

## **NISEP ACCEDENCE DOCUMENT (THE AGREEMENT)**

This Deed of Agreement must be executed by all Primary Bidders and delivered to the Programme Administrator by [xxxx 20xx].

Private & Confidential

**DATED** **20**

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**[xxxxxxxxxxxxx]** **(1)**

**and**

**THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION** **(2)**

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**NISEP ACCEDENCE DOCUMENT**  
**(THE AGREEMENT]**

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THIS DEED OF AGREEMENT is made this [xx] day of [xxxxxxx] 20[xx]

**BETWEEN:**

- (1) [xxxxxxxxxxxxx][*delete as appropriate*: a company limited by shares and incorporated/a company limited by guarantee and incorporated / a charity registered / a statutory organisation [ Properly registered or incorporated in Northern Ireland or its country of origin] (registered number xxxxx) whose registered office is at [xxxxxxxxxxxxxxxxxxxxxx] (“**Primary Bidder**”); and
- (2) **The Northern Ireland Authority for Utility Regulation** a body corporate acting on behalf of the Crown whose address is at Queens House, 14 Queen Street, Belfast BT1 6ED (“**the Utility Regulator**”).

**WHEREAS:**

- (A) The Primary Bidder is an organisation which has been registered to offer energy saving and/or renewable measures in accordance with the Approved Schemes under the **NISEP**.
- (B) The Fund represents a limited amount of funding for the provision of sustainable energy measures for third parties.
- (C) On behalf of the **Utility Regulator**, the **Programme Administrator** administers and manages the **NISEP** and is responsible for ensuring the appropriate allocation of funding under the **NISEP**.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

**1 Definitions and Interpretation**

- 1.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the respective meanings set out below:

<b>“Agreement”</b>	means this agreement including the Schedules appended to it.
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<b>“Approved Scheme”</b>	means each of those Schemes including any variations thereto which have been approved by the Utility Regulator in accordance with the Framework Document. Any Approved Scheme whether or not approved subsequent to the Date of Commencement shall form a separate Schedule to and be part of this Agreement.
<b>“Business Day”</b>	means any day which is not a Saturday, a Sunday or a bank or public holiday in Northern Ireland.
<b>“Competent Authority”</b>	means any court of competent jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, administrative or regulatory body, authority, official or public or statutory person (whether autonomous or not) of, or of the government of Northern Ireland, the United Kingdom or of the European Union.
<b>“Confidential Information”</b>	means, those matters or information as set out in Clause 12.
<b>“Date of Commencement”</b>	means the date of this Agreement.
<b>“Direct Subsidies”</b>	means the reimbursement for measures as specified in the Framework Document and representing the reimbursement of the reasonable cost of providing measures under Approved Schemes by the Primary Bidder. For the avoidance of doubt, Direct Subsidies excludes Indirect Costs.
<b>“Directive”</b>	means, Directive 2006/32/EC on energy end-use efficiency and energy services.
<b>“Eligible Costs”</b>	means, in relation to an Approved Scheme, Direct Subsidies and Indirect Costs.

<b>“Environmental Information Regulations”</b>	means the Environmental Information Regulations 2004
<b>“Framework Document”</b>	means the document entitled the Framework for Northern Ireland’s Energy Efficiency Levy Programme prepared by the Energy Saving Trust on behalf of Utility Regulator dated September 2014 or any document which supersedes such document.
<b>“Force Majeure”</b>	means, in respect of a Party, an event outside the reasonable control of that Party affecting its ability to perform any of its obligations under this Agreement including Act of God, fire, flood, lightning, war, armed hostilities, revolution, act of terrorism, riot or civil commotion, but excluding industrial action or failures of suppliers.
<b>“FOIA”</b>	means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
<b>“Fund”</b>	means a fund, established by Northern Ireland Electricity plc (or the successive holder of its electricity transmission licence), for such period and amount as may be specified in the Framework Document for the purpose of subsidising the operation and delivery of improvement measures in accordance with NISEP.
<b>“Funding”</b>	means the application of NISEP funds to the Primary Bidder in accordance with this Agreement.
<b>“Good Industry Practice”</b>	means, in relation to any undertaking and any circumstances, 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;

**“Incentive”**

means a payment to the Primary Bidder in respect of that Primary Bidder achieving a level of energy savings (GWh) which is greater than the energy saving target set according to the level of funding spent and the target cost effectiveness for the category of measure and calculated in accordance with the Framework Document.

**“Indirect Costs”**

means scheme management and other indirect costs which have been reasonably and efficiently incurred by the Primary Bidder specified in the Approved Schemes.

**“Law”**

means any statute, directive, statutory instrument, regulation, order or equivalent legal instrument, or any binding decision of a Competent Authority.

**“NISEP”**

means the energy efficiency programme known as the Northern Ireland Sustainable Energy Programme which is designed to promote energy efficiency measures and/or the use of renewable technologies and is approved by the Utility Regulator (or any successor or alternative energy efficiency programme which the Utility Regulator may from time to time approve).

**“Party”**

means either of the Primary Bidder or the Utility Regulator (and **“Parties”** shall mean both of them).

**“Post-Implementation Report”**

means the report submitted to the Project Administrator which confirms outturn results of the approved Scheme including but not limited to final spend, final number of measures carried out and outturn energy savings.

<b>“Post-Implementation Report Approval Letter”</b>	means the approval letter sent from the Utility Regulator to the Primary Bidder following satisfactory completion of the Post-Implementation Report.
<b>“Programme Administrator”</b>	means any legal or natural person who has been appointed by the Utility Regulator for the purposes of administering on the Utility Regulator’s behalf part or all of the NISEP in the terms expressed in the Framework Document or any other contract or agreement concluded with that person.
<b>“Project”</b>	means the delivery of the Approved Schemes collectively according to this Agreement by the Primary Bidder.
<b>“Request for Information”</b>	means a request for information under either the FOIA or the Environmental Information Regulations.
<b>“Scheme”</b>	means those group of energy saving and/or renewable measures and their delivery mechanisms proposed by the Primary Bidder and described in the Scheme Submission.
<b>“Scheme Submission”</b>	means details of each Scheme as submitted to the Programme Administrator by the Primary Bidder and as summarised using Appendix 1 of the Framework Document.
<b>“State Aid”</b>	means the law in relation to Article 107 of the Treaty on the Functioning of the European Union.

1.2 In this Agreement, except to the extent that the context otherwise requires:

- (a) reference in the singular shall include references in the plural (and vice versa) and words denoting natural persons shall include corporations and any legal entity (and vice versa);
- (b) the words and phrases **“other”**, **“including”** and **“in particular”** shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible;

- (c) references to a particular Clause or Schedule are references to that clause of, or schedule to, this Agreement;
  - (d) any reference to “this Agreement” or to any other agreement or document is a reference to it as amended, supplemented, novated or superseded from time to time and includes a reference to any document which amends, is supplemental to, novates, or is entered into made or given pursuant to or in accordance with any terms of it;
  - (e) references to any legislation, statute, statutory instrument, regulation or order (or any provision thereof) shall include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted, and (iii) any provision which subsequently supersedes it, supplements it, or re-enacts it (with or without modification);
  - (g) the headings are inserted for convenience only and are to be ignored for the purposes of construction; and
  - (h) reference to “Primary Bidder”, “Northern Ireland Electricity plc” or to “the Utility Regulator” shall include reference to their respective successors, reference to the respective persons to whom they transfer this Agreement in accordance with its provisions, and (to the extent commensurate therewith) reference to the respective persons to whom they assign and/or sub-contract their rights and/or obligations under this Agreement in accordance with its terms.
- 1.3 Where no time period is specified for performance of any obligation under this Agreement, the obligation shall be required to be performed within a reasonable period of time.
- 1.4 If there is an inconsistency between any provisions of this Agreement and the NISEP Framework Document or between the Agreement and any of its schedules, then the provisions of this Agreement shall prevail.
- 1.5 Upon a Scheme Submission becoming an Approved Scheme it shall be incorporated as a schedule to this Agreement and shall form part of it.
- 1.6 No variation to an Approved Scheme shall be valid unless it has either been approved in accordance with or allowed for under the Framework Document Appendix 5.



- 1.7 Subject to clauses 1.5 and 1.6, this Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

## **2 Commencement and Duration**

- 2.1 This Agreement shall commence on the Date of Commencement and shall continue in force until it is terminated in accordance with this Agreement.

## **3 The Project**

- 3.1 The Primary Bidder shall use best endeavours to implement and complete the measures in accordance with and as set out in the Approved Schemes.
- 3.2 The Primary Bidder shall comply with the requirements on it as set out in the Framework Document and shall operate at all times according to Good Industry Practice.

## **4 Information**

- 4.1 The Primary Bidder shall ensure that all information provided under this Agreement including any Scheme Submission, is reliable, accurate and complete, and complies with the requirements of the Framework Document.
- 4.2 The Primary Bidder shall furnish the Programme Administrator and the Utility Regulator with such information or documents relevant to the NISEP as they may in their discretion require, including but not limited to:
- (a) written progress reports of the Project as and when requested by the Programme Administrator, such reports to be satisfactory to the Programme Administrator;
  - (b) technical progress reports on the Project as and when requested by the Programme Administrator, such reports to be satisfactory to the Programme Administrator; and
  - (c) any information required under the Framework Document.
- 4.3 The Primary Bidder shall notify the Utility Regulator and the Programme Administrator promptly if the implementation or execution of the Project is suffering

significant delays or if an event of Force Majeure is occurring or has occurred.

- 4.4 The Primary Bidder shall at all times accurately maintain all books, accounts and records required by law (whether in the United Kingdom or otherwise) and in accordance with Good Industry Practice.

## **5 Inspection**

- 5.1 In order to ensure the proper and effective utilisation of the Fund, the Primary Bidder shall permit the Programme Administrator and the Utility Regulator (or such duly authorised agent of either) to enter the premises of the Primary Bidder during normal working hours (unless a statutory or regulatory obligation requires entry outside of these hours) to inspect any asset and any accounting or other record in respect of any funding which has been paid or may become payable in connection with the Approved Scheme and to review and, if applicable, copy the same.

## **6 Funding of Eligible Costs and Incentives**

- 6.1 Subject to the terms of this Agreement, the Utility Regulator shall authorise a payment of Funding from the Fund in respect of Eligible Costs in relation to the amounts specified in the Approved Schemes only.
- 6.2 The Utility Regulator shall have the right to set-off any amount in respect of monies due to the Fund from the Primary Bidder, against any monies to be authorised for payment to the Primary Bidder.
- 6.3 In respect of Eligible Costs, the Utility Regulator shall authorise the release of a payment within 30 Business Days of the dates set out in the Framework Document and receipt of the following:
- (a) a valid statement specifying the relevant amount of Funding; and
  - (b) satisfactory evidence of completion of the work as required by the Framework Document; and
  - (c) valid endorsement by the Programme Administrator.
- 6.4 Subject to the terms of this Agreement, the Utility Regulator shall authorise a payment from the Fund in favour of the Primary Bidder in respect of Incentives within 30 Business Days of the Utility Regulator issuing a Post-Implementation Report Approval Letter. Incentives shall be calculated in accordance with the Framework

Document.

- 6.5 The Utility Regulator may in its absolute discretion reduce any Incentive payable in respect of an Approved Scheme in line with 3.6 of the Framework Document or where the Primary Bidder has failed to achieve the required standards of either customer satisfaction or quality to a material extent and which has not been satisfactorily remedied, as set out in the Framework Document.
- 6.6 Any payment in favour of the Primary Bidder under this Agreement may be subject to an audit or review and may be adjusted or recovered based on the results of such audit or review.

## **7 Conduct of the Project**

- 7.1 The Primary Bidder shall ensure that Approved Schemes are implemented and conducted in a manner that is compliant with any applicable law.
- 7.2 The Primary Bidder shall use all reasonable endeavours to ensure that Approved Schemes are implemented and conducted in a manner so as to be consistent with the requirements on the Utility Regulator in law in relation to:
- (a) State Aid; and
  - (b) Article 6 of the Directive.

## **8 Project Completion**

- 8.1 Upon completion of the Project, the Primary Bidder shall issue a Post-Implementation Report to the Programme Administrator for review.
- 8.2 Following completion of that review and once the Utility Regulator is satisfied that the Primary Bidder has completed the Project in accordance with the terms of this Agreement and the Framework Document, it shall issue a Post-Implementation Report Approval Letter to the Primary Bidder and an authorisation for any payment of Funding which is due, not to be unreasonably withheld.

## **9. Suspension of Payments**

- 9.1 The Utility Regulator may suspend authorisation of any payment without notice, in addition to any other remedy under this Agreement or in Law, in the following circumstances:

- (a) When the Utility Regulator has reason to believe or suspect that any of the following apply:
  - (i) any payment under this Agreement has been deemed or is likely to be deemed State Aid;
  - (ii) the Primary Bidder has breached any term of this Agreement;
  - (iii) fraud or misuse of Funding in respect of an Approved Scheme has occurred;
  - (iv) the actions or omissions of the Primary Bidder, or the terms or manner of implementation of an Approved Scheme, have the effect that the Utility Regulator may reasonably be said to be, or to be likely to become, in breach of any requirement of Law.
- (b) There is an ongoing criminal investigation in relation to any aspect of the NISEP.
- (c) The Primary Bidder has notified the Utility Regulator or the Programme Administrator that an event of Force Majeure has occurred or is occurring.

9.2 In any case where:

- (a) a breach by the Primary Bidder of its obligations under this Agreement is capable of remedy and without giving rise to concern over the future management of the Project that breach is remedied within a reasonable period notified to the Primary Bidder by the Utility Regulator; and
- (b) such breach is the sole reason for the exercise of the Utility Regulator's right to cease making payments in accordance with clause 9.1,

the Utility Regulator shall reinstate the authorisation of the Funding.

## 10 **Return of Funding**

10.1 The Utility Regulator may require the Primary Bidder to promptly repay to the Fund such proportion of the Funding as the Utility Regulator may reasonably specify in writing in the following circumstances:

- (a) the Primary Bidder commits a material breach of this Agreement and fails to remedy the breach within 20 Business Days of notice requiring it to do so;

- (b) the Primary Bidder withdraws from an Approved Scheme or otherwise ceases to proceed with the Project, and does not recommence the Project within 20 Business Days of a notice requiring it to do so;
- (c) there is reason to suspect corruption or fraud in relation to any of the Funding provided to the Primary Bidder;
- (d) the Funding is held to be incompatible with State Aid law.

10.2 Where any sums are repayable to the Fund under the provisions of this Clause 10 and the Primary Bidder has failed to comply with any requirement under this Agreement, the Utility Regulator shall be entitled to recover from the Primary Bidder the reasonably incurred costs of the Utility Regulator in establishing the Primary Bidder's repayment liability and in recovering the sums due.

10.3 Neither failure to exercise nor any delay in exercising any right, power, privilege, or remedy under this Agreement shall in any way impair or affect the exercise thereof or operate as a waiver in whole or in part.

10.4 No single or partial exercise of any right, power, privilege or remedy under this Agreement shall prevent any further or other exercise thereof or the exercise of any other right, power, privilege or remedy.

## **11 Termination**

11.1 This Agreement shall terminate 20 Business Days after the issue of the Post-Implementation Report Approval Letter to the Primary Bidder.

11.2 The Utility Regulator may also terminate this Agreement at any time in the following circumstances:

- (a) The Primary Bidder commits a material breach of any of its obligations under this Agreement which in the view of the Utility Regulator is incapable of remedy;
- (b) The Primary Bidder fails to remedy or persists in any breach of any of its obligations under this Agreement (other than as referred to in (a) above) after having been required in writing to remedy or desist from such breach within a period of 20 Business Days;
- (c) If by the end of the period of three months from the date on which the

schemes are approved the Primary Bidder has not initiated the Project to the reasonable satisfaction of the Utility Regulator;

- (d) An audit of the Primary Bidder's management or conduct in relation to any Approved Scheme or any funds paid to it fails to provide adequate and reasonable assurance to the Utility Regulator in respect of the proper administration of the Project and any NISEP funding (and for the avoidance of doubt this includes any NISEP-related conduct or funding paid prior to the Commencement Date);
- (e) An order is made or a resolution is passed or a petition is presented for the winding up of the Primary Bidder or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Primary Bidder;
- (f) An order is made for the appointment of an administrator to manage the affairs, business and property of the Primary Bidder or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Primary Bidder or notice of intention to appoint an administrator is given by the Primary Bidder or its directors or by a qualifying floating charge holder (as defined in paragraph 15 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989);
- (g) A receiver is appointed over any of the Primary Bidder's assets or undertaking or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Primary Bidder or if any other person takes possession of or sells the Primary Bidder's assets;
- (h) The Primary Bidder makes any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors in any way;
- (i) The Primary Bidder becomes bankrupt and/or the Primary Bidder is unable to pay its debts within the meaning of Article 103 of the Insolvency (Northern Ireland) Order 1989 or any statutory modification or re-enactment thereof; or
- (j) The Primary Bidder enters a voluntary arrangement or composition with its creditors and/or distress or execution order is levied or Enforcement of Judgement Office proceedings are commenced against any of the property of

the Primary Bidder or any similar proceedings are commenced in any other jurisdiction.

- (k) In the reasonable opinion of the Utility Regulator, the actions or omissions of the Primary Bidder, or the terms or manner of implementation of an Approved Scheme, have the effect that the Utility Regulator may reasonably be said to be, or to be likely to become, in breach of any requirement of Law.

11.3 Either Party may terminate this Agreement in an event of Force Majeure which has continued for longer than 40 Business Days and upon giving 10 Business Days' notice in writing.

11.4 Termination shall be without prejudice to any claim or right arising out of any breach of any obligation under this Agreement occurring before then and without prejudice to those clauses which are expressly (or by implication) intended to survive termination (including Clauses 14, 15, 16, 17, 18, 20, 21, 22 and 23).

## **12 Disclosure, publicity and confidential information**

12.1 The Utility Regulator may publish details of the following:

- (a) amounts and types of Funding made available to the Primary Bidder under the Approved Scheme; and
- (b) the details of any application made under this Agreement; and
- (c) the details of outcomes for the year as contained within, but not limited to a Post Implementation Report;

at such times and in such manner as the Utility Regulator may decide.

12.1 The Primary Bidder may only publish or release details of any information and/or any application made under this Agreement with the prior written approval of the Utility Regulator.

12.2 The Primary Bidder shall render the Utility Regulator such assistance as the Utility Regulator may reasonably request in connection with any publicity which the Utility Regulator may deem appropriate in respect of the NISEP.

12.3 Any know-how or proprietary information including business plans and policies of the Primary Bidder provided to the Utility Regulator and marked confidential shall be

treated as Confidential Information for the purposes of this Agreement.

- 12.4 The Utility Regulator shall make reasonable endeavours to ensure that Confidential Information herein is treated as confidential and accordingly shall not be disclosed to any other person or entity other than to its professional advisors who are subject to obligations of confidence or as required by law or to the Programme Administrator, without the prior written consent of the Primary Bidder.
- 12.5 The Primary Bidder acknowledges that any information required under either this Agreement or the Framework Document has not been obtained by virtue of the provisions of the Energy (Northern Ireland) Order 2003, Part II of the Electricity (Northern Ireland) Order 1992 or Part II of the Gas (Northern Ireland) Order 1996.
- 12.6 The Primary Bidder acknowledges that the Utility Regulator is subject to the requirements of FOIA and the Environmental Information Regulations and shall assist and co-operate with the Utility Regulator (at the Primary Bidder's expense) to enable the Utility Regulator to comply with these information disclosure requirements.
- 12.7 The Primary Bidder shall ensure that its sub-contractors performing obligations in connection with this Agreement shall:
  - (a) transfer any Request for Information to the Utility Regulator as soon as practicable after receipt and in any event within three days of receiving a Request for Information;
  - (b) provide the Utility Regulator with a copy of all information in its possession or power in the form that the Utility Regulator requires within seven days (or such other period as the Utility Regulator may specify) of the Utility Regulator requesting that information; and
  - (c) provide all necessary assistance as reasonably requested by the Utility Regulator to enable the Utility Regulator to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of the Environmental Information Regulations.
- 12.8 The Utility Regulator shall be responsible for determining in its absolute discretion whether any information:
  - (a) is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations;



- (b) is to be disclosed in response to a Request for Information, and in no event shall the Primary Bidder respond directly to a Request for Information unless expressly authorised to do so by the Utility Regulator.

12.9 The Primary Bidder acknowledges that the Utility Regulator maybe obliged under FOIA or the Environmental Information Regulations to disclose Information:

- (a) without consulting with the Primary Bidder, or
- (b) following consultation with the Primary Bidder and having taken its views into account,

provided always that where this Clause 12.9(b) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Primary Bidder advanced notice, or failing that, to draw the disclosure to the Primary Bidder's attention after any such disclosure.

12.10 The Primary Bidder acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with Clause 12.9.

### **13 Data Protection**

13.1 Personal Data shall be defined as any information relating to an identified or identifiable natural person, including, but not limited to a person's name, surname, home address and date of birth.

13.2 To the extent that the Primary Bidder processes any Personal Data ("Company Personal Data") in connection with the performance of the Project under this Agreement, the Primary Bidder shall:

- a) fully comply with all applicable laws and regulations regarding data protection and personal privacy protection, including but not limited to the EU General Data Protection Regulation (GDPR);
- b) process Company Personal Data strictly for the purposes of performing the Project under this Agreement;

- c) process Company Personal Data in accordance with instructions;
- d) ensure that its personnel are authorised to access Company Personal Data and will respect and maintain the confidentiality and security of the Company Personal Data;
- e) implement appropriate technical and organisational measures to protect any Company Personal Data against accidental or unlawful destruction of accidental loss, alteration, unauthorised disclosure or access and provide a level of security appropriate to the risk represented by the processing and nature of Company Personal Data to be protected;
- f) retain Company Personal Data only for the period that is necessary to serve the purposes of this Agreement, unless the Primary Bidder is required to store Company Personal Data by law for a further period of time;
- g) obtain prior written consent from the Utility Regulator before transferring Company Personal Data to any third parties or sub-contractors in connection with the Project under this Agreement;
- h) only transfer Company Personal Data to countries outside the European Economic Area that ensure an adequate level of protection;
- i) promptly notify the Programme Administrator and the Utility Regulator of any accidental or unauthorised access no later than 24 hours after the Primary Bidder becomes aware of it; and
- j) promptly notify the Programme Administrator and the Utility Regulator of any legally binding request for disclosure of Company Personal Data by a law enforcement agency and/or any request received directly from individuals who the Company Personal Data relates ("Data Subjects") before responding to that request, unless the Primary Bidder has been otherwise authorised to do so.

## **14 Force Majeure**

- 14.1 If either Party is affected by an event of Force Majeure then the affected Party shall notify the other in writing giving details of the relevant matters and shall keep the other reasonably informed of events. The affected Party shall take all reasonable steps to minimise the effects of the Force Majeure on the performance of its

obligations under this Agreement.

- 14.2 The Primary Bidder shall not be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Project if such delay or failure result solely from an event of Force Majeure. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations by the Utility Regulator or Programme Administrator.

**15 Partnership, agency and third parties**

- 15.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.
- 15.2 The Primary Bidder remains wholly liable under this Agreement for any conduct of partners, managers, sub-contractors or agents working on its behalf in relation to its obligations hereunder.
- 15.3 Any sub-contract, the costs of which are to be claimed as an Eligible Cost, must be awarded according to the principles of best value for money (best price-quality ratio), transparency and equal treatment (for information on what is acceptable see 1.6 of the Framework Document).

**16 Documentation**

- 16.1 The Primary Bidder shall retain all documentation relating to the Project for a period of seven years following termination and provide a copy of any documentation upon request to the Utility Regulator for the duration of that period.
- 16.2 The Primary Bidder shall provide a copy of such documentation to any Competent Authority upon request regarding any payment under the NISEP which may be considered State Aid by that Competent Authority.

**17 Adequacy of damages**

- 17.1 Except as expressly provided in this Agreement, the rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 17.2 Without prejudice to any other rights or remedies that the Utility Regulator may

have, the Primary Bidder acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement by the Primary Bidder. Accordingly, the Utility Regulator shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.

## **18     Liability and indemnity**

- 18.1 The Primary Bidder shall, until twelve years from termination, indemnify, keep indemnified and hold harmless the Utility Regulator from all actions, claims, demands, liabilities, damages, costs, losses or expenses (including without limitation consequential losses, loss of profit, loss of reputation and all interest, penalties, legal and other professional costs and expenses) resulting from any action or omission by the Primary Bidder or those it engages to fulfil its obligations under this Agreement.
- 18.2 The Primary Bidder acknowledges that the Utility Regulator has no responsibility, financial or otherwise, for expenditure or liability arising out of the NISEP and any Approved Scheme, including that arising as a result of the purchase of equipment, marketing expenditure and/or consumable items.

## **19     Assignment and benefits**

- 19.1 The Primary Bidder may not, without the prior written consent of the Utility Regulator, assign or in any way encumber any right to receive funding or other benefit or entitlement in connection with NISEP.
- 19.2 No term of this Agreement shall be enforceable by a third party (being any person other than the parties hereto) under the Contracts (Rights of Third Parties) Act 1999.
- 19.3 The Primary Bidder shall ensure that Funding is applied only in accordance with the terms of this Agreement, in particular in accordance with the approved schemes.

## **20     Insurance**

- 20.1 The Primary Bidder shall at its own expense insure with a reputable firm of insurers, all its property, assets and effects of an insurable nature, including (without limitation) its buildings, plant, machinery and equipment against all and any loss, damage, risk, contingency or public liability as may from time to time be requested by the Utility Regulator (or, if no such request is made, against such loss, damage,

risk, contingency or public liability as a prudent company or firm in the same business as the Primary Bidder would insure against) to the full replacement value thereof and shall produce the policy or policies of insurance together with proof of payment of the necessary premiums to the Programme Administrator on request.

## **21 Severance**

- 21.1 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 21.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the intention of the Parties.

## **22 Audits**

- 22.1 The Primary Bidder agrees to all requirements in the Framework Document in respect of any audit. In addition to such audit processes, the Utility Regulator may, at any time up to five years after termination, arrange for audits to be carried out, in relation to any aspect of the Project.
- 22.2 Such audits may cover financial, technical and other aspects (such as accounting and management principles) relating to the proper execution of the Project and the application of Funding.

## **23 Service of Notices**

- 23.1 Any written notice to be served by the Utility Regulator on the Primary Bidder under the terms and conditions of the Agreement may be served by ordinary first class post, or facsimile transmission. The Primary Bidder will be deemed to have been duly served with the notice on the day it is sent if sent by facsimile transmission or on the following day if sent by first class post.

## **24 Governing law**

- 24.1 The Agreement shall be governed in all respects by the laws of Northern Ireland and the Parties hereby irrevocably submit to the exclusive jurisdiction of the Northern Ireland Courts for all purposes in connection with this Agreement.

Executed as a deed by [xxxxxxxx] acting by [xxxxxxxx / NAME OF FIRST DIRECTOR], a director and [xxxxxxxx /NAME OF SECOND DIRECTOR/SECRETARY], [a director OR its secretary]

Executed as a deed by the Utility Regulator acting by [ / NAME OF FIRST DIRECTOR], a director and [ /NAME OF SECOND DIRECTOR/SECRETARY], [a director OR its secretary]

