

DEED OF UNDERTAKING

BETWEEN

Electricity Supply Board, a statutory corporation having its principal place of business at 27 Fitzwilliam Square, Dublin D02 KT92 (**ESB**); and

ESB Networks DAC, a company registered in Ireland under company number whose registered office is at Three Gateway, East Wall Road, Dublin D03R583 (the **Company**).

WHEREAS

- (a) The Company is the licensed Distribution System Operator (**DSO**), pursuant to the distribution system operator licence (the **Licence**) granted by the Commission for the Regulation of Utilities (**CRU**) under Section 14(1)(g) of the Electricity Regulation Act 1999 as amended (the **Act**);
- (b) The Company is a subsidiary of ESB, which is a vertically integrated undertaking (**VIU**), having generation and supply interests;
- (c) Under the DSO licence, and in furtherance of applicable EU and national legislative requirements requiring unbundling of the DSO from a VIU, the Company is subject to strict business separation obligations, including a requirement for operational and managerial independence from its Affiliates, Related Undertakings and its shareholder, and requirements for ring-fencing of staff, personnel and assets;
- (d) For completeness, ESB is the owner of the distribution system and transmission system, holding the Distribution System Owner (also known as Distribution Asset Owner or **DAO**) licence issued by CRU pursuant to Section 14(1)(k) of the Act and the Transmission System Owner (also known as Transmission Asset Owner or TAO) licences issued by CRU pursuant to Section 14(1)(g) of the Act. The TAO and DAO functions are also subject to strict ring-fencing requirements.
- (e) In accordance with arrangements approved by the CRU in the interests of economic efficiency, the licensed functions of the Company as DSO, and of ESB as DAO and TAO are carried out by ESB staff dedicated to the ring-fenced business unit of ESB known as ESB Networks, and managed by the Company.
- (f) As required under Regulation 6 of the European Communities {Internal Market in Electricity} (Electricity Supply Board) Regulations 2008, and Condition 3 of the Licence, ESB and the Company have entered into an Operating Agreement and Personnel Agreement setting out the terms on which ESB and the Company set out their respective roles as DAO and DSO, and the basis on which ESB provides staff to the ESB Networks business unit, to carry out DSO functions under the direction of the Company;
- (g) The Parties have also entered into a Memorandum of Understanding ("the **MOU**") setting out how ESB exercises its corporate governance and supervisory rights in respect of the Company in accordance with the licence ring-fencing requirements;

- (h) The Undertakings set out in his Deed are provided pursuant to engagement between the Company and the CRU in the context of the DSO's fifth price control period (PR5), in which the CRU has provided an incentive for increased independence of the DSO. The intention of these legally binding undertakings from ESB for the benefit of the Company is to complement and enhance the existing measures that are in place.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. INTERPRETATION

Capitalised terms used in this Deed of Undertaking which are not defined in this Deed shall have the meaning set out in the Licence.

Undertaking 1: Provision of Information

2. ESB hereby undertakes for the benefit of the Company that it will (to the extent permitted by applicable law and licence obligations), procure that each of its subsidiaries (other than the Company) will, give to the Company all such information as may be necessary to enable the Company to comply fully with Condition 25 of the Licence.

Undertaking 2: ESB to refrain from actions that would cause the Company to breach its Licence

3. ESB hereby undertakes for the benefit of the Company that it will, and it will (to the extent permitted by applicable law) procure that each of its subsidiaries (other than the Company) will, refrain from any action which would be likely to cause the Company to breach any of its obligations as DSO under the Licence, the Act, or the European Communities (Internal Market in Electricity) Regulations 2000 to 2008 (as amended).

Undertaking 3: Corporate Governance Role

4. ESB hereby undertakes for the benefit of the Company that it will not exercise its corporate governance role or supervisory rights in relation to the Company in a manner that intentionally or recklessly operates to restrict, prevent or distort competition in the supply of electricity in Ireland or generation of electricity on the island of Ireland

Undertaking 4: Confidential Information

5. In addition, and without prejudice to, the obligations of confidentiality set out at paragraph 84 of the MOU between ESB and the Company, the Operating Agreement and the Personnel Agreement with regard to commercially sensitive information, ESB hereby undertakes:
- (i) To implement such measures and procedures as are reasonably necessary to ensure the confidentiality of any Confidential Information (as defined in the Licence) which it receives from the Company or which otherwise comes into its possession through its role as shareholder or the provision of intra-group services (**Received Confidential Information**), including measures and procedures designed to ensure that Received Confidential Information is not shared with or disclosed to personnel employed or engaged in its generation or supply businesses;

- (ii) Not to use any Received Confidential Information for the purpose of gaining any unfair competitive or commercial advantage for the benefit of its generation or supply business;
- (iii) To adhere to the provisions of the ESB Networks Staff Code of Conduct with regard to maintaining confidentiality of Received Confidential Information; and
- (iii) To cooperate with the Company in ensuring that measures are in place to prevent personnel moving out of the DSO/ESB Networks business from continuing to access DSO Confidential Information as provided for in the ESB Networks Code of Conduct.

The obligations in this Section 5 shall not apply to Confidential Information described in Condition 21(4) of the Licence.

Review and Amendment

- 6. The Parties shall periodically review the content and operation of the Undertakings set out in this Deed.
- 7. Any amendments agreed by the Parties shall be in writing and reflected in an amended Deed, provided that the Parties shall not make changes which would operate to the detriment of the Company (unless approved in advance by CRU).

Expiry and Termination

- 8. Subject to any deed of amendment provided for under paragraphs 6 and 7, and to paragraph 9 below, the Undertakings given in this Deed shall not be capable of termination or revocation by ESB or by the Company unless agreed otherwise by the CRU.
- 9. The undertakings given in this Deed shall automatically expire (without prejudice to any rights accruing prior to expiry) on ESB ceasing to be a holding company of the Company.

Governing Law

- 10. This Deed shall be governed by, and construed in all respects in accordance with, Irish law and the parties submit to the jurisdiction of the courts of Ireland in respect of any dispute arising from this Deed.

Counterparts

- 11. This Deed may be executed in any number of counterparts, all of which taken together will constitute one and the same Deed and any party may enter into this Deed by executing a counterpart.

Executed as a Deed by ESB and ESB Networks DAC on the day and year first above written

Given under the common seal of

Electricity Supply Board and delivered as a deed:



Director




Company Secretary



PRESENT when the common seal of

ESB Networks DAC was affixed hereto:



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