

Dated _____ **day of** _____ **20**



TRANSMISSION USE OF SYSTEM AGREEMENT

SUPPLIER (DEMAND USER) VERSION

EirGrid plc.

and

[]

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

BETWEEN:

- (1) **EirGrid plc**, a statutory corporation registered at The Oval, 160 Shelbourne Road, Ballsbridge, Dublin 4~~27 Lower Fitzwilliam Street, Dublin 2~~ (hereinafter called the “Company”); and
- (2) [Name of company], whose registered offices are at [company registered address of the customer] and whose company registration number is [c and Company rRegistration nNumber] (hereinafter called the “User”)

and each of the parties hereto being a “Party” and the term “Parties” shall be construed accordingly.

WHEREAS:

- (A) The User has applied to the Company for use of the ~~ESB~~-Transmission System as a person licensed under section 14 (1) (b), (c), (d) or (h) of the Electricity Regulation Act, 1999 (as the case may be) 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 ~~ESB~~ Transmission System with any person applying to use the ~~ESB~~-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 ~~ESB~~ Transmission System.
- (D) This Agreement relates to the supply of electricity to one or more persons connected to the ~~ESB~~-Transmission System or the ~~ESB~~-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 INTERPRETATIONS

- 1.1 The Parties agree that the latest version of the General Conditions of Connection and Transmission Use of System as amended from time to time is incorporated into this Transmission Use of System Agreement hereinafter referred to as the “General Conditions”.
- 1.2 In the event of inconsistency between the provisions of this Transmission Use of System Agreement and industry codes or inconsistencies within the Transmission Use of System Agreement itself the following order of precedence shall prevail:
- a) The Grid Code;
 - b) This Transmission Use of System Agreement including the General Conditions;
 - c) The Trading and Settlement Code and the Metering Code.
- 1.3 In this Transmission Use of System Agreement words and expressions shall have the same meanings as are respectively assigned to them in the General Conditions unless expressly provided to the contrary elsewhere, as appropriate, and for the avoidance of doubt shall be interpreted in accordance with Clause 2 of the General Conditions.

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):
- 2.1.1.1 the User holding a Supply Licence issued by the CER;
 - 2.1.1.2 the User being a party to the Trading and Settlement Code;
 - 2.1.1.3 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 General Conditions Clause 28; and
- 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 Transmission Use of System

- 2.2.1 The provisions of Clauses 26.1, 27 and 14 of the General Conditions are conditional and subject as further provided in this Agreement, upon each of the conditions precedent set out in Clause 26.2 of the

General Conditions being fulfilled (or waived by the Company, acting reasonably).

2.2.2 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.

2.2.3 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 TERM AND TERMINATION

The term and termination provisions as set out in the General Conditions in respect of Transmission Use of System Agreements shall apply to this Transmission Use of System Agreement.

4 AGREEMENT TO USE

4.1 Agreement to Use

The Company agrees to the User being provided with use of the ~~ESB~~ Transmission System at Network Connection Points for the purpose of transporting electricity to Network Connection Points through the ~~ESB~~ Transmission System in accordance with the Trading and Settlement Code from the date of this Agreement for the duration of the Term on the terms and conditions set out in this Agreement subject to transmission constraints from time to time.

4.2 Company's Obligation to Maintain and Operate

The Company shall maintain and operate the ~~ESB~~-Transmission System in accordance with the Grid Code and otherwise to a standard equal to Prudent Electricity Utility Practice.

4.3 Continuity of Transmission Use of System

4.3.1 No liability for loss of continuity

The Company shall to the best of its ability maintain continuous Transmission Use of System and if by reason of any cause whatsoever the Company shall fail to do so the Company shall restore Transmission Use of System with all reasonable speed but the Company shall not be under any liability whatsoever for loss or damage arising from such failure to maintain Transmission Use of System.

4.3.2 Failure of continuity

If there is a failure in the continuity of Transmission Use of System to one or more Network Connection Points, the Company shall endeavour as soon as practicable to notify the User of the reason for the breakdown and of the estimated time for restoration of Transmission Use of System and shall endeavour to keep the User informed about the progress of the work of restoring Transmission

Use of System but the Company shall not be liable if due to circumstances beyond its reasonable control it is unable to do so.

5 AGREEMENT TO PAY CHARGES

5.1 Agreement to pay Charges

The User agrees to pay the Charges set out in this Clause 5 and more specifically in the General Conditions, Tariff Schedules and the Statement of Charges thereto.

5.2 Charges related to Use of System

The applicability of Use of System Charges shall be in accordance with the General Conditions, Tariff Schedules and the Statement of Charges.

6 SECURITY COVER

The Customer shall provide Security Cover in accordance with Clause 28 of the General Conditions.

IN WITNESS WHEREOF the Company and the User have caused this Transmission Use of System Agreement to be executed on date above first herein written.

Signed for and on behalf of:-

EIRGRID PLC.

Print Company Signatory Name in Block Capitals: _____

Witness: _____

[USER DETAILS]

Print User Signatory Name in Block Capitals: _____

Witness: _____

SCHEDULE 1

Addresses

COMPANY:

Address: EirGrid plc.
The Oval
160 Shelbourne Road
Ballsbridge
Dublin 4
Republic of Ireland

For the attention of: Company Secretary
EirGrid plc.

with copies to Financial Controller & Commercial and
~~Pricing Regulation~~ Manager, EirGrid plc.

Facsimile Number: + 353 1 661 5375

USER:

Address:

For the attention of:

Email Address:

Telephone Number:

Facsimile Number:

SCHEDULE 2
Billing Information

USER:

Name:

Address:

For the attention of:

Ee-mail Address:

Telephone Number:

Facsimile Number:

SCHEDULE 3

Letter of Credit

[Name of Bank]

[Address]

Financial Controller _____

EirGrid _____

The Oval _____

160 Shelbourne Road _____

Ballsbridge _____

Dublin 4 _____

[Date]

Letter of Credit

Letter of Credit No.:

Amount:

[Letter of Credit No.] _____

[EUR €] _____

Company (Beneficiary):

Applicant:

EirGrid _____

[Name] _____

as Transmission System Operator _____

[Address] _____

The Oval _____

[Address 2] _____

160 Shelbourne Road _____

[Address 3] _____

Ballsbridge _____

[Address 4] _____

Dublin 4 _____

[Address 5] _____

At the request of [Applicant Name] (the "**Applicant**"), [Name of Bank] with registered place of business at [insert address] (the "**Issuer**") issues this irrevocable standby letter of credit ("**Letter of Credit**") in your favour on the following terms and conditions.

Terms and Conditions

Under Clause 67 of the Transmission Use of System Agreement between EirGrid plc, as Transmission System Operator (the "**Beneficiary**"), which expression includes its legal successors and any person to whom the Beneficiary assigns or transfers all its rights and obligations under the Transmission Use of System Agreement) and the Applicant (which expression includes its legal successors and any person to whom the Applicant assigns or transfers all its rights and obligations under the Transmission Use of System Agreement), it was agreed that the Applicant will procure the issue of a Letter of Credit in favour of the Beneficiary in the form of this document.

The Issuer issues this Letter of Credit number [], in the amount of [EUR € (Euro)] and irrevocably and unconditionally agrees as follows:

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

"Authorised Signatory"

means an officer of the Beneficiary having authority to execute a Demand and whose name and specimen signature have been notified to the Issuer by the Beneficiary before service of the Demand;

"Business Day" a day on which banks are open for business in Republic of Ireland;

"Demand"

means a written notice of demand served by the Beneficiary on the Issuer in the form set out in the Appendix to this Letter of Credit;

"Expiry Date"

means [day] [month] [201x];

"Effective Date"

means [day] [month] [201x];

"Specified Amount"

means in relation to any Demand the sum specified in that Demand;

"UCP Rules"

means the ICC Uniform Customs and Practice for Documentary Credits (2007 revision), and all subsequent revisions thereof unless otherwise stated. Reference to any article is reference to such article in the UCP Rules or, where relevant, the equivalent article in any subsequent revisions of the UCP Rules.

Unless expressly defined in this Letter of Credit words and phrases defined in the Transmission Use of System Agreement shall have the same meaning in this Letter of Credit (and every Demand).

This Letter of Credit is subject to the UCP Rules except where otherwise stated.

2. The Issuer irrevocably and unconditionally undertakes that it will, on service of a Demand, in paper form at the address specified in clause 7 (or such other address as agreed between the Beneficiary and Issuer), after the Effective Date but before the Expiry Date, and within three (3) Business Days of receipt of that Demand (or such later date as may be specified in the Demand) pay to the Beneficiary the Specified Amount unless in so doing the aggregate limit set out in paragraph 3 of this Letter of Credit would be exceeded, in which case the Issuer shall pay to the Beneficiary so much of the Specified Amount as may be paid without exceeding such limit.
3. The Beneficiary may make one or more Demands under this Letter of Credit provided that the aggregate amount of all Demands and the aggregate liability of the Issuer under this Letter of Credit shall not exceed [EUR €].
4. Any payment under this Letter of Credit shall be made without set-off or counterclaim and free from any deduction or withholding in EURO in immediately available, fully transferable, cleared funds by transfer to an account in the Beneficiary's account name of System Operator as set out in the appendix or in such

other manner or to such other account at an Irish financial institution as the Beneficiary may from time to time notify to the Issuer in writing.

Where any such deduction or withholding or is required by law to be made (whether by the Applicant, Issuer or otherwise) the Issuer shall pay in the same manner and at the same time such additional amounts as will result in receipt by the Beneficiary of the amount it would have received had no such deduction or withholding been required.

5. The obligations of the Issuer under this Letter of Credit shall cease on the Expiry Date, except:

5.1 in respect of any Demand received by the Issuer prior to the Expiry Date in relation to which the Issuer shall be obliged to pay to the Beneficiary the Specified Amount.

6. Save as expressly provided herein, the Issuer shall have no liability hereunder (save in its capacity as Issuer). The liability of the Issuer shall not in any way be affected by:

6.1 any time, indulgence or relief given to or by the Beneficiary or the Applicant;

6.2 any amendment or extension of or supplement to the Transmission Use of System Agreement;

6.3 any invalidity in, or irregularity or unenforceability of the obligations of any person under the Transmission Use of System Agreement; or

6.4 anything done or omitted, which but for this provision might constitute a legal or equitable discharge or release of, or defence for, the Issuer.

7. Unless otherwise expressly provided, any document, notice or other communication to be given to or be made by any person pursuant to or in accordance with this Letter of Credit shall be in writing and sent by letter to the addresses below. Each such document shall be treated as having been given or made and delivered, if by letter two (2) Business Days immediately following posting, if by delivery, when left at the relevant address.

 If to the Issuer: [Name of Bank]
 [Address 1]
 [Address 2]
 [Address 3]
 [Address 4]
 [Address 5]

 Attention: [Contact Name]

If to the Beneficiary: EirGrid

The Oval

160 Shelbourne Road

Ballsbridge

Dublin 4

Ireland

Attention: Chief Financial Officer

The Beneficiary and the Issuer may change its nominated address to another address in the Republic of Ireland by prior written notice to the other party. Any written notices shall be effective upon the earlier of:

7.1 actual receipt; and

7.2 two (2) days after mailing or despatch.

This Letter of Credit may be amended only by an instrument in writing signed on behalf of both the Beneficiary and the Issuer.

8. The Beneficiary, after receiving written consent of the Issuer and the Applicant (such consent not to be unreasonably withheld), may transfer and assign this Letter of Credit to any person to whom the Beneficiary assigns or transfers all its rights and obligations under the Transmission Use of System Agreement, and Article 38 and 39 of the UCP Rules is hereby expressly excluded to the extent that it precludes such transfers or assignments.

9. If this Letter of Credit expires during any interruption of business of a kind referred to in Article 26 of the URDG Rules, then the Issuer shall remain liable to make payment under this Letter of Credit in respect of any Demand served no later than fifteen (15) Business Days after the Issuer has notified the Beneficiary that its business has ceased to be so interrupted. The Issuer undertakes that it shall, within two (2) Business Days of the cessation of any interruption of business referred to in Article 36 of the UCP Rules (during which this Letter of Credit expires) notify the Beneficiary of that cessation. Article 36 of the UCP Rules is hereby amended.

10. This Letter of Credit shall be governed by and construed in accordance with the laws of Ireland and the competent Courts shall be the Courts of Ireland.

11. All charges hereunder are for account of the Applicant.

Signed for: _____

[Issuing Bank Name and address]

APPENDIX TO LETTER OF CREDIT

FORM OF DEMAND

To: [The Issuer] _____ [Date]

The Letter of Credit number [] dated [] (the “Letter of Credit”)

We refer to the above Letter of Credit dated [] and issued by you in our favour. In accordance with paragraph 2 of the Letter of Credit, we hereby make demand in the sum of EUR [€] and request that you pay the same by no later than [day] of [month] [year] under the Letter of Credit to the following account:

Account Name: EirGrid No 2 Account
Account No: 42890602
Bank Name: Barclays Bank Ireland Plc
Bank Address: 2 Park Place, Hatch Street, Dublin 2
Sort Code: 99-02-12
Swift Code: BARCIE2D
IBAN: IE80BARC99021242890602

Terms defined in the Letter of Credit shall have the same meanings in this Demand.

The date of this Demand is not later than the Expiry Date.

For and on behalf of EirGrid

Dated this [] of [] 200[]

[Authorised signatory]