

# Uisce Éireann Strategic Infrastructure Development

## Water Supply Project Eastern and Midlands Region

### Draft Water Abstraction Document

Version: Final

December 2025

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NOW IT IS HEREBY AGREED as follows: -

1. In this Abstraction Agreement words and expressions shall have the same meanings as are respectively assigned to them in the below Conditions ("the Conditions").
2. This Abstraction Agreement, including the rights and obligations of the Parties, shall come into force upon the Agreement Date.
3. In consideration of the mutual terms to be agreed between the Parties, ESB shall permit UE to abstract from the Impoundment, up to the Abstraction Amount of water at the Abstraction Point for the Purpose.

IN WITNESS WHEREOF the parties have executed this Abstraction Agreement as a deed in the manner required by their respective constitutions and the laws of their respective countries the day and date first hereinbefore written.

Present when the common seal of  
ELECTRICITY SUPPLY BOARD  
Was affixed hereto in the presence of:

\_\_\_\_\_  
\_\_\_\_\_

Witnessed By: \_\_\_\_\_

Present when the common seal of  
UISCE EIREANN  
Was affixed hereto in the presence of: :

\_\_\_\_\_  
\_\_\_\_\_

Witnessed By: \_\_\_\_\_

## CONDITIONS

### 1. DEFINITIONS

The following words and expressions shall have the meaning set out below:

- 1.1. "Abstraction" means the mechanical extraction of water from the Impoundment at the Abstraction Intake by UE.
- 1.2. "Abstraction Acts" means the Water Environment (Abstractions and Associated Impoundments) Act 2022 and all regulations made thereunder, as may be amended, extended or modified from time to time.
- 1.3. "Abstraction Agreement" means the Agreement (front part), these Conditions, the Schedules and the Appendices.
- 1.4. "Abstraction Amount" means the maximum rate in m<sup>3</sup>/s and the maximum daily volume in Megalitres/day of water UE is permitted to abstract from the Impoundment as more particularly specified in the Fourth Schedule.
- 1.5. "Abstraction for Commissioning and Testing" means the mechanical extraction of water from the Impoundment at the Abstraction Intake by UE prior to the Abstraction Operation Date, which shall be solely for the purposes of commissioning and testing the Abstraction Plant.
- 1.6. "Abstraction Intake" means the physical structure at the Abstraction Point which enables water to be abstracted from the Impoundment.
- 1.7. "Abstraction Licence" means a licence granted by the Agency under Sections 27, 35 or 44 of the Water Environment (Abstractions and Associated Impoundments) Act 2022.
- 1.8. "Abstraction Operation Date" means the date upon which ESB issues a written notice to UE confirming its satisfaction with the Abstraction Plant to commence operation.
- 1.9. "Abstraction Plant" means all of the plant, equipment and infrastructure, including the Abstraction Intake, constructed, owned or operated by UE at or on the Abstraction Plant Site that is shown hatched in yellow on the map appended hereto at Appendix A, that is installed or necessary for the abstraction of water from the Impoundment.
- 1.10. "Abstraction Plant Site" means the site for the Abstraction Plant outlined in red on the attached plan in Appendix A hereto.
- 1.11. "Abstraction Point" means the point at which an Abstraction takes place as more particularly shown on the map attached at Appendix A.
- 1.12. "Agreement Date" means the date of execution of this Abstraction Agreement.
- 1.13. "Agency" means the Environmental Protection Agency.
- 1.14. "Change in Control" means a change of control of UE or of a shareholder of UE, other than a change in control of UE or of a shareholder of UE from one Irish Government Minister to another Irish Government Minister, and for the purposes of this definition, "control" shall have the meaning ascribed to it in section 432 of the Taxes Consolidation Act 1997 (as amended from time to time).
- 1.15. "Commissioning and Testing Requirements" means the requirements of ESB that must be complied with by UE during the period that UE is conducting commissioning and testing of the Abstraction Plant, as detailed in the First Schedule.
- 1.16. "Dam" means all structural and non-structural components that control or manage the control of water at [Parteen Basin], including, without limitation, the concrete and earthen embankment structures, constructed to hold back or retain water and raise its level, forming the Impoundment used to generate electricity, as more particularly shown hatched in green on the map appended hereto at Appendix A. It also includes appurtenant structures and associated water control and monitoring equipment.
- 1.17. "Environment" means the environment generally, including air, the atmosphere, water (including inland waters, surface waters, groundwaters and water in pipes, drains or other

conduits), land (including without limitation soil, surface land and subsurface strata, seabed or river bed under any water), soil, any natural or man-made structures above, on or below ground, and all human, plant and animal life and living organisms or systems supported by those media. ).

- 1.18. "Environmental Laws" means all laws (whether criminal, civil or administrative) including common law, statutes, regulations, statutory instruments, directives, bye-laws, orders, codes and judgments having the force of law in Ireland or European Community Law concerning Environmental Matters (as hereinafter defined) and protection of the Environment (as defined) including without limitation, the Abstractions Acts, the Public Health (Ireland) Act 1878, the Air Pollution Acts 1987 and 2011, the Local Government (Water Pollution) Acts 1977 to 2007 , the Fisheries Acts 1959 to 2022, the Dangerous Substances Acts 1972 and 1979, the Litter Act 1982, the Litter Pollution Acts 1997 to 2009, the Safety, Health and Welfare at Work Acts 2005 to 2014, the Safety in Industry Acts 1955 to 1987, the Factories Act 1955, Planning and Development Acts 2000 to 2023, Building Control Acts 1990 to 2020, the European Communities Acts 1972 to 2012, the Waste Management Acts 1996 to 2011, the Environmental Protection Agency Acts 1992 to 2011 (including, in each case, any amendments thereto) and all regulations, bye-laws, orders and codes made thereunder.
- 1.19. "Environmental Licences" means any permit, licence, approval, consent, registration or other authorisation required by or pursuant to any applicable Environmental Laws or relating to Environmental Matters and includes an Abstraction Licence.
- 1.20. "Environmental Matters" means any matter relating to the Environment, human health or safety, health and safety of employees, health and safety of animal and plant life, sanitation and any matters relation to emissions, discharges, disseminations, releases or threatened releases of Hazardous Materials into the Environment or otherwise arising out of, or relating to, or resulting from the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.
- 1.21. "Hazardous Materials" means any pollutants, contaminants, radioactive, explosive, oxidising, flammable, toxic, harmful, corrosive, irritant, dangerous, hazardous, infectious, carcinogenic, teratogenic, etiologic, or mutagenic substances, materials, constituents, chemicals, preparations or wastes (including without limitation, petroleum or any by-products or fractions thereof, any form of natural gas, asbestos and asbestos-containing materials, or any derivations thereof, polychlorinated biphenyls ("PCBs") and PCB-containing equipment, radon or other radioactive elements, pesticides and defoliants) or any other meanings ascribed to such terms by any Environmental Laws.
- 1.22. "Health and Safety Laws" means all laws (whether criminal, civil or administrative) including common law, statutes, regulations, statutory instruments, directives, orders, codes and judgments having the force of law in Ireland or European Community Law including but not limited to Safety, Health and Welfare at Work Act 2005 (as amended), Safety, Health and Welfare at Work (General Application) Regulations 2007 (as amended) and Safety, Health and Welfare at Work (Construction) Regulations 2013 (as amended) (including, in each case, any amendments thereto) and all regulations, bye-laws, orders and codes made thereunder.
- 1.23. "Impoundment" means the reservoir owned by ESB situated at the Parteen Basin the subject of the Abstraction.
- 1.24. "Initiation of Commissioning and Testing Date" means the date on which ESB issues a written notice to UE confirming that it can proceed to commence Abstraction for Commissioning and Testing.
- 1.25. "Law" means any law (including Environmental Laws and Health and Safety Laws), regulation, ordinance, order, directive, notification, instruction, bye-law, guidance, code (including, but not limited to, any relevant code of practice regarding meter accuracy) or standard which is legally binding in Ireland (or part of it) from time to time. References to any statutory provision, enactment, order, regulation or other similar instrument in this Abstraction Agreement shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated

or re-enacted from time to time and shall include any orders, regulations, codes of practice, instrument or other subordinate legislation made under it.

- 1.26. "Longstop Date" means the earlier of (i) the date on which planning permission for WSP has been refused by An Bord Pleanála in circumstances where no further step can be taken by UE or a Court in respect of the application, or (ii) [the 31<sup>st</sup> of December 2040].
- 1.27. "Megalitre" means 1,000 m<sup>3</sup>.
- 1.28. "Metering Equipment" means all devices and apparatus used to measure, communicate and record the volume of water abstracted and the rate of water abstraction from the impoundment.
- 1.29. "Minimum Required Compensation Flow" means the minimum flow rate of water that ESB is required by Law and/or an Environmental Licence to release from the Impoundment downstream into the River Shannon.
- 1.30. "Minimum Water Level" means [32.7mOD] (metres above Ordnance Datum Poolbeg) as measured at [Parteen Weir]. This is the absolute minimum dam safety level that cannot be breached under any circumstances to ensure the safety and integrity of the Dam.
- 1.31. "Necessary Consent" means all planning, environmental, regulatory and other authorisations, licences, consents, permits or approvals necessary (from time to time) to allow UE to lawfully undertake its obligations under this Abstraction Agreement.
- 1.32. "Normal Operating Bands" means the operating bands set out in the Third Schedule.
- 1.33. "Operation and Maintenance Requirements" means the requirements set out in the Second Schedule.
- 1.34. "Ordnance Datum Poolbeg" means the vertical datum, defined as the low water of the spring tide at Poolbeg Lighthouse, Dublin, on April 8, 1837.
- 1.35. "Performance Security" means the security under Clause 7.
- 1.36. "Pollution" means pollution of the Environment due to the release or escape into the Environment of any Hazardous Material or any substance or article capable by reason of its nature and / or the quantity or concentration involved, of causing harm to the health of man (including offence to the senses) or harm to health of any living organism supported by the Environment and / or damage to property.
- 1.37. "Shannon Hydro Electric Scheme" means the scheme for the generation of electricity by means of hydraulic power at [Ardnacrusha, Co. Limerick], including, without limitation, [Parteen Weir dam, Fort Henry and Ardcooney dams, Lough Derg, the Impoundment, the headrace canal, Ardnacrusha power station, the tailrace canal, and all supporting infrastructure].
- 1.38. "Term" means the period of time commencing on the Agreement Date and ending on the earlier to occur of (i) the Longstop Date or (ii) the 99th anniversary of the Abstraction Operation Date, subject to earlier termination in accordance with the terms of this Abstraction Agreement.

## **2. INTERPRETATION**

- 2.1. References to clauses and schedules are to the clauses of, and schedules to, this Abstraction Agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 2.2. The schedules and appendices form part of this Abstraction Agreement and shall have effect as if set out in full in the body of this Abstraction Agreement.
- 2.3. Any words following the terms including, include, in particular, for example, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms. Where the context permits, other and otherwise are illustrative and shall not limit the sense of the words preceding them.
- 2.4. Unless otherwise specified, "day" or "days" shall be interpreted as referring to a calendar day for the purposes of this Abstraction Agreement.

- 2.5. Unless otherwise provided, a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force as at the date of this Abstraction Agreement. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Abstraction Agreement under that statute or statutory provision.

### **3. COMMENCEMENT AND DURATION**

- 3.1. This Abstraction Agreement shall be binding in its entirety following the Agreement Date.
- 3.2. Subject to Sub-Clause 3.5, this Abstraction Agreement will remain in full force and effect for the duration of the Term, after which it shall expire, unless an extension to the Term is agreed in writing by the Parties, or unless the Abstraction Agreement is terminated under the provisions for early termination in Clause 14.
- 3.3. ESB permits UE to commence Abstraction for Commissioning and Testing in accordance with the Commissioning and Testing Requirements on or after the Initiation of Commissioning and Testing Date.
- 3.4. ESB permits UE to commence the Abstraction of water for the Purpose on or after the Abstraction Operation Date for the duration of Term.
- 3.5. If the Abstraction Operation Date has not occurred by the Longstop Date, unless the Parties otherwise agree for extension of the Longstop Date, then this Abstraction Agreement shall automatically terminate and shall have no further effect, save for that UE shall be required to compensate ESB for the costs that it has incurred relating to the Abstraction from the Agreement Date up to the Termination Date.

### **4. UE OBLIGATIONS**

#### **4.1. Commissioning and Testing**

- 4.1.1. UE shall comply with the Commissioning and Testing Requirements in the First Schedule during Abstraction for Commissioning and Testing of the Abstraction Plant.
- 4.1.2. UE shall, prior to the Initiation of Commissioning and Testing Date, install and maintain appropriate warning signs and buoys to clearly identify the location of the Abstraction Intake to warn water users of the potential hazards associated with the Abstraction. The installation of such warning equipment shall be subject to the prior written approval of ESB.

#### **4.2. Operations and Maintenance**

- 4.2.1. Notwithstanding anything else in this Abstraction Agreement, UE shall:
  - 4.2.1.1. operate and maintain the Abstraction Plant in full compliance with the Operation and Maintenance Requirements set out in the Second Schedule;
  - 4.2.1.2. not abstract water in excess of the Abstraction Amount, which, for the avoidance of doubt shall prohibit the abstraction of water in excess of the maximum abstraction rate in m<sup>3</sup>/s or the maximum daily volume in megalitres;
  - 4.2.1.3. immediately notify ESB, where any condition, fault or issue, including relating to the operation or maintenance of the Abstraction Plant, is identified by UE that could potentially impact the integrity of the Dam. This includes any condition, fault or issue, that could contribute to ESB being unable to maintain the Minimum Required Compensation Flow, to the

water level in the Impoundment falling below the Minimum Water Level (32.7 mOD Poolbeg) or that could result in a Dam safety incident.

- 4.2.1.4. immediately cease or reduce the Abstraction, as directed by ESB, where the continued operation of the Abstraction may cause a risk to the safety of the Dam or may cause ESB to be unable to maintain the Minimum Required Compensation Flow or may cause ESB to determine that the water level in the Impoundment might fall below the Minimum Water Level (32.7 mOD Poolbeg) or where a Dam safety incident arises.

## 5. ESB RESERVED RIGHTS

- 5.1. ESB shall have the right to instruct UE to immediately cease the Abstraction or reduce the Abstraction Amount, which for the avoidance of doubt shall include a reduction in the maximum abstraction rate in m<sup>3</sup>/s and/or the maximum daily volume in megalitres, for such period as ESB requires, upon giving ten [10] calendar days prior written notice to UE, except in the case of an emergency, where such notice shall take effect immediately, where ESB believes that such action is necessary:

- to ensure the integrity and safety of the Dam, or
- to prevent the level of the Impoundment reducing below the Minimum Water Level (32.7 mOD Poolbeg),
- to maintain the Minimum Required Compensation Flow at any time;

Such notice shall set out the reasons for the reduction or cessation and the estimated duration that it will apply. UE shall comply with any such instruction from ESB.

- 5.2. ESB shall have the right to carry out whatever works or operations as it considers necessary so as to preserve the Minimum Required Compensation Flow and/or to prevent the level of the Impoundment reducing below the Minimum Water Level of 32.7 mOD Poolbeg at Parteen Weir, including such works or operations as it considers necessary to reduce or cease the Abstraction where UE fails to comply with a notice issued under Sub-Clause 5.1.
- 5.3. ESB shall have the right to implement such measures as required to comply with its legal obligations in relation to the Shannon Hydro Electric Scheme, including any obligations pursuant to its licence to generate electricity granted under the Electricity Regulation Act 1999 and/or as may be directed by the Commission for the Regulation of Utilities.
- 5.4. Subject to the Minimum Required Compensation Flow, ESB reserves the right to discharge water from the Impoundment
- 5.5. In the event that the Abstraction conflicts with the fulfilment of ESB's statutory obligations, ESB shall have the right to take such measures as are required to fulfil its statutory obligations, including the right to instruct UE to immediately cease or reduce the Abstraction for such period as ESB requires.
- 5.6. If UE fails to comply with a notice issued by ESB under Sub-Clause 5.1 within the timeframe stated therein, UE hereby consents to ESB entering the Abstraction Plant and the adjoining property within UE's possession, accompanied and assisted by UE's representative where so requested by ESB, to implement such measures as ESB considers necessary to the Abstraction Plant to fulfil the requirements of the notice, including the reduction or cessation of the Abstraction. ESB shall be entitled to seek and apply for the granting of equitable relief, including specific performance, should ESB be prevented in any way from gaining access to UE's property, including the Abstraction Plant and/or from implementing such measures as are required to fulfil the requirements of a notice issued under this Clause 5 and UE hereby consents to the granting of any such application.

## **6. LIMITATION OF LIABILITY**

- 6.1. UE's liability in contract or tort or otherwise howsoever arising, shall have no limitation whatsoever.
- 6.2. ESB shall not be liable to UE for any loss, damage or injury whatsoever, including but not limited to any loss of profits, revenue, loss of any contract or for any indirect or consequential loss, arising from or in connection with UE's use or reliance upon the water abstracted from the Impoundment or from the operation of the Abstraction Plant or arising from or in connection with the operation or maintenance of the Shannon Hydro Electric Scheme. Furthermore, ESB shall not be responsible or liable to UE for any failure, interruption, reduction discontinuance, suspension or interference whatsoever in the abstraction of water from the Impoundment. In addition, ESB shall have no responsibility or liability in respect of the availability of water or in respect of any particular quantity and/or quality of water at the Impoundment.

## **7. PERFORMANCE SECURITY**

- 7.1. UE shall issue to ESB, at its own cost, a third-party Performance Security to ensure the proper performance of UE's obligations under this Abstraction Agreement for the Term or to be renewed every five (5) years. The Performance Security shall be in the form of an on-demand performance bond in the amount of €1,000,000 ("the Bond Value"). The Bond Value shall be subject to adjustment every five (5) years following the Initiation of Commissioning and Testing Date, calculated in accordance with the Consumer Price Index (CPI), provided that any such adjustment shall not exceed a 5% increase in any single adjustment period. UE shall deliver the Performance Security to ESB prior to the Initiation of Commissioning and Testing Date. The Performance Security must be issued by a third party bank with a long-term credit rating of not less than A (Standard & Poor's) or A3 (Moody's Investors Services, Inc.), or by a financial institution authorised to carry on banking business in Ireland under EU Directive 2006/48/EEC, holding a long-term debt rating of not less than A- (Standard & Poor's) or A3 (Moody's Investors Services, Inc.) and shall be in the form set out in Appendix B. This Performance Security shall remain valid from the Initiation of Commissioning and Testing Date and shall endure or be renewed every five (5) years for the Term of this Abstraction Agreement. If the Performance Security becomes invalid or unenforceable or if the rating of the issuer of the Performance Security falls below the rating required by ESB, UE shall immediately notify ESB and further ensure that ESB receives a new Performance Security (at UE's cost) within 14 calendar days of such notification (or within 14 days of a request from ESB) in the form set out in Appendix B from a financial institution that meets the required rating. In the event that the Performance Security is required to be drawn down, a replacement Performance Security for the same value shall be issued within 14 days following the Performance Security being called in.

## **8. METERING EQUIPMENT**

- 8.1. UE shall, prior to the Initiation of Testing Date, provide and at all times maintain in good condition and satisfactory working order, at locations to be approved of in writing in advance by ESB, Metering Equipment to also be approved of in writing in advance by ESB, for the accurate measuring and recording of the Abstraction. ESB shall have the right to access structures to inspect the Metering Equipment and take readings from same and also, if necessary, to have input into the calibration of such Metering Equipment provided that same shall be calibrated to reflect industry standard. All costs of installation and maintenance shall be borne by UE.

- 8.2. Prior to the Initiation of Commissioning and Testing Date, UE shall provide the methodology for measuring the daily volume of water abstracted and the real-time rate of abstraction in m<sup>3</sup>/s for approval by ESB.
- 8.3. UE shall provide a real-time signal of the rate of abstraction in m<sup>3</sup>/s and volume in Megalitres abstracted over the previous 24 hours to the ESB SCADA system.
- 8.4. UE shall provide a rolling 5-day forecast to ESB of the projected volume of water to be abstracted and the projected rate of abstraction from the Impoundment in a format to be approved by ESB prior to the Initiation of Commissioning and Testing Date.
- 8.5. UE shall furnish to ESB a true written copy of the record of the daily volume of water abstracted through the Intake. This shall be provided quarterly, or at such other periods as may be agreed in writing between ESB and UE. When a potential Dam safety incident is being managed or a restriction on abstraction is foreseen, a true written copy of the record of the daily volume of water abstracted shall be provided daily. Upon giving reasonable notice it shall be lawful for ESB, their officers and agents to check or have checked the accuracy of such Metering Equipment and the method of recording the said flow. Calibration of the Metering Equipment shall be independently certified in accordance with the equipment provider's specifications and at least every five years, or at the request of ESB. Copies of such certification shall routinely be provided to ESB.

## 9. HEALTH AND SAFETY

- 9.1. UE shall comply and ensure that each of its employees, sub-contractors, agents and representatives are made aware of and comply at all times with:
  - 9.1.1. All applicable Health and Safety Laws and any relevant Codes of Practice, and
  - 9.1.2. Any additional health and safety requirement that may be agreed in writing between UE and ESB during the Term of this Abstraction Agreement.

## 10. ENVIRONMENT

- 10.1. The Parties acknowledge that the body responsible for regulating compliance with Environmental Laws and Environmental Licences in relation to the Abstraction is the Agency, or any other body designated with such responsibilities under the Abstraction Acts.
- 10.2. UE, its employees, sub-contractors, agents or representatives, shall, in respect of the Abstraction and related activities governed by the Abstraction Agreement:
  - 10.2.1. comply at all times with all relevant Environmental Laws;
  - 10.2.2. comply at all times with all Environmental Licences granted to:
    - 10.2.2.1. UE, and/or
    - 10.2.2.2. UE and ESB jointly,
  - 10.2.3. co-operate with ESB insofar as is required by ESB in order to facilitate ESB complying with Environmental Law and its own Environmental Licences relating to the Impoundment, and UE shall operate its Abstraction in a manner that does not conflict with ESB's obligations under Environmental Law and its Environmental Licences.
  - 10.2.4. copy all relevant Environmental Licences and Necessary Consents are to be copied to ESB's nominee before work is commenced. Any Environmental Licences or Necessary Consents granted, or amended, after work has

commenced are to be copied to ESB's nominee within fourteen (14) calendar days of the date of grant of the consent or the amendment.

10.2.5. upon receipt of any warning letter, enforcement notice, summons and / or service of legal proceedings (whether civil or criminal) from any regulatory authority or third party, in respect of any alleged or actual non-compliance with Environmental Laws, Environmental licences or Necessary Consents:

10.2.5.1. notify ESB within 5 working days of receipt;

10.2.5.2. provide ESB with regular updates, pending resolution or determination of the matter.

## 11. NOT USED

## 12. UE INDEMNIFICATION

12.1. UE shall indemnify and hold ESB harmless against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, such as loss of revenue from the Ardnacrusha generation plant, and all interest, penalties and legal costs and all other reasonable and vouched professional costs and expenses) suffered or incurred by ESB caused by or arising from any of the following:

12.1.1. UE's breach or negligent performance or negligent non-performance of this Abstraction Agreement; or

12.1.2. anything done or omitted by UE, its servants or agents in the construction, commissioning, testing, maintenance or operation of the Abstraction Plant or any alteration thereto or in connection with the Abstraction by UE; or

12.1.3. injury to any person or persons sustained while in or around the Abstraction Plant Site, the Dam or the Impoundment to the extent caused by or arising from the construction, commissioning, testing, operation or maintenance of the Abstraction Plant or ancillary activities by UE; or

12.1.4. pollution or contamination of any of ESB's lands, the Impoundment or any part thereof to the extent caused by or arising from the construction, commissioning, testing, operation or maintenance of the Abstraction Plant by UE;

12.1.5. any damage or accident or breach of any law, statute, by-law caused by UE its servants or agents; or

12.1.6. any necessary enforcement of this Abstraction Agreement or any part thereof by ESB against UE to the extent caused by or attributable to UE's breach or negligent performance or non-performance of this Abstraction Agreement, except to the extent that such liability, costs, damages, expenses, fines, damages and/or penalties are caused by ESB's breach or negligent performance of this Abstraction Agreement.

12.2. UE shall indemnify and hold ESB harmless in the event of any claims, losses, costs, damages, expenses, fines and/or penalties arising from the failure by UE, its employees, sub-contractors, agents or representatives to comply with the provisions of Sub-Clause 4, Clause 10 and Clause 11.

12.3. If a payment due from UE under this clause is subject to tax (whether by way of direct assessment or withholding at its source), ESB shall be entitled to receive from UE such amounts as shall ensure that the net receipt, after tax, to ESB in respect of the payment is the same as it would have been were the payment not subject to tax.

12.4. This clause shall survive the termination of this Abstraction Agreement.

12.5. UE shall agree to cover all ESB reasonable and vouched costs and expenses in necessary engagement by ESB with relevant authorities arising from UE breach or potential breach of the Abstraction Agreement or any licences or consents from relevant authorities.

## 13. INSURANCE

- 13.1. UE shall effect and maintain, prior to the date of service of the Commencement Notice pursuant to the grant of Planning Permission for the construction of Abstraction Plant, for the duration of the unexpired Term of this Abstraction Agreement, insurances referred to in Sub-Clause 13.4 to cover liabilities arising from the construction, testing, commissioning, operation and maintenance of the Abstraction Plant.
- 13.2. UE shall effect and maintain from the Agreement Date up to the date of service of the Commencement Notice referred to in Sub-Clause 13.1, insurances to cover liabilities associated with UE's activities on the Impoundment, the Dam, the Abstraction Plant Site and any property that ESB owns and/or is responsible for, that is accessed by UE in connection with the development of the Abstraction Plant.
- 13.3. UE shall ensure that any subcontractors/agents/subconsultants engaged by UE to provide services to UE have in place appropriate levels of insurances to cover their activities and in the event that any subcontractor/agent/subconsultant fails to take out insurance, UE shall be liable for all losses and liabilities that accrue for such failure and will indemnify ESB for any claims that might accrue.
- 13.4. UE shall have in place the following insurances prior to the date of service of the Commencement Notice referred to in Sub-Clause 13.1:
- 13.4.1. Public liability with an indemnity limit of not less than €200 million in respect of any one event and unlimited in the annual aggregate;
  - 13.4.2. Products liability with an indemnity limit of not less than €200 million in the annual aggregate;
  - 13.4.3. Employers liability with an indemnity limit of not less than €13 million in respect of any one event and unlimited in the aggregate;
  - 13.4.4. Environmental pollution liability with an indemnity limit of not less than €25 million in the annual aggregate, specifically covering such liability arising from the construction, testing, commissioning, operation and maintenance of the Abstraction Plant;
  - 13.4.5. Marine insurance (if applicable) on any craft in use.
- 13.5. During the construction, testing and commissioning phase of the Abstraction Plant, from the date that the Commencement Notice is served up to the Abstraction Operation Date, the insurances in respect of 13.4.1, 13.4.2, 13.4.4 and 13.4.5 (if applicable) shall provide a specific indemnity to ESB as co-insured and the insurances in respect of 13.4.3 shall include a specific indemnity to ESB.
- 13.6. From the Abstraction Operation Date, for the duration of the unexpired Term of this Abstraction Agreement, the insurances in respect of 13.4.1, 13.4.2, 13.4.3, 13.4.4 and 13.4.5 (if applicable) shall provide a specific indemnity to ESB.
- 13.7. UE shall, prior to the service of the Commencement Notice and the commencement of works on the construction phase of the Abstraction Plant, and upon request produce satisfactory evidence of UE's insurance cover. Furthermore, UE shall provide satisfactory evidence of UE's insurance cover to ESB, prior to carrying out any activities on the Impoundment, the Dam, the Abstraction

Plant Site and any property that ESB owns and/or is responsible for, between the Agreement Date and the date of service of the Commencement Notice. All policies must have an Irish jurisdiction clause.

- 13.8. The insurances in clause 13.3 shall be subject to adjustment every five (5) years following service of the Commencement Notice, calculated in accordance with the Consumer Price Index (CPI), provided that any such adjustment shall not exceed a 5% increase, subject to insurance market capacity, in any single adjustment period. In the event of any material change in insurance UE will notify ESB in writing and a full copy of the policy will be furnished forthwith.
- 13.9. In the event of any material change in insurance UE will notify ESB in writing and a full copy of the policy will be furnished forthwith.
- 13.10. UE shall comply with the conditions stipulated in each of the insurance policies.
- 13.11. All UE insurance shall be placed with reputable insurers.
- 13.12. If UE fails to effect and keep in force any of the insurances it is required to effect and maintain under the Abstraction Agreement, or any other agreements or fails to provide satisfactory evidence in accordance with this Sub-Clause, ESB may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. UE shall pay the amount of these premiums to ESB.
- 13.13. Nothing in this Clause limits the obligations, liabilities or responsibilities of UE, under the other terms of the Abstraction Agreement or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by UE in accordance with these obligations, liabilities or responsibilities.

## 14. TERMINATION

- 14.1. ESB reserves the right to terminate this Abstraction Agreement at any time subject to giving UE three (3) months' prior written notice ("the Termination Notice Period") where:
  - 14.1.1. UE is in material breach of any provision under this Abstraction Agreement and such material breach:
    - 14.1.1.1. is not due to a failure of the ESB; and
    - 14.1.1.2. has not been resolved within twenty-eight (28) calendar days following ESB providing UE with written notice of the breach;
  - 14.1.2. There is a Change in Control of UE.
- 14.2. Where notice of termination has been served by ESB on UE, the matter will be referred to Senior Management of both Parties. Failing resolution of the breach by UE, the subject of the notice of termination, and regardless as to whether or not the breach or the termination notice has been disputed by UE hereunder, this Abstraction Agreement will automatically terminate upon the expiry of the Termination Notice Period.
- 14.3. On termination of this Abstraction Agreement under any of the matters referred to in the preceding clauses, UE shall at its own expense decommission and remove the Abstraction Plant from the Abstraction Plants Site and restore same to its original state to the satisfaction of ESB.
- 14.4. The expiration or termination of this Abstraction Agreement hereunder shall not operate so as to affect such of the provisions hereof as are expressed to operate or have effect after termination thereof and shall be without prejudice to any rights or obligations which shall have accrued and be owing prior thereto or which are intended to survive termination of this Abstraction Agreement.
- 14.5. In the event of termination neither Party shall have the right to any compensation going forward, other than the right of ESB to receive payment in respect of costs and expenses that have accrued up to the date of termination.

## 15. DISPUTE RESOLUTION

- 15.1. Without prejudice to the requirement for UE to comply with any obligation under Clause 4 and/or notice issued by ESB pursuant to Clause 5 and to the entitlement of ESB to seek specific performance under Sub-Clause 5.9 of this Abstraction Agreement, which said requirements shall be complied with in full pending the outcome of any matter referred by a Party to the dispute resolution procedure under this Clause 15, if any dispute arises between ESB and UE and/or between ESB and any other contractor of UE, under this Abstraction Agreement, such dispute shall be referred to senior management of both parties and failing agreement being reached within 30 days of such escalation either party may, by notice to the other party, elect to refer the dispute to conciliation. The Conciliation shall be conducted in accordance with the Engineers Ireland Conciliation Procedure 2000 ('the Conciliation Procedure'). Within 10 working dates of the referral of a dispute to conciliation, the Parties shall jointly appoint a conciliator who is competent to adjudicate upon the dispute and independent of the Parties.
- 15.2. If the dispute is not resolved by agreement within 28 days after the conciliator was appointed or a longer period proposed by the conciliator and agreed by the Parties, the conciliator shall give both Parties a written recommendation within 14 days following the expiry of the initial 28 day period.
- 15.3. If either Party is dissatisfied with the conciliator's recommendation, it may, within 28 days after receiving the conciliator's recommendation, so notify the other Party. The notice shall state that it is given under Clause 15 of the Abstraction Agreement and shall state the matters in dispute and the reasons for the dissatisfaction. If the conciliator has failed to give a recommendation in accordance with Sub-Clause 15.2, either Party may give a notice of dissatisfaction. If notice of dissatisfaction has been given in accordance with this clause, either Party may refer the dispute to arbitration under this clause.
- 15.4. If no Party rejects the recommendation by notice in writing to the Conciliator and the other party within 28 days of the date of receipt of the Recommendation, then the Recommendation shall be final and binding on the Parties. However, if one Party rejects the Recommendation, then its terms and provisions and any reasons given by the Conciliator, together with any disclosures made during the Conciliation, shall be and remain privileged and confidential and shall not be divulged to the other party nor used in evidence by any other Party in any subsequent arbitration or litigation.
- 15.5. If the dispute has not been resolved by the high level meeting or conciliation under Sub-Clause 15.1, either Party shall be able to refer the dispute to arbitration by a person to be agreed between the Parties, or, failing agreement between the Parties within 28 days of either Party having made a request in writing to the other Party to concur in the appointment of a single arbitrator, a person to be nominated upon the application of any Party to the President for the time being of Engineers Ireland. Every or any such reference shall be deemed to be a submission to Arbitration within the meaning of the Arbitration Act 2010 (as amended from time to time). The arbitration shall be binding on the parties and conducted in accordance with the Engineers Ireland Arbitration Procedure 2011. The place of arbitration will be Dublin, Ireland and language of arbitration will be English.

## 16. TRANSFER

UE shall not assign, novate delegate or otherwise transfer the benefit or burden of the Abstraction Agreement.

## 17.CONFORMITY WITH LAWS

UE shall in all matters arising in the performance of this Abstraction Agreement conform at its own expense with all Statutory Requirements, including Environmental Laws and Environmental Permits and shall keep ESB indemnified against all penalties, fines, losses, costs, damages, claims and/or expenses of every kind for any breach and/or non-performance, or non-observance thereof. The terms of this Clause shall survive termination or expiration of the Abstraction Agreement.

## 18.VALIDITY AND WAIVER

The invalidity in whole or in part of any provision of this Abstraction Agreement shall not affect the validity of any other provision. A waiver of a breach of any provision of this Abstraction Agreement shall not constitute a waiver of any subsequent breach of that provision or any other provision of this Abstraction Agreement. Failure of ESB to enforce at any time or from time to time any provision of this Abstraction Agreement shall not be construed as a waiver thereof.

## 19.SEVERANCE

In the event that any provision of this Abstraction Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indications of the same are received by either of the parties from any relevant authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or it may be severed from this Abstraction Agreement and the remaining provisions shall remain in full force and effect.

## 20.NOTICES

20.1. Any notice or other communication whether required or permitted to be given by one Party to the other shall be in writing and shall be deemed to have been duly given if signed by or on behalf of a duly authorised officer of the Party giving the notice and:-

- 20.1.1 if delivered, at the time of delivery to the addressee or its duly authorised agent;
- 20.1.2 if sent by pre-paid post, four (4) days after posting if addressed to the Party to whom such notice is to be given at the address set forth for such Party in this Abstraction Agreement (or such other address as is from time to time notified to the other Party hereto);
- 20.1.3 if transmitted by email, on receipt of an error free transmission report to such email addresses from time to time notified to the other Party.

20.2. All notices to ESB under this Abstraction Agreement shall be in writing and sent to:-

Electricity Supply Board,  
27 Fitzwilliam St,  
Dublin 2,  
DO2KT92,  
Ireland.

Attn: Hydro Manager, ESB Generation & Trading  
Email: [generic email address]

All notices to UISCE EIREANN under this Abstraction Agreement shall be in writing and sent to:-

Uisce Éireann,  
Colvill House,  
24-26 Talbot Street,  
Dublin 1,  
D01NP86  
Ireland

Attn: Asset Strategy Manager  
Email: [generic email address]

## **21.APPLICABLE LAW**

This Abstraction Agreement shall, in all respects, be governed by and interpreted in accordance with the laws of Republic of Ireland.

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## FIRST SCHEDULE – COMMISSIONING AND TESTING REQUIREMENTS

UE shall carry out its commissioning and testing of the Abstraction Plant:

- in a manner that does not compromise the integrity of the Dam and/or cause or risk causing damage to property.
- in such a way that it strictly avoids any need to raise or lower the level of the water in the Impoundment outside of ESB's Normal Operating Bands.
- in a manner that does not interfere with the operation or maintenance of the Shannon Hydro Electric Scheme.
- Not begin any abstraction of water from the Impoundment before the Initiation of Commissioning and Testing Date.
- Provide ESB with 28 days' notice of its intended Abstraction for Commissioning and Testing hourly and daily volume and rates which shall be further confirmed with updates at 10 days' notice, 5 days' notice and 1 days' notice.
  - No hourly or daily Commissioning and Testing Abstraction can take place without prior written approval of ESB
- Immediately cease the Abstraction for Commissioning and Testing, where the continued operation of the Abstraction for Commissioning and Testing may cause a risk to the safety of the Dam or may cause ESB to be unable to maintain the Minimum Required Compensation Flow or may cause ESB to determine that the water level in the Impoundment might fall below the Minimum Water Level or where a Dam safety incident arises.
- In compliance with any additional requirements the ESB may have in relation to Abstraction for Commissioning and Testing.

## SECOND SCHEDULE – OPERATION AND MAINTENANCE REQUIREMENTS

UE shall operate and maintain the Abstraction:

- i. in a manner that does not compromise the integrity of the Dam and/or cause or risk causing any damage to property;
- ii. in such a way that it strictly avoids any need to raise or lower the level of the water in the Impoundment outside of ESB's Normal Operating Bands;
- iii. in such a way that the Minimum Water Level (32.7 mOD Poolbeg) shall never be breached as a consequence of the actions or omissions of UE; and
- iv. in a manner that does not interfere with the operation or maintenance of the Shannon Hydro Electric Scheme.

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### THIRD SCHEDULE – NORMAL OPERATING BANDS

<b><u>NORMAL OPERATING BANDS - LOUGH DERG*</u></b>	
Maximum Normal Operating Level	<b>33.56mOD</b>
Minimum Normal Operating Level	<b>33.10mOD</b>
Blackstart Level	<b>33.20mOD</b>

\*The level in Lough Derg is measured at Pier Head between Killaloe Bridge and the lake outlet

<b><u>LOUGH DERG</u></b>	
Flood Levels	<b>Variable</b>
Dam Crest Level (Crest of Fort Henry/Ardclooney Embankments)	<b>35.00mOD</b>
Exceptional Reservoir Level	<b>34.00mOD</b>
Minimum Navigation Level	<b>32.80mOD</b>

<b><u>PARTEEN WEIR</u></b>	
Minimum Water Level (Dam Safety Level)	<b>32.70mOD</b>

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#### FOURTH SCHEDULE – ABSTRACTION AMOUNT

<u>ABSTRACTION AMOUNT</u>	
Maximum abstraction rate in m <sup>3</sup> /s	<b>3.47</b>
Maximum daily volume in megalitres	<b>300.0</b>

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**APPENDIX A – MAP**

**(to follow)**

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## APPENDIX B – FORM OF PERFORMANCE SECURITY

**BY THIS BOND we,**

PLC/Limited whose principal place of business (registered office) is at

(the "Guarantor") are held and firmly bound unto Electricity Supply Board, 27 Lower Fitzwilliam Street, Dublin 2, Ireland, D02 KT92 (the "Beneficiary") in the sum of EUR [ ] for the payment of which sum the Guarantor is bound unconditionally and irrevocably as a prime obligor by this bond (the "Bond").

Dated this     day of                     20

WHEREAS [\*\*\*] PLC/Limited whose principal place of business is at [\*\*\*] (the "Principal") by an agreement made between the Beneficiary of the one part and the Principal of the other part dated [ ] has entered into an Abstraction Agreement (hereinafter called "the Agreement") permitting the abstraction of water from the impoundment as mentioned in and in conformity with the provisions of the Agreement (the "Abstraction") and in this connection a bond is required in the sum of EUR €[ ].

NOW THE GUARANTOR AT THE REQUEST OF THE PRINCIPAL UNDERTAKES IRREVOCABLY AND UNCONDITIONALLY to pay to the Beneficiary as primary obligor an amount or amounts not exceeding an aggregate maximum of EUR [ ] on receipt of the Beneficiary's written demand(s) in the form set out in the appendix to this Bond of the Guarantor, waiving all rights of objection and defense and without reference to the Principal. We shall accept such demand(s) as conclusive evidence, solely for the purpose of this Bond, that the amount(s) claimed is due to you under this Bond and we hereby agree that we shall fulfil our obligations under this Bond without any further proof or conditions.

No alteration in the terms of the Agreement or in the extent or nature of the Abstraction to be operated thereunder nor any forbearance or forgiveness in or in respect of any matter or thing concerning the Agreement on the part of the Beneficiary or like parties shall in any way release the Guarantor from liability under the Bond.

The Beneficiary may assign this Bond without the consent of the Guarantor by way of security or to any person to whom the Contract is assigned or novated.

This Bond expires on the [ ..... ] , which shall be the last day for receipt of demands or claims under this bond (the "Expiry Date"). The Guarantor shall have no liability in respect of any claim under this Bond received after the Expiry Date whether or not this Bond has been returned to the Guarantor's office.

Any notices (including any demand) given under this Bond shall be in writing and shall be served by sending the same by post or leaving the same at:

If to the Guarantor:     [insert address]  
Attention:                     [insert name or appropriate title]

If to the Beneficiary:     Electricity Supply Board, 27 Lower Fitzwilliam Street, Dublin 2, Ireland, D02 KT92  
Attention:                     [insert name or appropriate title]

This Bond shall be governed by and construed in accordance with the Laws of the Republic of Ireland and the Courts of Dublin will have exclusive jurisdiction over any claim or matter arising under or in connection with this Bond.

**SIGNED SEALED AND DELIVERED BY [name] duly authorised officer**

**FOR AND ON BEHALF OF [BANK/GUARANTOR]**

**Or**

**Present when the COMMON SEAL  
Of the [BANK/GUARANTOR] was  
Affixed hereto**

**DRAFT**

**APPENDIX C – ON DEMAND BOND**

[on Beneficiary letterhead]

To: [insert Guarantor]

Date:

Re: [Insert details of On Demand Bond] (“the On Demand Bond”)

Dear Sir/Madam,

We refer to the On Demand Bond dated [ ] issued by you in our favour. In accordance with the terms of the On Demand Bond, we hereby demand payment in the sum of EUR [ ] and request that you pay the same immediately to [specify account].

Yours faithfully,

For and on behalf of  
[Beneficiary]

Name:

Title:

Sign:

**DRAFT**