SME Contract Conditions Northern Ireland

Schedule 1

1. DEFINITIONS

In these conditions the words below have the following meanings: "Us" "We" or "Our" means ESB Independent Energy (NI) Ltd Trading as ESBIE (NI) ELECTRIC IRELAND; "You" or "Your" means The Person or Company who has entered into this Agreement; "Agreement" means the Contract for the supply of electricity by Us to You incorporating any special conditions and which includes these Terms and Conditions; "Charges" means the amount(s) payable by You for: (a) the supply of electricity by Us (b) any costs associated with the supply of electricity by Us, and (c) any Pass Through Charges; "Commencement Date" is the date of execution of this Agreement; "Commitment Period" means a period of time, as determined by your chosen Price Plan, during which You commit to remain a customer of ESB; "Connection Agreement" means an agreement in terms of which You have the right for Your installation to be and to remain connected to the relevant system upon the terms and conditions of that agreement; "Date of Supply Commencement" is the date as indicated on the Agreement or the Registration Date as advised to Us by NIE; "Distribution System" means all electric lines of NIE, and includes any electric plant, transformers and switchgear of ESB which is used for conveying electricity to final customers including any Direct Line acquired by the DSO and for the avoidance of doubt, including the Company's Connection Equipment; "DSO" means the Distribution System Operator (currently NIE); "ECB Rate" means the European Central Bank main refinancing interest rate; "Force Majeure" means any event or circumstance beyond the reasonable control of the affected party but does not include inability to pay; "Installation" means any fixed appliances, wires, fittings, apparatus or other electrical equipment used for (or for purposes incidental to) the conveyance, control and use of electricity; "Maximum Import Capacity" means the maximum amount of electricity expressed in kVA (kilovolt-amps) supplied to You at the Point of Supply; "NIAUR" means the Northern Ireland Authority for Utility Regulation which is the regulator for the electricity, gas and water and sewerage industries in Northern Ireland; "NIE" means Northern Ireland electricity PLC which operates the local electricity network that delivers electricity to you premises and are responsible for Change of Supplier process in the competitive electricity market in Northern Ireland. "Pass Through Charges" means government imposed levies or charges or any fees costs or charges levied or imposed on Us by any third party, relating to the supply of electricity, and which We are entitled or obliged to pass on to You as a customer; "Point of Supply" means the point specified in the Connection Agreement or in an application to supply at a specified point as the point where electricity may flow between the local Distribution System and Your installation; "Price Plan" means a product or offering made available by Us from time to time "Register/Registration" means the registering by NIE of You as a customer; "Security" means a cash deposit as required by and subject to the terms set out by Us and/or any form of guarantee or letter of credit from an entity and in a form acceptable to Us; "Schedule of Prices" means the schedule of price components of electricity supplied to You by Us as varied from time to time; "Supplier" means a company or entity licensed to supply electricity by NIAUR; "Withdraw Supply" or "Withdrawal of Supply" or "Withdrawal of Point of Supply" and related terms means or refers to the removal of all or any of the Company's Connection Equipment in such a way that the Customer may not import or export electricity to or from the Distribution System and the terms "Disconnection", "Disconnected", "Disconnecting" and like terms shall be construed accordingly; "Last Resort Supply Direction" means a direction given by the Utility Regulator to another Supplier to assume responsibility for Supply to Your premises

2 SUPPLY OF ELECTRICTY

2.1 It is a condition of this Agreement that at all times You have a Connection Agreement with NIE for the Point of Supply and comply with its conditions. NIE has appointed Us to act as its agent to enter into a Connection Agreement with you on standard terms. You agree that, by entering into this Supply Agreement with Us, you are also entering into a Connection Agreement with NIE for connection of your premises to NIE's network. The terms of that Connection Agreement are the Standard Connection Terms and Conditions set out in the Appendix or otherwise attached to this Supply Agreement or otherwise provided to You or made known to You by Us. You are entitled to negotiate terms of connection of your premises to NIE's network that are not the same as the Standard Connection Terms and Conditions. If you wish to do so You must negotiate with NIE and not with Us about those terms but Your supply cannot commence until You have provided Us with evidence that there is a Connection Agreement in force for Your premises with NIE and You must inform Us if that Connection Agreement terminates.

2.1 The characteristics of the supply will be in accordance with the relevant Connection Agreement and the terms of this Agreement.

3.1 For the duration of this Agreement, all electricity passing through the Point of Supply will be supplied under this Agreement, notwithstanding the existence of any other supply agreement.

3. COMMENCEMENT

This Agreement shall commence on the Commencement Date subject to receipt by Us of a signed contract and any necessary Security required by Us. Subject to the terms of this Agreement, We shall supply electricity to You from the Date of Supply Commencement.

4. LIMITATION OF DEMAND

4.1 You are not entitled to take electricity through the Point of Supply in excess of the Maximum Import Capacity. If You do so, You shall pay to Us any additional costs (including additional Use of System Charges), losses or expenses incurred by Us in providing the additional electricity.

4.2 Queries or disputes in relation to the Maximum Import Capacity agreed between You and NIE shall not affect Your obligations under this agreement.

5. METERING AND BILLING

5.1 Electricity supplied shall be measured by metering equipment installed and maintained in accordance with the Connection Agreement.

5.2 The accounts in respect of the Charges payable by You to Us shall be issued by Us at regular intervals.

5.3 If it is discovered that any meter reading has been inaccurate or omitted or the translation of such readings into Charges has been incorrect then the amount of money due from either party shall be paid promptly at the next account.

5.4 If for any reason We have been unable to obtain meter readings, estimated readings will be used by Us and the resultant Charges will be paid by You subject to any adjustment, which may be necessary, following receipt of actual meter readings.

5.5 If electricity is supplied, but all or part of it is not registered by the metering equipment You shall pay a sum representative of the Charges which would have been due had the metering equipment registered accurately.

5.6 You shall notify Us within three working days of any change of company name or formation of a new company or if You in any way vacate the Premises specified in this Agreement or give up or share possession to or with any other occupier at the Premises and will either provide a meter reading, or arrange with Us in advance for a special meter reading, for the date on which the change takes place. If You fail to do so, any termination by You under this agreement will be of no effect and You will continue to be liable for outstanding Charges. You will remain liable for all Charges in respect of Your premises unless either (a) You terminate this agreement or (b) some other party agrees to take over the account."

6. SECURITY

6.1 We may request Security from You at any time should We consider it necessary and You shall provide such Security within 14 days of any such request.

6.2 Security Deposits will be refunded to you at the end of the 12- month contractual term, provided that bills have been paid on time and in full during that period.

7. PRICES

7.1 The prices offered by Us are based on Our current Schedule of Prices which may be varied by Us from time to time.

7.2 Prices are exclusive of Value Added Tax which shall be payable by You at the applicable rate.

7.3 If your Price Plan is a discount of or tracks a currently regulated Power NI tariff and such tariff is deregulated or is no longer published by Power NI then your Price Plan shall change to discount or track our equivalent standard tariff.

7.4 If the Price Plan You have chosen contains a Commitment Period, and during that Commitment Period another Supplier Registers or attempts to Register your Point of Supply, then We may, at our discretion, either:

I. raise an objection to such Registration in line with prevailing industry rules and practice; or

II. Re-Register Your Point of Supply. If after either of the above taking place, You still wish to move to another Supplier, we may, at Our discretion, agree to

such a move provided that you pay Us a sum equal to the number of months or parts of a month between the date that you Register with the new Supplier and the End of the Commitment Period, up to a maximum of 4 months, multiplied by Your average monthly charge (such amount to be calculated by Us, prior to Your moving). For clarity, in the event that such payment is not made and another Supplier Registers Your Point of Supply, We may, at our discretion, re-Register Your Point of Supply.

8. PAYMENT OFCHARGES

8.1 You must pay all Charges by the due date shown on your bill. Your liability continues until all sums due to Us on foot of this Agreement have been paid.

8.2 From time to time Your bill will be based on estimated readings. Estimated bills are deemed valid for payment and must be paid in full by the due date shown on your bill.

8.3 If any account is not paid in full by the due date, We shall be at liberty to withdraw or terminate any discounts that you receive following Us giving a minimum of 7 days notice to You of our intent to do so. In the event of continued non-payment We shall be at liberty to Withdraw electricity supply from You and/or to proceed in any lawful manner considered necessary for the recovery of the amount due.

8.4 We may require You to pay Your Charges by a payment method which is acceptable to Us.

8.5 If You have a business account with Us at another premises, We may transfer any debt owing to Us on closure of this account to Your other premises.

8.6 If any payment due to Us is overdue, interest shall be charged on the sum due from the due date, on a daily basis, at ECB Rate plus three percentage points (3%) and shall be payable from the due date until the date payment is received.

8.7 Backbilling

8.7.1 We shall not issue bills or otherwise seek to recover Charges from You in respect of electricity supplied where such Charges relate to a period extending beyond thirteen (13) months prior to the date of issue of the bill, except in the circumstances set out in clause 8.7.2.

8.7.2 The limitation set out in clause 8.7.1 shall not apply, and We shall be entitled to recover Charges for periods exceeding thirteen (13) months, where: (a) the bill was issued prior to 1 September 2020; (b) We have previously issued a bill for the relevant period and continue to seek payment for such bill; (c) We have been unable, despite having used all reasonable endeavours, to obtain an actual meter reading for the period to which the backbill relates, as further described in clause 5.4; (d) the backbill arises as a consequence of unlawful meter tampering, fraud, or theft, as referenced in clause 10.2.3.

8.7.3 This clause shall apply to microbusiness and SME Customers in accordance with the requirements of the Utility Regulator for Northern Ireland.

8.7.4 For the avoidance of doubt, Your obligations in respect of payment of Charges are further set out in clause 8.1, and the provisions of Section 5 and clause 10.2.3 shall apply.

9. TERMINATION

9.1 Subject to any terms and conditions in your Price Plan, You may end this Agreement by giving Us one month's notice in writing to ESBIE Electric Ireland, Building 2, Swift Square, Northwood, Santry, Dublin 9 or by Email to info@electricireland.ie and this Agreement will terminate on the expiry of that notice.

9.2 This Agreement may be terminated by Us at any time if You:

9.2.1 do not pay any valid account for Charges; or

9.2.2 breach this Agreement or the Connection Agreement and do not remedy the breach in accordance with this Agreement or the Connection Agreement whichever is applicable within a reasonable time after having received written notice of default; or

9.2.3 have made unauthorised use of electricity or committed theft of electricity; or

9.2.4 are unable to pay Your debts within the meaning of Section 123 of the Insolvency Act 1986 or enter into a scheme or arrangement with Your creditors, have a receiver, administrative receiver, manager or examiner appointed or are subject to an order or resolution winding up Your activities; or

9.2.5 fail to provide any requested Security or fail any credit check undertaken within four weeks of the Commencement Date.

9.3 Upon termination of this Agreement, You shall pay to Us all Charges on Your account up to the date of termination.

10. WITHDRAWAL OF ELECTRICTY SUPPLY

10.1 The Point of Supply may be withdrawn in accordance with the Connection Agreement or as a result of an event of Force Majeure.

10.2 The Point of Supply may also be withdrawn if You:

10.2.1 do not pay any valid account for Charges; or

10.2.2 breach this Agreement or the Connection Agreement and do not remedy the breach in accordance with this Agreement or the Connection Agreement whichever is applicable within a reasonable time after having received written notice of default; or

10.2.3 have made unauthorised use of electricity, or if You have committed theft of electricity; or

10.2.4 are unable to pay Your debts within the meaning of Section 123 the Insolvency Act 1986 or enter into a scheme or arrangement with creditors, have a receiver, administrative receiver, manager or examiner appointed or are subject to an order or resolution winding up Your activities.

10.3 Withdrawal of the Point of Supply under this condition shall be in accordance with the Connection Agreement and will continue until the circumstances giving rise to such withdrawal have been remedied to Our satisfaction. In addition to any requirements set out in the Connection Agreement, resumption of supply shall be conditional upon payment by You of any reconnection or withdrawal charges and/or the making of such Security as We may require, and if such remedy shall not be effected within such time as specified in the notice of default, this Agreement may be terminated by Us, by notice.

10.4 Action taken under these conditions shall be without prejudice to either party's subsisting rights.

11. CUSTOMER INSTALLATION

11.1 We shall accept no responsibility for the adequacy, safety or other characteristics of Your Installation.

11.2 All Installations, (other than Your installation) belong to NIE at all times and must be kept at the premises and used in line with Our or NIE's instructions. We accept no responsibility for maintaining any such Installation.

11.3 You must allow NIE authorised personnel, agents or contractors, at all reasonable times and at any time in an emergency, to enter any premises to which electricity is supplied for the purposes of reading, inspecting, testing, repairing, replacing or removing the meter or meters, Withdrawing Supply and for all other purposes in connection with supplying electricity. You must also give Us similar rights of access.

12. CODES AND OTHER LEGAL RULES

12.1 Both You and We will comply with the relevant provisions of the relevant Transmission, Trading & Settlement, Distribution and other Industry Codes and all statutory instruments, regulations and orders applicable.

13. LIABILITY

13.1 We shall not be liable to You for loss of profit, loss of bargain, loss of contract, loss of revenue, cost of capital, indirect, consequential or economic loss or damage whether arising in contract, tort, statute, indemnity or howsoever otherwise.

13.2 Our maximum aggregate liability whether arising in contract, tort, statute, indemnity or howsoever otherwise, shall not exceed £100,000 in any calendar year.

13.3 Neither You nor Us shall be liable for breach of these conditions directly or indirectly caused by Force Majeure.

13.4 Nothing in these terms and conditions shall exclude or limit the liability of either party for death or personal injury resulting from the negligence of that party or You for any sums due to Us under this Agreement.

13.5 The rights and remedies provided by the agreement to the parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies expressed or implied and provided by common law or statute in respect of the subject matter of the Agreement, including without limitation any rights either party may possess in tort which shall include without limitation actions brought in negligence and/or nuisance.

14. VARIATION

14.1 Both parties shall effect any amendments necessary to comply with the relevant provisions of the relevant, Distribution Code, Metering Code, Grid Code, Trading & Settlement Code and all statutory instruments, regulations and orders applicable to them and shall effect any amendment required to be made to the Agreement as a result of a change in any of the above.

14.2 We reserve the right to vary these terms and conditions to reflect any change in law, regulation, trading arrangement or industry rules which have a cost impact on Us.

14.3 In the event that any bulk power source used by Us to supply You is reduced or becomes unavailable as a result of force majeure, We reserve the right to supply you from an alternative source and in such event We shall be entitled to amend the Charges so as to recover any additional costs from you.

14.4 We reserve the right to change the source of the electricity underlying this agreement from renewable sources to non-renewable sources and to amend the Schedule of Charges and taxes levies and regulated charges appropriately such that the total amount payable by You is unchanged.

14.5 We may update these Terms and Conditions, including how charges are applied, to comply with regulatory obligations or business requirements.

14.6 You will receive written notice at least 21 days before any changes take effect, except for adjustments to pricing, which are managed under clause 7.1. Should you choose not to accept the revised Terms and Conditions, you may end this Agreement at any point prior to the effective date of the changes, notwithstanding clause 6.1, by following the process outlined in clause 9.

15. SEVERANCE

15.1 If any provision of this Agreement is held by a court or other competent authority to be unlawful, void or unenforceable, it shall be deemed to be deleted and the agreement shall remain in full force and effect as if the provision had not originally been contained in this agreement. If any such deletion is required, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory provision in place of the provision deleted unless the deletion defeats the original intention of the parties in which case either party may terminate this agreement.

16. CUSTOMER INFORMATION

16.1 We may use information about You for Our own business purposes, including building up a profile of Our customers, processing orders, account management and carrying out market research.

16.2 We may retain Your data for a reasonable period after You cease to be supplied with products or services but will not keep it for any longer than is necessary and/or as required by law.

16.3 We may record phone calls to Our customer contact centre for training and quality management purposes.

16.4 We may give Your information to the DSO and Our agents who carry out certain business activities (for example, market research and debt collection).

16.5 We or Our agents may from time to time, contact You in writing/by phone/Email/in person with information about other services and products offered by Us. If You would prefer not to be contacted in relation to such other services or products please phone NI Freephone number 0800 056 9914.

16.6 We will comply with Data Protection Legislation. In order to ensure that the data we collect and hold about You is accurate and correct, We may contact You from time to time to confirm the accuracy of Your details. If any of Your details are incorrect please let Us know and We will amend them.

17. MISCELLANEOUS

17.1 Both Parties shall take all reasonable steps (except where otherwise required by law) to keep confidential the contents of this Agreement and any information concerning the other party's business which that party may (by written notice) reasonably designate as confidential.

17.2 You agree that We may carry out credit checks on You and on any of Your directors, managers or owners at any time during this Agreement to the extent permitted by law.

17.3 This Agreement shall be interpreted, construed and governed by the laws of Northern Ireland.

17.4 Where a Last Resort Supply Direction has been issued by the Utility Regulator, in respect of this Agreement, Your Agreement with Us shall terminate on the effective date of the Direction.

18. DEEMED CONTRACT

18.1 A Deemed Contract comes into force where (a) a term contract expires and You continue to consume electricity at Your premises without entering into a new contract with Us or (b) You move into a premises (in respect of which We are the registered supplier) where the electricity supply has not been disconnected and You consume electricity at those premises without entering into a contract with Us.

18.2 These terms and conditions apply to the Deemed Contract, as stated above, except as set out in this Condition 18.

18.3 You are liable to pay Charges under a Deemed Contract. You will be charged at the rate(s) appropriate to Your premises and the configuration of your meter. We will inform you of the rate(s) being charged from time to time.

18.4 You are free to switch to another supplier at any time without notice or penalty. You continue to be liable/legally responsible for any money you owe us and for any electricity you use until the date your electricity supply has been transferred to the new supplier.

18.5 You may terminate a Deemed Contract at any time by contacting us and requesting that your premises be Disconnected. Although no penalty will apply, You remain liable to Us for Charges until the Disconnection has been affected.