:**

**[GV\_NAME\_LINE]**

**[GV\_SINGLE\_LINE\_ADDR]**

(a) For the attention of \_\_\_\_\_

(b) For the attention of \_\_\_\_\_

## SCHEDULE 3: CONDITIONS PRECEDENT

The Parties acknowledge that these conditions precedent have been inserted for the benefit of the Company.

### 1. Company's Conditions Precedent to Agreement:

Notwithstanding anything in this Agreement to the contrary, this Agreement (other than Clause 2.0) is in all respects conditional upon and subject to the Company being satisfied that:

- 1.1 any Charges, or other monies, due to be paid by the Customer on execution of the Agreement have been paid; and
- 1.2 a map (if required by the Company) has been provided showing the Terminal Sub-Station, including a specific right of way from the public road to the Terminal Sub-Station, the Facility and the Customer's Premises; and
- 1.3 the Security (if required by the Company as at the date of the Agreement) have been granted in accordance with the requirements in Clause 7.0;
- 1.4 the Customer has complied with the pre-conditions for acceptance of the Company's offer of terms identified in the Quotation Letter.

### 2. Conditions Precedent to Operation:

Notwithstanding anything in this Agreement to the contrary, and without limiting any other obligations of the Customer, the Customer shall not have the right under this Agreement to require that the Company maintain the import and export capacity specified in this Agreement until the Company is satisfied (acting reasonably) that:

- 2.1 **Agreements:** the Consents have been obtained and the Customer has entered into a Supply Agreement (as confirmed by the Meter Registration Service Operator).
- 2.2 **Quotation Letter:** the Customer has complied with its obligations as set out in the Quotation Letter
- 2.3 **Distribution Code:** For Connections at MV, the Customer has complied with those of its obligations under the Distribution Code, which must be met prior to implementation of the Commissioning Instructions; and
- 2.4 **Commissioning Tests etc.:** the conditions specified in Clause 5.0 of this Agreement have been met.
- 2.5 **Connection Agreement Effective Date:** will not be agreed until such time as the following has been met:

2.5.1 Customer has paid all outstanding Connection Charges, ~~and~~

- 2.5.2 Customer has put in place all relevant Capacity and/or Charges Bonds, ~~and~~
- 2.5.3 Remote Disconnection Facility has been commissioned, ~~and~~
- 2.5.4 All necessary constraint and dispatch equipment is installed and paid for as specified by the relevant System Operator, ~~and~~
- 2.5.5 Final set of generator interface protection testing known as EGIP (Embedded Generator Interface Protection (formerly G10)) is completed as referenced in Clause 13.0 [Commissioning and Certification] of “Conditions Governing Connections to the Distribution System : Connections at MV and 38kV, Embedded Generators at LV, MV and 38kV”,
- 2.5.6 Where applicable, the Customer has complied with all provisions relating to the transfer of property and property rights as set out in the Undertaking and Indemnity at Appendix 1 herein and the necessary forms have been returned for transfer of the Terminal Sub-Station (if required) to the Company, ~~and~~
- 2.5.7 Where applicable, the Customer has (i) carried out Contestable Commissioning in accordance with the Company’s requirements set out in the Contestable Commissioning Specification and (ii) provided the Declaration(s) of Fitness as defined in Paragraph 4.10 of Appendix 3 of this Connection Agreement to the satisfaction of the Company.

## SCHEDULE 4: INTERFACE UNDERTAKING

In accordance with Clause 15 of the Connection Agreement, the Customer agrees as a counterparty to the Agreement to give and maintain, on its own behalf and on behalf of their officers, employees, agents and contractors, throughout the term of the Agreement and surviving its termination, the following undertaking (“Interface Undertaking”) in favour of the Company in relation to the Customer’s connection to the Distribution System.

1. In this Schedule, the following expressions shall have the following meanings:

“Statutory Instrument” means the European Communities (Internal Market in Electricity) Regulations 2008 (SI 280 of 2008);

“Operating Agreement” means the agreement made on 22 December 2008 that came into effect on 1 January 2009 pursuant to the requirement of Regulation 6 of the Statutory Instrument that ESB and the Company are required to enter into such agreement for the purpose of enabling the Company to discharge its functions as Distribution System Operator under the Statutory Instrument.

2. The Customer agrees to comply with the technical requirements for connection to the Distribution System set out in the Connection Agreement and to install protection equipment as required by the Company to protect its facility from faults on the Distribution System.
3. The Customer agrees that ESB is permitted to take any steps it is authorised to take under law, including, without limitation, by the European Communities Regulations, and pursuant to the Operating Agreement and the Customer agrees not to make any claim against ESB in connection with such steps except to the extent that such claim would be permitted under the Connection Agreement if ESB were a party to that Agreement in place of the Company.
4. The Customer agrees to comply with all safety rules, procedures and other requirements reasonably specified by ESB to ensure the health and safety of persons coming into contact with, or working in close proximity to, assets forming part of the Distribution System are adequately trained in those requirements.
5. The Customer agrees to grant ESB access to the Customer’s premises and facilities on reasonable notice and subject to the Customer’s own health and safety requirements for the purpose of enabling ESB to perform the Distribution System Owner (“DAO”) Functions and otherwise to fulfil its obligations under law.
6. The Customer agrees to permit the Company to give ESB information about the Customer’s connection to the Distribution System reasonably required by ESB to perform the DAO Functions subject always to DSO’s performance of the DSO Functions.



7. In the event that the Customer is unable to notify the Company, the Customer hereby consents to the Company notifying ESB promptly of any fault or other unusual circumstance that it discovers in relation to the Distribution System in connection with the Company's connection.
8. The Customer shall ensure that the public liability insurance procured and maintained by it in accordance with its Connection Agreement with the Company extends to damage suffered by ESB and its officers, employees, agents and contractors.
9. The Customer agrees that, except in the case of claims in respect of death and personal injury, and to the extent permitted by law, not to make, and to waive its rights now and for the future in respect of any claim against ESB or any of its directors, officers, employees, agents or contractors for any loss, damage, cost, claim, demand, suit, liability, fine, penalty or expense, whether based in contract, tort, breach of duty or any other grounds, in connection with the Customer's connection to the Distribution System except for any such claim that, had ESB been a party to the Connection Agreement in place of the Company, it would have been entitled to claim against ESB under the terms of the Connection Agreement, and then subject to ESB being entitled to rely on the limitations and exclusions of liability and indemnities available to a party to the Connection Agreement in the position of the Company.
10. The Customer agrees that, except in the case of claims in respect of death and personal injury and other liability that cannot, by law, be excluded or limited, and without prejudice to paragraph 9 above and paragraph 11 below or to any right of indemnity in the Connection Agreement, not to make any claim against ESB arising from any act or omission of ESB or its officers, agents, employees or contractors in respect of any loss, damage, claim, liability, cost or expense in respect of:
  - a) physical damage being occasioned to the property of the Customer, its officers, employees or agents; or
  - b) the liability of the Customer to any other person for loss in respect of physical damage caused directly to the property of such other person; or
  - c) the disconnection or de-energisation of the Customer's connection in circumstances permitted under the Connection Agreement; or
  - d) negligence or breach of statutory duty on the part of ESB or of any of its officers, employees, agents, or contractors; or
  - e) any other matter connected with the Customer's connection to the Distribution System or with the Connection Agreement

for an amount in respect of any one event in excess of the Connection Liability Amount (as defined in the General Conditions) and further, for an amount in respect of all events during the term of the Connection Agreement in excess of the Connection Liability Cap (as defined in the General Conditions).

11. The Customer agrees that, except in the case of claims in respect of death or personal injury and without prejudice to paragraphs 9 and 10 above to any rights of indemnity in the Agreement, not to make any claim against ESB or its directors, officers, employees, contractors or agents for, and to waive its rights now and for the future in respect of, any:

- a) indirect or consequential loss, punitive, special, exemplary or incidental damages;
- b) loss of profit, loss of use, loss of contract, loss of goodwill or loss of revenue;
- c) loss resulting from liability of the Customer to any other person howsoever and whensoever arising save as expressly provided in 10(b) above,

regardless of whether suffered by the Customer or not and regardless of whether such a claim is based on contract, warranty, tort (including negligence), breach of duty, strict liability or any other legal or equitable principle.

**IN WITNESS WHEREOF** the Company and the Customer have caused this Interface Undertaking to be executed on date above first herein written.

**Signed for and on behalf of ESB:-**

By:

\_\_\_\_\_  
**Joe Duignan**  
**Manager, Commercial & Renewable Regulation**  
**ESB Networks Ltd.**

In the presence of:

\_\_\_\_\_

Date:

\_\_\_\_\_  
[GV\_NAME\_LINE]

Print Customer Signatory Name in Block Capitals: \_\_\_\_\_

**Witness:** \_\_\_\_\_

Date:

## **Appendix 1: Undertaking and Indemnity**

The Customer further agrees that in consideration of the provision of an electricity connection to the development (or Facility, as the case may be) by the Company, the Customer hereby undertakes with the Company to:

- (a) Transfer/ convey the freehold interest of the Terminal Substation site and/or Contestable Components, where applicable, to ESB in accordance with Appendix 1(a) of the Connection Agreement, in fee simple, free from encumbrances and to exclude the property from all transfers, conveyances or leases which may be made to any third parties. Where the landowner does not have freehold interest, ESB will consider a leasehold interest on a case by case basis.
- (b) Grant the necessary wayleave(s) to ESB in accordance with Appendix 1(a) of the Connection Agreement and in ESB's standard Deed which shall include all necessary rights of access for the purpose of repair, maintenance, etc., and a covenant not to develop over the wayleave route and to include the said wayleave(s) in all transfers, conveyances or leases which may be made with any third parties.
- (c) Grant the necessary easement(s) to ESB in accordance with Appendix 1(a) of the Connection Agreement and in ESB's standard Deed which shall include all necessary rights of access for the purpose of repair, maintenance etc. and a covenant not to develop over/under the route of the line(s) and to include the said easement(s) in all transfers, conveyances or leases which may be made with any third parties.
- (d) Indemnify ESB from and against all actions, proceedings, costs, damages, claims and demands made by or on behalf of any party whatsoever by reason of or in connection with the transfer or use of the As-Built Records, where applicable, or the inclusion of the property or part thereof in any transfer, conveyance or lease by the Customer to third parties/non notification of the purchasers of the property affected by the wayleave(s).

Acceptance of the Connection/Development Agreement implies the Customer agrees to be bound by the conditions above.

## Appendix 1a: Customer Checklist

Checklist of requirements to transfer ownership of site(s) and equipment and/or rights over land to ESB. ). The template Deeds set out in the attached Annexes may be subject to change from time to time.

### **IMMEDIATELY AFTER PLANNING PERMISSION HAS BEEN GRANTED**

1. Planning Permission, if applicable

The Customer is required to furnish copies of full planning permission documentation as soon as planning permission has been granted (where the Customer has applied for planning permission).

### **ONE MONTH AFTER THE DATE THE RELEVANT CONSENTS HAVE BEEN ACQUIRED/ CONSENTS ISSUE DATE**

The Customer is required to produce to the Company, for the benefit of the ESB, the following items **no later than one month after the date the relevant Consents have been acquired/ Consents Issue Date:-**

2. Full satisfactory title documentation

Where the landowner's title is registered, original, up-to-date (to within 6 months), certified copy folio(s) and filed plan(s) showing ownership of site(s).

Where the landowner's title is unregistered (Registry of Deeds) the Original Deed of Conveyance, Lease or Assignment to landowner along with root of title will be required.

The landowner will be required to transfer title of the site(s) to ESB in accordance with the Undertaking and Indemnity at Appendix 1 of the Agreement.

3. All relevant maps

Where the site is owned by an individual, the Customer is required to furnish all relevant maps, conforming to the requirements set out below, in relation to the transfer of ownership of the site(s) and equipment and/or rights over land. The Company will facilitate ESB in verifying the relevant maps.

Map requirements:-

- the most up to date OS mapping for the area (the most up to date map for each area can be checked out online at [www.osismartmaps.ie](http://www.osismartmaps.ie) or [www.osi.ie](http://www.osi.ie))
- the map must be produced with the new ITM coordinate system.
- the map must be produced on the largest scale map available.
- the map must be produced in CAD form (in compliance with PRA CAD requirements available on the Property Registration Authority website - [www.prai.ie](http://www.prai.ie))
- the map must show the following:-
  - site to be transferred outlined in red;
  - right of way from public road to be shown shaded yellow;

- where an overhead line (easement) is required the area of the easement is to be marked hatched blue in accordance with standard industry practice. Specific minimum easement widths for standard Deeds of Grant are set out in Annex 1 hereto; and
  - where an underground cable (wayleave) is required the line is to be marked blue.
4. *[If applicable]* The Customer must procure from third parties the requisite rights of wayleave, easement and access (rights of way) where it is necessary for overhead lines, cable routes or access routes to traverse third party lands. Without prejudice to paragraph 4 (below), all such **rights must be acquired by way of Deed** and must be in the format of the template Deeds attached at Annex 2 (Deeds A and B).

The acquired rights must be transferred to ESB on completion of legal transfer and in the format of the template Deeds attached at Annex 3 (Deed C).

5. Where lines are contestably built, the Customer may opt to serve section 53 wayleave notices, instead of acquiring deeds by agreement with third parties, once they have obtained CER consent. In the event that the Customer opts to serve such notices, the Customer shall transfer all rights acquired under these notices to ESB (see template Deed D attached at Annex 4). The Customer shall also be required to furnish copies of such section 53 notices to the Company for the benefit of ESB.

**WITHIN SIX MONTHS OF THE DATE THE RELEVANT CONSENTS HAVE BEEN ACQUIRED/ CONSENTS ISSUE DATE**

The Customer is required to produce to the Company, for the benefit of ESB, the following items **no later than six months after the date the relevant Consents have been acquired/ Consents Issue Date:-**

6. Executed Contract for Sale between the Customer and ESB

The Contract for Sale is subject to satisfactory title being furnished. The landowner will be required to enter into the Contract for Sale with ESB to cover:-

- Sale of the **site(s)** to ESB including the equipment specified by the Company
- Transfer of requisite **wayleaves, easements and rights of way** to ESB where it is necessary for overhead lines, cable routes or access routes to traverse third party property including public highways and including the equipment, where applicable.

There will be a special condition in the Contract for Sale allowing for the contract to be rescinded in the event of any of the following: -

- (a) Failure to fulfil Connection Agreement requirements and/or,
- (b) For contestable builds where a decision regarding the transfer of assets is required from CER, CER directs that the assets are not to transfer to ESB but are to remain with the Customer.

**COMPLETION OF LEGAL TRANSFER**

The Customer shall complete the transfer of legal ownership to ESB **within eight weeks** of the later of:-

- (a) the Connection Agreement Effective Date or

- (b) the date on which the CER has made a direction to transfer ownership as per CER/10/056 or Section 37(4) Electricity Regulation Act, 1999.

The following is a non-exhaustive list of closing requirements that the Customer is required to produce to the Company, for the benefit of ESB, on completion:-

1. Executed Deed of Assurance from the Customer to ESB in respect of the site(s) and equipment, in the form of ESB standard templates and tax type and number details of Customer (for stamping purposes).
2. Transfer by Deed to ESB of rights acquired in respect of Easements for overhead lines and Wayleaves for underground cables (in the form of ESB Template Deeds C or D attached at Annexes 3 and 4 respectively).
3. Certification that the sale of the site is not affected by the Family Home Protection Act or section 72 burdens.
4. Confirmation that the property is free from encumbrances, charges, sub-lettings and all legal mortgages and procure confirmation of consent from all chargees (if any) for wayleaves and easements.
5. Give Solicitor's undertaking to discharge all Property Registration Authority queries raised in connection with the TAO's obligation to register its title.
6. Confirmation that this property is not subject to any lease or licence in favour of a third party.
7. Confirmation that there are no deaths or voluntary dispositions on the title within the past twelve years and that there is no outstanding liability to Capital Acquisitions Tax or Capital Gains Tax.
8. Detailed description of equipment on the land (specified by the Company) to be transferred to ESB.
9. Where the landowner is a company, a copy Certificate of Incorporation and Memorandum & Articles of Association.
10. Where leasehold title is given, the original lease and assignment if any and the landlord's [and head landlord's] consent to assign / to alterations / change of user will be required.
11. Certificate(s) of Compliance with planning permission (where contestably built).
12. Customer's VAT details where VAT is deemed chargeable.

**ANNEX (1)**  
**Minimum Easement and Wayleave Widths**

**1. Minimum Easement Widths – Overhead Lines**

**Forestry:**

- MV and 38kV Lines – 20m corridor (10m either side of the line)
- 110kV Lines – 61m corridor (30.5m either side of the line)
- 220kV Lines – 68m corridor (34m either side of the line)
- 400kV Lines – 74m corridor (37m either side of the line)

Within these corridors trees are allowed grow to a maximum height of 3m (as per the ESB/IFA Agreement). However, a 4m maintenance access corridor directly under the line must be left clear at all times to allow ESB access. Any trees which grow above 3m are to be cut or lopped by the landowner at his expense or, if not, by ESB and the cutting costs recovered from the landowner.

**Building:**

Generally building easements are only purchased under 110kV lines and upwards.

The widths can vary but the following minimum widths usually apply:

- 110kV Lines – 46m corridor (23m either side of the line)
- 220kV and 400kV Lines – 60m corridor (30m either side of the line)

**2. Minimum Wayleave Widths – Underground Cables**

- 10kV/ 20kV - 2m corridor (1m either side of the cable)
- 38kV - 4m corridor (2m either side of the cable)
- 110kV Single Circuit 4m (centred on the trefoil group)
- 110kV Double Circuit 5m (centred between trefoil groups which are at 500mm centres)
- 220kV Single Circuit 4m (centred on centre phase)
- 220kV Double Circuit (this situation doesn't normally arise as these circuits would normally require 4m separation)

Where two circuits are required with 4m separation the wayleave width will be 8m total. This allows for 4m separation between circuits and an additional 2m either side of the circuit to allow for future jointing, maintenance etc. Where three circuits are required the wayleave will be 12m and so on.

**ANNEX (2)**

**Deed A**

**Acquisition of Overhead Easement by agreement between the Customer and landowner**

**[Easement for Contestable Line – Overhead Line]**

**LAND REGISTRY**

COUNTY

FOLIO

DEED dated the        day of        20

BETWEEN

(1) \_\_\_\_\_ [of / a company incorporated in the State under register number        having its registered office at]        in the County of        (hereinafter called “the Grantor” which expression shall where the context so admits or requires include [his/her/its] [executors administrators heirs and assigns / successors and assigns]) of the First Part;

(2) \_\_\_\_\_ [of / a company incorporated in the State under register number        having its registered office at]        in the County of        (hereinafter called “the Grantee” which expression shall where the context so admits or requires include [his/her/its] [executors administrators heirs and assigns / successors and assigns]) of the Second Part; and

(3) the ELECTRICITY SUPPLY BOARD a Statutory Corporation having its principal office at Lower Fitzwilliam Street in the City of Dublin (hereinafter called “the Board” which expression shall where the context so admits or requires include its successors and assigns) of the Third Part.

RECITALS:-

- A. The Grantor [is/are] the registered owner of the lands comprised in Folio        of the Register of Freeholders of the County of        (hereinafter called “the Lands”).
- B. In the Electricity (Supply) Act, 1927 as amended (hereinafter called “the Act of 1927”) and in these presents the expression “electric line” wherever it occurs shall be construed and have effect and be deemed always to have had effect as meaning a wire or wires, conductor, or other means used for the purpose of conveying, transmitting, or distributing electricity and as including any transforming or other apparatus connected with any such wire or wires, conductor, or other means, and as including also any easing, coating, covering, tube, pipe, or insulator surrounding any such wire or wires, conductor, or other means or any such apparatus, and as including also any post, pole, stay, erection, or structure supporting any one or more of the things hereinbefore mentioned.
- C. Under and by virtue of Section 53 of the Act of 1927 the Board and any authorised undertaker is entitled to place any electric line above or below ground across any land not being a street, road, railway, or tramway and to attach to any wall, house, or other building any bracket or other fixture required for the carrying or support of an electric line or any electrical apparatus.
- D. The Grantee [intends to place / has placed] a        kV electric line (hereinafter called “the Line”) on the Lands as shown with a        line on the map annexed hereto.
- E. The Grantee is the holder of an authorisation within the meaning of Section 49 of the



Electricity Regulation Act, 1999, and is entitled under the aforesaid Section 49 to apply for consent of the Commission for Energy Regulation to exercise the powers of the Board under the aforesaid Section 53 of the Act of 1927.

- F. To avoid the necessity of exercising the Section 53 procedure the Grantor, in consideration of the payment by the Grantee to the Grantor of the sum of euro (€ ), has agreed with the Grantee to grant the wayleave hereinafter described to Grantee [to the intent that such wayleave shall correspond with the powers exercisable by the Grantee or the Board under the aforesaid Section 53 and may be freely assigned and transferred (including without limitation to the Board) [along with ownership of the Line]].
- G. The Grantor, the Grantee and the Board have entered into these presents to the intent that the same shall be in full and final settlement of any and all claims (including for the avoidance of doubt any compensation claim under the aforesaid Section 53 of the Act of 1927) that the Grantor may have against the Grantee or the Board or either of them arising out of or in connection with the erection of the line.

NOW THIS DEED WITNESSES as follows:-

1. In pursuance of the said Agreement and in consideration of the sum of euro (€ ) now paid by the Grantee to the Grantor (the receipt of which the Grantor hereby acknowledges) the Grantor the registered owner of the Lands as beneficial owner HEREBY GRANTS to the Grantee [its successors and assigns / his/her executors administrators heirs and assigns] all that and those the rights liberties and licence specified in the First Schedule hereto in over and upon the Lands to hold the same unto the Grantee in fee simple [and the Grantor hereby acknowledges that the said rights liberties and licence shall enure for the benefit of the Grantee [its successors and assigns / his/her executors administrators heirs and assigns] and may be freely assigned (including without limitation to the Board) [along with ownership of the Line].
2. [ For a standard overhead line not affected by a forestry plantation, use the following clause 2: ]
2. The Grantor hereby covenants with the Grantee, to the intent that such covenant shall bind and run with the Lands and any part thereof, not to permit any tree, shrub or hedge to grow and not to erect any building structure or erection or to place any concrete or similar surface or foundation or to carry out any excavation or development under, or on, or within a distance of metres on either side of the straight line joining the centres of the bases of any two consecutive posts pillars or other erections nor within a distance of metres on either side of the centre of any installation placed on the lands in exercise of the right granted as aforesaid nor under or on any part of the lands hatched in blue on the map annexed hereto and the Grantor hereby acknowledges that the benefit of this covenant may be freely assigned by the Grantee (including without limitation to the Board) [along with ownership of the Line] and the Grantor further acknowledges that the restriction aforesaid on [his/her/its] rights in respect of the Lands is a necessary incident of and is essential to the exercise of the rights granted pursuant to paragraph 1 above.

[or]

2. [For overhead line going through a forestry plantation, use the following clause 2:]
- 2 The Grantor hereby covenants with the Grantee, to the intent that such covenant shall bind and run with the Lands and any part thereof:-
  - 2.1 [If the line is a 10kV, 20kV or 38kV line, use the following clause 2.1:]

- 2.1 Not to permit any tree, shrub or hedge to grow within a distance of two metres on either side of the straight line joining the centres of the bases of any two consecutive posts pillars or other erections nor within a distance of two metres on either side of the centre of any installation placed on the lands in exercise of the right granted as aforesaid.
- [or]**
- 2.1 *[If the overhead line is a 110kV, 220kV or 400kV line, use the following clause 2.1:]*
- 2.1 Not to permit any tree, shrub or hedge to grow within a distance of four metres to one side of the supporting line structures placed on the lands in exercise of the right granted as aforesaid.
- 2.2 Subject as above not to permit any tree, shrub or hedge to grow more than three metres in height or to obstruct the Grantee's right of entry on the lands within a distance of        metres on either side of the straight line joining the centres of the bases of any two consecutive posts pillars or other erections nor within a distance of        metres on either side of the centre of any installation placed on the lands in exercise of the right granted as aforesaid nor under or on any part of the lands hatched in blue on the map annexed hereto.
- 2.3 In the event of any tree, shrub or hedge growing in breach of the foregoing covenant the Grantor at the request of the Grantee shall cut or lop the tree shrub or hedge at the Grantor's own expense.
- 2.4 In default of the Grantor cutting or lopping a tree shrub or hedge when requested to do so by the Grantee or in the event of an emergency the Grantee shall be entitled to cut or lop the tree shrub or hedge growing in breach of the foregoing covenant and to recover the costs of so doing from the Grantor.
- 2.5 The Grantor hereby acknowledges that the benefit of this covenant may be freely assigned by the Grantee (including without limitation to the Board) [along with ownership of the Line] and the Grantor further acknowledges that the restriction aforesaid on [his/her/its] rights in respect of the Lands is a necessary incident of and is essential to the exercise of the rights granted pursuant to paragraph 1 above.
3. The Grantor hereby assents to the registration of the rights hereby created as burdens on the said Folio        of the Register County        .
4. The Grantor hereby agrees that the payment of the sum referred to in paragraph 1 above is in full and final settlement of all claims against the Grantee and the Board and either of them (including without limitation any compensation claim under Section 53 of the Act of 1927) in respect of the placing of the Line and all associated posts pillars pylons steel masts wooden structures and other equipment and installations and other things.

IT IS HEREBY CERTIFIED that section 29 (conveyance on sale combined with building agreement for dwelling house/apartment) of the Stamp Duties Consolidation Act, 1999, does not apply to this instrument.

IT IS HEREBY FURTHER CERTIFIED that the consideration (other than rent) for the sale/lease is wholly attributable to property which is not residential property and that the transaction effected by this instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration (other than rent) which is attributable to property which is not residential property exceeds €10,000 / €20,000 / €30,000 / €40,000 / €70,000 / €80,000.

## **FIRST SCHEDULE**

### **RIGHTS AND PRIVILEGES HEREBY GRANTED BY THE GRANTOR TO THE GRANTEE**

- (a) Full and free right liberty and licence for the Grantee its servants agents contractors and workmen to place erect and lay and forever to retain the Line together with all associated posts pillars pylons steel masts wooden structures and other equipment and installations to carry wires cables or other things necessary for the transmission of electricity in over or under the strip of Land more particularly described in the Second Schedule.
- (b) Full and free right liberty and licence for the Grantee its servants agents contractors and workmen to enter upon the Lands at all times with or without vehicles and all necessary equipment plant and apparatus for the purpose of inspecting repairing renewing replacing and maintaining the Line and including any wires cables and other things now or to be so erected or installed to enter upon the said portion of the Lands hatched in blue on the said map in pursuance of the rights granted by these presents doing thereby as little damage as possible and making compensation for any damage thereby caused but not being responsible for any temporary inconvenience caused by any such work.
- (c) Full and free right liberty and licence for the Grantee its servants agents contractors and workmen to enter upon the Lands at all times with or without vehicles and all necessary equipment plant and apparatus to open the ground within that portion of the Lands described in paragraph (a) of this First Schedule for such purposes as may be required and reinstating the same to the reasonable satisfaction of the Grantor.

## **SECOND SCHEDULE**

### **STRIP OF THE LANDS IN RESPECT OF WHICH RIGHTS OF THE GRANTOR ARE RESTRICTED**

All that and those part of the Lands as shown on the map annexed hereto and thereon hatched in blue.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and affixed their seals the day and year first herein written.

**SIGNED AND DELIVERED**

by the said GRANTOR  
in the presence of:-

**SIGNED AND DELIVERED**

by the said GRANTEE  
in the presence of:-

PRESENT when the Common Seal of  
the ELECTRICITY SUPPLY BOARD  
was affixed hereto:-

**Deed B**

**Acquisition of Underground Cable Wayleave by agreement between the  
Customer and landowner**

**[Wayleave for Contestable Line – Underground Cables]**

LAND REGISTRY

COUNTY

FOLIO

DEED dated the        day of        20

BETWEEN

(1) \_\_\_\_\_ [of / a company incorporated in the State under register number        having its registered office at]        in the County of        (hereinafter called “the Grantor” which expression shall where the context so admits or requires include [his/her/its] [executors administrators heirs and assigns / successors and assigns]) of the First Part;

(2) \_\_\_\_\_ [of / a company incorporated in the State under register number        having its registered office at]        in the County of        (hereinafter called “the Grantee” which expression shall where the context so admits or requires include [his/her/its] [executors administrators heirs and assigns / successors and assigns]) of the Second Part; and

(3) the ELECTRICITY SUPPLY BOARD a Statutory Corporation having its principal office at Lower Fitzwilliam Street in the City of Dublin (hereinafter called “the Board” which expression shall where the context so admits or requires include its successors and assigns) of the Third Part.

RECITALS:-

- A. The Grantor [is/are] the registered owner of the lands comprised in Folio        of the Register of Freeholders of the County of        (hereinafter called “the Lands”).
- B. In the Electricity (Supply) Act, 1927 as amended (hereinafter called “the Act of 1927”) and in these presents the expression “electric line” wherever it occurs shall be construed and have effect and be deemed always to have had effect as meaning a wire or wires, conductor, or other means used for the purpose of conveying, transmitting, or distributing electricity and as including any transforming or other apparatus connected with any such wire or wires, conductor, or other means, and as including also any easing, coating, covering, tube, pipe, or insulator surrounding any such wire or wires, conductor, or other means or any such apparatus, and as including also any post, pole, stay, erection, or structure supporting any one or more of the things hereinbefore mentioned.
- C. Under and by virtue of Section 53 of the Act of 1927 the Board and any authorised undertaker is entitled to place any electric line above or below ground across any land not being a street, road, railway, or tramway and to attach to any wall, house, or other building any bracket or other fixture required for the carrying or support of an electric line or any electrical apparatus.
- D. The Grantee [intends to place / has placed] a        kV electric line (hereinafter called “the Line”) on the Lands as shown with a        line on the map annexed hereto.

- E. The Grantee is the holder of an authorisation within the meaning of Section 49 of the Electricity Regulation Act, 1999 and is entitled under the aforesaid Section 49 to apply for consent of the Commission for Energy Regulation to exercise the powers of the Board under the aforesaid Section 53 of the Act of 1927.
- F. To avoid the necessity of exercising the Section 53 procedure the Grantor, in consideration of the payment by the Grantee to the Grantor of the sum of euro (€ ), has agreed with the Grantee to grant the wayleave hereinafter described to Grantee [to the intent that such wayleave shall correspond with the powers exercisable by the Grantee or the Board under the aforesaid Section 53 and may be freely assigned and transferred (including without limitation to the Board) [along with ownership of the Line]].
- G. The Grantor, the Grantee and the Board have entered into these presents to the intent that the same shall be in full and final settlement of any and all claims (including for the avoidance of doubt any compensation claim under the aforesaid Section 53 of the Act of 1927) that the Grantor may have against the Grantee or the Board or either of them arising out of or in connection with the erection of the line.

NOW THIS DEED WITNESSES as follows:-

1. In pursuance of the said Agreement and in consideration of the sum of euro (€ ) now paid by the Grantee to the Grantor (the receipt of which the Grantor hereby acknowledges) the Grantor the registered owner of the Lands as beneficial owner HEREBY GRANTS to the Grantee [its successors and assigns / his/her executors administrators heirs and assigns] all that and those the rights liberties and licence specified in the First Schedule hereto in over and upon the Lands to hold the same unto the Grantee in fee simple [and the Grantor hereby acknowledges that the said rights liberties and licence shall enure for the benefit of the Grantee [its successors and assigns / his/her executors administrators heirs and assigns] and may be freely assigned (including without limitation to the Board) [along with ownership of the Line]].
2. The Grantor hereby covenants with the Grantee, to the intent that such covenant shall bind and run with the Lands and any part thereof, not to erect any building structure or erection or to place any concrete or similar surface or foundation or to carry out any excavation or development under or on that portion of the Lands more particularly described in the Second Schedule hereto and the Grantor hereby acknowledges that the benefit of this covenant may be freely assigned by the Grantee (including without limitation to the Board) [along with ownership of the Line] and the Grantor further acknowledges that the restriction aforesaid on [his/her/its] rights in respect of the Lands is a necessary incident of and is essential to the exercise of the rights granted pursuant to paragraph 1 above.
3. The Grantor hereby assents to the registration of the rights hereby created as burdens on the said Folio of the Register County .
4. The Grantor hereby agrees that the payment of the sum referred to in paragraph 1 above is in full and final settlement of all claims against the Grantee and the Board and either of them (including without limitation any compensation claim under Section 53 of the Act of 1927) in respect of the placing of the Line and all associated posts pillars pylons steel masts wooden structures and other equipment and installations and other things.

IT IS HEREBY CERTIFIED that section 29 (conveyance on sale combined with building agreement for dwellinghouse/apartment) of the Stamp Duties Consolidation Act, 1999 does not apply to this instrument.

IT IS HEREBY FURTHER CERTIFIED that the consideration (other than rent) for the sale/lease is wholly attributable to property which is not residential property and that the transaction effected by this instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration (other than rent) which is attributable to property which is not residential property exceeds €10,000 / €20,000 / €30,000 / €40,000 / €70,000 / €80,000.

### **FIRST SCHEDULE**

#### **RIGHTS AND PRIVILEGES HEREBY GRANTED BY THE GRANTOR TO THE GRANTEE**

- 1 The right of laying cables, and forever keeping same laid and maintained, below the surface of that part of the Lands comprising a strip                   metre(s) wide as more particularly described in the Second Schedule hereto.
2. Full right and liberty for the Grantee its agents and/or contractors, including the Customer, with or without plant and apparatus to enter upon the said Lands and open the ground, for the purpose of
  - 2.1 laying such cables, connections and fittings for carrying same through and under the Lands, and
  - 2.2 from time to time as may be necessary and without notice in the case of emergency, for the purpose of inspecting, repairing, maintaining, relaying and renewing the said cables, connections and fittings and so forth,

and reinstating the same to the reasonable satisfaction of the Grantor and not being responsible for any temporary inconvenience caused by any such work.

### **SECOND SCHEDULE**

#### **STRIP OF THE LANDS IN RESPECT OF WHICH RIGHTS OF THE GRANTOR ARE RESTRICTED**

All that and those the Lands comprising a strip                   metre(s) wide shown on the map hereto annexed and thereon marked "A - B" and coloured in blue

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and affixed their seals the day and year first herein written.

#### **SIGNED AND DELIVERED**

by the said GRANTOR  
in the presence of:-

SIGNED AND DELIVERED  
by the said GRANTEE  
in the presence of:-

PRESENT when the Common Seal of  
the ELECTRICITY SUPPLY BOARD  
was affixed hereto:-

### ANNEX (3)

#### Deed C

**[Deed of Transfer of Contestable Line from Customer to ESB where Wayleave was  
created by Deed A or B]**

#### LAND REGISTRY

COUNTY

FOLIO

DEED dated the        day of        20

#### BETWEEN

(1) \_\_\_\_\_ [of / a company incorporated in the State under register number        having its registered office at]        in the County of        (hereinafter called "the Assignor" which expression shall where the context so admits or requires include his/her/its executors administrators heirs and assigns / successors and assigns) of the First Part; and

(2) the ELECTRICITY SUPPLY BOARD a Statutory Corporation having its principal office at Lower Fitzwilliam Street in the City of Dublin (hereinafter called "the Board" which expression shall where the context so admits or requires include its successors and assigns) of the Second Part.

#### RECITALS:-

- A. In the Electricity (Supply) Act, 1927 as amended (hereinafter called "the Act of 1927") and in these presents the expression "electric line" wherever it occurs shall be construed and have effect and be deemed always to have had effect as meaning a wire or wires, conductor, or other means used for the purpose of conveying, transmitting, or distributing electricity and as including any transforming or other apparatus connected with any such wire or wires, conductor, or other means, and as including also any easing, coating, covering, tube, pipe, or insulator surrounding any such wire or wires, conductor, or other means or any such apparatus, and as including also any post, pole, stay, erection, or structure supporting any one or more of the things hereinbefore mentioned.
- B. Under and by virtue of Section 53 of the Act of 1927 the Board and any authorised undertaker is entitled to place any electric line above or below ground across any land not being a street, road, railway, or tramway and to attach to any wall, house, or other building any bracket or other fixture required for the carrying or support of an electric line or any electrical apparatus.

- C. The Assignor is the holder of an authorisation within the meaning of Section 49 of the Electricity Regulation Act, 1999, and is entitled under the aforesaid Section 49 to apply for consent of the Commission for Energy Regulation to exercise the powers of the Board under the aforesaid Section 53 of the Act of 1927.
- D. To avoid the necessity of exercising the Section 53 procedure a deed of grant dated \_\_\_\_\_ was entered into between \_\_\_\_\_ (hereinafter called "the Owner") of the first part, the Assignor of the second part and the Board of the third part, the Owner, the registered owner of the Lands, for the valuable consideration therein recited granted unto the Assignor full and free right liberty and licence for the Assignor to place and retain an electric line in under or over the portion of the Lands therein specified and for the purpose of inspecting repairing renewing replacing and maintaining the same to enter upon the Lands doing thereby as little damage as possible and to open the ground within the portion of the Lands aforesaid (hereinafter called "the Wayleave"), to the intent that the Wayleave should correspond with the powers exercisable by the Assignor under the aforesaid Section 53 of the Act of 1927 and further to the intent that the Wayleave should be freely assignable by the Assignor (including without limitation to the Board).
- E. The Assignor has placed an electric line over the lands comprised in Folio \_\_\_\_\_ of the Register of Freeholders of the County of \_\_\_\_\_ (hereinafter called "the Lands").
- F. By the deed of grant dated [date] aforesaid, the Owner as registered owner of the Lands covenanted with the Assignor, to the intent that such covenant should bind and run with the Lands and any part thereof, not to permit any tree, shrub or hedge to grow and not to erect any building structure or erection or to place any concrete or similar surface or foundation or to carry out any excavation or development under or on that portion of the Lands more particularly described in the Second Schedule to the deed of grant aforesaid (hereinafter called "the Covenant") to the intent and the Owner thereby acknowledging that the benefit of the Covenant should be freely assignable by the Assignor (including without limitation to the Board) and the Owner further acknowledging that the restriction aforesaid on the Owner's rights in respect of the Lands was and is a necessary incident of and was and is essential to the exercise of the rights comprised in the Wayleave.
- G. The Assignor placed an electric line on over or under the Lands as shown with a line on the map annexed hereto [together with associated posts pillars pylons steel masts wooden structures and other equipment and installations to carry wires cables or other things necessary for the transmission of electricity] (hereinafter called "the Line").
- H. The Wayleave and the Covenant were registered as [a burden / burdens] on the said Folio \_\_\_\_\_ of the Register of Freeholders of the County of \_\_\_\_\_ and the Assignor is the registered owner of the said burden[s].
- I. The Assignor has agreed with the Board for and the Commission has authorised the transfer and assignment by the Assignor to the Board of the Line together with the Wayleave and the benefit of the Covenant on the terms hereinafter appearing.

NOW THIS INDENTURE WITNESSETH as follows:-

In pursuance of the said Agreement and in consideration of the sum of \_\_\_\_\_ euro (€ \_\_\_\_\_) now paid by the Board to the Assignor (the receipt of which the Assignor hereby acknowledges) the Assignor, as beneficial owner, HEREBY TRANSFERS to the Board the Line and further as registered owner and as beneficial owner TRANSFERS ASSIGNS GRANTS AND CONVEYS unto the Board its successors and assigns all its full right title interest privilege and licence of



whatever kind in over and in respect of the Lands and including the Wayleave together with the benefit of the Covenant.

IT IS HEREBY CERTIFIED that section 29 (conveyance on sale combined with building agreement for dwelling house/apartment) of the Stamp Duties Consolidation Act, 1999, does not apply to this instrument as it does not effect a sale or lease of land.

IT IS HEREBY FURTHER CERTIFIED that the consideration (other than rent) for the sale/lease is wholly attributable to property which is not residential property and that the transaction effected by this instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration (other than rent) which is attributable to property which is not residential property exceeds €10,000 / €20,000 / €30,000 / €40,000 / €70,000 / €80,000.

#### **FIRST SCHEDULE**

##### RIGHTS AND PRIVILEGES HEREBY GRANTED BY THE GRANTOR TO THE GRANTEE

**[As per schedule attached to Deed A for overhead easement or Deed B for underground cable]**

#### **SECOND SCHEDULE**

##### STRIP OF THE LANDS IN RESPECT OF WHICH RIGHTS OF THE GRANTOR ARE RESTRICTED

**[As per second schedule of Deed A or B as appropriate]**

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and affixed their seals the day and year first herein written.

##### SIGNED AND DELIVERED

by the said ASSIGNOR

in the presence of:-

PRESENT when the Common Seal of the ELECTRICITY SUPPLY BOARD was affixed hereto:-

**ANNEX (4)**

**Deed D**

**[Deed of Transfer of Contestable Line from the Customer to ESB where Wayleave was acquired by section 53 Notice]**

LAND REGISTRY

COUNTY

FOLIO

DEED dated the            day of            20

BETWEEN

(1) \_\_\_\_\_ [of / a company incorporated in the State under register number            having its registered office at]            in the County of            (hereinafter called "the Assignor" which expression shall where the context so admits or requires include his/her/its executors administrators heirs and assigns / successors and assigns) of the First Part; and

(2) the ELECTRICITY SUPPLY BOARD a Statutory Corporation having its principal office at Lower Fitzwilliam Street in the City of Dublin (hereinafter called "the Board" which expression shall where the context so admits or requires include its successors and assigns) of the Second Part.

RECITALS:-

- A. In the Electricity (Supply) Act, 1927 as amended (hereinafter called "the Act of 1927") and in these presents the expression "electric line" wherever it occurs shall be construed and have effect and be deemed always to have had effect as meaning a wire or wires, conductor, or other means used for the purpose of conveying, transmitting, or distributing electricity and as including any transforming or other apparatus connected with any such wire or wires, conductor, or other means, and as including also any easing, coating, covering, tube, pipe, or insulator surrounding any such wire or wires, conductor, or other means or any such apparatus, and as including also any post, pole, stay, erection, or structure supporting any one or more of the things hereinbefore mentioned.
- B. Under and by virtue of Section 53 of the Act of 1927 the Board and any authorised undertaker is entitled to place any electric line above or below ground across any land not being a street, road, railway, or tramway and to attach to any wall, house, or other building any bracket or other fixture required for the carrying or support of an electric line or any electrical apparatus.
- C. The Assignor is the holder of an authorisation within the meaning of Section 49 of the Electricity Regulation Act, 1999 and by virtue of the consent of the Commission for Energy Regulation (hereinafter called "the Commission") given under the aforesaid Section 49 the Assignor became authorised to exercise the powers of the Board under the aforesaid Section 53 of the Act of 1927.
- D. The Assignor was authorised to place an electric line over the lands comprised in Folio            of the Register of Freeholders of the County of            (hereinafter called "the

Lands”).

- E. In the exercise by the Assignor of the powers conferred upon it under the aforesaid Section 53, by notice dated \_\_\_\_\_ the Assignor became entitled to place an electric line on, over or under the Lands and to enter upon the Lands for the purposes contemplated by the aforesaid Section 53 and thereby acquired rights in respect of the Lands which are referred to hereinafter as “the Wayleave”.
- F. In the exercise of the powers aforesaid and pursuant to the Wayleave the Assignor placed an electric line on over or under the Lands as shown with a \_\_\_\_\_ line on the map annexed hereto [together with associated posts pillars pylons steel masts wooden structures and other equipment and installations to carry wires cables or other things necessary for the transmission of electricity more particularly described in the Schedule hereto] (hereinafter called “the Line”).
- G. [The Wayleave was registered as [a burden / burdens] on the said Folio \_\_\_\_\_ of the Register of Freeholders of the County of \_\_\_\_\_ and the Assignor is the registered owner of the said burden[s].]
- H. The Assignor has agreed with the Board for and the Commission has authorised the transfer and assignment by the Assignor to the Board of the Line together with the Wayleave on the terms hereinafter appearing.

NOW THIS DEED WITNESSES as follows:-

In pursuance of the said Agreement and in consideration of the sum of \_\_\_\_\_ euro (€ \_\_\_\_\_) now paid by the Board to the Assignor (the receipt of which the Assignor hereby acknowledges) the Assignor, as beneficial owner, HEREBY TRANSFERS to the Board the Line and further as registered owner and as beneficial owner TRANSFERS ASSIGNS GRANTS AND CONVEYS unto the Board its successors and assigns all its full right title interest privilege and licence of whatever kind in over and in respect of the Lands and including the Wayleave.

IT IS HEREBY CERTIFIED that section 29 (conveyance on sale combined with building agreement for dwelling house/apartment) of the Stamp Duties Consolidation Act, 1999, does not apply to this instrument.

IT IS HEREBY FURTHER CERTIFIED that the consideration (other than rent) for the sale/lease is wholly attributable to property which is not residential property and that the transaction effected by this instrument does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration (other than rent) which is attributable to property which is not residential property exceeds €10,000 / €20,000 / €30,000 / €40,000 / €70,000 / €80,000.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and affixed their seals the day and year first herein written.

SIGNED AND DELIVERED  
by the said ASSIGNOR  
in the presence of:-

PRESENT when the Common Seal of  
the ELECTRICITY SUPPLY BOARD  
was affixed hereto:-

## Appendix 2: Quotation Letter

Quotation Letter dated [[GV\\_ISSUE\\_DATE](#)]

# **Appendix 3**

## **Contestable**

### **CONSTRUCTION, COMMISSIONING AND CONNECTION**

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**Note on Contestable Commissioning:** If not set out in this Appendix 3, defined terms used in relation to Commissioning, Company Commissioning and Contestable Commissioning can be found in the Quotation Letter in addition to the defined terms in the General Conditions; more particularly at Clauses 1.9, 1.10 and 12.19.2 of the Quotation Letter.

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

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

On the request of the Company, the Customer shall provide a site survey of the site at which the Contestable Components are to be constructed including, but not limited to, the lands, spaces, roads and any surface and wayleaves relating to the project. It is recommended that the site survey be provided prior to site purchase, but in any event, prior to submission of application for Consents. For the avoidance of doubt, and notwithstanding the responsibilities set out in [Paragraph 1.2](#) below, the Company reserves the right to veto the site selected if, in the opinion of the Company, it has an impact on the development of the Network.

### **1.2 Site Condition**

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

1.2.1 the Customer of its obligations under the Agreement shall not excuse any delay by the Customer in meeting its obligations under the Agreement or give rise to any other right for the Customer under the Agreement;

1.2.2 the Company of its obligations under the Agreement shall excuse any delay by the Company in meeting its obligations under the Agreement, and in the event that any such condition causes the Company to incur increased costs (as determined by the Company, acting reasonably) in meeting its obligations under the Agreement in relation to the Company's Connection Works then the Connection Charges shall be increased by the amount of those increased costs (so determined).

Notwithstanding the above, the Customer shall facilitate any request by the Company to visit the site pre-acceptance of the connection offer.

## **1.3 Site Responsibility Schedule**

1.3.1 As soon as reasonably practicable a document shall be prepared by the Company (reflecting the details agreed between the Company and the Customer) in respect of the site pursuant to the Agreement and signed by both Parties by way of confirmation of its accuracy, detailing the division of responsibilities at the interface site in respect of ownership, control, operation, maintenance and safety (“the Site Responsibility Schedule”). The Customer shall provide to the Company upon request all such information as is required by the Company to enable it to prepare the Site Responsibility Schedule prior to the commencement of permanent and/or temporary works required for the design, construction, completion and commissioning of the Facility and Contestable Components.

1.3.2 An ownership diagram shall be included in the Site Responsibility Schedule incorporating numbering, nomenclature and labelling. Apparatus to be shown and the preferred graphical symbols to be used shall be in accordance with the Company’s standard practice.

1.3.3 A copy of the Site Responsibility Schedule including the ownership diagram shall be retained by the Company and by the Customer.

1.3.4 The Customer shall notify the Company of any changes at or relating to the site which may affect the Site Responsibility Schedule or ownership diagram and the Company shall carry out any necessary updating and the principles set out in Paragraph 1.3.1 shall apply to such updating.

1.3.5 The Site Responsibility Schedule shall detail the demarcation of the responsibility for safety of persons carrying out work or testing at the site on circuits which cross the site at any point.

## **2.0 CARRYING OUT OF THE WORKS**

### **2.1 Customer's Consents**

2.1.1 All of the Company’s specifications including but not limited to outline, functional, materials, and protection specifications are Confidential Information.

2.1.2 The Company shall use reasonable endeavours in accordance with Paragraph 2.4 within sixty (60) Business Days following satisfaction of the appropriate Conditions Precedent to Agreement, provide the Customer with the outline specification to include the functional specification and protection specification for the connection of the Facility to the Network to facilitate the Customer in applying for Consents for the Customer’s Connection Works.

2.1.3. The Customer shall, immediately following satisfaction of the appropriate Conditions Precedent to Agreement use its prudent and commercial endeavours to obtain all such Consents as shall be required for the purposes of the Contestable Components (as shall be necessary to enable the Contestable Components to be completed) and as otherwise required for the purposes of the Agreement (and shall thereafter maintain the same). Prior to the Customer submitting any application for Consents the Customer shall submit the application to the Company for its acceptance. The Company shall advise within ten (10) Business Days any comments, suggestions and/or amendments to the application and, only after the Customer has incorporated all the Company's comments, suggestions and/or amendments into the application may the Customer formally submit the application for Consents to the relevant authorities. The Customer acknowledges and agrees that any comments, suggestions and/or amendments made by the Company to the Customer in connection with applications for Consents do not in anyway create any liability whatsoever for the Company. In making any application for Consents the Customer shall include in such applications a reference to any applications for planning permission consents which have been made by the Company and which have been notified to the Customer by the Company.

## **2.2 Connection Works Design and Programme**

2.2.1 Should the Customer so request, and following the provision of the outline specification as provided under paragraph 2.1.2, the Parties shall meet in good faith, to discuss and agree a programme for progressing of the shallow construction works consistent with the Quotation Letter and the following provisions:

2.2.1.1 The Customer is the 'Client' as defined under EU and Irish Health and Safety legislation for the purposes of the Contestable Components except where a Lead Developer has been appointed (see paragraph 5.1 herein) in which case the Lead Developer shall be the 'Client'.

2.2.1.2 The Company ~~will~~shall specify its requirements and advise of required standards within a reasonable timeframe;

2.2.1.3 The Customer ~~will~~shall specify its proposed designs consistent with the Company's requirements and all subsequent modifications and regulations arising under or in relation to same.

2.2.1.4 The Company shall review the Customer's designs and recommend any amendments necessary to meet the Company's requirements within sixty (60) Business Days of submission of designs by the Customer. Such amendments shall be carried out by and at the expense of the Customer. Notwithstanding

any review or comment made by the Company with respect to the Customer's design, the Customer shall be responsible for any failure to comply with and/or achieve the Company's requirements and for any errors, omissions or discrepancies whatsoever and howsoever arising therein;

2.2.1.5 If the Customer elects to Contestably Commission, the Customer will prepare a commissioning plan in compliance with the Company's requirements as set out in the Contestable Commissioning Specification. The Company shall review the Customer's commissioning plan and recommend any amendments necessary to meet the Company's requirements within forty (40) Business Days of submission of the commissioning plan by the Customer. Notwithstanding any review or comment made by the Company with respect to the Customer's commissioning plan, the Customer shall be responsible for any failure to comply with and/or achieve the Company's requirements and for any errors, omissions or discrepancies whatsoever and howsoever arising therein.

2.2.2 The Customer shall assume full responsibility for the design of the Contestable Components. Acceptance by the Company shall not relieve the Customer of any obligations under this Agreement.

2.2.3 The Parties shall liaise and co-operate during the carrying out of the Contestable Components.

## **2.3 Construction and Quality Assurance**

2.3.1 Safety procedures for all personnel working on or in close proximity of existing Networks are governed by the ESB Safety Rules.

2.3.2 In order to demonstrate that the Contestable Components comply with the Company's requirements the Customer shall provide the following to the Company at least twenty (20) Business Days before construction of the Contestable Components commences:

2.3.2.1 A copy of the Customer's programme of works for implementation of the Contestable Components

2.3.2.2 Rights to attend any factory acceptance test or site acceptance test for major plant, as selected at the option of the Company. The Customer shall provide ten (10) Business Days advance notification to the Company of any

such selected tests as they occur throughout the project and true copies of all documentation relevant to the tests;

2.3.2.3 On request provide, within five (5) Business Days, true copies of relevant documentation of any acceptance test (factory or site) that the Company has elected not to attend;

2.3.2.4 Rights to inspect work in progress and relevant documentation;

2.3.2.5 Rights to attend all pre-commissioning tests and receive copies of records of all pre-commissioning tests carried out. The Customer shall provide ten (10) Business Days advance notification to the Company of such tests-;

~~2.3.2.6~~ 2.3.2.6 Where the Customer has elected to and is carrying out Contestable Commissioning the right to attend all Contestable Commissioning carried out by or on behalf of the Customer and receive copies of records of all Contestable Commissioning. The Customer shall provide a minimum of thirty (30) Business Days advance notification to the Company of such tests in the event that the dates of testing set out in the commissioning plan are being amended; and

2.3.2.7 Right to request the Customer to carry out additional tests in cases where the Company considers the specified tests to be inadequate or in cases where the initial test has been failed.

2.3.3 In advance of the commencement of the Commissioning Tests and if applicable the Contestable Commissioning the Customer shall:

2.3.3.1 For all Contestable Components transferring to ESB, provide a copy of the Safety File (required pursuant to the Safety Health and Welfare at Work Act, 2005) to the Company. All and any subsequent modifications to the Safety File shall be notified to the Company and copies of any such modifications shall be provided to the Company. The original up-to-date Safety File and any ancillary rights thereto shall be provided to the Company on the Connection Agreement Effective Date.

2.3.3.2 ~~Transfer~~ make available and provide to the Company, the As-Built Records and any other relevant information, documentation or data which may be reasonably requested by the Company and which are necessary for

Commissioning and to facilitate the operation of the Network and Facility together.

2.3.3.3 Notwithstanding ~~paragraph~~ Paragraph 21.4 of the General Conditions, where the Contestable Components are transferred to ESB all copyright and other intellectual property rights in the As-Built Records and in any other relevant information, documentation or data which may be reasonable requested by the Company shall be vested in and belong to the Company. The Customer shall not use the As-Built Records for any purpose other than in connection with the Contestable Components or grant a licence of any such intellectual property rights to any third party, without the prior written consent of the Company.

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

2.3.3.4.1 Apply in perpetuity

2.3.3.4.2 Entitle any person in proper possession of the relevant part of the Contestable Components to copy, use and communicate the As-Built Records for the purposes of controlling, operating and/or regulating the Network and Customer's Equipment.

2.3.3.4.3 Entitle the Company to provide copies of as-laid maps and drawings showing the Contestable Components to third parties without the consent of the Customer.

~~2.3.3.5~~ Provide 2.3.3.5A where the Customer has elected NOT to carry out Contestable Commissioning, provide the Company with unrestricted access to the Terminal Sub-Station and to the Contestable Components in order to carry out Company Commissioning and operation and to maintain safety standards in accordance with ESB Safety Rules for the duration of the Company Commissioning Tests. In the interests of safety, the Customer, its servants or agents agree not to enter the Terminal Substation or any of the relevant Plant and/or Apparatus while the Company Commissioning Tests are ongoing without prior notification to and agreement of the Company in writing. The Company shall have no liability to the Customer to the fullest extent

permitted by law for the duration of the Company Commissioning Tests.

For the avoidance of doubt, where this Paragraph 2.3.3.5A applies, Paragraph 2.3.3.5B shall have no application.

2.3.3.5B where the Customer has elected to carry out Contestable Commissioning, provide the Company with unrestricted access to the Terminal Sub-Station and to the Contestable Components for the duration of the Contestable Commissioning. The Company shall have no liability to the Customer to the fullest extent permitted by law in respect of the Contestable Commissioning.

For the avoidance of doubt, where this Paragraph 2.3.3.5B applies, Paragraph 2.3.3.5A shall have no application.

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

The Parties shall, within twenty (20) Business Days of providing comments on the Customers designs, as set out under ~~paragraph~~Paragraph 2.32.1.4, and acting in good faith, meet to discuss what further project monitoring provisions shall apply to this Agreement. Subject always to the Company's overall rights to review the construction of the Contestable Components, the Parties shall use their reasonable endeavours to agree in writing on such further project monitoring provisions such as but not limited to meetings, construction programme and delays, and having so agreed shall comply with such provisions and in the event of a disagreement the matter will be determined by the Independent Engineer pursuant to Paragraph 3.4.

## **3.0 CONSEQUENCES OF DELAYS**

### **3.1 Delays**

In this paragraph, an "Affected Party" means a party of the Agreement who is delayed in carrying out any of its works including its Commissioning Tests and/or Contestable Commissioning and/or Company Commissioning and/or Grid Code/ Distribution Code tests prior to the Commissioning Tests and/or Contestable Commissioning and/or Company Commissioning completion date. A "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



If prior to the Commissioning Tests and/or Contestable Commissioning and/or Company Commissioning completion date, an Affected Party shall be delayed in carrying out any of the Affected Party's works (including, for the purposes of this Paragraph ~~0~~the 3 the Affected Party's Commissioning Tests and/or Contestable Commissioning and/or Company Commissioning and Grid Code /Distribution Code tests) by reason of:

3.1.1 any act, default or omission on the part of the Defaulting Party or the Defaulting Party's employees, agents, contractors or sub-contractors;

3.1.2 in the case of the Company being the Affected Party, any Consent required by the Company or in the case of the Customer being the Affected Party, any Consent required under Paragraph 2.1, ceasing to be in force, or any condition of such a Consent preventing the Affected Party from performing its obligations save where such condition is the consequence of the negligent actions or omissions of the Affected Party;

3.1.3. in the case of the Company, a delay of the nature referred to in Paragraph 1.2; or

3.1.4 an event of Force Majeure (to the extent that the Affected Party is relieved of its obligations under the General Conditions),

the Affected Party shall be entitled to have the Shallow Works Completion Period extended as may be fair and reasonable in the circumstances subject always to the Longstop Dates as set out in the Agreement not being exceeded and provided that the Affected Party notifies the Defaulting Party in writing of such act, default or omission, or event of Force Majeure, within five (5) Business Days of the Affected Party becoming aware of the occurrence giving rise to the delay, together with an estimate of the proposed delay which it will cause the Affected Party

### **3.2 Notification of Delay**

If either Party shall have reason to believe that it is being delayed or will be delayed in carrying out the Contestable Components or Essential Component Works for any reason (whether it is one entitling it to the fixing of a new date under Paragraph ~~0~~3 or not) it shall notify the other Party in writing within five (5) Business Days of its becoming aware of the occurrence giving rise to the delay and of the extent of the actual and/or anticipated delay.

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

Each Party agrees to use reasonable endeavours to complete the Contestable Components and Essential Component Works within the Shallow Works Completion Period

3.3.1A Except in the circumstances detailed in Paragraph ~~0-0r3.1or~~ 3.1or for reasons of Force Majeure, where it appears to the Customer at any time that the actual progress of the design, construction, Company Commissioning and testing of the Essential Component Works is not achieving a major milestone listed in the Construction Programme and provided both parties have already referred to the matter at issue to the Independent Engineer and the Company has failed to comply with the directions of the Independent Engineer the Customer shall be entitled to require the Company to submit to the Customer a report identifying the reasons for the delay and/or to produce and submit to the Customer for its review (where practicable to do so) a revised programme showing the order of procedure and periods consistent with actual progress and necessary to ensure compliance with the programme.

3.3.1B Except in the circumstances detailed in Paragraph 3.1 or for reasons of Force Majeure, where it appears to the Company at any time that the actual progress of the design, construction, Contestable Commissioning and testing of the Essential Component Works is not achieving a major milestone listed in the Construction Programme and provided both parties have already referred to the matter at issue to the Independent Engineer and the Customer has failed to comply with the directions of the Independent Engineer the Company shall be entitled to require the Customer to submit to the Company a report identifying the reasons for the delay and/or to produce and submit to the Company for its review (where practicable to do so) a revised programme showing the order of procedure and periods consistent with actual progress and necessary to ensure compliance with the programme.

3.3.2 If the Company fails to meet any of the major milestones listed in the revised programme for a period of thirty (30) Business Days (other than for circumstances outside its reasonable control or otherwise provided for in the Agreement) then the Customer's remedies against the Company for non performance of the Essential Component Works are to refer to the Dispute Resolution procedure in paragraph 3.4 hereto.

3.3.3 Where the Customer has not used all reasonable endeavours to meet its obligations and such failure has resulted in the Contestable Components and/or the Essential Component Works not being completed within the Shallow Works Completion Period then the Customer shall be liable to pay to the Company the costs and/or

expenses reasonably incurred by the Company arising from such delays.

### **3.4 Disputes and Independent Engineer**

3.4.1 Without prejudice to the dispute resolution provisions in the General Conditions, any dispute or difference of any kind shall be initially referred to in writing to a senior representative of each party (with a copy of the written referral sent to the other party) with a view to a senior representative of each party entering into bona fide discussions to resolve such dispute or difference. Senior representatives of the parties shall meet to discuss the issue in dispute as soon as reasonably practicable after having the matter referred to them but no later than ten ~~10~~ Business Days of the notice of referral.

3.4.2 If such bona fide attempt at resolution is unsuccessful the dispute or difference in question shall be referred by either Party to an independent engineer as agreed between the Parties (“Independent Engineer”).

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

3.4.2.2 In the event that the Independent Engineer ceases to perform the duties as required, then the Parties shall jointly appoint such firm of engineers as they may agree for the

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

#### **4.0 COMPANY/CONTESTABLE COMMISSIONING AND CONNECTION**

##### **4.1 *Contestable Components Completion Date***

The Company shall, as soon as it is satisfied that the Contestable Components have been completed, notify the Customer to that effect specifying the date on which such completion occurred.

##### **4.2 *Discussions on ~~Customers Commissioning (pre-commissioning)~~, Company Commissioning, Contestable Commissioning, Grid /Distribution Code and Capacity Tests***

4.2.1 Notwithstanding anything in the Agreement to the contrary, and without limiting any other obligations of the Customer, the Customer shall not have the right under the Agreement to require the Company Commissioning Tests be carried out ~~and/or to carry out the Contestable Commissioning~~ until the Company is satisfied (acting reasonably) that the Contestable Components have been built to standard and are acceptable to the Company.

~~4.2.2~~ As 4.2.2A Where the Customer is not carrying out Contestable Commissioning, as soon as reasonably practicable, but no later than sixty (60) Business Days before completion of the Shallow Works Completion Period and in any event no later than the latest date for such meeting specified in the Construction Programme, the Parties shall meet to discuss, in good faith, the matters set out in Paragraphs 4.2.2.1 to 4.2.2.8. Following the meeting, the dates agreed for these tests shall be confirmed in writing within ten (10) Business Days of the meeting.

4.2.2 B Where the Customer is carrying out Contestable Commissioning, as soon as reasonably practicable but no later than 20 Business Days in advance of submission of the Customer commissioning plan, the Parties shall meet to discuss, in good faith the matters set out in Paragraphs 4.2.2.1 to 4.2.2.8. Following the meeting, the dates agreed for these tests shall be confirmed in the Customer commissioning plan to be submitted for review by the Company.

- 4.2.2.1 what pre-commissioning tests, Company Commissioning Tests, Contestable Commissioning or Commissioning Tests and what Grid Code/ Distribution Code tests are required;
- 4.2.2.2 which Company Commissioning Tests, Contestable Commissioning or Commissioning Tests are to be conducted by each Party, and which Grid Code/ Distribution Code tests the Company reasonably requires to witness and/or requires notification as to the results;
- 4.2.2.3 any requirements of the Parties which must be met before they can carry out their ~~respective~~ Company Commissioning Tests, Contestable Commissioning or Commissioning Tests and, in the case of the Customer, the Grid Code/ Distribution Code tests;
- 4.2.2.4 whether there are any distinct parts of the Contestable Components which are capable of being separately Energised;
- 4.2.2.5 which of ~~one Party's~~ the Company's Commissioning Tests, Contestable Commissioning or Commissioning Tests must be conducted simultaneously ~~with Commissioning Tests of the other Party; and;~~
- 4.2.2.6 the Capacity Test if applicable;
- 4.2.2.7 if applicable, the date on which the Company shall take operational control of the Contestable Components and Terminal Sub-Station (“the Handover Date”); ~~); and~~
- 4.2.2.8 The date on which settings for protection relays will be required.

~~Following the meeting, the dates agreed for these tests shall be confirmed in writing within 10 business days of the meeting.~~

### **4.3 Notice of Requirement to Witness pre-commissioning tests**

The Company shall, within thirty (30) Business Days of receiving notice from the Customer giving details as to the pre-commissioning tests, notify the Customer as to:

4.3.1 which of the ~~Customer's Commissioning Tests and pre-commissioning tests and~~ the Grid Code/ Distribution Code Tests and if applicable the Capacity Test it reasonably requires to witness whereupon the Customer shall allow the representatives of the Company access to the Customer's Premises to witness and verify such pre-commissioning tests, and

4.3.2 which of the ~~Customer's~~ pre-commissioning tests and the Grid Code/ Distribution Code Tests and if applicable the Capacity Test it requires the results of whereupon the Customer shall, following completion of the test and without delay, notify reasonable details of the test results to the Company.

All copies of pre-commissioning documents shall be handed over to the Company at a handover meeting to be held at least ten (10) Business Days before Company Commissioning or Contestable Commissioning starts.

For the avoidance of doubt, pre-commissioning tests shall be carried out by the Customer irrespective of who is carrying out commissioning of Contestable Components.

#### **4.4 Notice of Further pre-commissioning tests**

Subsequent to written confirmation of dates agreed for tests given under Paragraph 4.2.2, in the event that, the Customer proposes to carry out a pre-commissioning test or Grid/ Distribution Code test and/or if applicable the Capacity Test the Customer shall, without delay, give the Company reasonable details of the pre-commissioning test or Grid/ Distribution Code test and/or if applicable the Capacity Test it proposes to carry out. The Company may, within five (5) Business Days of such a notice, notify the Customer that it reasonably requires to witness that test or that it requires the results of the test whereupon Paragraph 4.3 shall apply in respect of that test as if it had been so included in the Customer's notice given under Paragraph 4.3.

#### **4.55A Notice of Requirement to Witness Company Commissioning Tests**

This Paragraph 4.5A shall apply in circumstances where the Customer has elected not to carry out Contestable Commissioning. For the avoidance of doubt, in such circumstances Paragraph 4.5B shall have no application.

The Customer shall, within thirty (30) Business Days of receiving notice from the Company giving details as to the Company Commissioning Tests the Company proposes to carry out, notify the Company as to:

4.55A.1 ——— which of the Company's Commissioning Tests it reasonably requires to witness whereupon the Company shall allow the representatives of the Customer access to the Company's Premises to witness and verify the

Company Commissioning Tests, the Grid Code/ Distribution Code tests and if applicable the Capacity Test,

4.55A.2 which of the Company's Commissioning Tests it requires the results of whereupon the Company shall, following completion of the test and without delay, notify reasonable details of the test results to the Customer.

#### **4.65B Notice of Requirement to Witness Contestable Commissioning**

This Paragraph 4.5B shall apply in circumstances where the Customer has elected to carry out Contestable Commissioning. For the avoidance of doubt, in such circumstances Paragraph 4.5A shall have no application.

The Company shall, in its review of the Customer's commissioning plan, indicate (i) which of the Contestable Commissioning it reasonably requires to witness whereupon the Customer shall allow the representatives of the Company access to the Customer's Premises to witness and/or verify the Contestable Commissioning the Grid Code/ Distribution Code tests and if applicable the Capacity Test, and (ii) which of the Contestable Commissioning it requires the results of whereupon the Customer shall, following completion of the test and without delay, notify reasonable details of the test results to the Company.

For the avoidance of doubt, no witnessing, verification, acceptance or like by the Company in respect of any aspect of pre-commissioning, Commissioning Tests, Contestable Commissioning or any Declaration of Fitness shall of itself be conclusive evidence that the Customer has complied with all or any of its obligations under Appendix 3 of this Connection Agreement.

#### **4.6A Notice of Further Company Commissioning Tests**

This Paragraph 4.6A shall apply in circumstances where the Customer has elected not to carry out Contestable Commissioning. For the avoidance of doubt, in such circumstances Paragraph 4.6B shall have no application.

Subsequent to a notice given under Paragraph 4.4.25A, in the event that the Company proposes to carry out a Company Commissioning Test for which reasonable details were not given in that notice, the Company shall, without delay, give the Customer reasonable details of the Company Commissioning Test it proposes to carry out. The Customer may, within five (5) Business Days of such a notice, notify the Company that it reasonably requires to witness that test or that it requires the results of the test whereupon Paragraph 4.4 shall apply in respect of that test as if it had been so included in the other Party's notice given under Paragraph 4.4

#### **4.6B Notice of Further Contestable Commissioning**

This Paragraph 4.6B shall apply in circumstances where the Customer has elected to carry out Contestable Commissioning. For the avoidance of doubt, in such circumstances Paragraph 4.6A shall have no application.

Subsequent to a notice given under Paragraph 4.5B, in the event that the Customer proposes to carry out Contestable Commissioning for which reasonable details were not given in that notice, the Customer shall, without delay, give the Company reasonable details of the Contestable Commissioning it proposes to carry out. The Company may, within five (5) Business Days of such a notice, notify the Customer that it reasonably requires to witness that test or that it requires the results of the test whereupon Paragraph 4.4 shall apply in respect of that test as if it had been so included in the other Party's notice given under Paragraph 4.4.

#### **4.7 Joint Testing**

“Joint Commissioning Tests” means the simultaneous and/or co-ordinated conduction of Company Commissioning Tests, Contestable Commissioning and Commissioning Tests by both Parties.

4.7A: This Paragraph 4.7A shall apply in circumstances where the Customer has elected not to carry out Contestable Commissioning. For the avoidance of doubt, in such circumstances Paragraph 4.7B shall have no application.

The Company shall, as soon as reasonably practicable, notify (acting reasonably and having regard to the Parties discussions under Paragraph 4.2.2.5) the Customer as to which Joint Commissioning Tests must be conducted. In addition the Company shall, (acting reasonably and without delay), once the Company is satisfied that all the ~~Company's~~ Company's Commissioning Tests (other than Joint Commissioning Tests) and that all the ~~Customer's~~ pre-commissioning tests (other than Joint Commissioning Tests) in respect of any distinct (as determined by the Company, acting reasonably and having regard to the Party's discussions under Paragraph 4.2.2.4) part of the Customer's Equipment which is capable of being separately Energised, have been properly and satisfactorily completed (or that none are required in respect of that part) notify to the Customer the date of commencement of each Joint Commissioning Test relevant to that part, which date shall be as soon as reasonably practicable thereafter.

4.7B: This Paragraph 4.7B shall apply in circumstances where the Customer has elected to carry out Contestable Commissioning. For the avoidance of doubt, in such circumstances Paragraph 4.7A shall have no application.

The required Joint Commissioning Tests shall be detailed in the Customer's commissioning plan.

#### **4.8 Repetition of Tests**

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



Customer's pre-commissioning tests and/or the Grid Code/ Distribution Code tests and/or if applicable the Capacity Tests (as the case may be) to be properly and satisfactorily completed and having given in respect of such repetitions or further tests the notice required by Paragraph 4.2 to be given to the Company) undertake such repetitions of, or further, Customer's Commissioning Tests and/or Contestable Commissioning and/or Grid Code / Distribution Code tests and/or if applicable the Capacity Tests (as the case may be) as are required by the Company (acting reasonably) so that the Company may satisfy itself that the Customer's Commissioning Tests and/or Contestable Commissioning and/or Grid Code/ Distribution Code tests and/or if applicable the Capacity Test (as the case may be) have been properly and satisfactorily completed.

#### **4.99A Notice of Company's Commissioning Tests**

This Paragraph 4.9A shall apply in circumstances where the Customer has elected not to carry out Contestable Commissioning. For the avoidance of doubt, in such circumstances Paragraph 4.9B shall have no application.

The Company shall give the Customer reasonable advance notice (being not less than fifteen (15) Business Days) of the time and date of carrying out the Company's Commissioning Tests (other than Joint Commissioning Tests) as per the previously agreed schedule. In the event that, having given such confirmation, the Company (acting reasonably) determines that such tests must be carried out prior to or after the time and date previously confirmed, then provided the Company gives the Customer reasonable notice of the re-scheduled tests, it shall not be deemed to have failed to give the Customer the notice required. In the event of failure by the Company to give such notice, the Customer may notify the Company that it requires the Company to repeat or re-schedule any Company Commissioning Test not so notified, whereupon the Company shall repeat or re-schedule such test having first given the advance notice required by this Paragraph 4.99A. The time and date of the Company's Commissioning Tests will be re-confirmed not less than three (3) Business Days before the date of carrying out such tests.

#### **4.9B Notice of Contestable Commissioning**

This Paragraph 4.9B shall apply in circumstances where the Customer has elected to carry out Contestable Commissioning. For the avoidance of doubt, in such circumstances Paragraph 4.9A shall have no application.

The Customer shall give the Company reasonable advance notice (being not less than thirty (30) Business Days) of the time and date of carrying out the Contestable Commissioning (other than Joint Commissioning Tests) as previously agreed and as scheduled in the Customer's commissioning plan. In the event that, having given such confirmation, the Customer (acting reasonably) determines that such tests must be carried out prior to or after the

time and date previously confirmed, then provided the Customer gives the Company reasonable notice of the re-scheduled tests, it shall not be deemed to have failed to give the Company the notice required. In the event of failure by the Customer to give such notice, the Company may notify the Customer that it requires the Customer to repeat or re-schedule any Contestable Commissioning not so notified, whereupon the Customer shall repeat or re-schedule such test having first given the advance notice required by this Paragraph 4.9B. The time and date of the Contestable Commissioning will be re-confirmed not less than thirty (30) Business Days before the date of carrying out such tests.

#### **4.10 Declaration of Fitness**

A “Declaration of Fitness” means a declaration, in respect of any distinct part of the Customer’s Equipment (as determined by the Company), that the Customer’s Equipment has been properly completed in accordance with Good Industry Practice and the requirements of the Company. ~~The Company~~

(a) If the Customer is not carrying out Contestable Commissioning, the Company will issue the Customer with the relevant Declarations of Fitness within ten (10) Business Days in respect of any distinct (as determined by the Company, acting reasonably and having regard to the Parties discussions under Paragraph 4.2.2.4) part of the Contestable Components which is capable of being separately Energised, that the Company’s Commissioning Tests have been properly and satisfactorily completed or that none is required in respect of that part.

(b) If the Customer is carrying out Contestable Commissioning, the Customer will issue the Company with the relevant Declarations of Fitness within ten (10) Business Days in respect of any distinct (as determined by the Company, acting reasonably and having regard to the Parties discussions under Paragraph 4.2.2.4) part of the Contestable Components which is capable of being separately Energised, that the Contestable Commissioning has been properly and satisfactorily completed or that none is required in respect of that part. For the avoidance of doubt, the Company reserves the right in its absolute discretion to accept or reject any Declaration of Fitness provided by the Customer. Within 10 Business Days of receipt of the Declaration of Fitness the Company shall either issue a certificate of acceptance of the Declaration of Fitness or state the reasons why it is unable to issue a certificate of acceptance. In the event that the Company is unable to issue a certificate of acceptance the Customer shall procure that the relevant commissioner shall rectify those matters, identified by the Company and on completion re-issue the Declaration of Fitness.

In respect of Paragraph 4.10(a) or 4.10(b) above, there are three distinct asset types, being (i) the Terminal Sub-Station, (ii) the overhead cable and (iii) the underground cable. The Company (under Paragraph 4.10(a)) or the Customer (under Paragraph 4.10(b) is entitled to provide a separate Declaration of Fitness from a separate commissioner for each of these three distinct asset types (provided, in the case of Paragraph 4.10(b), that such commissioner has been accepted by the DAO in accordance with the other provisions of this Appendix 3).

For the avoidance of doubt, this Paragraph 4.10 does not remove the Customer's obligations set out in Clause 5 of the Connection Agreement to provide a Declaration of Fitness for the Customer Connection Equipment.

#### **4.11 Notification of Energisation Instructions**

“Energisation Instructions” means instructions detailing the sequence of events which must be followed when energising for the first time. The Company shall in respect of each part of the Customer's Equipment for which a Declaration of Fitness is to be issued under Paragraph 4.910 and in consultation with the Customer, develop and notify to the Customer the Energisation Instructions. The Energisation Instructions shall be completed and notified to the Customer (subject to the Customer having co-operated fully with the Company in developing and implementing the Energisation Instructions (which the Customer agrees to do)) not later than the date on which the ~~Company issues its~~ Declaration of Fitness is issued in respect of that part. Both Parties shall comply with the Energisation Instructions and for the avoidance of doubt no part of the Customer's Equipment shall be energised other than by implementation of the Energisation Instructions.

#### **4.12 Notification of Operating Instructions**

“Operating Instructions” means the detailed instructions which meet as a minimum the requirements of ESB Safety Rules on the switching sequences to be followed for voluntary, fault and emergency switching at the interface in the transmission /distribution station and the Customer's Equipment. This instruction must state the representatives of the Company and the Customer who are approved to switch and will attend the transmission /distribution station and/or Facility during emergencies or planned switching. Letters of competence must be provided by the customer for these representatives.

The Company shall in consultation with the Customer, develop, and notify to the Customer the Operating Instructions. The Operating Instructions shall be completed and notified to the Customer (subject to the Customer having co-operated fully with the Company in developing the Operating Instructions (which the Customer agrees to do) not later than the date on which the Company and/or the Customer (pursuant to Paragraph 4.10) has issued a Declaration of Fitness in respect of every part of the Customer's Equipment

and the Company's Connection Equipment. Both Parties shall be bound to comply with the Operating Instructions, which shall come into force on the Connection Agreement Effective Date.

#### **4.13 Joint Commissioning Tests Completion Date**

The Company shall notify the Customer when, in its opinion, the Joint Commissioning Tests have been completed provided that the Joint Commissioning Tests completion date shall not occur prior to the date on which the ~~Company is~~ both Parties are satisfied that all Commissioning Tests, Company Commissioning and/or Contestable Commissioning to be carried out pursuant to this Paragraph ~~04~~ (other than Joint Commissioning Tests) have been properly and satisfactorily completed.

#### **4.14 Operational Control**

4.14.1 Where applicable, the period between the Handover Date and the Date of Transfer, in accordance with ~~paragraph~~ Paragraph 6, hereto is called the "Operational Control Period" and is subject to the principle that any faults arising from Commissioning, Contestable Commissioning (if applicable) and/or Energisation within the Operational Control Period shall be rectified by the Customer. The Company shall have no liability to the Customer to the fullest extent permitted by law for the Contestable Components and/or Terminal Sub-Station during the Operational Control Period.

4.14.2 Further to ~~paragraph~~ Paragraph 2.3.3.5, access for the Customer during the Operational Control Period shall be subject to agreement with the Company and/or at the request of the Company to complete outstanding items on the snag list and to resolve any faults arising from Commissioning, Contestable Commissioning, and/or Energisation. The access route to the Terminal Sub-Station shall be maintained by the Customer.

4.14.3 ESB Safety Rules shall continue to apply for the Operational Control Period

#### **4.15 Contestable Commissioning**

Where the Customer has elected to and is carrying out Contestable Commissioning:

4.15.1 The Customer shall carry out the Contestable Commissioning in accordance with the Company's requirements in respect of Contestable

Commissioning set out in the Contestable Commissioning Specification, which may be amended from time to time. The Customer shall at all times remain fully responsible for the acts or omissions of the commissioner or any personnel engaged by the commissioner or otherwise.

4.15.2 The Customer shall be entitled to engage up to three commissioners, one for each of the distinct asset types referenced in Paragraph 4.10, for the purpose of issuing a Declaration of Fitness. The assessment of commissioner(s) proposed by the Customer shall be carried out in accordance with the Contestable Commissioning Specification. The individual proposed commissioners shall not have been involved in the design, procurement, construction or pre-commissioning of the Contestable Components.

4.15.3 Should the commissioner be found, through auditing or otherwise, to be carrying out Contestable Commissioning in such a way that is not in compliance with the Company's requirements set out in Contestable Commissioning Specification or is deemed in the absolute discretion of the Company or DAO to compromise the safety, quality or security of the Network, the Company reserves the right to require the immediate removal of the commissioner and the Customer must reapply to the Company to have a further commissioner assessed and accepted on the Company's commissioner approval register for that project and the Contestable Commissioning phase of the project shall be required to recommence.

4.15.4 The Company shall have the right to De-Energise the Customer in accordance with the provisions of Clause 9 of the General Conditions (De-energisation and Breach of Agreement) in the event of any non-compliance by the Customer in respect of the Contestable Commissioning.

4.15.5 Where the Customer is carrying out Contestable Commissioning, the Customer's insurance requirements as set out in Clause 11 of this Connection Agreement shall be amended to the extent that the amount of public liability insurance shall be as follows:

Public Liability Insurance with a minimum indemnity limit of €6,500,000 (six million five hundred thousand Euro).

4.15.6 The Customer shall ensure that the commissioner takes out and maintains professional indemnity insurance in respect of the Contestable Commissioning with a minimum indemnity limit of €6,500,000 (six million five hundred thousand Euro) in the aggregate

with an insurer of repute carrying out business in the European Union for the duration of seven years following the Handover Date.

4.15.6 The Customer shall ensure that the professional indemnity insurance taken out by the commissioner extends to damage suffered by ESB and its officers, employees, agents and contractors. The Customer shall ensure that the commissioner's professional indemnity insurance policy includes a specific indemnity to the Company and ESB.

4.15.8 The Company shall be entitled to seek written confirmation and satisfactory documentary evidence from the Customer that the commissioner's professional indemnity insurance remains in effect for the required period.

## **5.0 Shared Assets**

### **5.1 Lead Developer and Subgroups**

- 5.1.1 A Subgroup is a number of Customers in the same geographic location who will share a connection method or connection assets. The Subgroup have appointed a Lead Developer under the standard *Contestability Letter of Agreement for Contesting Shared Assets* which is attached at Appendix 4 of the Quotation Letter.
- 5.1.2 In the event that the Lead Developer ceases to act, the Subgroup must within 30 Business Days appoint a new Lead Developer and submit to the Company a revised standard *Contestability Letter of Agreement for Contesting Shared Assets*, failing which the Subgroup will unanimously request a modified offer in the form of a non-contestable contract.

## **6.0 TRANSFER OF ASSETS**

### **6.1 Transfer of Ownership**

The Customer shall transfer such Contestable Components as agreed between the parties or as directed by CER pursuant to CER/10/056, to ESB in accordance with the Agreement (see paragraph 1.8 of the Quotation Letter). The "Date of Transfer" is the date that such transfer occurs within the time limits set out in the Agreement.

### **6.2 Warranties to the Company**

- 6.2.1 The Customer warrants to the Company and to ESB that;

- 6.2.1.1 The Contestable Components, Terminal Sub-Station and associated Equipment are constructed in accordance with the Agreement and any defects therein shall be remedied by the Customer. The Contestable Components, Terminal Sub-Station and associated Equipment shall be fit for the purposes for which they are intended as defined in the Agreement and shall be of merchantable quality and free from defects for a period of twenty four (24) months from the Handover Date; ~~and;~~
- 6.2.1.2- All electrical and mechanical works relating to the Contestable Components, Terminal Sub-Station and associated Equipment shall be free from defects for a period of twelve (12) months from the Handover Date; ~~and;~~
- 6.2.1.3 All civil works relating to the Contestable Components, Terminal Sub-Station and associated Equipment shall be free from defects for a period of five (5) years from the Handover Date; ~~and;~~
- 6.2.1.4 The Contestable Components, Terminal Sub-Station and Customer Equipment shall be free from corrosion for a period of five (5) years from the Handover Date; ~~;~~
- 6.2.1.5 The Contestable Components, Terminal Sub-Station and associated Equipment and the sites on which they are located shall be in a good state of repair and condition and shall be fit for purpose and shall be free from all environmental hazards including but not limited to contamination, groundwater pollution, flooding, subsidence, heave or landslip for a period of ten (10) years from the Handover Date; ~~;~~

6.2.1.6 Where the Customer has elected to and is carrying out Contestable Commissioning:

6.2.1.6.1 The Contestable Commissioning shall be conducted to the full satisfaction of the Company and in accordance with the requirements in respect of Contestable Commissioning set out in the Contestable Commissioning Specification and the Agreement;

6.2.1.6.2 The Contestable Commissioning will be performed with the degree of skill and care that is required by the industry as evidenced by good, competent, workmanlike procedures and standards prevailing at the time the Contestable Commissioning is being performed, in compliance with all relevant laws, rules, regulations, consents and licences to the satisfaction of the Company;

6.2.1.6.3 That it has or can procure personnel with the appropriate experience, qualifications and competencies to perform the Contestable Commissioning; and

6.2.1.7 Without prejudice to the Company or ESB's right to repair replace or redo any damage or defect to the Contestable Components, Terminal Sub-Station and associated Equipment, or remedy any failure by the Customer to carry out the Contestable Commissioning in accordance with the Agreement at the Customer's expense, and all other rights under this Agreement, the Company and/or ESB shall be entitled during the warranty period referred to in Paragraph 6.2.1.1, at their sole discretion in respect of any breach of the aforementioned Contestable Commissioning Warranties (as defined below), to require the Customer, at the Customer's expense, to repair and/or replace and or/redo within such period specified by the Company and/or ESB any aspect of the Contestable Components, Terminal Sub-Station and associated Equipment, or Contestable Commissioning and to reimburse the Company and/or ESB with all associated costs incurred by the Company and/or ESB as a result of the foregoing.

For the avoidance of doubt the warranties detailed in Paragraphs 6.2.1.6.1 to 6.2.1.6.3 inclusive shall each be referred to herein as a "Contestable Commissioning Warranty" and together as the "Contestable Commissioning Warranties"

6.2.2. The warranty periods referred to in this paragraph 6.2 shall be extended by a further 24 months should any defect arise within the original warranty period herein provided for and such extension shall apply only to that part of the Contestable Components, Terminal Sub-Station or associated Equipment where the defect has arisen.

6.2.3 Notwithstanding anything to the contrary in clause 18.2 of the General Conditions (Liability for Breach and Physical Damage only:), the warranties referred to in this Paragraph 6 and the Customer's liability to the Company thereunder shall extend beyond solely liability for physical damage to property only.

6.2.4. In the event the Customer elects to carry out Contestable Commissioning, the Liability Amount and Liability Cap detailed in the Agreement shall, not apply to the Customers liability for breach of the Contestable Commissioning Warranties detailed in this Paragraph 6 or



the Customers liability under Paragraph 6.2.1.7 and in this regard the total liability of the Customer to the Company and/or ESB for breach of any Contestable Commissioning Warranty and/or pursuant to Paragraph 6.2.1.7 shall be as set out in Paragraph 7.2 below.

6.2.5 Where it would accord with Good Industry Practice for the commissioner(s) to provide warranties or indemnities in respect of the Contestable Commissioning, then the Customer shall procure such warranties and indemnities and upon request by the Company shall in the absolute discretion of the Company (i) assign such warranties and indemnities to the Company or ESB (at any such time specified by the Company on or following the Handover Date) and/or (ii) enforce such warranties or indemnities against the commissioner(s) and undertake to the Company to provide the proceeds of such warranties and indemnities to the Company.

## **7.0 Customer's Indemnification and Liability to the Company and ESB where the Customer elects to carry out Contestable Commissioning**

7.1 The Customer shall indemnify and hold harmless the Company and ESB in full on an after tax basis against any and all losses, actions, damages, demands, costs, liabilities, fines penalties or expenses claims and proceedings (including legal and other professional costs), arising as a consequence of the Customer carrying out Contestable Commissioning negligently or in breach of the terms of this Agreement. For the avoidance of doubt, this indemnity shall include costs (including, without limitation, by way of loss of incentives, fines, penalties or the like imposed by the Commission for Energy Regulation) which may be incurred by the Company or ESB as a result of or in connection with any interruption in the supply of electricity to third parties.

7.2 The total liability of the Customer to the Company and/or ESB pursuant to the indemnity set out in Paragraph 7.1 and/or for breach of any of the Contestable Commissioning Warranties and/or pursuant to Paragraph 6.2.1.7 shall not exceed €6,500,000 (six million five hundred thousand Euro) in the aggregate, except for death or personal injury resulting from the negligence of the Customer.

7.3 For the avoidance of any doubt and without prejudice to the generality of the Interface Undertaking in Schedule 4, in the event of any breach of warranty or indemnity in Paragraphs 6 and 7, the Company shall be entitled to recover for any loss or damage suffered or incurred by ESB in its capacity as DAO as if this were loss suffered by the Company.

## APPENDIX 3(a)

[APPLICABLE WHERE DSO CUSTOMER IS CONTESTING THE TRANSMISSION ASSETS]

1. The following terms and conditions, as appropriate and as amended from time to time, are applicable where the Customer is contesting Transmission assets:
  - “Schedule 10 - Construction, Commissioning and Connection Contestable<sup>1</sup>” of the Transmission Connection Agreement, and;
  - “Eirgrid General Conditions of Connection and Transmission Use of System”
2. The following reference document, which may be amended from time to time, can be referred to for further information:-
  - “EirGrid - Contestability of Connection Assets - October 16th 2007”

3. The terms and conditions listed at paragraph 1 (above) and the reference document at paragraph 2 (above) are TSO documents therefore TSO definitions will apply.
4. The DSO will endeavour to comply with TSO Schedule 10 timescales where possible but will not be held responsible for failure to meet these timescales.

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