**Dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Between**

**THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION**

**And**

**THE PERSONS LISTED IN SCHEDULE 1**

**Supply Meter Point Agreement for**

**The Greater Belfast Licensed Area**

**and**

**The Ten Towns Licensed Area**

**and**

**The West Licensed Area**

**CHANGE HISTORY**

|  |  |  |
| --- | --- | --- |
| Version | Issue date | Reason For Change |
| 1.0 | 1 Nov 2010 |  |
| 1.1 | 15 Aug 2011 | CCN4: Inclusion of an additional schedule (Schedule 13) outlining the process for switching domestic customers with a libra pay as you go meter. |
| 1.2 | 13 Oct 2011 | CCN1: Inclusion of Quantum Procedures for Switching as new Schedule 9;CCN2: Amendment to Schedule 6 to include a definition of debt through no fault of the customer; andCCN3: Amendment to the existing SMP Objection code for Domestic customers in Schedule 4. |
| 1.3 | 21 Dec 2011 | CCN5: Amendment to transfer of credit calculation for PAYG (Libra) customers who wish to switch Supplier & update of first top up amount in Schedule 13. |
| 1.4 | 18 Apr 2012 | CCN6: Amendment to transfer of credit calculation for PAYG (Libra) customers switching Supplier in Schedule 13; andCCN7: Inclusion of the Supply Meter Point Objection Code for Non-Domestic Consumers as new Schedule 14. |
| 1.5 | 14 Jun 2012 | CCN8: Amendments to Schedules 6 and 9 to require the Existing User to notify the Proposing User if the debt on the meter belongs to the current occupier of the property and is therefore recoverable; andCCN9: Amendments to Schedule 9 to allow the new Registered User to make a monetary claim to the previous Registered User for any quantum meters that they switch where there is a credit balance on the meter and no debt balance on the meter. The claim amount per meter is based on an agreed average which will be subject to monitoring and review.  |
| 1.6 | 12 Sep 2012 | CCN10: Amendment to Schedule 7 to allow the cancellation of a SMP Confirmation up to 4 business days before the SMP Registration date, if it is discovered that the supplier transfer would result in an erroneous transfer; CCN11: Amendment to Schedule 6a so that the schedule applies to the whole of Northern Ireland;CCN12: Inclusion of new Schedule 15 setting out an interim process for expedited switches for domestic new connection customers; andCCN13: Amendment to Schedule 4 to prevent an objection being raised for a domestic new connection customer where the name of the customer does not match the information held by the Existing Registered User. Also an additional clause is added to allow the Existing Registered User in the Ten Towns licence area to object to a switch for a domestic customer using less than 732,500 kWh per annum prior to full market opening. |
| 1.7 | 19 Sep 2012 | CCN14: Amendments to the main body of the SMP Agreement and also to the Schedules of the SMP Agreement so that the full SMP Agreement will be applicable to both licensed gas networks in Northern Ireland. |
| 1.8 | 7 Feb 2014 | CCN15: Inclusion of new Schedule 19 to provide a process for PAYG Libra customers who do not pick up their Change of Supplier message. |
| 1.9 | 4 Mar 2014 | CCN16: Amendment to Schedule 1 to update the supplier details of those suppliers that are a party to the SMP Agreement; CCN17: Amendment to Schedule 10 to reflect that an inspection is to be carried out at the meter at the same time as an opening meter reading is taken when a customer switches supplier; andCCN18: Amendment to Schedule 15 to reflect that suppliers are required to have access to Met Office data for input into weekly energy factor files submitted to Paypoint. |
| 1.10 | 26 May 2015 | CCN19: Amendment to Schedules 1, 3, 4, 7, 9, 10, 11, 12 and 13 to reflect working practices and to ensure the Schedules are accurate and up to date.  |
| 1.11 | 10 Sep 2015 | CCN 20: Inclusion of a new schedule (Schedule 20) to require domestic suppliers to include a clause within their domestic customer terms and conditions. The new clause allows the Network Operator to share customer information with a Supplier of Last Resort.CCN21: Inclusion of a new schedule (Schedule 18a) setting out a criteria for supplier information that can be provided to Distribution Network Operators for inclusion in new connection welcome packs. |
| 1.12 | 22 Aug 2016 | CCN 22: Amendments to the main body of the SMP Agreement and also to the Schedules of the SMP Agreement to extend the SMP Agreement to include the West area and also to make amendments to reflect working practices.  |
| 1.13 | 02 Apr 2019 | CCN23: Amendment to Schedules 1 & 2 to remove LCC Power Limited and include LCC Group Limited following the assignment of LCC Power Limited’s gas supply licence to LCC Group Limited; and updated contents page in the main body of SMP Agreement; CCN 24: Amendment to Schedules 1, 2, 5, 6, 7, 10, 11, 12, 13, 15 & 17 to reflect the Gas SoLR arrangements.  |

**CONTENTS**

[2. Conditions Precedent 10](#_Toc335308074)

[3. Duration 11](#_Toc335308075)

[4. Additional Parties 11](#_Toc335308082)

[5. Schedules 12](#_Toc335308092)

[6. Change Control 12](#_Toc335308093)

[7. Events of Default, Consequences of Default and Limitation of Liability 14](#_Toc335308117)

[8. Confidentiality 17](#_Toc335308153)

[9. Force Majeure 19](#_Toc335308175)

[10. Disputes 20](#_Toc335308180)

[11. Derogations 20](#_Toc335308183)

[12. Contract Management 21](#_Toc335308191)

[13. Entire Agreement 21](#_Toc335308197)

[14. Severability 22](#_Toc335308200)

[15. No Partnership or Agency 22](#_Toc335308201)

[16. Further Assurance 22](#_Toc335308202)

[17. Waivers 22](#_Toc335308203)

[18. Assignment and Sub‑Contracting 22](#_Toc335308204)

[19. Notices 23](#_Toc335308212)

[20. Audit and Records 23](#_Toc335308221)

[21. Counterparts 24](#_Toc335308229)

[22. Contracts (Rights of Third Parties) Act 1999 24](#_Toc335308230)

[23. Governing law 24](#_Toc335308231)

|  |  |
| --- | --- |
| Schedule 1 | Suppliers |
| Schedule 2 | Accession Agreement |
| Schedule 3 | Not Used |
| Schedule 4 | Not Used |
| Schedule 5 | SMP Objection Code for Non-Domestic Consumers |
| Schedule 6 | SMP Objection Code for Domestic Consumers |
| Schedule 7 | Retailer Code of Practice for Dealing with Customers in Debt Wishing to Switch Supplier |
| Schedule 7a | Appendices B&C to the Retailer Code of Practice for Dealing with Customers in Debt Wishing to Switch Supplier (in Excel format) |
| Schedule 8 | Definition of “Debt Through No Fault of the Customer” |
| Schedule 9 | Not Used |
| Schedule 10 | Process for Meter Reading and Inspection at the time of SMP Confirmation |
| Schedule 11 | Procedure for the Provision and Rejection of Change of Supplier Readings and the Use of Change of Supplier Readings for Daily Metered Supply Meter Points and for Very Large Daily Metered Supply Meter Points |
| Schedule 11a | Appendices 1&2 to the Procedure for the Provision and Rejection of Change of Supplier Readings and the Use of Change of Supplier Readings for Daily Metered Supply Meter Points and for Very Large Daily Metered Supply Meter Points (in Excel format) |
| Schedule 12 | Procedure for Resolution of Erroneous Transfers in the NI Gas Market |
| Schedule 12a | Annex 3 to the Procedure for Resolution of Erroneous Transfers in the NI Gas Market (in Excel format) |
| Schedule 13 | Gas Supplier Process for Treatment of Suspected Meter Mix-Ups |
| Schedule 13a | Appendix 1 to the Gas Supplier Process for Treatment of Suspected Meter Mix-Ups (in Excel format) |
| Schedule 14 | Not Used |
| Schedule 15 | Retailer Code of Practice for Dealing with Libra Pay As You Go Customers wishing to Switch Supplier |
| Schedule 16 | Not Used |
| Schedule 17 | Retailer Code of Practice for Dealing with Quantum Customers wishing to Switch Supplier |
| Schedule 18 | Expedited switch process for domestic new connections |
| Schedule 18a | New Connection Supplier Information: Criteria for Supplier Information to be provided to the Network Operator for the purpose of the Distribution Network Code New Domestic Connection Procedure and the New I&C Connection Procedure  |
| Schedule 19 | Retailer Code of Practice for Dealing with an incomplete switch for Libra PAYG Customers  |
| Schedule 19a | Appendix 1 to the Retailer Code of Practice for Dealing with an incomplete switch for Libra PAYG Customers |
| Schedule 20 | Supplier of Last Resort: Schedule for Dealing with Vulnerable Customer Information in the event of a Last Resort Supply Direction |

**THIS AGREEMENT** is made as a deed on 1 November 2010

**BETWEEN:**

1. **THE PERSONS** whose names, registered numbers and registered or principal offices are set out in Schedule 1; and
2. **THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION,** a statutory body established under the Energy (Northern Ireland) Order 2003 and whose address for the purposes of this agreement is at Queens House, 14 Queen Street, Belfast BT1 6ED (“**NIAUR**”).

**WHEREAS:**

1. Condition 2.26 of the Supply Licence provides that each Supplier is required to prepare, maintain and be a Party to a form of agreement to be known as the Supply Meter Point Agreement;
2. The Supply Meter Point Agreement is a document designed to facilitate (i) the development, maintenance and operation of efficient, coordinated and economical arrangements and systems of communications between all parties for the implementation of, and compliance with, the change of supplier process as set out in the Network Code(s) of the Network Operator(s), (ii) the furtherance of effective competition between Suppliers and between relevant agents, (iii) the promotion of efficiency in the implementation and administration of the Supply Meter Point Agreement and (iv) the efficient discharge of a licensee's obligations under the Supply Licence;
3. Each Supplier has accordingly agreed to enter into and comply with the provisions of this agreement as the Supply Meter Point Agreement in respect of the Greater Belfast Licensed Area, the Ten Towns Licensed Area and the West Licensed Area[[1]](#footnote-1) on the basis of the terms and conditions set out below.

# **Definitions and Interpretation**

## The following terms shall have the meaning as defined in this clause unless otherwise stated. All other capitalised terms used in this Agreement shall have the meanings as defined in the Network Code(s):

|  |  |
| --- | --- |
| "**Accession Agreement**" | means an agreement in the form set out in Schedule 2; |
| "**Affected Party**" | has the meaning given to that term in Clause 9.1; |
| "**Affiliate**" | means, in relation to any Party, any holding company of that Party, any subsidiary of that Party or any subsidiary of a holding company of that Party, in each case within the meaning of Section 1159 of the Companies Act 2006; |
| "**Agreement**" | means this Supply Meter Point Agreement, including its recitals, the Schedules, Annexes and Appendices thereto; |
| "**Application for Derogation**" | has the meaning given to that term in Clause 11.2; |
| “**Breach**” | means any instance of non-compliance by a Party with any of its obligations under this Agreement; |
| "**Change Control Administrator**" | means the person appointed by NIAUR pursuant to Clause 6.1; |
| "**Change Control Note**" | means the form referred to in clause 6.3; |
| "**Change Proposal**" | means a notice in writing from any Party or Parties in accordance with Clause 6, proposing an amendment to the terms of this Agreement; |
| "**Change Report**" | has the meaning given to that term in Clause 6.7; |
| "**Competent Authority**" | means NIAUR and any local or national agency, authority, department, inspectorate, minister, ministry, official, or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or the European Community; |
| "**Confidential Information**" | means, in relation to a Party, all data or other information supplied to that Party by another Party under or pursuant to the provisions of this Agreement;  |
| “**Consumer Council**”, “**CCNI**” | means the Consumer Council for Northern Ireland; |
| "**Customer**" | means any person supplied or requiring to be supplied with gas at any Premises by a Supplier; |
| "**Data Protection Act**" | means the Data Protection Act 1998 (as amended or replaced from time to time); |
| “**Debt**” | has the meaning given to that term in paragraph 5.1 of Schedule 7 (Retailer Code of Practice for Dealing with Customers in Debt wishing to Switch Supplier);  |
| "**Defaulting Party**" | has the meaning given to that term in Clause 7.3; |
| “**Designated Agreement**” | means:(i) this Agreement; (ii) the Network Code(s) and any agreement entered into pursuant to the Network Code(s); or(iii) any agreement NIAUR approves as a Designated Agreement; |
| “**DETI**” | means the Department of Enterprise Trade & Investment;  |
| "**Disclose**" | means disclose, reveal, report, publish or transfer and "**Disclosure**" shall be construed accordingly; |
| "**Dispute**" | has the meaning given to that term in Clause 10.1; |
| "**Disputing Party**" | has the meaning given to that term in Clause 10.2; |
| "**Domestic Supplier**" | means a Party who is entitled to make Domestic Supplies and who is described in Schedule 1; |
| "**Domestic Supply**" | means a supply of gas to Premises which is taken wholly or mainly for domestic purposes; |
| "**Effective Date**" | means 1 November 2010 for the Greater Belfast Licensed Area and 1 October 2012 for the Ten Towns Licensed Area and 22 September 2016 for the West Licensed Area; |
| "**Energy Order**" | means the Energy (Northern Ireland) Order 2003; |
| “**Erroneous Transfer**” “**ET**” | has the meaning given to that term in Schedule 12; |
| “**Erroneous Transfer Procedure**” | means the action Suppliers are require to undertake as set out in Schedule 12 to resolve an Erroneous Transfer; |
| "**Event of Default**" | has the meaning given to that term in Clause 7.1 of this Agreement; |
| “**Existing Registered User**” | has the meaning given to that term in the Network Code(s); |
| **“firmus energy (Distribution) Limited Conveyance Licence”** | means the Licence for the Conveyance of Gas granted to Bord Gais Eireann by the Authority pursuant to Article 8(1)(a) of the Order; |
| "**Force Majeure**"  | means any event or circumstance which is beyond the reasonable control of any Party acting as a Reasonable and Prudent Operator and which results in or causes the failure of that Party to perform any of its obligations under this Agreement, provided always that lack of funds shall not be interpreted as a cause beyond that Party's reasonable control; |
| "**Freedom of Information Act**"  | means the Freedom of Information Act 2000 (as amended or replaced from time to time); |
| "**Gas Conveyance Licence**" | means a licence to convey gas granted under Article 8(1)(a) of the Gas (NI) Order 1996; |
| “**Greater Belfast Licensed Area**” | means the Licensed Area, as the term “Licensed Area” is defined in the Phoenix Natural Gas Limited Conveyance Licence; |
| **“Licensed Area”** | means the Greater Belfast Licensed Area or the Ten Towns Licensed Area or the West Licensed Area; |
| “**Network**”  | means all gas plant owned, operated or utilised by the Network Operator(s) by virtue of the licence granted to those Network Operators under Article 8(1)(a) of the Order;  |
| “**Network Code**”, “**Code**”  | means the documents, as amended from time to time, so described and published by the Network Operator(s) relevant to its Network, pursuant to Condition 2.5.1 of the Phoenix Natural Gas Ltd licence, Condition 2.4.1 of the firmus energy (Distribution) licence, and Condition 2.4.1 of the SGN Natural Gas licence, each granted under Article 8(1)(a) of the Order;  |
| “**Network Code Modification Rules**”  | means the rules in force from time to time relating to making modifications to the Network Code(s); |
| “**Network Operator(s)**” | means Phoenix Natural Gas Limited (NI 32809), firmus energy (Distribution) Limited (5375370) and SGN Natural Gas Limited (8822715);  |
| **“New Connection”** | A connection is deemed a “New Connection” in accordance with Schedule 18 (Interim Process for Expedited Switches for Domestic New Connections) of this Agreement; |
| “**New Party**” | has the meaning given to that term in Clause 4.1; |
| “**Operational Issue**” | means an issue or problem perceived by one or more Parties arising out of the operation of the arrangements designed to facilitate competition in the gas industry, which, for the avoidance of doubt, shall not be limited to issues or problems arising out of or impacting upon this Agreement; |
| "**Order**" | means the Gas (Northern Ireland) Order 1996 as amended by the Energy Order; |
| “**Party**” | means a party to this Agreement; |
| “**Party Change Administrator**” | means a Party’s appointed person to co-ordinate all communications from and to such party in relation to a Change Proposal; |
| “**Party Liable**” | has the meaning given to that term in Clause 7.10 and does not extend to NIAUR; |
| “**Phoenix Natural Gas Limited Conveyance Licence”** | means the Licence for the Conveyance of Gas granted to Phoenix Natural Gas Limited by the Authority pursuant to Article 8(1)(a) of the Order; |
| “**Premises**” | means any land, building or structure within the Greater Belfast Licensed Area or the Ten Towns Licensed Area or the West Licensed Area; |
| “**Prospective Supplier**” | means a Supplier who wishes to accede to the Agreement by executing an Accession Agreement pursuant to Schedule 2 hereof; |
| “**Reasonable and Prudent Operator**” | has the meaning given to that term in the Network Code(s); |
| “**Registered**” | means the recording on the Supply Meter Point Register of a Supplier as being responsible for a Supply Meter Point from a particular date and “Registration” shall be construed accordingly; |
| “**Report**” | has the meaning given to that term in Clause 20.2; |
| “**Reporting Party**” | means the party alleging the suspected Breach or Event of Default; |
| **“SGN Natural Gas Limited Conveyance Licence”** | means the Licence for the Conveyance of Gas granted to Scotia Gas Networks Northern Ireland Ltd by the Authority pursuant to Article 8(1)(a) of the Order; |
| "**Senior Manager**" | means a person appointed by each Party pursuant to Clause 12.1; |
| “**Supplier**” | means a person or body corporate who has been granted a Supply Licence under Article 8(1)(c) of the Order;  |
| “**Supplier Forum**” | means the body of that name set up by NIAUR, comprising the Consumer Council and all Suppliers who have been granted a Supply Licence which has not been determined or revoked by NIAUR; |
| “**Supply Licence**” | means a licence for the supply of gas granted under Article 8(1)(c) of the Order;  |
| “**Supply Meter Point**”, “**SMP**” | has the meaning given to that term in the Network Code(s); |
| “**Supply Meter Point Reference Number**”, “**SMPRN**” | has the meaning given to that term in the Network Code(s); |
| “**Supply Meter Point Register**” | has the meaning given to that term in the Network Code(s); |
| “**Supply Meter Point Registration**” | has the meaning given to that term in the Network Code(s); |
| “**Supply Meter Point Registration Date**” | has the meaning given to that term in the Network Code; |
| **“Ten Towns Licensed Area”** | means the Licensed Area, as the term “Licensed Area” is defined in the firmus energy (Distribution) Limited Conveyance Licence;  |
| **“West Licensed Area”** | means the Licensed Area, as defined in the SGN Natural Gas Limited Conveyance Licence;  |
| “**Working Day**” or “”**WD**” | means a day other than a Saturday, a Sunday or a day which is a bank holiday in Northern Ireland; |

## In this Agreement, unless the context requires otherwise, any reference to:

### a "person" includes a reference to an individual, body corporate, association or partnership;

### the singular shall include the plural and vice versa;

### this "Agreement" shall mean this agreement, its recitals, and the Schedules, Annexes and Appendices thereto;

### a Clause, Schedule or Part is a reference to a clause of or schedule to or part of this Agreement;

### writing includes all methods of reproducing words in a legible and non‑transitory form;

### any statute or any other subordinate legislation, any other agreement or instrument shall be construed as a reference to that statute, subordinate legislation, other agreement or instrument as amended, or re‑enacted or consolidated from time to time;

### the masculine gender includes the feminine gender.

## The headings in this Agreement are for the ease of reference only and shall not affect its interpretation.

## In this Agreement, references to "include" or "including" are to be construed without limitation to the generality of the preceding words.

## References to a document in "**agreed form**" are to that document in the form agreed by the Parties and initialled by or on behalf of them for identification.

# **Conditions Precedent**

2.1 A Party may not be a Party to the Agreement unless it has been granted a Supply Licence which has not been determined or revoked by NIAUR.

2.2 Should a Supplier’s licence limit the licensed area(s) of operation within Northern Ireland, that Supplier will remain bound by the obligations under this agreement and the accompanying schedules relevant to these licensed areas.

# **Duration**

## This Agreement shall take effect on the Effective Date of 1 November 2010 for the Greater Belfast Licensed Area and 1 October 2012 for the Ten Towns Licensed Area and 22 September 2016 for the West Licensed Area.

## Subject to Clauses 7.8 and 7.9, this Agreement shall remain in effect in respect of a Party until such Party ceases to be a party to this Agreement in accordance with Clause 10 and Clause 18.

## Subject to Clauses 7.8 and 7.9, this Agreement shall remain in effect until:

### all the Parties cease to be Parties in accordance with Clause 7 and Clause 18; or;

### there remains just one (1) Supplier as a Party.

## This Clause is without prejudice to Clause 11.

# **Additional Parties**

## Subject to the following provisions of this Clause 4, the Parties shall admit as an additional Party to this Agreement any person (a "**New Party**") who is not at that time already a Party, who applies to be admitted in the capacity requested by the New Party subject to the New Party either holding a Supply Licence and acting in its capacity of a licensed gas supplier or being such other person as may be a necessary party to this Agreement (as collectively determined by the Suppliers that are party to this Agreement from time to time).

## Subject to Clause 4.3, a New Party wishing to be admitted as an additional party shall apply to NIAUR for admission on a form of application issued by NIAUR in the agreed form from time to time and shall deliver such form to NIAUR together with any other information and/or documents referred to in the form. A New Party shall self-certify in the form set out in Schedule 2 that its system design is such that on becoming a Party to this Agreement it will be able to fully comply with the terms and conditions of this Agreement. Within 30 Working Days of receipt of the application, NIAUR shall notify the New Party and the other Parties to this Agreement the identity of the New Party and that either the New Party shall be admitted as a Party or that it requires from the New Party the information and/or documents referred to in the application form.

## Where NIAUR notifies the New Party that it requires the information and/or documents specified in Clause 4.2, the New Party shall, within 20 Working Days of receiving NIAUR’s notice provide such information and/or documents, failing which the New Party's application shall lapse and be of no effect and the New Party shall not be, and shall not be entitled to be, admitted as a New Party consequent upon such application without prejudice to any new application for admission it may make thereafter.

## NIAUR may determine not to admit a New Party if such New Party does not provide the information and/or documents requested in its application within the time period specified at Clause 4.3 above. Where NIAUR determines not to admit a New Party it shall provide such New Party with the reasons for its decision. The determination of the NIAUR shall be final and binding on the Parties.

## Where:

### NIAUR notifies the New Party in accordance with Clause 4.2 that the New Party is to be admitted as a Party; or

### following a request for information and/or documents pursuant to Clause 4.2 the New Party provides sufficient information satisfactory to NIAUR within the time period specified in Clause 4.3; or

### NIAUR determines that the New Party shall become a Party pursuant to Clause 4.4,

NIAUR shall, within 5 Working Days, prepare an Accession Agreement, which shall be executed by an authorised signatory for and on behalf of all Parties to this Agreement other than the New Party. In the event that a Party fails to execute and return to NIAUR the Accession Agreement within 5 Working Days of receipt of the execution version of the Accession Agreement from NIAUR, such Party hereby authorises and instructs any delegate authorised by NIAUR to sign such Accession Agreement on its behalf. Upon execution of the Accession Agreement by existing Parties, NIAUR and the New Party, the New Party shall become a Party for the purposes of this Agreement from the date specified in the Accession Agreement.

## NIAUR shall, within five (5) Working Days of the New Party becoming a Party to this Agreement, notify all Parties of the execution and delivery of the Accession Agreement.

# **Schedules**

All Parties to this Agreement agree to abide by the provisions of the Network Code(s) and in addition to abide by the provisions and tables specified in the Schedules which form part of this Agreement. The said provisions and tables specified in this Agreement hereof are in addition to the provisions of the relevant Network Code(s) and in the event of a conflict between the said provisions and tables and the relevant Network Code(s), the relevant Network Code(s) shall prevail. In the event that the Network Codes are simultaneously modified in accordance with the relevant Network Code Modification Rules and where the provisions of each Network Code remain aligned, the Schedules to this Agreement shall, where applicable, be deemed to be automatically modified to comply with the said modification to the Network Codes (with effect from the date that the relevant modifications to the Network Codes come into effect) and, unless NIAUR determines in its discretion that the process of updating the contents of the affected Schedules should be carried out pursuant to the Change Control process set out in Clause 6, NIAUR shall circulate the relevant revised Schedules to the Parties within 20 Working Days from the date such modification to the Network Codes (and relevant Schedules) becomes effective. However, in the event that the Network Code(s) are modified in accordance with the relevant Network Code Modification Rules such that the Network Codes are non-aligned, the Schedules to this Agreement shall not be deemed to be automatically modified. In such circumstances, the process of updating the contents of the affected Schedules will be carried out pursuant to the Change Control process set out in Clause 6 of this Agreement to ensure that the affected Schedules are updated in such a way to comply with the said modification(s) to each relevant Network Code.

# **Change Control**

## NIAUR may from time to time appoint and remove (on such conditions as it thinks fit) any such person as NIAUR requires to assist it or any sub-committee of it in connection with communications relating to, co-ordination and voting on, and implementation of, a Change Proposal (“**Change Control Administrator**”) which person shall be part of the Supplier Forum (if appointed) and NIAUR shall inform the Parties of the identity of the Change Control Administrator that may be in place from time to time.

## Each of the other Parties to this Agreement shall each appoint an appropriate person to co-ordinate all communications from and to such Party and/or undertake all procedures in respect of a Party relating to the change control process pursuant to this Clause 6 (each such person shall be known as a “**Party Change Administrator**” and together the “**Party Change Administrators**”) and shall notify the Change Control Administrator of the identity of such Party Change Administrator that may be in place from time to time. A Party Change Administrator shall be fully authorised to carry out all acts or obligations of the Party that appointed it in relation to the change control process pursuant to the principles and procedures set out in this Clause 6. The Change Control Administrator and/or NIAUR shall be entitled to assume that a Party Change Administrator shall be authorised to perform all acts or obligations in relation to the change control process in respect of the Party that appointed it. If a Party fails to notify the identity of their Party Change Administrator to the Change Control Administrator such Party’s Senior Manager shall be deemed to be its Party Change Administrator until such time as a Party Change Administrator is notified to the Change Control Administrator.

## Any Party to this Agreement may suggest a Change Proposal, but any Change Proposal must be discussed at the Supplier Forum prior to its submission to the Change Control Administrator and all of the Parties shall in connection therewith discuss and consider the implications of the Change Proposal on the Network Code(s). After such Change Proposal has been discussed at the Supplier Forum, any Party or NIAUR may submit a Change Proposal to the Change Control Administrator on the form(s) issued by NIAUR from time to time and shall deliver such form(s) to the Change Control Administrator together with any other documents referred to in the form(s) (the “**Change Control Note**”). Without prejudice to its other rights under this Agreement, and notwithstanding the provisions of this Clause 6.3, NIAUR may at its discretion review the contents of this Agreement (and its implementation) after six (6) months from the Effective Date of 1 November 2010, and thereafter from time to time at NIAUR’s discretion, and as a result of such review NIAUR may suggest Change Proposals for discussion at the Supplier Forum and submit Change Proposals to the Change Control Administrator.

## The Parties acknowledge and agree that, notwithstanding any other provision of this Agreement, a Change Proposal which seeks to achieve any of the matters listed in 6.4.1 to 6.4.4 below inclusive shall not take effect until the written consent of NIAUR has been obtained (such consent not to be unreasonably withheld or delayed):

### any change to any definition in Clause 1 which materially affect the provisions of the Clauses set out in this Agreement; or

### any change to any provision of this Agreement which requires or permits any matter to be referred to NIAUR for approval, consent, direction or decision or confers any rights or benefits upon the NIAUR; or

### a change to the terms of a Schedule of this Agreement; or

### the introduction of a new Schedule of this Agreement.

## The Change Control Administrator may reject a Change Proposal in its absolute discretion if it considers that the Change Proposal:

### is not sufficiently specific;

### has been submitted by a person or persons not authorised or not properly authorised to do so pursuant to Clause 6.2 of this Agreement;

### is inconsistent with the objectives specified in condition 2.26.4 of the Supply Licence;

### is ambiguous or incomplete; and/or

### is not materially different from a Change Proposal that has already been submitted to it.

When rejecting a Change Proposal, the Change Control Administrator may recommend any amendment and/or additional information that ought to have been provided in the Change Control Note.

## Subject always to the provisions of Clauses 6.4 and 6.5 above, the Parties can request to vote at the Supplier Forum on whether to accept or reject a Change Proposal (where each Party present shall have one vote, and where voting is on the basis of acceptance of the Change Proposal requiring a unanimous vote). In the event that the vote is not unanimous, the Change Control Administrator shall consider all relevant material and the impact on the Parties of the Change Proposal being considered and determine at his/her discretion whether the Change Proposal should be accepted or rejected.

## Promptly following any acceptance or rejection of a Change Proposal under Clause 6.4, 6.5 or 6.6, the Change Control Administrator shall produce a change report which details the reasons for his/her acceptance or rejection of the Change Proposal (the “**Change Report**”) and shall notify the Parties that the Change Proposal has been accepted or rejected (and at the same time provide each of the Parties with a copy of the Change Report).

**Appeals**

## If a Change Proposal is rejected in accordance with this Clause 6, any Party may appeal such decision, within 20 Working Days of receipt of the Change Report, to NIAUR for its determination in writing.

## If a Change Proposal is approved in accordance with this Clause 6, any Party may appeal such decision, within 20 Working Days of receipt of the Change Report, to NIAUR for its determination.

## If a Party appeals to NIAUR pursuant to Clauses 6.8 to 6.9 (inclusive), it shall provide NIAUR with notice of such appeal and provide NIAUR with copies of its appeal and any other information and/or documentation submitted to NIAUR in support of such appeal.

## Where any change is proposed to this Agreement pursuant to the terms of this Clause 6 which NIAUR decides is of an urgent nature and is a change which should be decided upon promptly, NIAUR may decide to reduce the timescales set out in this Clause 6 as notified to the Parties from time to time.

## Until such time as a Change Proposal has taken effect, the Parties shall continue to perform this Agreement in compliance with its terms. A copy of any Change Proposal must be provided to NIAUR.

## A Change Proposal shall not take effect or be implemented until either the 20 Working Days period to appeal a Change Proposal pursuant to clauses 6.8 and 6.9 has expired or an appeal pursuant to this clause 6 has been finally determined by NIAUR.

## Any discussions which may take place between the Parties pursuant to the terms of this Clause 6 shall be without prejudice to the rights of any Party.

# **Events of Default, Consequences of Default and Limitation of Liability**

## It shall be an “Event of Default” if:

### a Party fails to comply with a Final Order (within the meaning of Article 42 of the Energy Order) or with a Provisional Order (within the meaning of Article 42 of the Energy Order) which has been confirmed under Article 42 of the Energy Order and which (in either case) has been made in respect of a contravention or apprehended contravention of a condition to which its Supply Licence is subject or of a “relevant requirement” as defined in Article 41(2)(b) of the Energy Order and such failure is not rectified to the satisfaction of the NIAUR within three months after the NIAUR has given notice of such failure to the Party, provided that no such notice shall be given by NIAUR before the expiration of the period within which an application under Article 44 of the Energy Order could be made questioning the validity of the Final or Provisional Order or before the proceedings relating to any such application are finally determined;

### the Party fails to pay any financial penalty (within the meaning of Article 45 of the Energy Order) imposed in respect of a contravention or apprehended contravention of a condition to which its Supply Licence is subject or of a “relevant requirement” as defined in Article 41(2)(b) of the Energy Order by the due date for such payment and such payment is not made to NIAUR within three months after NIAUR has given notice in writing of such failure to the Party, provided that no such notice shall be given by NIAUR before the expiration of the period within which an application under Article 49 of the Energy Order could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined; or

### the Party fails to comply with an order made by a court under section 34 of the Competition Act 1998; or fails to comply with an order made under section 72, 75, 76, 81, 83, 84, 158, 160 or 161 of, or under paragraph 2, 5, 6, 10 or 11 of Schedule 8 to, the Enterprise Act 2002; or is found guilty or an offence under section 188 or 193 or 194 of the Enterprise Act 2002; or

### a Party:

#### is unable to pay its debts (within the meaning of article 214(1) or 214(2) of the Insolvency (Northern Ireland) Order 1989, but as if in that article 214(1)(a) the sum of £10,000 was substituted to the sum of £750 or has any voluntary arrangement proposed in relation to it under Article 14 of that Order, or 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 NIAUR); or

#### has a receiver (which expression shall include an administrative receiver within the meaning of Article 5 of the Insolvency (Northern Ireland) Order 1989 of the whole or any material part of its assets or undertaking appointed; or

#### has an administration order under Article 21 of the Insolvency (Northern Ireland) Order 1989 made in relation to it; or

#### passes any resolution for winding up other than a resolution previously approved in writing by NIAUR; or

#### becomes subject to an order for winding up by a court of competent jurisdiction; or

### without prejudice to Clause 9, a circumstance of Force Majeure which affects the performance by a Party of substantially all of its obligations under this Agreement continues for more than 180 days;

### a Party has its Supply Licence determined or revoked by NIAUR in accordance with its terms.

## Any Party may report any suspected Event of Default to NIAUR and upon receiving such report, NIAUR shall notify the Party to whom the suspected Event of Default report relates.

## In the event of a Party being in default pursuant to Clause 7.1 (a “**Defaulting Party**”) NIAUR may:

### notify the Defaulting Party; and

### notify the other Parties that such Parties shall decide not to give the Defaulting Party the benefit of any part of this Agreement as specified by NIAUR in its said notice from a date determined by NIAUR until NIAUR determines otherwise.

## On receipt of notification from NIAUR pursuant to Clause 7.3.2, a Party shall be entitled to decline to give a Defaulting Party the benefit of any part of this Agreement in accordance with such notification, until it is notified by NIAUR that NIAUR has determined otherwise.

## Any Party that is a Defaulting Party pursuant to the terms of Clause 7.1 may apply to NIAUR to have the restrictions referred to in this Clause 7 removed and NIAUR shall consider such application.

## Upon giving NIAUR 30 Working Days’ notice of its intention to cease to be a Party to this Agreement, a Supplier shall cease to be a Party to this Agreement upon expiry of such notice period.

## A Party shall cease to be a party to this Agreement with immediate effect if its Supply Licence is determined or revoked (whichever is the earlier). A Party shall cease to be a party to this Agreement as a Domestic Supplier on and from the date that Part 2 of such Supplier’s Supply Licence ceases to have effect if NIAUR provides that Part 2 of such Supplier's Supply Licence shall cease to have effect.

## A Party ceasing to be a party to this Agreement shall be without prejudice to the accrued rights and liabilities of that Party prior to the date of it ceasing to be a Party and shall not affect any continuing obligations of that Party under this Agreement.

## Where a Party ceases to be a party to this Agreement, Clauses 7, 8, 9, 10, 12 to 13 (inclusive), 18 and 19 shall remain in full force and effect as regards the Party.

## Subject to Clause 7.13 and 7.15 and save as provided in this Clause 7.10 and Clause 7.11 no Party (the “**Party Liable**”) nor any of its officers, employees or agents shall be liable to any other Party for loss arising from any breach of this Agreement by the Party Liable other than for loss directly resulting from such breach and which at the date hereof was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:

### physical damage to the property of that other Party, its officers, employees or agents; and/or

### the liability of such other Party to any other person for loss in respect of physical damage to the property of any person arising from breach by the Party Liable,

provided that the liability of any Party in respect of claims for such loss arising from any incident or series of related incidents shall in no circumstances exceed £1,000,000 (one million pound sterling). NIAUR shall be excluded from the provisions of this Clause 7.10.

## Nothing in this Agreement shall exclude or limit the liability of the Party Liable for death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents and the Party Liable shall indemnify and keep indemnified any other Party, its officers, employees or agents, from and against all such liability which such other Party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents.

## Subject to Clause 7.15, no Party, nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to any other Party for:

### any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or

### any indirect or consequential loss; or

### loss resulting from the liability of such other Party to any other person howsoever and wheresoever arising save as expressly provided in Clauses 7.10 and 7.11.

## 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 any rights any Party may possess in tort or delict which shall include 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, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein.

## Save as otherwise expressly provided in this Agreement, this Clause 7 insofar as it excludes or limits liability shall override any other provision in this Agreement provided that nothing in this Clause 7 shall exclude or restrict or otherwise prejudice or affect any of:

### the rights, powers, duties and obligations of any Party which are conferred or created by the Order, any licence granted pursuant to the Order or any subordinate legislation made under the Order; or

### the rights, powers, duties and obligations of NIAUR or DETI under the Order, any such licence or otherwise howsoever.

## Each of the sub-clauses of this Clause 7 shall:

### be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such Clauses shall remain in full force and effect and shall continue to bind the parties; and

### survive termination of this Agreement.

## Each Party hereby acknowledges and agrees that each of the other Parties holds the benefit of Clauses 7.10, 7.11 and 7.12 for itself and as trustee and agent for its officers, employees and agents.

## Each Party hereby acknowledges and agrees that the provisions of this Clause 7 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof.

## For the avoidance of doubt, nothing in this Clause 7 shall prevent or restrict any Party enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Agreement.

# **Confidentiality**

## Subject to the provisions set out in Clause 8.2, each Party hereby undertakes with each other Party that it shall preserve the confidentiality of and shall not directly or indirectly disclose or use for its own purposes Confidential Information.

## A Party shall be entitled to Disclose or use Confidential Information if and to the extent that one or more of the following apply:

### the Party is required or permitted to Disclose Confidential Information pursuant to the terms of a Designated Agreement, to the extent of such requirement or permission; or

### the Party believes, on reasonable grounds, that market arrangements set out or contemplated by this Agreement require or permit it to Disclose Confidential Information to another person or to use Confidential Information to the extent of such requirement or permission and it has given the other Parties prior written notice of such intended Disclosure and NIAUR has consented to such Disclosure; or

### the person to whose affairs the Confidential Information relates gives its prior written consent to the Disclosure or use, to the extent of such consent; or

### the Confidential Information, before it is furnished to the relevant Party is in the public domain; or

### the Confidential Information, after it is furnished to the Party:

#### is acquired by the Party in circumstances in which this Clause 8 does not apply;

#### is acquired by a Party in circumstances in which this Clause 8 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause; or

#### enters the public domain,

and in any such case otherwise than as a result of (i) a breach by the Party of its obligations in this Clause or (ii) a breach by the person who disclosed that Confidential Information of that person's confidentiality obligation and the Party is aware of such breach; or

### the Party is required or permitted to Disclose Confidential Information to any person:

#### in compliance with any provisions of the Order or the Energy Order (and any other applicable legislation); or

#### in compliance with any other requirement of law or of a Competent Authority; or

#### in response to a requirement of any stock exchange or regulatory authority or the Panel on Takeovers and Mergers; or

#### pursuant to any judicial or arbitral process or tribunal having jurisdiction in relation to the Party; or

### the Party Discloses Confidential Information to its Affiliates or its Affiliates' employees, directors, agents, consultants and professional advisers; or

### the Party Discloses Confidential Information to NIAUR.

## Confidential Information which a Party is permitted or obliged to Disclose or use pursuant to Clause 8.2 shall not cease to be regarded as Confidential Information in all other circumstances by virtue of such Disclosure or use.

## With effect from the date of this Agreement each Party shall adopt procedures within its organisation for ensuring the confidentiality of all Confidential Information which it is obliged to preserve as confidential under Clause 8.1. These procedures include the following:

### the Confidential Information will be disseminated within the Party only on a "need to know" basis;

### employees, directors, agents, consultants and professional advisers of the Party in receipt of Confidential Information will be made fully aware of the Party's obligations of confidence in relation thereto; and

### any copies of the Confidential Information, whether in hard copy or computerised form, will clearly identify the Confidential Information as confidential.

## Each Party shall take all reasonable steps to ensure that any person referred to in Clause 8.2 to whom the Party Discloses Confidential Information does not use that Confidential Information for any purpose other than that for which it is provided and does not Disclose that Confidential Information otherwise than in accordance with this Clause 8.

## Each Party shall procure that each of its Affiliates observes the restrictions in Clauses 8.1 to 8.5 as if in each such Clause there was substituted for the name of the Party the name of the Affiliate.

## Each Party warrants that it has effected, and undertakes that it will during the term of this Agreement effect and maintain all such notifications as it is required to effect and maintain under the Data Protection Act to enable it lawfully to perform the obligations imposed on it by this Agreement. Each Party undertakes to comply with the Data Protection Act in the performance of its obligations under this Agreement.

## Each Party undertakes that, in any case where information to be disclosed by it under this Agreement may lawfully be Disclosed only with the prior consent of the person to whom the information relates, it will use its reasonable endeavours to obtain such prior consents so as to enable it, to promptly to perform its obligations under this Agreement.

## Subject to the requirements of the Freedom of Information Act, the Parties acknowledge that for NIAUR to properly carry out its duties and responsibilities under this Agreement, it may decide or be obliged to keep confidential to it matters, reports, data and other information produced by or for, or made available to or held by it and in any such case, it shall neither Disclose the same to the Parties nor be required by such Parties so to Disclose. Each of the Parties agrees to respect the position of NIAUR accordingly.

## Each of the Parties agrees, subject to any relevant confidentiality provision binding on it, to provide NIAUR with all data and other information reasonably requested by and necessary for NIAUR to properly to carry out its duties and responsibilities under this Agreement.

# **Force Majeure**

## If any Party (the "**Affected Party**") shall be unable to carry out any of its obligations under this Agreement due to a circumstance of Force Majeure this Agreement shall remain in effect but:

### the Affected Party's obligations; and

### the obligations of each of the other Parties owed to the Affected Party under this Agreement; and

### any other obligations of such other Parties under this Agreement owed between themselves which the relevant Party is unable to carry out directly as a result of the suspension of the Affected Party's obligations,

shall be suspended without liability for the period during which the circumstance of Force Majeure prevails provided that:

#### the Affected Party gives the other Parties prompt notice describing the circumstance of Force Majeure including the nature of the occurrence and its expected duration and where reasonably practicable continues to furnish regular reports with respect thereto during the period of Force Majeure; and

#### the suspension of performance is of no greater scope and of no longer duration than is required by the circumstance of Force Majeure; and

#### no obligations of any Party that arose before the circumstance of Force Majeure causing the suspension of performance are excused as a result of the Force Majeure; and

#### the Affected Party uses all reasonable efforts to mitigate the impact of the circumstance of Force Majeure and to remedy its inability to perform as quickly as possible; and

#### immediately after the end of the circumstance of Force Majeure the Affected Party notifies the other Parties in writing of the same and resumes performance of its obligations under this Agreement.

# **Disputes**

## Save where expressly stated in this Agreement to the contrary, and subject to any contrary provision of the Order, the Energy Order, the Supply Licence(s) or the rights, powers, duties and obligations of NIAUR or DETI under the Order or otherwise howsoever arising, any dispute or difference of whatever nature and howsoever arising under, out of or in connection with this Agreement (a "**Dispute**") shall be resolved according to the provisions of this Clause 10.

## Any Party shall refer a Dispute to the Senior Managers, by notice in writing to all other Parties to the Agreement who are Party to the Dispute (the Party referring the Dispute and the other Parties to the Dispute each being a "**Disputing Party**"). The Senior Managers of the Disputing Parties shall endeavour to resolve the Dispute between them within fifteen (15) Working Days. The Senior Managers of the Disputing Parties shall have authority to negotiate in relation to and to resolve the Dispute including authority to bind the Party nominating them. The joint and unanimous decision of the Senior Managers of the Disputing Parties shall be binding upon the Parties to the Dispute.

**Arbitration**

10.3 Any dispute arising out of or in connection with this Agreement which is not resolved in accordance with Clause 10.2 shall be referred to mediation as follows:

10.3.1 the meditation shall be conducted by a single mediator who shall be appointed by agreement in writing between the Parties or, if the Parties are unable to agree on the identity of the mediator within five Business Days of the date of the decision that the dispute be determined by a mediator, or if the mediator appointed is unable or unwilling to act, the mediator shall be appointed by the Centre for Effective Dispute Resolution on the application of either party;

10.3.2 the mediation shall be conducted in Belfast, Northern Ireland and in the English language under the laws of Northern Ireland; and

10.3.3 the mediation shall be conducted without prejudice to the rights of the Parties in any future proceedings.

10.4 Any dispute which is not resolved by mediation in accordance with Clause 10.3 within one month after commencement of the mediation, may, at the request of either Party, be referred to arbitration before a single arbitrator who shall be appointed by agreement in writing between the Parties or, if they are unable to agree on the identity of the arbitrator within five Business Days of the date of the decision that the dispute be referred to arbitration, or if the person appointed is unable or unwilling to act, shall be appointed by the London Court of International Arbitration on the application of either Party. The arbitration shall be conducted in Belfast, Northern Ireland in the English language under the laws of Northern Ireland in accordance with the arbitration rules in force at the date the dispute is referred to arbitration.

10.5 Nothing in this Clause will restrict, at any time while the above dispute resolution procedures are in progress or before or after they are invoked, either Party’s freedom to commence legal proceedings to preserve any legal right or remedy.

# **Derogations**

## NIAUR may resolve to grant a derogation to any Party or Parties in relation to any obligation contained in this Agreement, which may be subject to conditions and shall specify the term, scope and application of such derogation, and may amend or retract any such derogation, or any such conditions relating thereto, from time to time as it sees fit.

## A Party may, in the form set out in Schedule 2, apply to NIAUR for a derogation pursuant to Clause 11.1 ("Application for Derogation").

## Where NIAUR receives an Application for Derogation from a Party pursuant to Clause 11.2, it shall ensure that the Application for Derogation is added to the agenda for the next meeting of the Supplier Forum, and shall give notice to all Parties, at least 10 Working Days prior to the meeting of the Supplier Forum at which the application is to be considered, stating:

### that the Application for Derogation has been made, setting out the terms of the derogation sought, and the identity of the Party making the Application for Derogation; and

### the time (not being less than 10 Working Days from the date on which notice is provided) within which Parties may make representations or objections with respect to the derogation which has been applied for.

## If pursuant to Clause 11.3.2 any Parties make representations or objections with respect to the derogation that has been applied for, NIAUR shall as soon as reasonably practicable and in any event before the relevant meeting of the Supplier Forum at which the Application for Derogation is to be considered, provide such representations and objections to the Parties by e-mail or in writing.

## Where a Party is granted a derogation by NIAUR in accordance with this Clause 11, that Party shall be excused from complying with the obligations specified in the terms of that derogation, and shall be deemed not to be in breach of this Agreement for failing to comply with the relevant obligations for the term of the derogation, but shall be required to comply with any modified obligations which are specified as a condition of the derogation.

# **Contract Management**

## Each Party shall appoint an appropriate person (each a "**Senior Manager**" and together the "**Senior Managers**") to manage all matters arising under or in connection with this Agreement and to monitor the general operation of this Agreement.

## Each Senior Manager appointed by a Party shall ensure that procedures are in place in respect of that Party to ensure that there is adequate support for operations provided under this Agreement and timely resolution of problems that may occur, including a point of contact to process and resolve such problems.

## At times determined by NIAUR a meeting of Senior Managers shall be convened to discuss Operational Issues, with particular regard to inter‑operability issues and performance of third parties.

## Each Party shall notify the other Parties, NIAUR and the Change Control Administrator of the name and contact details of the Senior Manager appointed by it for the purposes of this Agreement from time to time.

## A copy of this Agreement shall be provided by NIAUR to any person requesting the same upon payment of an amount not exceeding the reasonable cost of making and providing such a copy.

# **Entire Agreement**

## This Agreement and any document referred to herein represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and without prejudice to the generality of the foregoing excludes any warranty, condition or other undertaking implied at law or by custom.

## Each Party confirms that, except as provided in this Agreement and without prejudice to any liability for fraudulent misrepresentation, no Party has relied on any representation, warranty or undertaking which is not contained in this Agreement or any document referred to herein.

# **Severability**

If any provision of this Agreement shall be held to be invalid or unenforceable by a judgment or decision of any court of competent jurisdiction or any authority (including NIAUR) whose decisions shall be binding on the Parties, the same shall be deemed to be severable and the remainder of this Agreement shall remain valid and enforceable to the fullest extent permitted by law. In any such case, the Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid or unenforceable provision in order to give effect, so far as practicable, to the spirit of this Agreement.

# **No Partnership or Agency**

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.

# **Further Assurance**

Each Party shall and shall use all reasonable endeavours to procure that any necessary third party shall promptly execute and deliver such documents and perform such acts as may reasonably be required for the purposes of giving full effect to the terms of this Agreement.

# **Waivers**

The failure by any Party to exercise, or the delay by any Party in exercising, any right, power, privilege or remedy provided by this Agreement or by law shall not constitute a waiver thereof nor of any other right, power, privilege or remedy. No single or partial exercise of any such right, power, privilege or remedy shall preclude any further exercise thereof or the exercise of any other right, power, privilege or remedy.

# **Assignment and Sub‑Contracting**

## Subject to Clauses 18.2 and 18.3, and except as provided elsewhere in this Agreement, no Party shall assign any of its rights under this Agreement without the prior written consent of all other Parties, such consent not to be unreasonably withheld or delayed.

## Subject to Clauses 7.8 and 7.9, any Party may transfer its rights and obligations under this Agreement to any successor holder of its Supply Licence (or part thereof, as appropriate) provided that:

### NIAUR has approved the transfer of such Supply Licence pursuant to the Order; and

### the successor holder executes an Accession Agreement with the other Parties to this Agreement.

## If Clause 18.2.2 applies, upon execution of the Accession Agreement, the successor holder shall become a Party for all purposes of this Agreement from the date specified in the Accession Agreement. To the extent that a Party has effectively transferred its rights and obligations under this Agreement to a successor holder of its Supply Licence pursuant to Clause 18.2, the transferring Party will have no further rights and obligations pursuant to this Agreement (but such transferring Party shall remain bound by the provisions of this Agreement up to the point of transfer of such rights and obligations).

## Any Party may sub‑contract or delegate the performance of all or any of its obligations under this Agreement to any appropriately qualified and experienced third party, but shall at all times remain liable to any other Parties in relation to all sub‑contracted or delegated obligations.

## Each Party shall notify other Parties, on request, of any subcontractors appointed by it for the purposes of this Agreement.

# **Notices**

## Any notice, request, claim form or other communication to be made under or in connection with this Agreement shall be in writing and shall be delivered by hand or by fax or by first class post, or (provided this Agreement expressly so provides) sent by e-mail, to that Party's address as included in Schedule 1 as may be varied from time to time by notice from a Party to all other Parties (marked for the attention of the Senior Managers) and notified to NIAUR in accordance with the terms of this Clause.

## Unless otherwise stated in this Agreement, a notice, request or other communication sent in accordance with Clause 19.1 shall be deemed received:

### if delivered by hand, when left at the address referred to above;

### if sent by post, 2 Working Days after the date of posting;

### if sent by fax, upon production by the sender's equipment of a transmission report indicating that the fax was sent to the fax number of the recipient in full without error;

### if sent by e-mail upon receipt by the sender of a delivery receipt e-mail message which states that the e-mail has been successfully delivered to the recipient.

## Without any prejudice to Clause 19.2, notice, request or communication sent by e-mail shall also be sent by hand, by post or by fax.

## This Clause 19 shall apply mutatis mutandis to NIAUR save that their address and details shall be as set out below or varied from time to time by notice from such persons to the other Parties in accordance with the terms of this Clause 19.

**NIAUR**

Address: Queens House, 14 Queen Street, Belfast, BT1 6ED

Fax: 44 (0) 28 9031 1740

E-mail: info@ureg.gov.uk

# **Audit and Records**

## Subject always to the scope of NIAUR’s statutory powers and duties, on request by NIAUR each Party shall ensure that any auditor appointed by NIAUR has access at reasonable times and on reasonable notice to:

### any records maintained by that Party in relation to any Supply Meter Point for which it is or has been Registered in the 24 months prior to that date;

### any records maintained by it in relation to any Supply Meter Point comprised in its Supply Licence in the 24 months prior to that date;

### any software, hardware, data or information held by the Party or its agents where reasonably required by the auditor; and

### the Party’s Premises.

## Each party will comply with any reporting requirements in relation customer switching in the Greater Belfast Licensed Area, the Ten Towns Licensed Area and the West Licensed Area as determined from time to time by NIAUR dependent on the maturity of competition in the relevant licensed area.

# **Counterparts**

This Agreement may be executed in any number of counterparts each of which when executed and delivered shall be an original, but all the counterparts together shall constitute the same document.

# **Contracts (Rights of Third Parties) Act 1999**

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

# **Governing law**

## This Agreement is governed by, and shall be construed in accordance with Northern Ireland law and the Parties submit to the exclusive jurisdiction of the courts of Northern Ireland.

## Each Party agrees that without preventing any other mode of service, any document in an action including any writ of summons or other originating process or any third party or other Party notice) may be served on any Party by being delivered to or left for that Party at its address for service of notices and each Party undertakes to maintain such an address at all times in the United Kingdom and to notify the other Party in advance of any change from time to time of the details of such address in the manner prescribed in Clause 19.

**IN WITNESS WHEREOF** this Agreement has been duly executed and delivered as a deed by the duly authorised representatives of the Parties on the date stated at the beginning.

**EXECUTED** as a **DEED** by )

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

acting by (authorised signatory) )

in the presence of: )

Name of Witness …………………………….

Occupation of Witness…………………….

Address of Witness………………………….

**EXECUTED** as a **DEED** by )

**FIRMUS ENERGY SUPPLY LTD**  )

acting by (authorised signatory) )

in the presence of: )

Name of Witness …………………………….

Occupation of Witness…………………….

Address of Witness………………………….

**EXECUTED** as a **DEED** by )

**PHOENIX SUPPLY LTD**  )

acting by (authorised signatory) )

in the presence of: )

Name of Witness …………………………….

Occupation of Witness…………………….

Address of Witness………………………….

**EXECUTED** as a **DEED** by )

**POWER AND GAS VENTURES LTD**  )

acting by (authorised signatory) )

in the presence of: )

Name of Witness …………………………….

Occupation of Witness…………………….

Address of Witness………………………….

**EXECUTED** as a **DEED** by )

**VAYU LTD**  )

acting by (authorised signatory) )

in the presence of: )

Name of Witness …………………………….

Occupation of Witness…………………….

Address of Witness………………………….

**EXECUTED** as a **DEED** by )

**VIRIDIAN ENERGY SUPPLY LTD (Energia)** )

acting by (authorised signatory) )

in the presence of: )

Name of Witness …………………………….

Occupation of Witness…………………….

Address of Witness………………………….

**EXECUTED** as a **DEED** by )

**AIRTRICITY ENERGY SUPPLY (NI) LTD** )

acting by (authorised signatory) )

in the presence of: )

Name of Witness …………………………….

Occupation of Witness…………………….

Address of Witness………………………….

1. This Agreement has been amended to include the West Licensed Area. Responsibilities upon each Supplier in respect of this area will only apply in the event that a Supplier’s licence includes the West Area as an authorised area of the licence. [↑](#footnote-ref-1)