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1.	EirGrid plc.	
2.	User	

**THIS AGREEMENT** is made the                      day of                      200[ ]

**BETWEEN:**

- (1) **EirGrid plc.** a statutory corporation having its principal office at 27 Lower Fitzwilliam Street, Dublin 2 (hereinafter called the “**Company**”); and
- (2) [**Name**] (hereinafter called “the **User**”) having its registered office at, [registered address]

**WHEREAS:**

- (A) The User has applied to the Company for use of the Transmission System as a person licensed under section 14 (1) (h) of the Electricity Regulation Act, 1999 in order to supply electricity to the categories of customers described in that section.
- (B) In accordance with section 34 of the Act, 1999 the Company is required, subject to certain exceptions, to enter into an agreement for use of the Transmission System with any person applying to use the Transmission System.
- (C) This Agreement sets out the terms and conditions upon which the Company and the User have agreed in relation to the use by the User of the Transmission System.
- (D) This Agreement relates to the supply of electricity to one or more persons connected to the Transmission System or the Distribution System, the connection of those persons being made and maintained pursuant to a Transmission Connection Agreement or a Distribution Connection Agreement.

**IT IS HEREBY AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement except where the context otherwise requires the following words and expressions shall have the meanings set opposite them:

“**Act**” means the Electricity Regulation Act, 1999, as amended;

“**Affiliate**” means in relation to either Party, any holding company or subsidiary or any subsidiary of a holding company of the relevant Party, in each case within the meaning of the Companies Acts, 1963 to 2003 inclusive;

“**Approved Credit Rating**” means a credit rating of at least A2/A for long term debt given by Moodys and/or

	Standard & Poors and/or another internationally recognised credit rating agency reasonably satisfactory to the Company;
<b>“Board”</b>	means the Electricity Supply Board;
<b>“Business Day”</b>	means any day other than a Saturday, a Sunday or a public holiday in Republic of Ireland;
<b>“Confidential Information”</b>	has the meaning given in Clause 18.1;
<b>“Charging Period”</b>	means the period specified in Schedule 2, or if no period is specified, a period of one calendar month;
<b>“Commission”</b>	means the Commission for Energy Regulation established by the Act;
<b>“Company”</b>	means EirGrid plc, and any legal successors in title;
<b>“Competent Authority”</b>	means the Commission or any local, national or supra-national agency, authority, department, inspectorate, minister, official, Court, tribunal or public or statutory person (whether autonomous or not) of Republic of Ireland (or the government thereof) on the European Union which has jurisdiction over a Party on the subject matter of this Agreement;
<b>“Connection Point”</b>	means the physical point or points at which the Customer’s Installation is joined to the Transmission System or the Distribution System;
<b>“Customer”</b>	means a final customer as defined in the Act to whom the User proposes to supply or for the time being supplies electricity through a Connection Point;
<b>“Customer’s Installation”</b>	means any structures, equipment, lines, appliances or devices used or to be used by any Customer and connected or to be connected directly or indirectly to the Transmission System or to the Distribution System;

<b>“De-Energise”</b>	means in relation to any Metering Point, deliberately to prevent the flow of electricity from the Transmission System through the relevant Connection Point to the relevant Customer’s Installation for any purpose other than a System Outage, and “De-Energisation” and “De-Energising” shall be construed accordingly;
<b>“De-Energisation Works”</b>	means the movement of any isolator, breaker or switch, or the removal of any fuse or meter, or the taking of any other step to De-Energise a Connection Point;
<b>“Designated Dispute”</b>	has the meaning given to it in Section 1.2 of Schedule 3;
<b>“Distribution Connection Agreement”</b>	means an agreement between the Board and any Customer which provides that the Customer has the right for that Customer’s Installation to be and remain connected to the Distribution System;
<b>“Directive”</b>	means any present or future legislation, statutory instrument, directive, requirement, instruction, order, direction or rule of any Competent Authority binding on either or both of the Company and the User (but only, if not having the force of law, if compliance with the Directive is in accordance with the general practice of persons to whom the Directive is addressed) and includes any modification, extension or replacement thereof then in force;
<b>"Disconnect"</b>	means in relation to an Connection Point, to change the status of the Meter Point Reference Number relating to that Connection Point so as to prevent any further registration in respect of that Meter Point Reference Number;
<b>“Disconnection Notice”</b>	shall mean a notice issued to the User by the Company to Disconnect;
<b>“Distribution Code”</b>	means the Distribution Code required to be prepared by the Board pursuant to section 33 of the Act, and approved by the Commission, as from time to time revised, amended, supplemented or replaced with

	the approval of or at the instance of the Commission;
<b>“Distribution System”</b>	means the Board’s Distribution System that is to say, a system which consists of electric lines, electric plant, transformers and switchgear and which is used for conveying electricity to final customers and which is not the Transmission System;
<b>“Eligible Customer”</b>	has the meaning given to it under the Act;
<b>“Encumbrance”</b>	means any pledge, mortgage, lien, assignment by way of security, charge, hypothecation, security interest, title retention or any other security agreement or arrangement having the effect of conferring security, or other form of encumbrance and “Encumber” and like terms shall be construed accordingly;
<b>“Event of Default”</b>	has the meaning given to it in Clause 14.4;
<b>“Energise”</b>	means in relation to any Connection Point, deliberately to allow the flow of electricity from the Transmission System through the relevant Connection Point to the relevant Customer’s Installation where such a flow of electricity was disabled or non-existent;
<b>“Energisation Works”</b>	means the movement of any isolator, breaker or switch, or the insertion of any fuse so as to enable active power and reactive power to be transferred to and from the Customer's Installation through an Connection Point;
<b>“ESB Safety Rules”</b>	means the documents prepared by the Company entitled “ESB Networks Electrical Safety Rules 2006 and ESB Power Generation Electrical Safety Rules 2002.”;
<b>“Escrow Account”</b>	has the meaning given to it in Clause 7.3.2;

<b>“EURIBOR”</b>	means in relation to any sum, the rate per annum for deposits in Euro for the specified period applicable thereto which appears on appropriate page of Telerate or appropriate page of Reuters at or about 11:00 am on the relevant rate fixing date. If no such quotation is available, EURIBOR will be the rate per annum for deposits in Euro determined to be equal to the arithmetic mean (rounded upwards to four decimal places) of the six month rates at which at least three banks who generally provided quotes on appropriate page of Telerate when quotations were last available thereon was offering to prime banks in the European Interbank Market deposits in Euro and for the specified period at or about 11:00 am on the relevant rate fixing day. For the purposes of this definition “specified period” means the period in respect of which EURIBOR falls to be determined in relation to such sum;
<b>“Euro”</b>	means the single currency of participating Member States of the European Union;
<b>“Force Majeure”</b>	means any one of the events, conditions or happenings as set out in Clause 17;
<b>“Good Industry Practice”</b>	means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;
<b>“Grid Code”</b>	means the code required to be prepared by the Company pursuant to section 33 of the Act, and approved by the Commission, as from time to time revised, amended, supplemented or replaced with the approval of or at the instance of the Commission;
<b>“Injury Claim”</b>	has the meaning given to it in Clause 16.3;

<b>“kVA”</b>	means kilovoltamperes;
<b>“kW”</b>	means kilowatts;
<b>“Legal Claim”</b>	has the meaning given to it in Clause 16.2.2;
<b>“Letter of Credit”</b>	<p>means an irrevocable standby letter of credit in such form as the Company may reasonably approve issued for the account of the User in favour of the Company, allowing for partial drawings and providing for the payment to the Company forthwith on demand, by any bank which meets the following criteria:</p> <ul style="list-style-type: none"> <li>(a) banks with a long-term credit rating of at least AA (Standard and Poor) or AA2 (Moody’s) or equivalent. AA minus will not suffice, or</li> <li>(b) holders of banking licences issued under Section 9 of the Central Bank Act 1971, with total balance sheets assets of not less than €1,270 million equivalent or whose parent bank, where such a holder is a branch or subsidiary, has total balance sheet assets of not less than €2,700 million equivalent and a rating not less than A/A2, or</li> <li>(c) subsidiaries of branches of international banks, operating in Republic of Ireland, provided that the parent bank meets the criteria at (a) or has total balance sheet assets of not less than €2,700 million or equivalent and a credit rating of at least A/A2;</li> </ul>
<b>“Maximum Import Capacity”</b>	means the amount of electricity referred to as being the “Maximum Import Capacity” in relation to each Transmission Connection Agreement and each Distribution Connection Agreement to which this Agreement relates;
<b>“Metering Code”</b>	means the code of that name which specifies the minimum technical design



	and operational criteria to be complied with for metering and data collection equipment and associated procedures as required under the Trading and Settlement Code;
<b>“Metering Equipment”</b>	has the meaning given to it in the Metering Code;
<b>“Metering Point”</b>	has the meaning given to the term “Actual Metering Point” in the Metering Code;
<b>“Meter Point Reference Number”</b>	means the number which uniquely identifies Users’ Metering Equipment and which is registered under the Meter Registration System, as further provided in the Trading and Settlement Code;
<b>“Meter Registration System” or “MRS”</b>	means the system and/or process which uniquely identifies Metering Equipment and Users associated with the meter and which contains pertinent data relating to the meter, as required by the Trading and Settlement Code;
<b>“Meter Registration System Operator” or “MRSO”</b>	means the operator of the Meter Registration System as further provided for in the Trading and Settlement Code;
<b>“Non-Performing Party”</b>	has the meaning given to it in Clause 17.1;
<b>“Party”</b>	means, as the context requires, the User or the Company and the term <b>“Parties”</b> shall be construed accordingly;
<b>“Party Liable”</b>	has the meaning given to it in Clause 16.1;
<b>“Party Not Liable”</b>	has the meaning given to it in Clause 16.1;
<b>“Qualifying Guarantee”</b>	has the meaning given to it in Clause 7.3.3;
<b>“Registration Notice”</b>	means a notice sent to the MRSO by either the User or the Company, as the case may be, instructing the MRSO to change the status of a Metering Point in

	the manner set out in the notice;
<b>“Security Cover”</b>	means the security cover (if any) provided to the Company by the User under Clause 7;
<b>“Settlement”</b>	has the meaning given to that term in the Trading and Settlement Code;
<b>“Supply Contract”</b>	means a contract (whether oral or in writing) between the User and a Customer for a supply of electricity to such Customer through a Connection Point from time to time;
<b>“Supply Licence”</b>	means a licence for the supply of electricity under Section 14 (1) (b), (c), (d) or (h) and 14(2) of the Act;
<b>“Term”</b>	has the meaning given to it in Clause 14.1;
<b>“Trading and Settlement Code”</b>	means the code and agreement of that name which sets out the rules for trading in electricity and settling energy imbalances and the responsibilities of parties to the code;
<b>“Transmission Connection Agreement”</b>	means an agreement between the Company and any Customer which provides that the Customer has the right for that Customer’s Installation to be and remain connected to the Transmission System;
<b>“ Transmission System”</b>	means the Board’s Transmission System that is to say, a system which consists wholly or mainly of high voltage electric lines and electric plant and which is used for carrying electricity from a generating station to a substation, another generating station, any interconnector or a final customer, but not including any such lines or plant which the Board may, from time to time, with the approval of the Commission, specify as being part of the Distribution System;

<b>“Use of System Charges”</b>	has the meaning given to it in Clause 5.1 and set out in Schedule 1;
<b>“Use of Transmission System”</b>	means use of the Transmission System for the passing of electricity through the Transmission System and for the transportation of such electricity to Connection Points;
<b>“Value Added Tax” or “VAT”</b>	means the value added tax chargeable under the provisions of the Value Added Tax Act 1972 or any tax on the supply of goods and or services which may hereafter replace or supplement Value Added Tax.

- 1.2 In this Agreement, unless the context requires otherwise, any reference to:
- 1.2.1 the singular shall include the plural and vice versa;
  - 1.2.2 any gender reference shall be deemed to include references to the masculine, feminine and neuter genders;
  - 1.2.3 the word “including” and its variations shall be construed without limitation;
  - 1.2.4 the “Agreement” shall mean this agreement and its Schedules and Appendices;
  - 1.2.5 any reference to “writing” or “written” shall include all methods of reproducing words in a legible and non-transitory form;
  - 1.2.6 any words importing persons or parties shall include individuals, firms and corporations, joint ventures, trusts, unincorporated associations and organisations, partnerships and any other entity, in each case whether or not having a separate legal personality and any references to persons shall include their legal successors and permitted assignees;
  - 1.2.7 any reference to legislation, regulations, Directives, orders, instruments, codes or other enactments shall include any amendments, modifications extensions, replacements or re-enactments thereof then in force;
  - 1.2.8 unless otherwise specified:
    - (a) any reference in this Agreement to a "Clause" is a reference to a Clause contained in this Agreement;
    - (b) any reference to a "Schedule" is a reference to a Schedule to this Agreement;

- (c) any reference to a “Section” is a reference to a Section to a Schedule to this Agreement; and
  - (d) any reference to an “Appendix” is a reference to an Appendix to this Agreement.
- 1.2.9 any reference to another agreement or document, or any deed or other instrument (including the Grid Code, the Metering Code, the Trading and Settlement Code or the ESB Safety Rules) shall be construed as a reference to that other agreement, or document, deed or other instrument as the same may have been, or may from time to time be, amended, varied, supplemented, substituted or novated;
  - 1.2.10 any terms which are defined in the Act, the Grid Code, the Metering Code or the Trading and Settlement Code and which are not otherwise defined in this Agreement shall have the meanings ascribed to them in the relevant code or the Act;
  - 1.2.11 any terms not defined in either this Agreement, the Grid Code, the Metering Code or the Trading and Settlement Code shall have the meaning commonly used in electric utility practice or the English language, as appropriate;
  - 1.2.12 any reference to a month or year shall be construed as reference to a calendar month or year, as the case may be;
  - 1.2.13 unless otherwise appears where reference is made to an amount or sum, it is to an amount or sum denominated in Euro;
  - 1.2.14 the table of contents and Clause headings are inserted for ease of reference only and shall be ignored for the purpose of the construction of this Agreement;
  - 1.2.15 all terms which have been defined in this Agreement shall have their initial letters in capital typescript whenever and wherever they appear in this Agreement;
  - 1.2.16 in the event of inconsistency between the provisions of this Agreement and the Grid Code, the Metering Code or the Trading and Settlement Code (as the case may be), the provisions of the Grid Code, the Metering Code or the Trading and Settlement Code (as the case may be) shall prevail to the extent of such inconsistency unless the contrary intention is explicit. In the event of inconsistency between this Agreement and any other agreement between the Parties relating to connection to the Transmission System, this Agreement shall prevail to the extent of such inconsistency unless the contrary intention is explicit.

## **2. CONDITIONS PRECEDENT**

### **2.1 Conditions Precedent to a Valid and Enforceable Agreement**

2.1.1 This Agreement is conditional upon the following conditions precedent being fulfilled (or waived by the Company, acting reasonably):

- (a) the User holding a Supply Licence;
- (b) the User being a party to the Trading and Settlement Code;
- (c) where the User does not hold an Approved Credit Rating, provision by the User of any Security Cover as required by the Company in accordance with Clause 7; and
- (d) the User having provided all the information and documentation required in accordance with this Agreement in relation to its Customers, such information to include, without limitation a list of those its Customers who have entered into a Transmission Connection Agreement and a Distribution Connection Agreement to be covered by this Agreement (whether contractually bound or anticipated at the date of the list) and information required pursuant to Clause 11.

2.1.2 Subject as otherwise provided in this Agreement, if any of the conditions precedent set out in Clause 2.1.1 has not been fulfilled (or waived by the Company, acting reasonably) then the Parties acknowledge and agree that this Agreement shall not be valid and enforceable until such time as all of the above conditions precedent have been fulfilled (or waived by the Company, acting reasonably).

## **2.2 Conditions Precedent to Use of System**

2.2.1 The provisions of Clauses 4.2, 5, 6, 8 and 11 to 13 of this Agreement are conditional and subject as further provided in this Agreement, upon each of the following conditions precedent being fulfilled (or waived by the Company, acting reasonably):

- (a) the User being authorised by its Supply Licence to supply electricity to each of the premises to be supplied with electricity through such Connection Point;
- (b) the User being a party to a Distribution Use of System Agreement insofar as any Customer of the User is connected to the Distribution System;
- (c) in relation to Customers connected to the Transmission System, the User's Customers being party to a Transmission Connection Agreement under which the right to connect and energise has arisen (subject only to the entering into of this Agreement) and continues in full force and effect;

- (d) the User being validly registered in MRS in respect of each Metering Point relating to Customers to be supplied by the User;
- (e) there being in place Metering Equipment which complies with the requirements of the Metering Code if applicable, or if the Metering Code is not applicable, the User having satisfied the Company, acting reasonably, that adequate metering, data transferral system and relevant registrations are in place for each Connection Point and
- (f) Subject as otherwise provided in this Agreement, if any of the conditions set out in Clause 2.2 has not been fulfilled (or waived by the Company, acting reasonably) or is no longer fulfilled, then subject to any accrued rights and obligations of either Party the Company may terminate this Agreement in relation to the Connection Point in question by written notice to the User and this Agreement shall be deemed amended on the date specified in the notice to remove the right to Use of the Transmission System in relation to that Connection Point. The User shall immediately pay to the Company any amounts due by the User to the Company as calculated in accordance with Clause 15.

2.3 Where the conditions in Clause 2.1 and 2.2 have been met the User shall notify the Company in writing. The Company shall notify the User in writing of any conditions in Clause 2.1 and 2.2 that have been waived.

2.4 Once the conditions in Clause 2.1 and 2.2 have been fulfilled (in whole or in part), the User shall keep such conditions fulfilled throughout the Term.

### **3. REPRESENTATIONS AND WARRANTIES**

The User represents and warrants to the Company in respect of Clauses 3.1.1 and 3.1.2 on an on-going basis throughout the Term that:

- 3.1.1 the User has 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 the User is a party or any judgement, order, statute or regulation which is applicable to the User; and
- 3.1.2 no representation or warranty made by or on behalf of the User and contained in this Agreement and no statement contained in any submission to the Company, declaration or other instrument made or to be made by or on behalf of the User in connection with this Agreement contains or will contain any false or misleading representation of a material fact, or omits or will omit to state a material fact necessary to prevent such statements, in the light of the

circumstances under which they are to be made, from being misleading.

- 3.2 The Company represents and warrants to the User as at the date of this Agreement that the Company has 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 the Company is a party or any judgement, order, statute or regulation which is applicable to the Company.

#### **4. USE OF SYSTEM**

##### **4.1 Maximum Import Capacity:**

4.1.1 in relation to each Connection Point, the User will confirm (in the case of a Connection Point on the Transmission System) or notify (in the case of a Connection Point on the Distribution System) to the Company the Maximum Import Capacity for that Connection Point or such other substitute or variation as is specified in Schedule 1, or as specified in any replacement published by the Company from time to time and approved by the Commission;

4.1.2 the User will update such confirmation or notification as soon as practical after it becomes aware of any change and advise the Company of any such change.

- 4.2 Subject to the terms and conditions of this Agreement, the Company shall transport electricity through the Transmission System to each Connection Point (or to a Distribution System connection with the Transmission System in the case of Connection Points on the Distribution System) subject to any arrangements made between the respective Customers and the Company, up to the Maximum Import Capacity of each Customer contained in the list of Customers referred to in Clause 2.1.1 (d), and subject to such variations (if any) as may be agreed between the Parties, or such other substitute or variation provided for in Schedule 1, or provided for in any replacement published by the Company from time to time and approved by the Commission.

- 4.3 The Company shall provide, and the User shall be entitled to receive, Use of Transmission System only insofar as it relates to:

4.3.1 supplies of electricity to premises of Eligible Customers; and

4.3.2 supplies of electricity to premises permitted pursuant to sections 14(1)(c) and (d) of the Act.

- 4.4 Insofar as any condition set out in Clause 2.2 subsequently ceases to be fulfilled in relation to any Customer then the provisions of this Agreement shall continue but the aggregate Maximum Import Capacity shall be reduced by an amount equal to the Maximum Import Capacity of that Customer. If there are no Customers complying with any of the requirements set out in Clause 2.2, the provisions of Clause 14 shall apply and this Agreement shall terminate.



## **5. CALCULATION AND PAYMENT OF CHARGES**

- 5.1 The User shall pay to the Company in respect of Use of Transmission System the charges set out in or calculable from Schedule 1 which shall include charges in relation to use of the network facilities, ancillary services, constraints and other costs attributable to providing the User with direct or indirect use of the Transmission System. The Company may vary the Schedule 1 charges or charges as published by the Company and approved by the Commission from time to time, with the prior approval of the Commission by giving at least twenty (20) Business Days written notice to the User. Such charges (the "Use of System Charges") and any variations are and will be calculated in accordance with the statement required under section 35 of the Act, once produced.
- 5.2 In addition to the charges provided for in Clause 5.1, the User shall pay to the Company:
- 5.2.1 charges for certain services provided by the Company to the User pursuant to any agreements between the Parties for additional metering or data collection services as identified in each such agreement as being recoverable by the Company as an element of the charges which it levies on the User under this Agreement.
- 5.3 The Company may, with the prior approval of the Commission, vary:
- 5.3.1 The charges set out in or calculable from Schedule 2 , by giving at least twenty (20) Business Days written notice to the User;
- 5.3.2 the charges for certain services provided by the Company to the User pursuant to the other agreements between the Parties described in Clause 5.2.3 in accordance with those agreements.
- 5.4 The Company shall invoice the Use of System Charges payable by the User using data obtained pursuant to the relevant Transmission Connection Agreements and Distribution Connection Agreements and in accordance with the Trading and Settlement Code, or in the absence of such data, using such other data as it available to it.
- 5.5 All amounts payable by the User under this Agreement, whether Use of System Charges, interest or otherwise:
- 5.5.1 are exclusive of any applicable Value Added Tax (or other similar tax), sales tax or other lawful taxes or levies applicable by reason of the performance of this Agreement and the Parties agree that an amount equal to any applicable Value Added Tax (or other similar tax), sales tax or other lawful taxes or levies lawfully chargeable in respect of the performance of this Agreement shall be payable or repayable, as the case may be, in addition to, at the same time and in the same manner as the amounts to which it relates; and



5.5.2 except to the extent required by law or expressly permitted by Schedule 3 shall be paid in full, free and clear of and without any deduction set-off or deferment whatsoever.

5.6 The Company may charge the User Use of System Charges calculated by reference to electricity discovered or reasonably and properly assessed to have been consumed by a Customer while a Customer of the User but not recorded at the time of consumption (for whatever reason) by the Metering Equipment installed pursuant to Clause 10. At any time when the Company charges the User Use of System Charges under this Clause 5, it shall include details for the User of the calculation of those charges and the basis of that calculation.

## **6. BILLING AND PAYMENT**

6.1 As soon as is reasonably practicable after the end of each Charging Period, the Company shall submit to the User an account specifying the Use of System Charges and other charges payable for that Charging Period. The Company shall provide to the User such reasonable information as may be required to enable the User to verify those Use of System Changes. Such account shall be based on:

6.1.1 data from Metering Equipment or where actual data is not available, estimated data prepared in accordance with methods of estimation established under the Trading and Settlement Code or in the absence of such provisions under such code, as reasonably estimated by the Company; and

6.1.2 other data as specified in the relevant Transmission Connection Agreements and Distribution Connection Agreements.

Where an account is based on estimated data, the account shall be subject to any adjustment which may be necessary following the receipt of actual data.

6.2 Within ten (10) Business Days of the date of an account submitted in accordance with Clause 6.1 or within twenty (20) Business Days after the end of the Charging Period whichever is the later, the User shall pay to the Company all sums due in respect of such account by electronic transfer of funds to such bank account as is specified in the account, quoting the account number against which payment is made and/or such other details as the Company may reasonably require. Subject to Clause 6.3, if any amount remains unpaid after the due date thereof, the Company shall (in addition to any other remedies) be entitled to charge interest on the amount unpaid, including interest on any Value Added Tax unpaid, at the rate of 2% per annum above the EURIBOR rate, compounded annually.

6.3 Where any sum included in an account submitted in accordance with Clause 6.1 is disputed by the User the provisions of Schedule 3 shall apply.

## **7. SECURITY COVER**

7.1 Unless the User has an Approved Credit Rating, the User must as soon as reasonably practicable after (and in any event within ten (10) Business Days) of execution of this Agreement provide the Security Cover referred to in Clause 7.3 to the Company. If the User does not comply with this Clause 7, the Company may in its discretion acting reasonably by notice to the User given at any time terminate this Agreement with effect from the date specified in the notice.

7.2 If the User has an Approved Credit Rating, it must immediately notify the Company if its credit rating changes, giving details of its revised credit rating. If its credit rating ceases to be an Approved Credit Rating, the User must within ten (10) Business Days of it so ceasing provide the Security Cover referred to in Clause 7.3.

7.3 If this Clause 7.3 applies, the User must deliver to the Company and subsequently maintain Security Cover as security for payment of all monies due to the Company under this Agreement in the form of:

7.3.1 a Letter of Credit; or

7.3.2 a cash deposit in an interest bearing deposit account in the joint names of the Company and the User at a bank that satisfies the criteria as outlined in the definition of Letter of Credit (an "Escrow Account"). Interest on the Escrow Account will accrue for the benefit of the User, after deduction of any bank charges or tax; or

7.3.3 a guarantee in such form as is reasonably acceptable to the Company issued by an entity with an Approved Credit Rating (a "Qualifying Guarantee").

the amount of Security Cover shall be the amount calculated under Clause 7.4 and notified in writing by the Company to the User from time to time.

7.4 The Company shall determine the amount of Security Cover required, based on an estimate of the User's Use of System Changes over a three (3) month period. This estimate will be calculated as the aggregate of the estimated charges at each Connection Point registered to the User. The estimated charges at each Connection Point shall be determined taking into account historical data, if appropriate or by reference to an estimate of the Users Customers' Maximum Import Capacity and load factor, and shall be multiplied by the average unit price applicable to that Customer.

7.5 Substitute and replacement Security Cover:

7.5.1 If the bank issuing the User's Letter of Credit ceases to have the credit rating set out in the definition of Letter of Credit the User shall forthwith procure the issue of a substitute Letter of Credit by a bank that has such a credit rating or procure the issue of a Qualifying Guarantee or place cash in the Escrow Account.

- 7.5.2 If the entity providing the User's Qualifying Guarantee ceases to have an Approved Credit Rating the User shall forthwith procure a replacement Qualifying Guarantee from an entity with such a credit rating or procure a Letter of Credit or place cash in the Escrow Account.
- 7.6 Where at the end of any month the then existing amount of Security Cover is less than the amount of Security Cover that would be required by the Company if the amount of Security Cover was recalculated under Clause 7.4, the Company shall notify the User of the recalculated amount of Security Cover in writing, whereupon the User shall forthwith procure that the Company receives the necessary additional Security Cover within ten (10) Business Days.
- 7.7 Security Cover (and in the case of cash deposit, any interest accrued in respect of the cash deposit, less any bank and similar charges and any taxes deducted by the bank) will be returned to the User within ten (10) Business Days of termination of this Agreement only if the User has paid all amounts owing by it in respect of this Agreement. Return of Security Cover is without prejudice to the rights of the Company under this Agreement and does not relieve the User of any of its obligations or any liability in respect of this Agreement.

## **8. ENERGISATION, DE-ENERGISATION AND DISCONNECTION**

- 8.1 Action on behalf of Users:
- 8.1.1 Energisation Works and De-Energisation Works carried out on behalf of the User pursuant to this Clause 8 shall be carried out by a person who is engaged by the Company to carry out such work.
- 8.1.2 The Company shall, to the extent that it may lawfully do so, at the request of the User carry out Energisation Works and De-Energisation Works at the cost of the User within a reasonable time or, in circumstances of urgency, as soon as reasonably practicable. The Company shall inform the User of its reasonable requirements for the details by reference to which Connection Points to be Energised or De-Energised are to be identified.
- 8.1.3 If a Connection Point has been De-Energised by or on behalf of a previous user and the Company receives a request from the User to Energise such Connection Point, then the Company shall Energise the Connection Point as soon as reasonably practicable at the cost of the User and shall notify the User of the expected date for carrying out the Energisation Works.
- 8.1.4 Where the Company resolves to Energise or De-Energise an Connection Point pursuant to Clause 8.1.2 or 8.1.3, the Company shall undertake the Energisation Works at the cost of the User and the User shall pay the Company the relevant charge listed at Schedule 2 associated with such works.

8.1.5 The Company shall act in accordance with Good Industry Practice when carrying out, or procuring the carrying out of, any Energisation Works or De-Energisation Works. The User hereby indemnifies the Company against all losses, damages, claims, liabilities, costs and expenses to which the Company may become liable in respect of or in connection with such Energisation Works and/or De-Energisation Works.

8.2 Action by the Company:

8.2.1 The Company may, upon (where reasonably practicable) giving the User two (2) Business Days' prior written notice, De-Energise any Connection Point if the Company is entitled to do so pursuant to the Transmission Connection Agreement relating to such Connection Point.

8.2.2 Notwithstanding the provisions of Clause 8.2.1 the Company may, at any time with no prior notice to the User, De-Energise any Connection Point if:

- (a) the Company is instructed, pursuant to the terms of the Trading and Settlement Code, the Grid Code or the Distribution Code, to do so;
- (b) the Company reasonably considers it necessary to do so for safety or system security reasons;
- (c) the Company reasonably considers it necessary to do so to avoid interference with the regularity or efficiency of the Transmission System;
- (d) an accident or emergency occurs or threatens to occur which requires the Company to do so to avoid the risk of personal injury to any person or physical damage to the property of the Board, its officers, employees or agents or the property of any other person;
- (e) subject to the terms of a replacement agreement, this Agreement is terminated in accordance with the provisions of Clause 14;
- (f) The Company is entitled to do so by law.

In these circumstances the Company shall inform the User as soon as reasonably practicable and in any event by the end of the next Business Day of the fact that the Connection Point has been De-Energised.

8.2.3 If the Company resolves to De-Energise a Connection Point pursuant to Clause 8.2.1 and 8.2.2 then:

- (a) the Company shall decide on the extent and nature of the De-Energisation Works required to De-Energise the relevant Connection Point; and
  - (b) the Company shall Energise the Connection Point as soon as reasonably practicable after the circumstance giving rise to such De-Energisation has ended;
- 8.2.4 Where the Company resolves to De-Energise a Connection Point pursuant to Clause 8.2 following termination of this Agreement by the User under Clause 14.5 the Company shall undertake the De-Energisation Works and any subsequent Energisation Works, at the cost of the User.
- 8.2.5 If Energisation has not taken place within two (2) Business Days of De-Energisation then the Company shall inform the User that the Connection Point has been De-Energised and shall provide the User with an explanation of the reasons for De-Energisation and the likely timescales for Energisation.
- 8.3 If there is no reasonably foreseeable future use for a Metering Point the User shall be entitled to send to the Company a Disconnection Notice. In respect of any Disconnection Notice sent to the Company pursuant to this Clause, the User shall:
  - 8.3.1 warrant that to the best of its knowledge and belief, having exercised Good Industry Practice, the Metering Point has been De-Energised and that there is no reasonably foreseeable future use of the Metering Point giving details of any De-Energisation Works which have been undertaken and providing an explanation of why there is no reasonably foreseeable future use for the Metering Point; and
  - 8.3.2 indemnify the Company against all costs, demands, claims, expenses, liability, loss, or damage which the Company incurs in consequence of acting in reliance on the warranty given in Clause 8.3.1 which proves to be in any way inaccurate or misleading.
- 8.4 If a third party contacts the Company to request directly or indirectly that the Company undertakes works in relation to a Metering Point because there is no reasonably foreseeable future use for that Metering Point and the Company is satisfied that the third party is entitled to make such request then the Company shall contact the relevant User and request it to submit a Disconnection Notice. Upon receiving such a request the User shall send the Company the requested Disconnection Notice unless in the User's reasonable opinion there is a reasonably foreseeable future use for the Metering Point.
- 8.5 If, in any case, in the reasonable opinion of the Company there is a reasonably foreseeable future use for the Metering Point then the Company shall not be obliged to comply with a Disconnection Notice received under Clauses 8.3 and 8.4 and where the Company decides not to comply it shall provide the User with the reasons for its decision.

- 8.6 If the Company is of the reasonable opinion that there is no reasonably foreseeable future use for a Metering Point then the Company shall contact the relevant User and request it to submit a Disconnection Notice. Upon receiving such a request the User shall send the Company the requested Disconnection Notice unless in the User's reasonable opinion there is a reasonably foreseeable future use for the Metering Point.
- 8.7 For the avoidance of doubt, the warranty and indemnity contained in Clause 8.3 shall not apply to any Disconnection Notice requested by the Company pursuant to Clause 8.4 and 8.6.
- 8.8 Subject to Clause 8.5, within five (5) Business Days of receipt of the Disconnection Notice, the Company shall send a notification thereof to the MRSO and to such other relevant entity in accordance with the Trading and Settlement Code, instructing it to register that the Metering Point has been Disconnected.
- 8.9 Nothing in this Clause 8 shall prejudice the ability of the Company to recover Use of System Charges under Clause 5.

## **9. GRID CODE**

The User undertakes to comply with all provisions of the Grid Code applicable to it throughout the Term.

## **10. METERING**

- 10.1 The Company shall, in accordance with the Metering Code, provide and maintain the Metering Equipment at or as close as reasonably practicable to each Connection Point in respect of which the User is registered in the Meter Registration System. The Metering Equipment shall be capable of providing the relevant metering readings required by the Company for the calculation of Use of System Charges and such Metering Equipment shall comply with the requirements of the Metering Code.
- 10.2 The User shall procure that the MRSO shall collect such data from the Metering Equipment installed and maintained pursuant to Clause 10.1 and provide it to the User and any other relevant entity in accordance with the Trading and Settlement Code.
- 10.3 The Company may use or may additionally collect any data which it might reasonably require for:
- 10.3.1 the calculation of Use of System Charges; and
  - 10.3.2 the operation and planning of the Transmission System.
- 10.4 In the event that either Party has grounds for believing that the Metering Equipment is operating outside the agreed margins of error and that as a result the meter readings are erroneous, they shall forthwith notify the other Party of

those grounds and the Metering Equipment will be checked in accordance with the Metering Code.

- 10.5 The User shall use its reasonable endeavours including the inclusion of appropriate terms in its Supply Contract, to procure that the employees, agents, sub-contractors and invitees of the Company shall at all reasonable times have safe and unobstructed access to the Metering Equipment.

## **11. PROVISION OF INFORMATION**

- 11.1 The User shall provide the following information to the Company in accordance with timing and process requirements notified by the Company in respect of any Connection Point through which the relevant supply is to be delivered for each Customer covered under Clause 4.1;

11.1.1 the relevant Meter Point Registration Number;

11.1.2 the relevant Customer's name;

11.1.3 the Connection Point address relating to each Meter Point Reference Number;

11.1.4 the Customer's Maximum Import Capacity or, such other substitute or variation as set out in the statement required under section 35 of the Act, once it has been produced; and

11.1.5 the Customer's postal address if different from the Meter Point Reference Number; and

11.1.6 such other information reasonably required by the Company including without limitation, a contact telephone number.

- 11.2 The User shall provide a contact name for the Customer (if different from the Customer's name) to the Company in respect of any Connection Point through which the relevant supply is to be delivered.

- 11.3 The User shall notify the Company of any changes to the details set out in Clause 11.1 and Clause 11.2 as soon as reasonably practicable following that change by reference to the Meter Point Reference Number. The User hereby indemnifies the Company against all losses, damages, claims, liabilities, costs and expenses for which the Company may become liable in respect of or in connection with its failure to notify the Company of any such changes as indicated above.

- 11.4 Where the User receives a report or enquiry from any person relating to any matter or incident that does or is likely to:

11.4.1 cause danger or require urgent attention in relation to the supply or transmission of electricity through the Transmission System; or



11.4.2 affect the maintenance of the security, availability and quality of service of the Transmission System,

the User shall notify the Company of such report or enquiry in a prompt and appropriate manner having regard to the nature of the incident to which the report relates. The User shall notify the Company by telephone or post using the telephone number and postal address as may from time to time be notified in writing by the Company.

11.5 The User shall use reasonable endeavours to ensure that all the facts, information and other details provided pursuant to Clause 11 shall throughout the duration of this Agreement remain true, accurate and complete in all respects.

## **12. ASSIGNMENT AND SUB-CONTRACTING**

12.1 Subject to Clauses 12.2 and 12.4, the User may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Company, not to be unreasonably withheld or delayed nor be subject to unreasonable conditions.

12.2 Subject to Clause 12.4, the User may at any time assign or transfer all its rights and obligations under this Agreement to an Affiliate provided that the User first enters into a performance guarantee in a form satisfactory to the Company Where this Agreement is so assigned to an Affiliate:

12.2.1 without prejudice to Clause 12.1, such Affiliate may not itself assign or transfer this Agreement under this Clause 12.2 except to the person who was the User on the date of this Agreement or to another Affiliate of that person, provided that the person who was the User on the date of this Agreement first enters into a performance guarantee in a form satisfactory to the Company; and

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

and these provisions shall apply *mutatis mutandis* to any other Affiliate of the person who was the User on the date of this Agreement and to whom this Agreement is assigned under Clause 12.2.1 or Clause 12.2.2.

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

12.4 Every assignment permitted by this Clause 12 shall be conditional upon the assignee expressly assuming the assignor's obligations under this Agreement



and, in the case of an assignment by the User the assignment not impairing any bond or other security given by the User to the Company under this Agreement.

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

12.6 Notwithstanding the provisions of this Clause 12, either Party may enter into arrangements which create an Encumbrance over this Agreement, the amounts payable under this Agreement or any other assets required for the performance of this Agreement by way of security to any bank or financial institution. The Party creating the Encumbrance shall notify the other Party of reasonable details of the arrangements within ten (10) Business Days of the creation of any such Encumbrance.

### **13. VARIATIONS**

13.1 Subject to Clause 20.11, no variation of this Agreement shall be effective unless made in writing and signed on behalf of both Parties.

13.2 Either Party may at any time give written notice to the other proposing that this Agreement be varied.

13.3 If any variation proposed under Clauses 13.1 or 20.11 has not been agreed by the Parties within one (1) month of it being proposed, either Party may refer the matter to the Commission for determination and the Parties agree to abide by and to effect the Commission's determination, if necessary by entering into an agreement supplemental to this Agreement.

### **14. TERM AND TERMINATION**

14.1 Subject to Clause 2 and to the other provisions of this Agreement, this Agreement shall take effect on the date hereof and shall continue in force for the period of five (5) years (unless extended by agreement of the Parties) or until earlier terminated in accordance with the provisions of this Clause 14 (or any other provision providing for termination) ("Term").

14.2 The User may terminate this Agreement by giving the Company three (3) months' notice in writing (or such lesser period as may be agreed between the Parties).

14.3 The Company may terminate this Agreement by giving the User three (3) months' notice in writing (or such lesser period as may be agreed between the Parties) save that the Company shall not be entitled to terminate pursuant to this Clause 14.3 for so long as it is required to offer terms for Use of System to the User pursuant to the Act.

- 14.4 The following events or circumstances shall be Events of Default by the User:
- 14.4.1 a failure to comply with or operate in conformity with any provisions of this Agreement or the Grid Code where such failure is a material breach of this Agreement or the Grid Code, as the case may be (being one which materially affects the User's ability to perform its obligations under this Agreement or the Grid Code) and (if such failure is capable of remedy) such failure remains unremedied for the period provided for in this Agreement or the Grid Code or if none is provided then twenty (20) Business Days following the date on which the User is given notice of the default by the Company; or
  - 14.4.2 if an order of the High Court is made or an effective resolution passed for its insolvent winding up or dissolution; or
  - 14.4.3 if a receiver (which expression shall include an examiner within the meaning of Section 1 of the Companies Amendment Act, 1990) of the whole or any material part of its assets or undertaking is appointed; or
  - 14.4.4 if it enters into any scheme of arrangement (other than for the purpose of a solvent reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Company); or
  - 14.4.5 if it is unable to pay its debts within the meaning of Section 214 of the Companies Act 1963 (and the User shall not be deemed to be unable to pay its debts if any demand for payment is being contested in good faith by the User with recourse to all appropriate measures and procedures) for the purpose of this Clause 14.4.5, Section 214 of the Companies Act, 1963 shall have effect as if for “€1,270” there was substituted “€63,487” or such higher figure as the Company may determine (with the prior approval of the Commission) by notice in writing to the User; or
  - 14.4.6 notwithstanding the terms of Clause 14.4.2, if the User fails to pay (other than by inadvertent error in transfer of funds which is discovered by the Company, notified to the User and corrected within two (2) Business Days thereafter ) any Charges due to the Company under this Agreement, howsoever arising, by the due date for payment or fails to provide, procure or maintain any Security Cover required by this Agreement and replacement Security Cover is not put in place within ten (10) Business Days of the date on which the Company gives the User written notice of the default; or
  - 14.4.7 if by a transfer or allotment of shares or amendment of articles of association or by some other act or deed the effective control of the User changes or passes to any person not having effective control as at the date of this Agreement without the prior written consent of the Company such consent not to be unreasonably withheld.

14.5 Once an Event of Default has occurred the Company may give notice of termination to the User whereupon this Agreement shall terminate with effect from the date specified in the notice. The Company shall have no liability to the User by reason of exercising such right of termination.

14.6 If at any time after Energisation there is not a current and enforceable Transmission Connection Agreement in place relating to a connection to the Transmission System then the Company may give whole or partial notice of termination to the User whereupon this Agreement shall be deemed amended to remove the right to Use of the Transmission System relating to that Connection Point.

## **15. EFFECT OF TERMINATION**

15.1 Upon termination of this Agreement for any reason, and without prejudice to any other subsisting rights of either Party, the User shall following receipt of the Company's invoice therefor immediately pay to the Company:

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

15.1.2 any other monies owing to the Company under this Agreement.

15.2 If the amount in Clause 15.1 is calculated by reference to any estimated amount by the Company, the amount payable under Clause 15.1 shall be recalculated by the Company (and notified to the User by way of an invoice of a payment as due to be made by the User) once the actual amount is ascertained and the amount originally calculated as being payable under Clause 15.1 shall be adjusted accordingly and any Party which has underpaid or been overpaid shall forthwith pay the amount of the balance yet to be paid or the balance comprising the overpayment (as the case may be).

15.3 The provisions of this Clause 15 shall survive termination of this Agreement. The relevant provisions of this Agreement shall survive expiry or termination of this Agreement to the extent necessary to provide for final billings, adjustments and payments of any Charges or other monies due and owing pursuant to this Agreement. The expiry or termination of this Agreement shall not affect any rights or obligations which may have accrued prior to such expiry or termination and shall not affect any continuing obligations of either of the Parties under this Agreement (including, without limitation any proceedings which have been commenced) or any other agreement between the Parties in which rights or obligations are expressed to continue after expiry or termination of this Agreement.

## **16. LIMITATION OF LIABILITY**

16.1 To the extent provided in Clause 16.2 neither Party shall be liable for any breach of this Agreement directly or indirectly caused by Force Majeure.

16.2 Except as provided in this Clause 16 and Clauses 16.3 to 16.5 and except where any other provision of this Agreement provides for an indemnity, neither Party

("Party Liable") nor any of its officers, employees or agents shall be liable to the other Party ("Party Not Liable") for any losses, damages, claims, liabilities, costs or expenses arising from any breach of this Agreement other than for losses, damages, claims, liabilities, costs or expenses directly resulting from such breach and which at the date hereof were reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:

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

16.2.2 the liability of the Party Not Liable to any other person for loss in respect of physical damage caused directly to the property of such other person as a result of such breach (a claim by a third party in respect of that liability hereafter in this Clause 16 being referred to as a "Legal Claim");

provided that the liability of either Party in respect of all such losses, damages, claims, liabilities, costs or expenses shall not exceed €380,921 in any year of this Agreement.

16.3 Nothing in this Agreement shall exclude or limit the liability of the Party Liable for death or personal injury to an officer, employee or agent of the Party Not Liable resulting directly from the negligence of the Party Liable or any of its officers, employees and agents and the Party Liable shall indemnify and keep indemnified the Party Not Liable, its officers, employees and agents from and against any losses, damages, claims, liabilities, costs or expenses which the Party Not Liable may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liable or the negligence of any of its officers, employees or agents (such claim hereafter in this Clause 16 being referred to as an "Injury Claim").

16.4 Subject to Clause 16.3 and any provision of this Agreement which provides for payment obligations or an indemnity, neither Party nor any of its officers, directors, employees or agents shall in any circumstances whatsoever be liable to the other Party for:

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

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

16.4.3 loss resulting from the liability of the other Party to any other person howsoever and whensoever arising save as provided in Clauses 16.2 and 16.3.

16.5 The rights and remedies provided by this Agreement to the Parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies expressed or implied and provided by common law or statute in respect of the subject matter of this Agreement, including without limitation any rights either Party may possess in tort which shall include

without limitation actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute, and releases the other Party, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein.

16.6 In the event of any Legal Claim being made against the Party Not Liable, the Party Liable shall be promptly notified of the Legal Claim and may at the Party Liable's own expense conduct all negotiations for the settlement of the same, and any litigation that may arise from the claim. The Party Not Liable shall not, unless and until the Party Liable has failed to unconditionally agree in writing to take over the conduct of the negotiations or litigation in respect of the Legal Claim within ten (10) Business Days of receiving notice from the Party Liable requesting it to do so, make any admission which might be prejudicial to the claim. The conduct by the Party Liable of such negotiations or litigation shall be conditional upon the Party Liable having first given to the Party Not Liable such reasonable security as the Party Not Liable shall from time to time notify the Party Liable that it requires to cover the amount ascertained or agreed or estimated, as the case may be, of any losses, damages, claims, liabilities, costs or expenses (subject always to the proviso to Section 16.7 ) for which the Party Not Liable may become liable in respect of the Legal Claim. The Party Not Liable shall, at the request of the Party Liable, afford all available assistance for the purpose of contesting the Legal Claim and shall be paid by the Party Liable (within ten (10) Business Days of the date of its invoice therefor) all reasonable expenses incurred in so doing.

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

16.8 Each of the provisions of this Clause 16 shall:

16.8.1 be construed as a separate and severable contract term, and if one or more of such provisions is held to be invalid, unlawful or otherwise

unenforceable the other or others of such provisions shall remain in full force and effect and shall continue to bind the Parties; and

16.8.2 survive termination of this Agreement.

16.9 Each of the Parties agrees that the other Party holds the benefit of Clauses 16.2, 16.3 and 16.4 for itself and as trustee and agent for its officers, directors, employees and agents.

16.10 For the avoidance of doubt:

16.10.1 nothing in this Clause 16 shall prevent or restrict either Party enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Agreement.

16.10.2 each Party acknowledges and agrees that the provisions of this Clause 16 are fair and reasonable having regard to the circumstances as at the date hereof.

## **17. FORCE MAJEURE**

17.1 Force Majeure means in relation to any event or circumstance or number of events or circumstances or combination thereof which is beyond the reasonable control of such Party (the "Non-Performing Party") and which could not have been avoided through the use of Good Industry Practice and which results in or causes the failure of that Party to perform any of its obligations under this Agreement, including:

17.1.1 acts of terrorists;

17.1.2 war (whether declared or undeclared), threat of war, act of public enemy, blockade, revolution, riot, insurrection, public demonstration, civil commotion, invasion or armed conflict;

17.1.3 sabotage or acts of vandalism, criminal damage or the threat of such acts;

17.1.4 extreme weather or environmental conditions including lightening, earthquake, flood, wind, drought, storm, fire, landslip, accumulation of snow or ice, natural disasters and phenomena including meteorites, the occurrence of pressure waves caused by aircraft or other aerial devices travelling at supersonic speeds, impact by aircraft, volcanic eruption, explosion including nuclear explosion, radioactive or chemical contamination or ionising radiation;

17.1.5 any change of legislation, governmental order, restraint or Directive having the effect of shutting down or reducing the supply of electricity to the Customer's Installation or which prohibits (by rendering unlawful) the operation of the Customer's Installation and such operation cannot be made lawful by a modification to the Customer's Installation or a change in operating practice;



- 17.1.6 a strike or any other form of industrial action by persons employed by the affected Party or by an Affiliate of the affected Party or by any contractor, subcontractor or agent of the affected Party or any such Affiliate;
- 17.1.7 any strike which is part of a labour dispute of a national character occurring in Republic of Ireland or which is part of a national electrical industry strike within Republic of Ireland;
- 17.1.8 the inability at any time or from time to time of the Transmission System to be capable of lawfully and safely supplying electricity to the Customer;
- 17.1.9 an electricity capacity shortfall whereby insufficient capacity is available to meet the requirements of users of the Transmission System;
- 17.1.10 the act or omission of any contractor or supplier of either Party but only if due to an event which, but for the contractor or supplier not being a party to this Agreement, would have constituted Force Majeure;

Provided that Force Majeure shall not include:

- (a) lack of funds and/or the inability of a Party to pay;
- (b) mechanical or electrical breakdown or failure of machinery or plant owned or operated by either Party other than as a result of the circumstances identified in Clause 17.1.1 to 17.1.10 above;
- (c) any of the events referred to in Clause 13 resulting in modifications in this Agreement; or
- (d) a strike or any other form of industrial action not falling within paragraph Clause 17.1.6 or Clause 17.1.7 above.

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

- 17.2.1 as soon as reasonably practicable, the Non-Performing Party shall notify the other Party of the circumstances of Force Majeure, identifying the nature of the event, its expected duration, and the particular obligations thereby affected and furnish reports at such intervals as the other Party may reasonably request, with respect thereto during the period of Force Majeure;

- 17.2.2 the Non-Performing Party shall use all reasonable efforts to remedy this inability to perform and to resume full performance of its obligations under this Agreement;
  - 17.2.3 no obligations of either Party that arose before the Force Majeure and which can reasonably be expected to be performed are excused as a result of Force Majeure;
  - 17.2.4 forthwith after the occurrence of the Force Majeure, each Party shall use all reasonable endeavours to consult with the other as to how best to give effect to their obligations under this Agreement so far as is reasonably practicable during the period of Force Majeure;
  - 17.2.5 the Non-Performing Party on being able to resume full performance of its obligations under this Agreement, shall provide the other Party with written notice to that effect, without delay; and
  - 17.2.6 insofar as practicable the Non-Performing Party shall seek to mitigate the consequences of the Force Majeure.
- 17.3 This Clause 17 shall not require the settlement of any strike, walkout, lock-out or other labour dispute on terms which, in the sole judgement of the Party involved in the dispute, are contrary to its interests. It is understood and agreed that the settlement of strikes, walkouts, lock-outs or other labour disputes shall be entirely within the discretion of the Non- Performing Party.

## **18. CONFIDENTIALITY**

- 18.1 Each Party shall treat any and all information and data disclosed to it by the other Party in connection with this Agreement in any form whatsoever, and this Agreement itself, (the “Confidential Information”) as confidential and proprietary, shall preserve the secrecy of the Confidential Information and shall not use the Confidential Information for any purpose other than solely in connection with this Agreement.
- 18.2 For the purposes of this Clause 18, the term Confidential Information shall not include information which:
- 18.2.1 at the time of disclosure or at any time thereafter is in, or becomes part of, the public domain other than through a breach of the provisions of this Section 18; or
  - 18.2.2 the Party receiving the information can prove that the information was already known to it or was independently acquired or developed by it without being in breach of its obligations under this Clause 18; or
  - 18.2.3 became available to the Party receiving the information from another source in a non-confidential manner otherwise than in breach of an obligation of confidentiality; or



- 18.2.4 is published by or the publication of which is required by a Competent Authority.
- 18.3 Notwithstanding the provisions of Clause 18.1, Confidential Information may be disclosed by a Party:
- 18.3.1 to those of the shareholders, owners, directors, officers, employees, agents, consultants, contractors, advisers, investors, insurers or lenders of such Party or its Affiliates who need to know the Confidential Information for this Agreement for the purpose of carrying out this Agreement (and for no other purpose) provided that:
- (a) the recipient agrees to keep the Confidential Information confidential on terms no less onerous than contained in this Clause 18; and
- (b) the disclosing Party shall be responsible for ensuring that the recipient observes and complies with such obligation to keep the Confidential Information confidential and shall accordingly be responsible for any failure of the recipient to do so;
- 18.3.2 as may be ordered or required by any applicable law or a Competent Authority;
- 18.3.3 as may be required by the regulations of any recognised stock exchange upon which the share capital of the Party (or any parent undertaking of the Party) is or is proposed to be from time to time listed or dealt in, and the Party making the disclosure shall, if reasonably practicable prior to making the disclosure, and in any event as soon as reasonably practicable thereafter, supply the other Party with a copy of such disclosure or statement and details of the persons to whom the Confidential Information is to be, or has been, disclosed. Where a copy of such disclosure or statement has been supplied prior to making the disclosure, the other Party may give comments on that disclosure or statement to the Party proposing to make it. The Party proposing to make the disclosure shall, if reasonably practicable in the time available, consult with the other Party as to any such comments and consider whether the disclosure is to be amended to take into account the comments;
- 18.3.4 as may be required to comply with the requirements of the Grid Code, Metering Code or Trading and Settlement Code or this Agreement;
- 18.3.5 by either Party as may be necessary to comply with any obligation under any licence granted to it under the Act;
- 18.3.6 by the Company as may be necessary to enable the Company to operate the Transmission System and carry out its obligations in relation thereto in accordance with Good Industry Practice (including

in relation to the application by any person for connection to the Transmission System), provided that:

- (a) only Confidential Information which is necessary for such purpose is disclosed by the Company; and
- (b) the Company notifies the recipient in advance of such disclosure that the information is confidential and should not be disclosed by the recipient to third parties;

18.3.7 as may be required by a Court, arbitrator or administrative tribunal or an expert in the course of proceedings before it to which the disclosing Party is a party; or

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

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

18.5 The provisions of this Clause 18 shall survive the termination of this Agreement for a period of five (5) years.

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

18.7 Subject to Clause 18.3, no public announcement or statement regarding the signature, performance or termination of, or otherwise in relation to, this Agreement shall be issued or made by a Party unless the other Party shall have first been furnished with a written copy of the proposed announcement or statement and shall have approved it (such approval not to be unreasonably withheld or delayed).

## **19. DISPUTE RESOLUTION**

19.1 If any dispute or difference arises between the Parties in connection with this Agreement it shall be resolved in accordance with the provisions set out in this Clause 19, subject to the provisions of Clause 13 and except in so far as it relates to a billing and payment dispute in which case the provisions of Schedule 3 apply.

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

- 19.3 If considered appropriate, the relevant Party may, by notice to the other Party and within fifteen (15) Business Days of a notification under Clause 19.2, appoint, by notice to the other Party, a senior company official with expertise or experience in the area in which the dispute arises and who has no prior direct involvement with the subject matter of the particular dispute, to represent them and meet with the representative of the other Party within fifteen (15) Business Days of the last date on which a Party receives notification of the appointment under Clause 19.2, to attempt in good faith to satisfactorily resolve the dispute.
- 19.4 If the dispute shall fail to be resolved pursuant to Clause 19.3 within thirty (30) Business Days of the meeting referred to, then either Party may refer the matter to the Commission for resolution.

## **20. MISCELLANEOUS**

### **20.1 Counterparts**

This Agreement may be executed in any number of counterparts and by each Party on a separate counterpart, each of which when executed and delivered shall be an original, but all the counterparts together shall constitute one and the same document.

### **20.2 Entire Agreement**

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

### **20.3 Severability**

If any provision of this Agreement is or becomes invalid, unenforceable or illegal by a judgement or decision of any court of competent jurisdiction or any Competent Authority to which it is subject or by order of the relevant body of the European Union, the same shall be deemed severable and the remainder of this Agreement shall remain in full force and effect. In any such case, the parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid or unenforceable provision in order to give effect, so far as practicable, to the spirit of this Agreement.

### **20.4 Waivers**

No delay, omission or forbearance by either Party in exercising any right, power, privilege or remedy under this Agreement or the Grid Code shall operate to impair or be construed as a waiver of such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of

any such right, power, privilege or remedy shall not preclude any further exercise thereof or other right, power, privilege or remedy.

## **20.5 Notices**

Except for notices to be given pursuant to the Grid Code (as to which, for the avoidance of doubt, the provisions of the Grid Code shall apply) any notice given by one Party to the other under this Agreement shall be in writing unless emergency conditions exist reasonably preventing such notice from being given.

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

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

- 20.5.1 in the case of personal delivery, when delivered;
- 20.5.2 in the case of pre-paid registered post, on the second day following the date of posting (or, if airtailed to or from overseas, on the fifth day following the date of posting); and
- 20.5.3 in the case of facsimile transfer or electronic transfer on the date of dispatch provided:
  - (a) such date is a Business Day; and
  - (b) time of dispatch is within the hours of 0900 hours and 1730 at the place of receipt;

otherwise on the next following Business Day.

Except for notices to be given pursuant to the Distribution Code (as to which, for the avoidance of doubt, the procedures provided for in the Distribution Code shall apply), any such notice given by one Party to the other under this Agreement shall be sent or delivered to the address, and marked for the attention of the person specified in Schedule 4.

Either Party may, by notice to the other, given in compliance with this Section 20.5, change the address or the person to which such notices are to be sent or delivered.

## **20.6 Compliance with the Law**

The parties agree that, in performing its obligations pursuant to this Agreement, the Company and the User shall be required to comply with relevant statutes, statutory instruments and the general law and shall not be liable for any failure to perform its obligations in accordance with this Agreement where to do so would put it in breach of any such statute, statutory instrument or general provision of law.

## **20.7 Survival**

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

## **20.8 Independent Contractors**

The relationship between the Company and the User shall be that of two independent contracting parties. Each Party shall be solely liable for the payment of all wages, taxes and other costs related to the employment by that Party of persons to meet its obligations under this Agreement.

## **20.9 No partnership etc**

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

## **20.10 No Third Party Beneficiaries**

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

## **20.11 Change in Law**

Nothing in this Agreement shall prejudice or affect the rights or powers of either Party under any statute, statutory instrument or regulation for the time being in force. If at any time following the date of this Agreement, a Change in Law requires an amendment to this Agreement, the terms of this Agreement shall be adjusted as soon as reasonably practicable to ensure that the Company is not prejudiced as a result of that Change in Law. The Company shall give the Customer reasonable notice when a change in its costs occurs resulting from a Change in Law. For the purpose of this Clause 20.11, "Change in Law" means the application to the Company of any Directive which did not previously so apply or any change of or to any Directive including any Directive ceasing to apply, being withdrawn or not being renewed, or any, rule, regulation, direction, statutory instrument or order of any Competent Authority arising therefrom, or change in the Grid Code, Metering Code or Trading and Settlement Code except a Directive by the Commission expressly excluding the effect of this Clause 20.11.

## **20.12 Language**

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

**21. GOVERNING LAW AND JURISDICTION**

- 21.1 This Agreement shall be interpreted, construed and governed by the laws of Republic of Ireland.
- 21.2 Each Party agrees that a finding or conclusion of an arbitrator, determined in accordance with the relevant provisions of this Agreement or a judgement in any proceedings brought under or pertaining to this Agreement in the courts of the Republic of Ireland shall be conclusive and binding upon each Party and may be enforced in the courts of any other jurisdiction.
- 21.3 Each Party agrees to bring all judicial litigation under or pertaining to this Agreement in the courts of Republic of Ireland.
- 21.4 For the avoidance of doubt nothing in this Clause 21 shall be taken as permitting a Party to commence any judicial litigation in the courts where this Agreement otherwise provides for a dispute to be referred to arbitration pursuant to this Agreement.

**IN WITNESS WHEREOF** this Agreement has been executed the day and year first above written.

Signed for and on behalf of **EIRGRID PLC.** by:

.....

AUTHORISED SIGNATORY

Signed for and on behalf of **[Name]** by:

.....

AUTHORISED SIGNATORY

## **SCHEDULE 1**

### **USE OF SYSTEM CHARGES**

(As per the attached Schedule and any replacement that may be published by the Company from time to time and approved by the Commission).



**SCHEDULE 2**  
**OTHER CHARGES**

## **SCHEDULE 3**

### **BILLING AND PAYMENT DISPUTES**

1. This Schedule 3 applies to disputes about Use of System Charges and other charges payable by the User pursuant to Clauses 5, and 6:
  - 1.1 Where the User disputes any sum in an account issued under Clause 6 and the dispute is a Designated Dispute (as defined in paragraph 1.2 below):
    - (a) the User shall pay such amount of Use of System Charges due as are not in dispute and shall be entitled to withhold the balance pending resolution of the dispute;
    - (b) the Parties shall use reasonable endeavours to resolve the dispute in good faith;
    - (c) where the dispute remains unresolved after twenty (20) Business Days either Party may refer the dispute to arbitration in accordance with Clause 19; and
    - (d) following resolution of the dispute, any amount agreed or determined to be payable shall be paid within twenty (20) Business Days after such agreement or determination and interest shall accrue on such amount plus Value Added Tax (if any) from the date such amount was originally due until the date of payment at the rate of 1% per annum above EURIBOR.
  - 1.2 A dispute shall be a "Designated Dispute" for the purposes of this paragraph 1 where within ten (10) Business Days of receiving a request for payment the User in good faith provides the Company with a statement and explanation of the amount in dispute where:
    - (a) there is an error in the information used for the calculation or an arithmetic error in the calculation of Use of System Charges by the Company which is apparent on the face of the account ; and/or
    - (b) the Company chooses not to use the half-hourly data (whether actual or estimated) for the purposes of Settlement in calculating Use of System Charges and the User disputes the accuracy or validity of the data actually used.
  - 1.3 Where, other than in the case of a Designated Dispute within ten (10) Business Days of receiving a request for payment the User in good faith provides the Company with a statement and explanation of the amount of Use of System Charges in dispute:

- (a) the User shall pay the total amount of such charges as they fall due in accordance with Clause 5.5;
- (b) the parties shall use reasonable endeavours to resolve the dispute in good faith;
- (c) where the dispute remains unresolved after twenty ( 20) Business Days either Party may refer the dispute to arbitration in accordance with Clause 19; and
- (d) following resolution of the dispute, any amount agreed or determined to be repayable (including where appropriate any interest paid pursuant to Clause 6.2) by the Company shall be paid within ten (10) Business Days after such agreement or determination and interest shall accrue on such amount from the date such amount was originally paid by the User until the date of repayment at 1% per annum above EURIBOR.

## SCHEDULE 4

### ADDRESSES

**1. EirGrid plc.**

27 Lower Fitzwilliam Street, Dublin 2

For the attention of the Company Secretary

with copies to Financial Controller & Agreements Manager, **EirGrid plc.**

**2. {Name}**

[address]

(a) For the attention of

(b) For the attention of