

Dated            day of            200

**NORTHERN IRELAND ELECTRICITY plc**

**and**

**THE SUPPLIER NAMED IN SCHEDULE 2**

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**USE OF SYSTEM AGREEMENT  
FOR SUPPLIER**

**As amended and restated by  
the Amendment and Restatement Agreement**

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Legal Department  
Northern Ireland Electricity plc  
120 Malone Road  
BELFAST BT9 5HT

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**“Approved Credit Status”**

means:

- (a) a long term credit rating of not less than A- by Standard and Poor’s Corporation or a rating not less than A3 by Moody’s Investors Service (or such other credit rating as the Company may from time to time specify based on the relevant sections of the Company’s prevailing payment security policy); or
- (b) such credit status which, in the opinion of the Company, provides equivalent comfort as that set out in paragraph (a) above;

**“Authority”**

means the Northern Ireland Authority for Energy Regulation;

**“Connection Agreement”**

means either an LV Connection Agreement or an HV Connection Agreement, as the case may be;

**“De-energisation Code of Practice”**

means the code of that name prepared by the Company or (until the final Code comes into effect) the Interim De-energisation Code of Practice prepared by the Company and which may be amended by the Company from time to time as the Company considers appropriate by notice to the User, after consultation with the User, each other Supplier and any other person that the Company considers it appropriate to consult with in relation to the amendment;

**“De-energise”**

means the movement of any isolator, breaker or switch or the removal of any fuse or the taking of any other step whereby no electrical current can flow from the NIE System through the Point of Supply and “De-energisation” and “De-energised” shall be construed accordingly;

**“Deposit Account”**

means a deposit account at a bank in the UK that satisfies the criteria outlined in the definition of Qualifying Issuer where:

- (a) the account is in the joint name of the Company and the User;
- (b) interest on the amount deposited in the account accrues for the benefit of the User, after any deduction for any tax or bank

charges;

- (c) the Company and the User have irrevocably instructed the bank to make payments to the Company against the sole signature of the Company;
- (d) the bank has agreed that the amounts deposited in the account must not be set off or otherwise applied by the bank in respect of any indebtedness of the User or any other person; and
- (e) amounts (other than interest) standing to the credit of the account will not be paid to the User without the prior written agreement of the Company;

**“Eligible Customer”**

has the meaning given to the term in the Supply Competition Code, which is the code of that name established by the Company pursuant to the Licence;

**“General Conditions”**

means the Conditions Applicable to Electricity Agreements entered into with Northern Ireland Electricity plc, as amended from time to time. The General Conditions form part of and are incorporated into this Agreement, subject to any variations set out in this Agreement including Schedule 3;

**“HV Connection Agreement”**

means an agreement with an HV Customer for connection of the HV Customer’s premises to the NIE System, and which must be agreed between the HV Customer and the Company;

**“HV Customer”**

means a Customer consuming electricity at a voltage exceeding 650 volts;

**“Industry Arrangements”**

means:

- (a) the Order and any direction or instruction issued under the Order, and any deemed agreement under the Order; and
- (b) any standard, code, code of practice or associated instrument or agreement or other instrument or document established pursuant to the Licence or the Order with which the Company and/or the User, as applicable, is

	required to comply or enter into and (for the avoidance of doubt) includes those instruments or documents referred to by name elsewhere in this Agreement;
<b>“Interconnector Connection Point”</b>	means the point of connection between the NIE System and any interconnector (as defined in the Licence);
<b>“Letter of Credit”</b>	means an unconditional irrevocable stand-by letter of credit issued on behalf of the User by a Qualifying Issuer, in sterling and in favour of the Company, allowing for partial drawings and providing for payment to the Company by the Qualifying Issuer forthwith on demand at a branch of the issuing Qualifying Issuer and otherwise on terms approved by the Company;
<b>“LV Connection Agreement”</b>	means an agreement with an LV Non-Domestic Customer on the Standard Connection Terms and Conditions relating to the connection of the LV Non-Domestic Customer’s premises to the NIE System;
<b>“LV Non-Domestic Customer”</b>	means a Customer receiving a permanently metered supply on a non-domestic use of system tariff and who receives that supply of electricity through lines and equipment not exceeding 650 volts;
<b>“Market Registration Code”</b>	means the Code of that name established by the Company pursuant to the Licence;
<b>“Market Registration Framework Agreement”</b>	has the meaning given to the term in the Market Registration Code”;
<b>“Maximum Import Capacity”</b>	means, in relation to a Point of Supply, the maximum import capacity for that Point of Supply (in kVA) as determined in accordance with clause 9.2;
<b>“Metering Equipment”</b>	means the metering equipment described in clause 11.1;
<b>“MIC Management Policy”</b>	means the policy established by the Company (as amended from time to time) for the management of Maximum Import Capacity (also entitled “Distribution Network Capacity Management”);

<b>“Point of Supply”</b>	means a point where energy may flow between the NIE System and the Customer’s facility;
<b>“Public Electricity Supplier”</b>	a holder of a public electricity supply licence granted pursuant to Article 10(1)(c) of the Order;
<b>“Qualifying Amount”</b>	has the meaning given to it in clause 6.7;
<b>“Qualifying Issuer”</b>	<p>means a legal person which either:</p> <p>(a) possesses a current A- rating or better awarded by Standard and Poor’s Rating Services or a current A3 rating or better awarded by Moody’s Investors Service (or such other credit rating as the Company may specify from time to time based on the relevant sections of the Company’s prevailing payment security policy) in respect of its most recent unsecured (and unsubordinated) long term debt issue on any capital market or, if those agencies should both cease to publish such ratings, possesses an equivalent rating from another ratings agency of equal repute; or</p> <p>(b) is otherwise approved by the Company and is permitted to accept deposits pursuant to Part IV of the Financial Services and Markets Act 2000,</p> <p>provided that if any person previously possessing the rating set out in (a) above should cease to possess such rating or, being admitted to be a Qualifying Issuer by virtue only of approval pursuant to paragraph (b), should be the subject of a notice by the Company to the User to the effect that the issuer has, in the reasonable opinion of the Company, suffered a material adverse change in its financial condition since its approval, such person shall cease to be a Qualifying Issuer;</p>
<b>“Revenue Protection Code of Practice”</b>	means the code of that name prepared by the Company and which may be amended by the Company from time to time as the Company considers appropriate by notice to the User, after consultation with the User, each other Supplier and any other person that the Company considers it appropriate to consult with in relation to the amendment;

<b>“Security Cover”</b>	means security cover (if any) provided by the User to the Company under clause 7;
<b>“Standard Connection Terms and Conditions”</b>	means the terms and conditions of that name which will be provided by the Company to the User as applicable and/or as appears on the Company’s website, as may be amended from time to time by the Company in accordance with the procedure set out in those standard connection terms and conditions;
<b>“Supplier”</b>	means the holder of a Supply Licence, including the Public Electricity Supplier, and references to a User being a “Supplier for a Point of Supply” shall be interpreted in accordance with clause 3.1;
<b>“Supply Licence”</b>	means a licence granted under Article 10(1)(c) or Article 10(2)(a) of the Electricity (Northern Ireland) Order 1992; and
<b>“Tariff Customer”</b>	means a Customer supplied by the Public Electricity Supplier under a tariff established in accordance with Article 21 of the Order.

## **2. Conditions Precedent**

The obligation of the Company to transport energy on the NIE System for the User is in each case subject to:

- (a) the User being a Supplier authorised to supply electricity by virtue of a Supply Licence and such Supply Licence continuing in full force and effect throughout the term of this Agreement;
- (b) in relation to each particular Point of Supply for which the User is the Supplier, and except where the Customer is a Tariff Customer, there being a subsisting Connection Agreement in respect of the Point of Supply and such Agreement continuing in full force and effect for so long as the User is the Supplier for that Point of Supply;
- (c) the User being a party to a Bulk Supply Tariff Agreement or to such alternative arrangement for the trading and settlement of electricity as may be permitted by the Supply Competition Code throughout the term of this Agreement;
- (d) the User being a party to the Market Registration Framework Agreement;
- (e) the User providing the Company with Security Cover where required in accordance with clause 7 and otherwise complying with its obligations under clause 7;

- (f) in relation to each particular Point of Supply for which the User is the Supplier, the condition in clause 9.1 relating to Maximum Import Capacity being fulfilled; and
- (g) in relation to each particular Point of Supply for which the User is the Supplier, metering being in place for the Point of Supply as required by clause 11.

### **3. Use of System**

- 3.1 Subject to the terms of this Agreement, the User may use the NIE System for the purposes of supplying each Point of Supply for which the User is the Supplier or importing or exporting at an Interconnector Connection Point and the Company shall transport energy on the NIE System for the User, subject to any permitted variations under the Regulations or the Grid Code and up to the relevant Maximum Import Capacity (as described in clause 9.2). This Agreement shall continue until terminated in accordance with clause 13.
- 3.2 The Points of Supply for which (subject to clause 3.3) the User is the Supplier under this Agreement are all those Points of Supply:
  - 3.2.1 that were Points of Supply associated with the User for the purposes of this Agreement immediately before the Amendment and Restatement Agreement came into effect; and
  - 3.2.2 from the time the Amendment and Restatement Agreement comes into effect, all those Points of Supply which are or become registered to the User or otherwise associated with or allocated to the User under applicable Industry Arrangements or other procedures as may be notified by the Company from time to time for the purposes of this clause.
- 3.3 Points of Supply will only cease to be Points of Supply for which the User is Supplier in accordance with the applicable Industry Arrangements or as otherwise agreed with the Company for the purposes of this clause.
- 3.4 The Company shall be entitled to vary the charges under this Agreement to reflect the addition or removal of Points of Supply for which the User is the Supplier.
- 3.5 The User shall comply with the Industry Arrangements and such procedures in relation to use of the NIE System and registration of Points of Supply or other arrangements for associating Points of Supply with or allocating Points of Supply to the User, as the Company may notify to the User from time to time and as applicable to each particular Point of Supply.

### **4. De-energisation/Re-energisation**

- 4.1 The Company shall be entitled to De-energise any Point of Supply:

- (a) in accordance with the Connection Agreement which relates to the Point of Supply, if applicable;
- (b) in accordance with any Industry Arrangements applicable to the User and/or the Point of Supply;
- (c) if any of the conditions precedent set out in clause 2 applicable to the Point of Supply cease to apply in relation to that Point of Supply;
- (d) when Force Majeure occurs;
- (e) to avoid or mitigate the effect of any material danger;
- (f) to avoid a breach of the Regulations;
- (g) to enable the Company to inspect, modify, maintain, repair or add to any part of the NIE System;
- (h) in case of accident or emergency affecting or likely to affect the NIE System or any other system through which (directly or indirectly) the Company receives or distributes a supply of electricity;
- (i) to avoid interference with the regularity or efficiency of any supplies by the Company to any person;
- (j) where clause 9 is not fully complied with; or
- (k) on or after the expiry of notice given by the User under clause 13.

4.2 Where De-energisation in accordance with clause 4.1 occurs, the Company shall give the User such notice as is reasonable in the circumstances and shall (except following De-energisation under clause 4.1(k) or De-energisation at the request or instruction of the User in accordance with the provisions of this Agreement and subject to the requirements of applicable Industry Arrangements) re-energise the Point of Supply as soon as reasonably practicable.

4.3 Subject to the Grid Code, the Company shall be entitled to plan and execute outages of parts of the NIE System or its Plant and Apparatus at any time and from time to time.

4.4 The Company shall, subject to the provisions of any Industry Arrangements relating to the De-energisation of any Point of Supply, as soon as reasonably practicable, De-energise any Point of Supply for which the User is the Supplier where instructed to do so in writing by the User. Subject to clause 4.5, the De-energisation Code of Practice shall apply in relation to De-energisation and re-Energisation of any Point of Supply of an Eligible Customer in accordance with this provision. The Company shall promptly notify the User of the date and time at which such De-energisation was effected. The User shall reimburse the Company any expense incurred in relation to such De-energisation and shall indemnify the Company against any costs,

liability, loss, or damage suffered as a result of such De-energisation provided the Company has acted in accordance with Good Industry Practice.

- 4.5 The Company shall De-energise the Point of Supply in accordance with clause 4.4 following an instruction given by the User in accordance with clause 4.4 unless:
- (a) the Company considers it is not reasonable in all the circumstances to De-energise and notifies the User thereof not more than 3 Business Days after an instruction under clause 4.4;
  - (b) the Company is unable to De-energise or has delayed De-energisation for reasons beyond the Company's control (including where the Customer at the Point of Supply to be De-energised has failed to contact the Company to make an appointment for De-energisation) and the Company has notified the User of this inability or delay; or
  - (c) the Company considers that the notice from the User does not fulfil the requirements of clause 4.4 and notifies the User thereof not more than 3 Business Days after an instruction under clause 4.
- 4.6 Following a notification by the Company under paragraphs (a), (b) or (c) of clause 4.5, if the User disagrees with the Company it shall confirm its instruction to De-energise within 3 days of receipt of the notice. Where following confirmation of an instruction the Company fails to De-energise as soon as reasonably practicable for a reason other than those set out in paragraphs (a), (b) or (c) of clause 4.5 the Company shall indemnify the User against any cost, loss or damage suffered by the User as a result from the date of the confirmatory instruction. The User shall be under an obligation to mitigate the consequences of the failure to De-energise.
- 4.7 The Company may disconnect or decommission a Point of Supply when instructed to do so by a Customer or in accordance with the terms of any agreement between the Company and the Customer.

## **5. Revenue Protection**

- 5.1 The Company and the User shall comply with the Revenue Protection Code of Practice in relation to the services described in that Code of Practice.
- 5.2 The Company may adjust charges for Use of System as provided for in the Revenue Protection Code of Practice and make such additional charges as are provided for under the Revenue Protection Code of Practice. The Company shall include such adjustment or charges in an account delivered to the User in accordance with clause 6 of this Agreement, and the User shall pay such account as described in clause 6 of this Agreement.

## **6. Calculation and Payment of Charges**

- 6.1 The User shall pay to the Company charges plus Value Added Tax pursuant to this clause 6 and Schedule 1.
- 6.2 The Company may, to the extent permitted by its Licence or other Industry Arrangements (as applicable to the charges in question), revise its charges or the basis of their calculation.
- 6.3 As soon as reasonably practicable after the end of each Charging Period the Company shall deliver to the User an account showing the charges payable in respect of that Charging Period and any adjustments. The Company may, in addition to the account for the Charging Period, deliver to the User an account showing charges payable for services provided to the User by the Company as those charges are incurred.
- 6.4 On any occasion upon which the charges payable by the User under this Agreement have not been calculated in accordance with this Agreement including the Statement (as defined in Schedule 1) or Industry Arrangements (as appropriate) adjustments shall be made by the Company and included in the relevant account. Where:
- (a) the adjustment discloses an overcharge, the Company shall repay to the User the amount by which the User has been overcharged together with interest at the at the base rate of the Bank of Ireland from time to time plus 1% calculated from the due date of the invoice containing the overcharge until the date of repayment; or
  - (b) the adjustment discloses an undercharge, the User shall pay to the Company the amount by which the User has been undercharged together with interest at the base rate of the Bank of Ireland from time to time plus 1% calculated from the due date of the invoice that should have included the undercharge until the date of payment.
- 6.5 The User shall pay each account in full within 10 Business Days of its date and the Company shall be entitled to charge interest on the amount unpaid after expiry of the said 10 days at the interest rate specified in Schedule 1 compounded on a quarterly basis.
- 6.6 If the User wishes to raise a bona fide dispute in relation to an account, then:
- (a) the User must provide written notice of the dispute, the reason for the dispute and the amount in dispute to the Company;
  - (b) the User must pay the amount in dispute on or before the due date of the account, except where the amount in dispute is a Qualifying Amount;
  - (c) if the amount in dispute is a Qualifying Amount then the User need not pay the Qualifying Amount unless and until it is agreed or determined that the amount in dispute is payable. The User must still pay the amount not in dispute on or before the due date of the dispute;

- (d) the Parties shall use all reasonable endeavours to resolve the dispute in good faith;
  - (e) where the dispute remains unresolved after 20 Business Days of the User notifying the Company of the dispute pursuant to paragraph (a), either Party may refer the dispute to resolution in accordance with the General Conditions.
- 6.7 A “Qualifying Amount” is an amount that exceeds five percent (5%) of the total amount stated to be payable by the User to the Company in the account in dispute.
- 6.8 If it is agreed or determined pursuant to clause 6.6:
- (a) that the whole of the amount in dispute is payable by the User, and the User has paid such amount in accordance with clause 6.5, then no further action need be taken;
  - (b) that the whole or any part of the amount in dispute is not payable by the User, and the User has paid such amount in accordance with clause 6.5, then the Company will refund such amount to the User within 10 Business Days of the date of resolution or determination of the dispute, together with interest at the base rate of the Bank of Ireland from time to time plus 1% calculated from the later of (i) the date the account was paid to the Company and (ii) the date the Company received notice of the dispute pursuant to clause 6.6;
  - (c) that the whole or any part of the amount in dispute is payable by the User, and the User has not paid such amount in accordance with clause 6.5, then the User shall pay such amount to the Company within 10 Business Days of the date of resolution or determination of the dispute, together with interest at the base rate of the Bank of Ireland from time to time plus 1% calculated from the date the relevant amount fell due for payment under clause 6.5; and
  - (d) that the whole of the amount in dispute is not payable by the User, and the User has not paid such amount in accordance with clause 6.5, then no further action need be taken.
- 6.9 The User must raise a dispute in relation to an amount in an account rendered by the Company pursuant to clause 6.3 within 24 calendar months of the date of the account.

## **7. Security**

- 7.1 The User must, at any time that it does not have an Approved Credit Status, deliver to the Company within 10 Business Days of the date on which charges become payable under clause 6 and subsequently maintain Security Cover:
- (a) in the form of a Letter of Credit;

- (b) in the form of a cash deposit in a Deposit Account; or
- (c) in such other form as the Company agrees;

for payment of all monies due to the Company under this Agreement. The amount of the Security Cover is determined under clause 7.3, 7.4 and 7.5.

- 7.2 If the User does not comply with this clause 7, the Company may in its discretion by notice to the User given at any time terminate this Agreement with effect from the date specified in the notice.
- 7.3 The Security Cover amount that the User is required to provide and maintain shall be determined by the Company from time to time. The amount of the Security Cover shall be calculated in accordance with the relevant sections of the Company's payment security policy, as prevailing from time to time.
- 7.4 The Company may from time to time, by notice, require the User to increase the amount of Security Cover if the amount of the Security Cover provided by the User is less than the amount calculated for it under clause 7.3 (whether due to recalculation by the Company, changes to the relevant sections of the Company's payment security policy, drawings or anticipated drawings on the Security Cover by the Company or any other reason). The User must within 5 Business Days of the notice procure that the Security Cover is increased or deliver to the Company additional Security Cover so as to comply with clause 7.3.
- 7.5 The User may notify the Company that it considers that the amount of its Security Cover is more than is required under clause 7.3 and ask for it to be reduced to the level required under clause 7.3. The Company must not unreasonably refuse such a request, having regard to clause 7.3.
- 7.6 Security Cover must at all times have a validity of at least 3 months. The User must ensure that Security Cover is replaced before this requirement is breached. The User shall in any event replace Security Cover within 5 Business Days of a request from the Company to do so, if the request is made by notice given within the last 4 months of the validity of the Security Cover in place at the time the request is made.
- 7.7 If:
  - (a) the issuer of a Letter of Credit ceases to be a Qualifying Issuer;
  - (b) the bank at which a Deposit Account is held ceases to meet the Qualifying Issuer criteria; or
  - (c) any condition on which the Company accepted any other form of Security Cover under clause 7.1(c) ceases to be met;

then the User must procure replacement Security Cover within 5 Business Days of the occurrence of the relevant event referred to in clauses 7.7(a) to 7.7(c).

- 7.8 The Security Cover (and in the case of a 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 released to the User within 10 Business Days after the later of (i) termination of this Agreement and (ii) the date when the User has paid all amounts owing by it in respect of this Agreement including interest. Release 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.
- 7.9 The Company may draw down on any Security Cover provided by the User without notice to the User if:
- (a) the User has not paid an amount owed to the Company by the due date under this Agreement;
  - (b) an event of default (as defined in clause 12 of this Agreement) occurs in relation to the User;
  - (c) the User fails to provide Security Cover as required under this clause 7 or otherwise comply with its obligations under this clause 7.
- 7.10 If any of the circumstances in clauses 7.9(a) to 7.9(c) occurs, then all other amounts in respect of charges and other amounts payable by the User to the Company under this Agreement become payable forthwith upon demand by notice from the Company to the User, notwithstanding anything to the contrary in this Agreement.

## **8. Connection Agreement**

- 8.1 The Company appoints the User and the User agrees to act as the non-exclusive agent of the Company (to be a disclosed and identified principal) for the sole purpose of entering into an LV Connection Agreement with LV Non-Domestic Customers (excluding Tariff Customers) for and on behalf of the Company in the manner prescribed in clause 8.8 and subject to clauses 8.2 to 8.7 (inclusive), during the continuance of this Agreement or until the Company revokes the authority given to the User under this clause 8.1 by written notice to the User.
- 8.2 The User is not authorised by this Agreement to deal with any application for connection to the NIE System other than as set out in clause 8.1 and in the manner prescribed in clause 8.8 and must not represent itself as being so authorised. If the User receives any request or question concerning connection to the NIE System, the User must immediately refer the person making the request to the Company and explain to the person that the User is only authorised to act as agent of the Company as described in this Agreement.
- 8.3 The User will at all times during the continuance of the authority granted under clause 8.1 (and, in the case of paragraph (c), for the period referred to in that paragraph):

- (a) have no power or authority to conclude any contract on behalf of the Company or make any form of representation, statement, warranty or guarantee in favour of any person on behalf of the Company, other than as provided by clause 8.1;
- (b) not expressly or by implication otherwise describe itself as acting in any capacity for or on behalf of the Company other than in accordance clause 8.1;
- (c) keep full, proper and up to date records showing clearly the entering into of LV Connection Agreements, retain those records for a period of 7 years after the Supply Agreement with the Customer terminates and, subject to the User's right to delete references to the User's confidential commercial data about price, allow authorised representatives of the Company to have reasonable access to those records and to take such copies as they shall require; and
- (d) observe all reasonable directions and instructions given to the User by the Company in relation to the entering into of LV Connection Agreements.

8.4 The User agrees with the Company that it will not at any time during the continuance of the authority granted under clause 8.1:

- (a) amend or terminate, or agree or purport to agree to amend or terminate, any LV Connection Agreement;
- (b) perform any obligation or exercise any right under an LV Connection Agreement;
- (c) agree or purport to agree to any obligations on behalf of the Company other than those in the Standard Connection Terms and Conditions;
- (d) make or give any representation or warranty in relation to the Company unless the Company has expressly approved the representation or warranty itself in writing;
- (e) incur any liability on behalf of the Company or in any way pledge or purport to pledge the Company's credit;
- (f) knowingly, recklessly or negligently do anything or omit to do anything that would or might cause the Company to not comply with any laws or regulations for the time being in force in Northern Ireland which affects in any way the Company's activities in respect of connection to the NIE System notified to the User by the Company, including without limitation the Licence.

8.5 It is expressly agreed that no commission or other fee shall be payable by the Company to the User for the provision of the agency services under this Agreement and that in no circumstances will the User have any lien or similar claim over any property or rights or any other interest of the Company.

- 8.6 The Company agrees with the User that it will:
- (a) at the commencement of the agency arrangement contemplated by clause 8.1, provide to the User the Standard Connection Terms and Conditions that are in force at that time (whether by incorporation into the Supply Agreement or otherwise);
  - (b) if the Company amends the Standard Connection Terms and Conditions (which the Company is entitled to do), give the User the amended Standard Connection Terms and Conditions and instruct the User to use those amended Standard Connection Terms and Conditions when acting as agent for the Company under clause 8.1, specifying the date from which the amended Standard Connection Terms and Conditions come into effect (to be a date no sooner than 14 days from the date of receipt by the User of the notice from the Company).
- 8.7 The authority granted by the Company to the User under clause 8.1 is personal to the User and neither it nor any rights or obligations arising as a consequence of it may be assigned, mortgaged, charged or otherwise disposed of, nor may the User sub-contract or otherwise delegate any of its obligations under this clause 8 to any other person including an agent of the User (other than officers, directors and employees of the User) except where it has the prior consent in writing of the Company (which may be given on such terms as to guarantee or indemnity or otherwise as the Company thinks fit).
- 8.8 The User agrees with the Company that each Supply Agreement entered into between the User and an LV Non-Domestic Customer (excluding a Tariff Customer) will contain the following clause:
- “To receive a supply of electricity from us under this agreement you require a connection agreement with Northern Ireland Electricity plc (“NIE”).*
- NIE operates the local electricity network that delivers electricity to your premises and has appointed [us/name of the relevant licensed supplier] to act as its agent to enter into a connection agreement with you on standard terms. You agree that, by entering into this supply agreement with us, you are also entering into a Connection Agreement with NIE for connection of your premises to NIE’s network. The terms of that Connection Agreement are the Standard Connection Terms and Conditions set out in the Appendix or otherwise attached to this Supply Agreement or otherwise provided to you or made known to you by us.*
- You are entitled to negotiate terms of connection of your premises to NIE’s network that are not the same terms as the Standard Connection Terms and Conditions. If you wish to do so you must negotiate with NIE and not with us about those terms but your supply cannot commence until you have provided us with evidence that there is a connection agreement in force for your premises with NIE and you must inform us if that connection agreement terminates.”*
- 8.9 Subject to clause 8.10, the User shall at all times indemnify the Company against all actions, proceedings, costs (including legal fees), demands, claims, expenses,

liabilities, charges, expenses, losses or damages (“Losses”) at any time arising from or incurred by the Company as a consequence of or in connection with the User failing to have in place an LV Connection Agreement entered into by the User as agent for and on behalf of the Company or supplying without there being another subsisting Connection Agreement in place for that Customer’s Point of Supply, except to the extent that the absence of a Connection Agreement is due to the act or omission of the Company.

8.10 The liability of the User for any claim under the indemnity in clause 8.9 shall at all times be limited to the greater of:

8.10.1 £500,000 (five hundred thousand pounds); and

8.10.2 the excess applicable from time to time to any insurance policy which is taken out by the Company and which provides indemnity in relation to the loss which is the subject of the User’s liability.

If there is no such policy in existence or if the policy fails to respond for whatever reason the limit in clause 8.10.1 shall apply.

8.11 For the purposes of clause 8.9:

8.11.1 it is the obligation of the User to provide sufficient evidence that a Connection Agreement was in place at the relevant time;

8.11.2 the relevant form of Connection Agreement for the purposes of calculating Losses is an agreement on the Standard Connection Terms and Conditions; and

8.11.3 Losses include any liability of the Company to the Customer that would not have arisen had the provisions relating to liability in the Standard Connection Terms and Conditions applied as between the Customer and the Company.

8.12 The limitations and exclusions of liability in clause 3 (other than clause 3.2.4) of the General Conditions (as amended by Schedule 3 of this agreement) are subject to clauses 8.9, 8.10 and 8.11. Subject to clause 3.2.4 of the General Conditions nothing in this Agreement or the General Conditions precludes the Company from recovering under any claim for indemnity made under clause 8.9.

8.13 The obligations in clauses 8.3(c), 8.9 and 8.11 shall survive revocation of the authority granted under clause 8.1. The revocation of this appointment does not affect any rights or obligations that may have accrued prior to such revocation.

## **9. Maximum Import Capacity**

9.1 The use of the NIE System under this Agreement is subject to the amount of electricity taken through each Point of Supply for which the User is the Supplier not

exceeding the relevant Maximum Import Capacity, without the prior written consent of the Company.

- 9.2 For the purposes of clauses 9.1 and 3.1, the relevant Maximum Import Capacity for a Point of Supply shall be the value quoted for that Point of Supply when it was constructed or, if since modified, when last modified, or the value as otherwise determined in accordance with the Connection Agreement (including a reduction following a review). If that information is not available, then it shall be based on the Maximum Import Capacity applicable to the relevant use of system tariff charged to the User in respect of that Point of Supply, except where the Company can reasonably demonstrate that some other figure is the correct Maximum Import Capacity, in which case it is that figure.
- 9.3 In the event that the Maximum Import Capacity is exceeded, the Company may give notice to the User that the Customer has exceeded the relevant Maximum Import Capacity setting out relevant details and requesting the User to have the situation remedied. The Company may also or instead notify the relevant Customer setting out relevant details and request the Customer to remedy the situation.
- 9.4 If the situation has not been remedied, or an agreement reached with the Company about how it will be remedied, within the time required by the Company acting in accordance with its MIC Management Policy then the Company may charge for the additional capacity used in accordance with the MIC Management Policy until the situation is remedied.
- 9.5 Without prejudice to the above, if the situation has not been remedied within the time required by the Company acting in accordance with its MIC Management Policy, then, without prejudice to any other rights and remedies provided by this Agreement, the Company may, after notice given in accordance with the MIC Management Policy, De-energise the relevant Point of Supply.

## **10. Compliance with the Grid Code and Good Industry Practice**

- 10.1 The Parties agree to comply with all relevant provisions of the Grid Code and in the event of any conflict between this Agreement and the Grid Code, the Grid Code shall prevail.
- 10.2 The Parties agree to perform their respective obligations under this Agreement in accordance with Good Industry Practice.

## **11. Metering Equipment and Profiling**

- 11.1 Subject to clause 11.5, supplies of electricity to Customers at each Point of Supply shall be metered using equipment (“Metering Equipment”) that complies with the requirements of Section 1 of Part 3 of the General Conditions, the relevant requirements of Schedule 7 to the Order and the Metering Code and/or such other requirements as may be notified to the User by the Company from time to time.

- 11.2 The User shall ensure that its agents, employees and invitees do not interfere with any Metering Equipment without the prior written consent of the Company, except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent serious damage to property adjacent to the Metering Equipment.
- 11.3 Where the Metering Equipment for a Point of Supply is not Half Hour Metering Equipment, and where permitted by the applicable settlement arrangements, the Company may agree to use load profiles and estimated annual consumption to calculate the charges payable under this Agreement.
- 11.4 The procedures for the use of load profiles and estimates of annual consumption shall be those established by Industry Arrangements where applicable, or otherwise, as established by the Company and notified to the User from time to time.

## **12. Events of Default**

- 12.1 An event of default occurs if:
- (a) the User does not pay any valid account for charges within one month of its date, whether or not the Company has issued a payment reminder in respect of the unpaid account;
  - (b) the User fails to perform or comply with any obligations under this Agreement or the Grid Code within 28 days after receipt of notice from the Company of such failure;
  - (c) an order of the High Court is made or an effective resolution is passed for the insolvent winding up or dissolution of the User;
  - (d) a receiver, which expression shall include an administrative receiver within the meaning of Article 5(1) of the Insolvency (Northern Ireland) Order 1989, of the whole or any material part of the User's assets or undertaking is appointed;
  - (e) an administration order under Article 21 of the Insolvency (Northern Ireland) Order 1989 is made in relation to the User or a voluntary arrangement is proposed under Article 14 of that Order in relation to the User;
  - (f) the User enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
  - (g) the User is unable to pay its debts within the meaning of Article 103(1) or (2) of the Insolvency (Northern Ireland) Order 1989, save that such sections shall have effect as if for £750 there was inserted £10,000 (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);

- (h) any of the conditions precedent described in clause 2(a) (relating to the Supply Licence), 2(c) (relating to trading and settlement arrangements) and clause 2(e) (relating to the provision of security cover) cease to be fulfilled for the User.

12.2 The Company may give notice of termination to the User once an event of default under clause 12.1 occurs, whereupon this Agreement shall terminate and the Company shall be entitled to De-energise all Points of Supply registered to that User or, where supplier of last resort arrangements are in effect, to otherwise deal with the Points of Supply in accordance with those arrangements.

### **13. Termination of Agreement**

13.1 The User may terminate this Agreement by giving written notice of termination, specifying the date, being not less than 28 days after the date of the termination notice, with effect from which the User wishes to terminate this Agreement. Notwithstanding the date specified in the User's notice of termination, termination shall only be effective when the User has ceased to be the Supplier for any and all Points of Supply and has ceased all imports and exports at the Interconnector Connection Point.

13.2 Upon termination of this Agreement in accordance with clause 7.2, clause 12.2, or clause 13.1, the Company shall have the right as between the Company and the User to terminate the agreements specified in clauses 2(b) (relating to Connection Agreements) and 2(c) (relating to trading and settlement arrangements).

13.3 Upon termination of this Agreement the User shall pay to the Company:

- (a) all charges payable upon or in connection with the termination of this Agreement as described in the Statement referred to in Schedule 1;
- (b) except to the extent already covered under clause 13.3(a), all charges accrued as at the date of termination of this Agreement whether or not invoiced by the Company as at the date of termination of this Agreement; and
- (c) all reasonable costs and expenses incurred by the Company in terminating this Agreement and, where applicable, De-energising the Points of Supply for which the User was the Supplier at the time termination became effective and/or all reasonable costs and expenses incurred by the Company in dealing with registration of the Points of Supply for which the User was the Supplier at the time termination became effective in accordance with any applicable supplier of last resort arrangements.

**14. Notices**

All notices under this Agreement shall be sent to the addresses detailed in Schedule 2 to this Agreement.

**15. Third Party Rights**

A person who is not a party to this Agreement has no right, and is not intended by the Company or the User to have any right, under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this clause does not affect any right or remedy of a third party which exists or is available apart from that Act.

Signed by the duly authorised representatives of the Parties as an agreement on the date first written above

**SIGNED** by (name) )

for and behalf of the )

**SUPPLIER** named in Schedule 2 )

)

)

in the presence of: )

)

.....  
Signature

.....  
Signature of witness

.....  
Name

.....  
Position

**SIGNED** by (name) )

for and on behalf of **NORTHERN** )

**IRELAND ELECTRICITY plc** )

in the presence of: )

.....  
Signature

.....  
Signature of witness

Name

.....  
Position

## **Schedule 1: Charges**

### **1. Use of System Charges**

- 1.1 The User shall pay to the Company Use of System Charges in accordance with the Statement, which are subject to change without notice following revision of the Statement and its approval by the Authority. The User is required to pay all and any charges due in respect of Use of System as described in the Statement and the accompanying schedules.
- 1.2 The User shall pay Use of System Charges, which have been costed by the Company relative to each Point of Supply for which the User is the Supplier.
- 1.3 The primary source of data on which Use of System Charges shall be calculated for non-Tariff Customers is data obtained pursuant to the provisions of the Market Registration Code (including where such data has been estimated or substituted). The source of data on which Use of System Charges shall be calculated for Tariff Customers shall be as agreed between the Company and the Public Electricity Supplier.
- 1.4 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 at a Point of Supply for which the User is the Supplier but not recorded at the time of consumption (for whatever reason) by the Metering Equipment installed for the Point of Supply. At any time that the Company calculates and Charges the User Use of System charges under this paragraph 1.4 of this Schedule 1, the Company shall provide an explanation of the calculation of the charges and basis for the calculation.
- 1.5 The Company may charge the User Use of System Charges calculated by reference to electricity assessed to have been consumed by a Customer at a Point of Supply during a period in which the User was supplying electricity to the Customer at that Point of Supply in accordance with a direction of the Authority pursuant to supplier of last resort arrangements, if such arrangements are in effect, from the time that the direction of the Authority takes effect. This right exists from the date the direction of the Authority takes effect and continues irrespective of whether or not the Point of Supply is registered to the User in accordance with the Market Registration Code or other applicable Industry Arrangements until such time as another Supplier becomes the Supplier for that Customer.

### **2. Other Charges**

- 2.1 The User shall pay to the Company charges for other services provided by the Company to the User as set out in the Statement or as otherwise published by the Company from time to time, including but not limited to charges in respect of

fieldwork carried out at the request of the User and charges in accordance with the Revenue Protection Code of Practice.

### **3. Definitions**

3.1 For the purposes of this Schedule, the following words and phrases shall have the meaning set opposite them:

Charging Period	means the period of a calendar month during a year.
Interest Rate	for the purposes of this Agreement the relevant interest rate shall be the higher of the base rate of the Bank of Ireland from time to time plus 3% or such other rate as may be specified in the Statement.
Statement	means the Statement of Charges for use of the Northern Ireland Electricity plc Electricity Transmission and Distribution System published by the Company from time to time.

**Schedule 2:  
Contract details**

**1. Details of the Supplier (the User under this Agreement)**

Name of Supplier	
Registered Address of Supplier	
Company Number of Supplier	

**2. Details of the Use of System Agreement**

Description and date of the Use of System Agreement as originally entered into	
Former name of Supplier (if applicable)	
Date of the Amendment and Restatement Agreement	

**3. Address for notices to the Supplier**

Address for notices	
Attention	
Telephone number	
Facsimile number	

**4. Address for notices to the Company**

Address for notices	120 Malone Road Belfast BT9 5HT
Attention	Company Secretary
Telephone number	02890 661100
Facsimile number	02890 689269

**Schedule 3:**  
**Variations to the General Conditions (Limitation of Liability)**

1. Clause 3 (Limitation of Liability) of the General Conditions shall be replaced by the following:
  - 3. Limitation of Liability**
    - 3.1 Subject to clause 3.2.4 (death and personal injury), neither Party nor its officers, employees or agents shall, in any circumstances whatsoever, be liable to the other Party for:
      - 3.1.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill;
      - 3.1.2 any special, indirect or consequential loss; or
      - 3.1.3 loss resulting from the liability of such other party to any other person howsoever and whenever arising.
    - 3.2 Other limitations and exclusions
      - 3.2.1 Subject to clause 3.2.2 (liability cap) and clause 3.2.4 (death and personal injury) and without prejudice to clause 3.1 (exclusion of certain losses) each Party (the “Party Liable”) and its officers, employees and agents shall be liable to the other Party under or in respect of this Agreement only for loss or physical damage to the other Party’s property arising directly from a breach of this Agreement and which at the date of this Agreement was reasonably foreseeable as likely to result in the ordinary course of events from such breach.
      - 3.2.2 Subject to clause 3.2.4 (death and personal injury) and without prejudice to clause 3.1 (exclusion of certain losses), clause 3.2.1 (remedies for breach) or clause 3.3 (exclusive remedies), the liability of the Party Liable and any of its officers, employees or agents to the other Party and any of its officers, employees or agents, whether in contract, warranty, tort (including negligence), breach of duty, strict liability or any other legal or equitable principle, in respect of any:
        - (a) breach of this Agreement;
        - (b) representation or statement made under or in connection with this Agreement;
        - (c) tortious (including negligent) act or omission related to this Agreement of the Party Liable or any of its officers, employees or agents;

- (d) claim by the other Party under an indemnity;
- (e) liability of the other Party or any of its officers, employees or agents to any other person; or
- (f) any other matter arising out of or in respect of this Agreement,

shall not exceed, per event or incident or series of related events or incidents, the amount of £1 million (and whether liability arises under one or more of sub-sections 3.2.2(a) to (f)). For this purpose, a “series of related events or incidents” shall include any series of related events or incidents on the NIE System, whether affecting one or more Points of Supply or Interconnector Connection Points and regardless of the proximity of such Points of Supply or Interconnector Connection Points.

3.2.3 Either Party shall be entitled to deduct from any sums payable under this Agreement by way of compensation for loss or damage:

- (a) any sums payable by such Party under any other agreement entered into between the Parties in respect of such loss or damage suffered by the other Party, its officers, employees or agents; and
- (b) any sums payable to the other Party by a third party in respect of such loss or damage suffered by the other Party, its officers, employees or agents.

3.2.4 Nothing in this Agreement limits or excludes liability that cannot, by law, be limited or excluded, including liability for death or personal injury caused by the negligence of a Party or that Party’s officers, employees or agents or for the fraud or fraudulent misrepresentation of a Party or that Party’s officers, employees or agents.

3.3 Subject to clause 3.2.4 (death and personal injury), and clause 4 (Saving for statutory powers), 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 express 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 Party Liable 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.

3.4 References to Agreement in this clause 3 shall for the purposes of this clause 3 be interpreted as including a reference to the Revenue Protection Code of Practice.

- 3.5 Each Party agrees that the other Party holds the benefit of sub-clauses 3.1 to 3.4 inclusive for itself and as trustee and agent for its officers, employees and agents.
- 3.6 If any provision or sub-provision of this clause 3 or the application of any such provision or sub-provision is or becomes or is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject or by any other Competent Authority, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement (including the other provisions and sub-provisions of this clause 3) which shall continue in full force and effect and shall continue to bind the Parties notwithstanding such invalidity, unenforceability or illegality.