

Dated the [] day of [] 20[]

(1) ELECTRICITY SUPPLY BOARD

-AND-

(2) []

EXTRANET ACCESS AGREEMENT

(ESB Networks Retail Market Participant Extranet)

**Document No: DOC-290212-BLF.
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CONTRACT DOCUMENT

THIS AGREEMENT is made on the [] of [] 20[]

BETWEEN

- (1) **ELECTRICITY SUPPLY BOARD**, a statutory corporation having its principal place of business at 27 Lower Fitzwilliam Street, Dublin 2, Ireland (hereinafter referred to as "ESB") which expression shall include its assigns and legal successors in title under any restructuring of ESB by the Government of the Republic of Ireland of the One Part; and
- (2) [] a company incorporated in the Republic of Ireland under Registration No. [] whose registered office is situate at [](hereinafter referred to as the "Market Participant" which expression shall include each of its employees, agents and subcontractors, legal successors in title or permitted assigns).

WHEREAS:

- A. The Market Participant is licenced or otherwise authorised to deal with customers in the electricity market of the Republic of Ireland.
- B. ESB has agreed to permit the Market Participant the right to access, use and interact with the Networks Extranet on the terms and subject to the conditions of the Agreement.
- C. This Contract Document together with the Terms and Conditions and the Administration Procedures shall form the Agreement between the parties. Terms shall have the meanings as set forth in clause 1 of the terms and Conditions set forth in Schedule 1 hereto.

IT IS AGREED by the parties hereto that in consideration of the mutual undertakings herein each party shall be bound by and strictly adhere to each of the provisions of the Agreement.

In the event of any conflict between the Terms and Conditions and the Administration Procedures then the Terms and Conditions shall prevail.

All the information contained in the Agreement is confidential and proprietary information and must not be disclosed to any other party without the prior consent and authority of ESB.

IN WITNESS whereof the parties hereto have entered into the Agreement the day and year first herein written:-

SIGNED for and on behalf of
ELECTRICITY SUPPLY BOARD:

SIGNED for and on behalf of
[]:

witnessed by:

witnessed by:

SCHEDULE 1

Terms and Conditions

1. Interpretation

1.1 Definitions

“Access”	means the Market Participant’s access that is provided electronically via Networks Extranet;
“Administration Procedures”	means the procedures set forth in the document entitled ‘Administration of the Retail Market Participant Extranet website’ issued by ESB as may be amended by notice from ESB from time to time;
“Agreement”	means the Contract Document, the Terms and Conditions, the Administration Procedures and each Schedule and Appendix thereto or hereto;
“Commencement Date”	means [] [] 20[];
“Contract Document”	means the document entitled contract document executed by the parties to which these Terms and Conditions are attached;
“Data Protection Acts”	means the Data Protection Acts 1998, the European Communities (Data Protection) Regulations, 2001, the European Communities (Privacy and Data Protection in Telecommunications) Regulations, 2002 as may be amended, modified, extended or consolidated by the introduction into law of the Data Protection Act 2003;
“Default Password”	means a series of letters or numbers assigned to each Market Participant by ESB in order to gain Access in conjunction with the User Name;
“ESB Networks Administrator”	means the person(s) nominated by ESB pursuant to clause 3.1 below;
“ESB Networks Data”	means information and data including, but not limited to Personal Data, processed or intended to be processed by the Market Participant under the Agreement;

“Market Participant”	means the party (other than the ESB) to the Contract Document which has access and use of the Networks Extranet;
“Market Participant Administrator(s)”	means the person(s) nominated by the Market Participant pursuant to clause 4.1 below;
“Networks Extranet”	means the Retail Market Participant extranet website provided by ESB or any substitute or replacement thereof;
“Personal Data”	means personal data as defined by the Data Protection Acts;
“Registration Process”	means the registration process to be completed by a Market Participant to facilitate setting up the initial user database for the Networks Extranet as detailed in the Administration Procedures;
“Terms and Conditions”	means the terms and conditions as set forth in this Schedule 1;
“User”	means any person authorised in writing to ESB by the Market Participant Administrator to use the Networks Extranet, including without limitation, any Market Participant Administrator;
“User Name”	means the unique username for an individual User advised by the Market Participant Administrator to ESB; and
“User Password”	means a series of letters or numbers chosen by the User in order to obtain the Access.

1.2 Any reference in these Terms and Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.

2. Access

- 2.1 With effect from the Commencement Date, the ESB shall provide the Market Participant with access to the Networks Extranet on the terms and subject to the conditions of the Agreement.
- 2.2 The Market Participant must complete the Registration Process in order to commence Access.
- 2.3 The computing infrastructure used by the Market Participant to obtain Access shall be the responsibility of the Market Participant. Upkeep and servicing of such computing equipment shall be the Market Participant's sole responsibility.
- 2.4. The Market Participant undertakes that only Users shall be entitled to gain Access.
- 2.5 The Market Participant shall inform ESB forthwith of any change in access requirements that should be put in place, including, without limitation, cases where an employee with Access should leave the Market Participant's employment or where the Market Participant wishes to terminate any User's Access.

3. ESB Networks Administrator

- 3.1 ESB shall nominate the ESB Networks Administrator to interact exclusively with the Market Participant in relation to the Access. The ESB Networks Administrator's sole point of contact with the Market Participant shall be the Market Participant Administrator(s).
- 3.2 The role of the ESB Networks Administrator is set out in the Administration Procedures.

4. Market Participant Administrators

- 4.1 The Market Participant shall nominate at least two persons to act as a Market Participant Administrator(s) in relation to the Access.
- 4.2 The Market Participant Administrator(s) shall liaise with the ESB Networks Administrator on behalf of the Market Participant and the Users. The Market Participant agrees and undertakes to ensure that any contact with the ESB in relation to Access shall be by a Market Participant Administrator with the ESB Networks Administrator.
- 4.3 The role of the Market Participant Administrator(s) is set out in the Administration Procedures.

5. ESB's Obligations

- 5.1 ESB shall:-

- 5.1.1 exercise reasonable care in compiling the Networks Extranet site;
- 5.1.2 use reasonable efforts to make the site available to a Market Participant at all times;
- 5.1.3 take reasonable steps to ensure that the access procedures and other security features of Access are in line with industry practice;

provided however that the ESB shall be entitled, without any liability, to carry out ongoing maintenance, updating or alterations to the Networks Extranet that may result in loss of Access from time to time without prior notice.

- 5.2 The Market Participant acknowledges and accepts that ESB neither represents nor warrants that:-

- 5.2.1 Access or any part of it shall be uninterrupted, reliable or fault free;
- 5.2.2 the Networks Extranet or any of its contents shall be accurate, complete, suitable for any purpose or reliable;
- 5.2.3 any Access (whether or not provided by ESB) shall be provided with due care and skill.

- 5.3 ESB excludes all liability (whether arising in contract, tort or otherwise and whether or not due to any negligence on the part of the ESB) including, without limitation, for loss or damage (whether direct, indirect or consequential loss, including loss of profit) compensatory loss of data, income or profit, loss of or damage to property and claims of third parties as a result of use of the Networks Extranet including but not limited to:-

- 5.3.1 any technical, factual, textual or typographical inaccuracies, errors or omissions on or relating to the site or any information on the site;
- 5.3.2 the unavailability of the site, or any part of it;
- 5.3.3 any person acting, or refraining from acting, as a result of data contained in the Networks Extranet;
- 5.3.4 any virus passed on or introduced to the Market Participant as a result of accessing the Networks Extranet.

- 5.4 The Market Participant acknowledges that the very nature of communication via the internet restricts ESB from offering any guarantee to the privacy or confidentiality of information relating to the Market Participant passing over the internet. In gaining the Access via the internet, the Market Participant acknowledges and accepts that electronic communication may not be free from interference by

unauthorised persons and may not remain confidential. The Market Participant therefore accepts that the use of the Access is at its own risk.

- 5.5 Each of the exclusions or limitations contained in this clause 5 shall be construed as a separate and severable provision of the Agreement.
- 5.6 Save as expressly set out in the Agreement, all representations, warranties, terms and conditions, whether oral or written, express or implied by law, custom, statute or otherwise and including, but not limited to, satisfactory quality or fitness for any particular purpose are excluded.

6. Warranties and Indemnity

- 6.1 The Market Participant undertakes, represents and warrants that:-
 - 6.1.1 the Access shall only be used for the use and purpose for which it is intended;
 - 6.1.2 information from the Networks Extranet site shall not be passed to any other parties unless strictly in discharge of the Market Participant's obligations under any applicable law and provided that prior notice in writing is given to ESB;
 - 6.1.3 no information obtained from the site shall be sold or otherwise transferred on to other parties;
 - 6.1.4 the Username, the Default Password and the User Password shall remain confidential and to forthwith notify the ESB of any unauthorised use of them or any breach of security regarding the Access;
 - 6.1.5 it has all necessary computing infrastructure to avail of the Access;
 - 6.1.6 it shall provide appropriate training to Market Participant Administrator(s) and Users in relation to the Access;
 - 6.1.7 it shall take all necessary steps to ensure that only Users have Access;
 - 6.1.8 to apply security measures in line with industry best practice against unauthorised access to or alteration, disclosure or destruction of the ESB Networks Data and against its accidental loss or destruction, including without limitation taking all necessary steps to ensure that all Users are aware of and comply with those measures;
 - 6.1.9 measures will be in place in line with industry best practice to ensure that harmful viruses are not introduced to the ESB environment in the course of using the Access;

6.2 The Market Participant shall indemnify and keep the ESB, its officers, board members, agents, employees and sub-contractors, fully indemnified against all losses, liabilities, damages, claims, actions, causes of action, and expenses of any nature for injury or death of any person or damage to property or any claims brought against the ESB by third parties arising out of the breach or negligent performance or failure in performance by the Market Participant of the terms of the Agreement.

7. Security Measures

7.1 ESB acknowledges the security issues involved in providing the Access and to this extent shall implement reasonable security measures.

8. Confidentiality

8.1 The Market Participant undertakes to the ESB:-

8.1.1 to keep confidential all information concerning the business and affairs of the ESB and/or its affiliated companies, Personal Data or any other information on the Networks Extranet that the Market Participant shall have obtained or received as a result of the discussions leading up to or the entering into or performance of the Agreement or as a result of Access (the "Confidential Information"), including without limiting the generality of the foregoing, the Default Password, the Username and User Password;

8.1.2 to exercise the same degree of care and discretion to avoid unauthorised disclosure, publication or dissemination of all Confidential Information as the Market Participant exercises to protect its own confidential information that it does not wish to disclose and not to copy or permit others to copy any information except as reasonably necessary to undertake this Agreement, all of which copies shall be treated in accordance with this standard;

8.1.3 not without the ESB's prior written consent to disclose Confidential Information in whole or in part to any other person save those personnel who have a need to know the same for the purpose of performance of the Access;

8.1.4 to use the Confidential Information wholly in accordance with all applicable laws and solely in connection with its declared business, its role as Market Participant and the electricity market of the Republic of Ireland; and

8.1.5 not to publish or cause to be published orally or in writing to the public or any section of the public any of the Confidential Information or any matter concerning the Agreement or the internal affairs of the ESB whether confidential or not without the prior written permission of the ESB.

- 8.2 The Market Participant may disclose Confidential Information to the extent required by law provided however that the Market Participant shall give to the ESB prior written notice of and the reasons for such disclosure.
- 8.3 This undertaking does not apply to Confidential Information (i) which at any time is or comes into the public domain, (ii) which was lawfully in the possession of the Market Participant prior to disclosure; (iii) which at any time after the Agreement commences comes lawfully into the Market Participant's possession from a third party without obligations of confidentiality owed to the ESB; or (iv) which is information already in the possession of the person to whom the information relates for example informing customers of their own meter location.
- 8.4 The provisions of this clause shall survive for two (2) years following the termination or expiry of the Agreement.

9. Data Protection

- 9.1 Where processing of Personal Data, the Market Participant agrees and undertakes to ESB to comply with all security obligations under the Data Protection Acts and all other applicable provisions thereof.
- 9.2 The Market Participant hereby guarantees to the ESB that adequate and appropriate security measures are in place to guard against unauthorised access, unauthorised alteration, disclosure or destruction of Personal Data or data gained from Access.
- 9.3 The ESB's data remains the property of the ESB.
- 9.4 In the event of a breach of this clause 9 or clause 11 by the Market Participant, the Market Participant undertakes to fully indemnify the ESB for all claims, fines, penalties, losses, expenses or liabilities imposed on ESB which are arising therefrom.

10. Insurance

- 10.1 The Market Participant shall at all times insure and keep itself insured with a reputable insurance company against all insurable liability under the Agreement. The Market Participant shall provide all facilities, assistance and advice required by the ESB or the ESB's insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Market Participant's performance of the Agreement.

11. Intellectual Property Rights

- 11.1 All rights, including all intellectual property rights, in the design, text, graphics and other material on the Networks Extranet and the selection or arrangement thereof are owned by ESB. Permission is granted hereby to electronically copy and print in

hard copy parts of the Networks Extranet site solely in connection with the use of the Access. Any other use of materials on the Networks Extranet site (including reproduction for the purposes other than those noted above and alterations, modifications, distribution or republication) without the prior written permission of the ESB is strictly prohibited.

12. Force Majeure

12.1 ESB shall not be liable for any breach of the Agreement or any failure to provide or delay in providing the Access through the Networks Extranet site resulting from any event or circumstance beyond ESB's reasonable control including, without limitation, strikes, lockouts and other industrial disputes, breakdown of systems or network access, fire, explosion or accident.

13. Compliance

13.1 The Market Participant shall comply with all requirements and/or obligations of any statute, statutory instrument, rule, order, regulation, directive and/or byelaw laid down by legislation, Government Departments and/or EU Bodies dealing with and relating to the Access or any provision of this Agreement.

14. Governing Law

14.1 The Agreement shall be governed by and shall be read and construed in all respects in accordance with the laws of the Republic of Ireland and each of the parties hereto submits to the non-exclusive jurisdiction of the Republic of Ireland Courts

15. Waiver

15.1 No waiver by the ESB of any breach of the Agreement by the Market Participant shall be considered as a waiver of any subsequent breach of the same or any other provision.

16. Validity

16.1 If any provision of the Agreement is held by any competent authority to be invalid or unenforceable in whole or part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.

17. Relationship

17.1 Nothing in the Agreement shall constitute or shall be deemed to constitute a partnership between the parties hereto or constitute or be deemed to constitute the Market Participant as agent of the ESB or to contract in the name of or create a liability against the ESB in any way or for any purpose.

18. Scope of Authority

- 18.1 The Market Participant shall not be the ESB's agent and shall not make any contracts on the ESB's behalf or bind the ESB to any obligation or in any way act as an agent of the ESB.
- 18.2 The Market Participant shall not, without the prior written approval of the ESB represent itself as being in any way connected with or interested in the business of the ESB.

19. Disputes and Arbitration

- 19.1 The ESB and the Market Participant agree that any dispute which arises concerning the interpretation of the Agreement and/or the performance of the Access shall be mutually resolved through good faith negotiations between the appointed representatives of each party. If any dispute cannot be resolved in such manner then the matter shall be referred to a senior arbitrator to be agreed upon by the parties or in default of agreement to be nominated by the President for the time being of the Incorporated Law Society of Ireland in accordance with and subject to the provisions of the Arbitration Acts 2010 or any statutory modifications or re-enactment for the time being in force. The award of the said arbitrator shall be final and binding on both parties hereto.
- 19.2 The progress of the Access shall not be delayed or suspended pending the resolution of any dispute.

20. Termination

- 20.1 Without prejudice to any other rights or remedies to which it may be entitled, the ESB shall be entitled to terminate the Agreement forthwith without liability to the Market Participant by giving notice to the Market Participant at any time if:-
- 20.1.1 the Market Participant commits a material breach of any of the terms or conditions of this Agreement and if such breach is capable of being remedied fails to remedy the breach within thirty days of notice given by the ESB requiring the Market Participant to do so; or
 - 20.1.2 there is a change in control of the Market Participant; or
 - 20.1.3 the Market Participant convenes a meeting for the purpose of or proposes to enter into any arrangement or composition for the benefit of its creditors; or
 - 20.1.4 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Market Participant; or

- 20.1.5 the Market Participant ceases, or threatens to cease, to carry on business or takes or suffers any similar analogous action under any other applicable law; or
- 20.1.6 the Market Participant is unable to pay its debts within the meaning of Section 214 of the Companies Act, 1963 (as amended by Section 123 of the Companies Act, 1990) or analogous provision of law; or
- 20.1.7 any representation herein contained by the Market Participant shall in the opinion of the ESB prove to be untrue or incorrect in any respect as of the date when made; or
- 20.1.8 an order is made or an effective resolution is passed for the winding up of the Market Participant's Company other than for the purpose of an amalgamation or reconstruction the terms of which have been agreed by the ESB; or
- 20.1.9 a petition is presented or an Order is made or a resolution passed or any analogous proceedings or action is taken for the appointment of an examiner, administrator, administrative receiver, trustee or any similar officer over the Market Participant's Company; or
- 20.1.10 the ESB reasonably believes that any of the events mentioned above is about to occur in relation to the Market Participant and notifies the Market Participant accordingly; or
- 20.1.11 the relevant supply licence of the Market Participant is withdrawn, revoked or not renewed; or
- 20.1.12 the ESB is directed by the Commission for Energy Regulation or any other relevant authority to terminate the Agreement.

21. Assignment

- 21.1 The Market Participant shall not be entitled to assign, novate or otherwise transfer part or all of the Agreement to any other party without the prior written consent of ESB. However, ESB shall, without any requirement for consent from the Market Participant, be entitled to assign, novate or otherwise transfer the Agreement to another entity responsible for administering the Networks Extranet following any direction from a relevant and applicable legal authority.