

**MOYLE INTERCONNECTOR LIMITED**

**- and -**

**THE CAPACITY HOLDER**

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**MOYLE INTERCONNECTOR CAPACITY FRAMEWORK AGREEMENT  
(MOYLE AUCTION PLATFORM)**

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## Table of Contents

Clause	Page
1	Definitions and Interpretation.....1
2	Commencement and Duration.....9
3	Relevant Access Arrangements .....9
4	Use of Interconnector Capacity Entitlements .....12
5	Resale of Units.....13
6	Rights on Gate Closure .....16
7	Capacity Transfers .....17
8	Unavailability of Moyle Auction Platform .....19
9	Interconnector Outages and Curtailment Compensation .....19
10	Payment.....21
11	Default and Termination .....24
12	Liability .....27
13	Force Majeure.....28
14	Disputes.....29
15	Entire Agreement.....30
16	Waiver .....30
17	Variation.....30
18	Notices .....30
19	Confidentiality .....32
20	Assignment and Novation .....33
21	Agency and Subcontracting.....33
22	Severance .....34
23	Survival .....34
24	Governing law .....34
25	Change in Circumstances .....34
26	Rights of Third Parties .....34
<b>Schedule 1</b>	
The Capacity Holder.....36	
<b>Schedule 2</b>	
Nominations .....37	
<b>Schedule 3</b>	
Security Requirements.....39	
<b>Appendix 1</b>	
Form of Guarantee.....44	
<b>Appendix 2</b>	
Form of Irrevocable Letter of Credit .....51	
<b>Schedule 4</b>	
Moyle Interconnector Framework Deed.....54	

**THIS AGREEMENT** is made the                      day of                      20

**BETWEEN:**

- (1) **MOYLE INTERCONNECTOR LIMITED**, an incorporated company registered in Northern Ireland under number NI036562, having its registered office at First Floor The Arena Building; 85 Ormeau Road; Belfast BT7 1SH, Northern Ireland (“**Moyle**”); and
- (2) **THE PARTY NAMED IN ITEM 1 OF SCHEDULE 1** whose incorporation details are set out at Item 2 of Schedule 1 and whose registered office is at the locations set out in Item 3 of Schedule 1 (the “**Capacity Holder**”).

**RECITALS:**

- (A) Moyle is the owner of the Moyle Interconnector. The Transmission System Operator has been appointed as Moyle’s agent for the purposes of offering the right to use Units of capacity.
- (B) The Capacity Holder is interested in acquiring the right to use Units of capacity. This Agreement sets out the terms and conditions upon which the Capacity Holder may acquire the right to use Units of capacity and the terms and conditions upon which the Capacity Holder may use Units of capacity.

In consideration of the mutual promises under this Agreement and other good and valuable consideration including the right to purchase Units of capacity, **THE PARTIES AGREE** as follows:

**1. Definitions and Interpretation**

1.1 In this Agreement the following words shall have the following meanings:

“**Agreement**” means this Moyle Interconnector Capacity Framework Agreement and all schedules or appendices.

“**Applicable Laws**” means all relevant industry codes of practice, laws, permissions (including any relevant planning permission) consents, bye-laws, rules and regulations, all relevant European Union legislation (and/or Northern Ireland and Great Britain statutory or sub-statutory material intended to bring into legal effect such European Union legislation) and the requirements of any Agencies or Competent Authorities, as the same may be modified and amended from time to time during the term of this Agreement;

“**Auction Credit Limit**” means [ • ];

“**Auction Specification**” has the meaning given in the Relevant Access Arrangements;

“**Authority**” means the Northern Ireland Authority for Utility Regulation (or such successor body or authority as may replace it);

“**Available Transfer Capacity**” means, in respect of each Trading Period in each direction of flow, the maximum capacity of the Moyle Interconnector that can be made available to transfer electricity in that Trading Period as determined pursuant to the Trading and Settlement Code;

“**Balancing and Settlement Code**” means Balancing and Settlement Code of Great Britain;

“**Business Day**” means a day (other than a Saturday or Sunday or a day which is a bank or legal holiday in Northern Ireland) on which banks are open for business in Belfast and London;

“**Capacity Contract**” means any contract concluded between Moyle and the Capacity Holder pursuant to this Agreement (whether or not in written form) for the acquisition of the right to use Units of capacity, the terms and conditions of which shall be documented in a Final Auction Allocation Confirmation which shall incorporate the provisions of this Agreement as if they were set out in full;

“**Capacity Transfer**” means the mechanism pursuant to which a Capacity Holder may assign its rights in respect of Units of capacity to another Capacity Holder described in Clause 7;

“**Capacity Transfer Notice**” has the meaning given in Clause 7.1(a);

“**Capacity Transfer Period**” has the meaning given in Clause 7.1(c);

“**Change in Circumstances**” has the meaning given in Clause 25.2;

“**Commencement Date**” means the later of the Moyle Auction Platform Go Live Date and the date of execution of this Agreement;

“**Commercial Offer Data**” has the meaning given in the Trading and Settlement Code;

“**Competent Authority**” includes any court of competent jurisdiction and any local, national or supranational agency, authority, inspectorate, minister, ministry, department, official or public or statutory person (whether autonomous or not) of, or of the government or legislature of any state or any part of any state or of the European Union or any statutory undertaker (which expression shall include, without limitation, any person who carries on activities pursuant to the authority conferred by any licence granted under any statute);

**“Confidential Information”** means any item of information, regardless of its form, disclosed under or in relation to this Agreement (including information so disclosed which relates to the other party to this Agreement), other than:

- (a) the terms of this Agreement;
- (b) any item of information which is in the public domain; or
- (c) any item of information which not being in the public domain, enters the public domain otherwise than as a result of a breach of confidentiality obligation owed in relation to that item of information of which the Recipient (as defined in Clause 19.1) is aware;

**“Curtailed”** means that the Available Transfer Capacity is less than the Nominal Transfer Capacity;

**“Curtailed Compensation”** has the meaning given in Clause 9.8;

**“Daily Auction”** means an auction conducted in respect of capacity for the Trading Day following the day of the auction;

**“ESB System”** means the “transmission system” referred to in the Transmission System Owner Licence granted to the Electricity Supply Board in the Republic of Ireland pursuant to section 14(1)(f) of the Electricity Regulation Act 1999;

**“Expiry Date”** means the latest of the expiry dates of any Capacity Contracts between Moyle and the Capacity Holder;

**“Existing Capacity Agreement”** means any Capacity Contract, between Moyle and the Capacity Holder which is in force on the Commencement Date and which grants the Capacity Holder the right to use Units of capacity after the Commencement Date;

**“Final Auction Allocation Confirmation”** means the confirmation screen published on the Moyle Auction Platform in respect of an auction which shall be made available only to the Interconnector User and which shall contain the information specified in Clause 3.3(c);

**“Force Majeure”** means in relation to a party, any event or circumstance, or series of events or circumstances, beyond the reasonable control of that party (provided that lack of funds shall never be interpreted as a cause beyond the reasonable control of a party), which could not have been avoided through the use of Good Industry Practice, and which has the result that the party is unable to perform any or all of its obligations under this Agreement or any Capacity Contract. Force Majeure includes:

- (a) war (whether declared or undeclared),

- (b) revolution, riot, insurrection, public demonstration or other civil commotion;
- (c) acts of terrorism, sabotage, criminal damage or threat of such acts;
- (d) nuclear explosion, radioactive or chemical contamination or ionising radiation;
- (e) act of God, any effect of the natural elements, including lightning, flood, wind, storm, unusually heavy or prolonged rain or accumulation of snow or ice; and
- (f) strikes and labour disputes,

provided that any change in market conditions affecting the price of electrical capacity or any change in the electricity markets of Northern Ireland, the Republic of Ireland and/or Great Britain shall not constitute Force Majeure;

**“Forced Outage”** means any Outage which is not notified to the Capacity Holder in the Auction Specification for the Daily Auction for the Trading Day on which the Outage occurs;

**“Gate Closure”** means the latest time at which a Capacity Holder is permitted to submit Commercial Offer Data in respect of the Moyle Interconnector under the Trading and Settlement Code;

**“GB Grid Code”** means the Grid Code of Great Britain;

**“GB System”** means the electricity transmission system in Great Britain or, as the circumstances require, that part of the electricity transmission system in Great Britain to which the Moyle Interconnector is connected in Scotland;

**“Good Industry Practice”** means, in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;

**“Interconnector Administrator”** has the meaning given in the Trading and Settlement Code and/or the Balancing and Settlement Code of Great Britain, as the circumstances require;

**“Interconnector Capacity Entitlement”** or **“ICE”** means the total number of MW of capacity on the Moyle Interconnector that the Capacity Holder is entitled to nominate in a direction during each hour of that Trading Day or, as the circumstances require, a schedule setting out such amount;

“**Interconnector Unit**” has the meaning given in the Trading and Settlement Code;

“**Intraday Auction**” means an auction conducted in respect of capacity for the Trading Day on which the auction is held;

“**LIBOR**” means the rate for deposits in pounds sterling for a period of one calendar year which appears on the Reuters Screen ISDA page at approximately 11.00am, London time, on the date of termination provided that if such rate does not appear for that date the rate for that date will be the rate at which deposits in pounds sterling is offered by the Bank of Ireland at approximately 11.00am London time on the date of termination to prime banks in the London interbank market for a period of one calendar year on the date of termination;

“**Long Term Auction**” means an auction which is not a Daily Auction or an Intraday Auction;

“**Material Breach**” means any breach of this Agreement or any Capacity Contract which has a material adverse effect on the ability of a party to enjoy the rights conferred on it by this Agreement or any Capacity Contract, having regard to all the circumstances including, without limitation, the nature of the relationship between the parties, the nature of the breach (and in particular whether it is intentional, negligent or otherwise) and the consequences of the breach;

“**Month**” means a period commencing at the start of the first Trading Day in a month and ending at the conclusion of the last Trading Day in a month;

“**Moyle Auction Platform**” means the electronic trading platform used to facilitate the sale and purchase of Units of capacity on the Moyle Interconnector in accordance with Relevant Access Arrangements;

“**Moyle Auction Platform Go Live Date**” means such date as may be notified by Moyle to the Capacity Holder in advance as being the date from which all purchases of Units will be required to be made using the Moyle Auction Platform;

“**Moyle Interconnector**” means, the electrical interconnector between Northern Ireland and Scotland which is owned by Moyle and which comprises the converter stations at Ballycronan More, Co. Antrim, Northern Ireland and Auchencrosh, Ayrshire, Scotland and the undersea and underground electric lines which interconnect such converter stations, together with its connections to the NIE System and the GB System;

“**Moyle Interconnector Framework Deed**” means the document of that name in the form prescribed by Moyle from time to time, which at the date of this Agreement shall be in the form set out in Schedule 5;

“**NGC**” means National Grid Company plc, a company registered in England with number 2366977 whose registered office is at 1 – 3 Strand, London, WC2N 5EH, or such other body performing the functions of transmission system operator in respect of the GB System from time to time;

“**NIE**” means Northern Ireland Electricity plc;

“**NIE System**” means the electricity transmission system in Northern Ireland;

“**Nominal Transfer Capacity**” means, in relation to any Trading Period in which the Available Transfer Capacity is reduced by reason of the occurrence of an Outage, the maximum amount of electricity (as referred to in the definition of Available Transfer Capacity and as determined by or on behalf of Moyle) which would have represented the Available Transfer Capacity had the Available Transfer Capacity not been reduced by such Outage;

“**Nominate**” has the meaning given in means to issue the notice referred to in paragraph 2 of Schedule 2;

“**Nomination Gate Closure**” means the latest time at which nominations can be made in relation to that Trading Period, which time shall be published by Moyle from time to time;

“**Nomination Window**” means a period of time commencing at [ • ] and ending at Nomination Gate Closure;

“**Outage**” means any reduction in the capacity of the Moyle Interconnector caused by a limitation on the Moyle Interconnector or for reasons of operational security, in either direction and includes Forced Outages;

“**Pass Through Charges**” means any charges or levies which are paid directly or indirectly, by or on behalf of, Moyle in connection with the transfer of electricity to or from the NIE System or the GB System, including, if applicable, use of system charges, public service obligations and system service and infrastructure demand charges;

“**Payment Period**” means a calendar month or part thereof;

“**Pool**” has the meaning given in the Trading and Settlement Code;

“**Product Period**” means, in respect of a specific auction, the period of time, measured from the first Trading Day to the last Trading Day, in respect of which rights may be acquired to use the relevant Units, which period shall be specified in the applicable Final Auction Allocation Confirmation;

“**Relevant Access Arrangements**” means the arrangement or arrangements established by Moyle from time to time pursuant to

Condition 17 of the Transmission Licence granted to Moyle in relation to the grant of rights to use Units of capacity on the Moyle Interconnector;

“**Resale Proceeds Payment**” has the meaning given in Clause 5.14;

“**Resale Request**” has the meaning given in Clause 5.1;

“**Resale Units**” has the meaning given in Clause 5.10;

“**RPI**” means the Retail Prices Index (All Items) as published by the Office of National Statistics from time to time, or failing such publication, such other index as Moyle determines most closely to resemble such index;

“**Security Requirements**” means the requirements as set out in Schedule 3 to this Agreement or such other requirements as are notified by Moyle to the Capacity Holders in writing from time to time;

“**SEM**” has the meaning given in Article 2 of the Electricity (Single Wholesale Market) (NI) Order 2007;

“**Suspension Order**” has the meaning given in the Trading and Settlement Code;

“**System Documents**” means all agreements, codes and other documents (including the Trading and Settlement Code and the Balancing and Settlement Code) which require to be entered into and complied with by persons who trade electricity between the SEM and Great Britain and/or use or are granted rights to use the ESB System, the NIE System or the GB System for transporting electricity to or from Northern Ireland or to or from Scotland through the Moyle Interconnector;

“**Termination Amount**” means an amount equal to the net present value of the aggregate of the product of the Unit Price and aggregate MW of the corresponding Units in respect of each Capacity Contract and any payments that may have become due under Clause 10 assuming that this Agreement had not been terminated during the period between the date of termination of this Agreement and the Expiry Date discounted back to the date of termination at a discount rate of LIBOR plus one percent less the amount (as reasonably certified by Moyle) of the revenues which Moyle ought reasonably to be able to derive from the sale of the Units to third parties who satisfy the Security Requirements during the unexpired part of the Product Period, assuming for this purpose that Moyle will use its reasonable endeavours to maximise the amount of such revenues. In the event that one or more Capacity Contracts is terminated but this Agreement is not, the Termination Sum shall be calculated in the manner set out above in relation to those Capacity Contracts which are terminated;

“**Timescale**” means a period of time that is Long-Term, Daily or Intraday;

“**Trading and Settlement Code**” means the trading arrangements established pursuant to Section 23 of the Northern Ireland (Miscellaneous Provisions) Act 2006 and/or such other arrangements as are in force from time to time and make provision for the settlement of electricity in Northern Ireland;

“**Trading Day**” has the meaning given to it in the Trading and Settlement Code;

“**Trading Period**” has the meaning given to it in the Trading and Settlement Code;

“**Transmission Licences**” means the licence granted to NIE and/or the licence granted to SONI Limited and/or the licence granted to Moyle under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992, as the context requires;

“**Transmission System Operator**” means the person who from time to time performs the function of operating the NIE System and/or the Moyle Interconnector;

“**Unit**” means capacity on the Moyle Interconnector, where applicable as described in and subject to this Agreement, and the relevant Capacity Contract, having a specified transfer direction and nominal 1 MW value (at the Auchencrosh connection point of the Moyle Interconnector);

“**Unit Price**” means, in respect of a Unit, the price (in pounds sterling per megawatt hour) resulting from the auction at which the Unit was allocated to the Capacity Holder;

“**Unit Validity Times**” means:

- (i) in the case of Long Term Units, the specific periods of time within the Product Period for which the Units have been offered in the applicable auction,
- (ii) in the case of Daily Units, the individual periods of time for which the Units have been offered in the applicable auction,
- (iii) in the case of Intraday Units, the individual periods of time for which the Units have been offered in the applicable auction,

in each case specified in the Final Auction Allocation Confirmation;  
and

“**Unused Units**” has the meaning given in Clause 5.1.

1.2 In this Agreement and any Capacity Contract:

- (a) the singular includes the plural and vice versa;
- (b) references to one gender include all other genders;
- (c) references to persons include bodies corporate, unincorporated associations and partnerships, in each case whether or not they have a separate legal personality;
- (d) the table of contents and headings in this Agreement are inserted for convenience only and are to be ignored for the purposes of interpretation of this Agreement and any Capacity Contract;
- (e) the word “including” and its variations are to be construed without limitation;
- (f) reference to any legislation, regulation, directive, order, instrument, licence, code or any enactment shall include any modification, extension or re-enactment of it then in force;
- (g) any references in this Agreement to a “Clause” is a reference to a clause in the Agreement, any reference in a Schedule to a paragraph is a reference to a paragraph in that Schedule and any reference to a “Schedule” is a reference to a schedule to this Agreement;
- (h) any reference to another agreement or document, or any deed or other instrument is to be construed as a reference to that other agreement, or document, deed or other instrument as amended, varied, supplemented, substituted or novated from time to time; and
- (i) any reference to a day, month or year is to be construed as a reference to a calendar day, month or year as the case may be.

## **2. Commencement and Duration**

- 2.1 This Agreement shall commence on the Commencement Date and shall continue in full force and effect until the date of termination pursuant to Clause 11.
- 2.2 Any Moyle Interconnector Capacity Framework Agreements entered into by Moyle and the Capacity Holder prior to the date of execution of this Agreement are hereby terminated with effect from the Commencement Date.

## **3. Relevant Access Arrangements**

- 3.1 Moyle may from time to time invite offers from persons interested in acquiring rights to use Units of capacity on the Moyle Interconnector pursuant to Relevant Access Arrangements.

- 3.2 Subject to any Applicable Laws, Relevant Access Arrangements shall be in such form as Moyle, in its absolute discretion, determines from time to time and shall include:
- (a) the mechanism by which an offer for the acquisition of Units of capacity may be made by a Capacity Holder; and
  - (b) the basis upon which Moyle may accept an offer for the acquisition of Units of capacity from a Capacity Holder.
- 3.3 The parties acknowledge and agree that unless the Relevant Access Arrangements expressly provide otherwise or unless otherwise agreed with Moyle in writing:
- (a) the Capacity Holder shall be entitled to make an offer for the acquisition of the right to use any Units of capacity pursuant to any Relevant Access Arrangements, provided that:
    - (i) the Capacity Holder is not in breach of its obligations under this Agreement, any Capacity Contract or the Relevant Access Arrangements; and
    - (ii) if accepted by Moyle, such offer shall not result in the Capacity Holder having acquired more than the permitted capacity allocation, as determined by the Authority from time to time;
  - (b) any offer made by the Capacity Holder pursuant to any Relevant Access Arrangements shall be binding upon the Capacity Holder until such capacity is allocated in accordance with the Relevant Access Arrangements;
  - (c) Moyle shall, following final acceptance, in whole or in part, of an offer from the Capacity Holder to acquire rights to use Units of capacity, publish a Final Auction Allocation Confirmation, confirming:
    - (i) the code identifying the auction in the Moyle Auction Platform;
    - (ii) the category of Unit purchased (if applicable);
    - (iii) the number of Units allocated to the Interconnector User;
    - (iv) the Unit Price of the Units;
    - (v) the Product Period of the Units purchased;
    - (vi) if necessary, any known Outage(s) associated with this Product Period; and

- (vii) the Unit Validity Times;
- (d) subject to Clause 3.3(e), a Capacity Contract will be deemed to be concluded between the Capacity Holder and Moyle:
  - (i) in the case of Intraday Auctions and Daily Auctions, immediately upon publication of the Final Auction Allocation Confirmation pursuant to Clause 3.3(c); and
  - (ii) in the case of Long Term Auctions, on the later publication of the Final Auction Allocation Confirmation pursuant to Clause 3.3(c) and the provision of sufficient Credit Cover that the requirements of Schedule 3 will be satisfied when the Capacity Contract is concluded, provided that if sufficient Credit Cover is not provided within 10 days after the date publication of the Final Auction Allocation Confirmation all rights of the Capacity Holder pursuant to that auction shall cease and the right to use and/or resell any Units in respect of which the Capacity Holder was successful in the auction shall revert to Moyle,

and in each case, subject to Clause 3.3(f), any Capacity Contract concluded by virtue of this Clause 3.3(d) shall be binding upon the parties;

- (e) Save in respect of a manifest error, the Final Auction Allocation Confirmation shall be conclusive evidence of the terms of the Capacity Contract. Any dispute as to whether the Final Auction Allocation Confirmation accurately reflect the terms of the Capacity Contract shall be determined in accordance with Clause 14; and
- (f) a Capacity Contract may be terminated by Moyle by notice in writing to the Capacity Holder:
  - (i) if it is subsequently determined that the Capacity Holder was not entitled to make an offer to acquire the right to use the relevant Units of capacity by virtue of Clause 3.3(a); or
  - (ii) in any other circumstances provided for in the Relevant Access Arrangements.

3.4 Subject to Applicable Laws, nothing in this Agreement shall limit Moyle's discretion in establishing any Relevant Access Arrangements in relation to:

- (a) the mechanism or mechanisms by which it invites offers from time to time pursuant to any Relevant Access Arrangements;

- (b) the timing or frequency of the mechanism or mechanisms by which it invites offers pursuant to any Relevant Access Arrangements, including whether such mechanisms involve a discrete process (such as a periodic auction) and/or on-going mechanisms each Trading Period that Units are available;
- (c) the volume, duration, direction or other characteristics of the Units in respect of which it seeks such offers from time to time; and/or
- (d) accepting an offer for the acquisition of the right to use Units of capacity in part but not in full.

#### 4. **Use of Interconnector Capacity Entitlements**

4.1 The right of the Capacity Holder to use its ICE is conditional on this Agreement being in full force and effect and the Capacity Holder:

- (a) having an Interconnector Unit registered in respect of the Moyle Interconnector in respect of which no Suspension Order is in force;
- (b) having entered into and complying at all times with the System Documents;
- (c) having provided Moyle and/or the Transmission System Operator and/or the Interconnector Administrator with all data or other information that they require to perform their obligations in respect of the Capacity Holder under the System Documents;
- (d) complying at all times with all Applicable Laws;
- (e) complying at all times with the Security Requirements; and
- (f) having executed and delivered a Moyle Interconnector Framework Deed in the current prescribed form to the Transmission System Operator and the Transmission System Operator having confirmed to Moyle that it is satisfied with the Moyle Interconnector Framework Deed received from the Capacity Holder.

4.2 Subject to this Agreement and the System Documents, each Unit of Contracted Capacity entitles the Capacity Holder to use the Moyle Interconnector by submitting Commercial Offer Data in respect of the Unit in accordance with the Trading and Settlement Code and corresponding information under any other System Document, but only:

- (a) for transfers in the direction specified in the Final Auction Allocation Confirmation;

- (b) in Trading Periods during the Unit Validity Times during the Product Period of that Unit (unless suspended or terminated); and
  - (c) for transfers up to the amount permitted under the System Documents at the relevant time.
- 4.3 Use of a Capacity Holder's ICE is subject to and on the terms of this Agreement and the relevant Capacity Contract.
- 4.4 The Capacity Holder shall be solely responsible for entering into and complying with the System Documents. Moyle shall have no liability with respect to such System Documents. The Capacity Holder acknowledges that the allocation of Units to the Capacity Holder pursuant to this Agreement or any Capacity Contract does not, of itself, give the Capacity Holder the right to use the NIE System, the ESB System or the GB System or to submit Commercial Offer Data or nominations of any other kind under any System Document and it is the responsibility of the Capacity Holder to acquire such rights.
- 4.5 Units are contractual rights and do not confer proprietary rights or any other right or interest in the Moyle Interconnector. The Capacity Holder acknowledges and agrees that the level of transfers over the Moyle Interconnector from time to time will be determined pursuant to the System Documents.
- 4.6 Nothing in this Agreement, the Relevant Access Arrangements or any Capacity Contract limits the ability of Moyle to make such commercial arrangements as it determines, in its absolute discretion, are appropriate in relation to capacity on the Moyle Interconnector which is not being used.
- 4.7 To the extent that a Capacity Holder wishes to use Long Term Units, it must submit a Nomination in respect of such Units during the Nomination Window in accordance with Schedule 2;

## 5. **Resale of Units**

- 5.1 Units held as part of a Capacity Holder's ICE shall be re-sold by Moyle:
  - (a) to the extent that any Capacity Holder does not Nominate any Long-Term Unit(s) (that have not otherwise been the subject of a Capacity Transfer) for any hour of a Trading Day or a Nomination of zero is submitted or is deemed to be submitted (the "**Unused Units**") in accordance with Clause 4.7; or
  - (b) where otherwise requested by the Capacity Holder (a "**Resale Request**").
- 5.2 In respect of each Unused Unit:

- (a) these Unused Unit(s) will be unavailable for use by the Capacity Holder after the Nomination Gate Closure;
  - (b) the Capacity Holder's other rights and obligations in relation to its Units (including in relation to payment), whether used or unused, will not be affected; and
  - (c) Moyle will make Unused Unit(s) available in the appropriate Daily Auction for the Trading Day.
- 5.3 In the event that Moyle sells the right to use any Unused Units in the relevant auction:
  - (a) the Capacity Holder shall not be relieved of any payment obligations in respect of such Unused Units; and
  - (b) Moyle shall remit to the Capacity Holder all or any revenues which are derived from the sale of Unused Units.
- 5.4 In the case of a Daily Auction cancellation no compensation shall be paid to Capacity Holders for Unused Units.
- 5.5 A Capacity Holder may elect to resell in a forthcoming Long Term Auction Units it has purchased by making a Resale Request. A Capacity Holder shall only be permitted to make a Resale Request where:
  - (a) all Units the subject of the Resale Request have been allocated from a previous Long Term Auction;
  - (b) the Product Period for the Units the subject of the Resale Request coincides with, and is not less than, the Product Period of the Units being offered in the relevant forthcoming Long Term Auction;
  - (c) the Unit Validity Times of the relevant forthcoming Long Term Auction is the same as the Unit Validity Times of the auction in which the Units the subject of the Resale Request were allocated;
  - (d) the Resale Request is for the same number of Units across all Unit Validity Times within the Product Period of the Units being offered in the relevant forthcoming Long Term Auction.
- 5.6 Only one Resale Request may be registered per Capacity Holder in respect of a forthcoming Long Term Auction for Units acquired in a certain previous Long Term Auction.
- 5.7 A Resale Request can be made or modified in respect of a forthcoming Long Term Auction up to 30 Minutes before the Final Specification of that Long Term Auction and each Resale Request must:

- (a) subject to Clause 8, be submitted via the Moyle Auction Platform;
  - (b) identify the Capacity Holder making the Resale Request;
  - (c) identify the Long Term Auction in which the Units are requested to be Resold;
  - (d) state the Product Period of the Units which are requested to be Resold; and
  - (e) state the number and category (if applicable) of the Units requested to be resold. This must be a whole number of Units and must not exceed the number of Units in that category in all applicable Unit Validity Times held by the Capacity Holder making the Resale Request (taking into account any Capacity Transfer or and Curtailment).
- 5.8 A Capacity Holder making a Resale Request must promptly respond to Moyle's satisfaction to any request by Moyle for clarification of such Resale Request.
- 5.9 Moyle will acknowledge receipt of Resale Requests. Moyle may reject any Resale Request that is invalid or that purports to resell Units in circumstances not permitted by this Clause 5.9 or if the Capacity Holder has failed to respond satisfactorily to a request under Clause 5.8.
- 5.10 Where one or more Resale Request(s) is made for a forthcoming Long Term Auction, Moyle will include the total associated Units ("**Resale Units**") from such Resale Request(s) in the forthcoming auction, but only to the extent that capacity is available on the Moyle Interconnector.
- 5.11 Resale Units that are made available in auctions shall be allocated by Moyle, as principal and not as agent of the Capacity Holder making the Resale Request. No rights or obligations arise or exist in connection with allocation of Resale Units as between the Capacity Holder making the Resale Request and the Capacity Holder to whom the Resale Units are allocated.
- 5.12 Moyle is under no obligation, express or implied, to ensure that demand in any auction is such that Resale Units will be allocated in that auction.
- 5.13 The price at which Resale Units are sold is the Unit Price of the auction specified in the Resale Request.
- 5.14 Where Resale Units are allocated to third party Capacity Holders in an auction, the original Capacity Holder in respect of the Units shall be entitled to a "**Resale Proceeds Payment**" to be calculated as follows:

$$A = (B * C)$$

Where:

A is the amount of the Resale Proceeds Payment;

B is the Unit Price in the auction specified in the relevant Resale Request;

C is the number of MW specified in the relevant Resale Request.

- 5.15 Moyle shall pay the Resale Proceeds Payment to the Capacity Holder in accordance with Clause 10.
- 5.16 Subject to Clause 5.17, any Capacity Holder which submits a Resale Request will forego its entitlement to use the Units specified in the Resale Request, whether or not such Units are allocated in the auction and whether or not the Capacity Holder receives a Resale Proceeds Payment. In all other respects, Relevant Capacity Holders' rights and obligations relating to such Units (including in relation to payment) will not be affected.
- 5.17 Where an auction is cancelled, any associated Resale Request(s) is/are cancelled and the corresponding Units are able to be used by the relevant Capacity Holder.
- 5.18 Moyle has no obligations in respect of a Resale Request save for those expressly set out in this Clause 5.

## 6. **Rights on Gate Closure**

- 6.1 Subject to Clauses 5 and 6.2, the right of the Capacity Holder to use its Units acquired prior to Gate Closure shall lapse upon Gate Closure and following Gate Closure Moyle shall have the right to use any unused Units or parts of Units in any manner that it determines in its absolute discretion, including reselling any such Units or parts of Units.
- 6.2 In the event that Moyle uses or sells the right to use any Units or parts of Units which are unused at Gate Closure in accordance with Clause 6.1:
  - (a) the Capacity Holder shall not be relieved of any payment obligations in respect of such Units or parts of Units; and
  - (b) Moyle shall have no liability to the Capacity Holder in respect of any use of such Units or parts of Units and, in particular, Moyle shall not be obliged to remit to the Capacity Holder all or any revenues which are derived from the use of such unused Units or parts of Units.

## 7. Capacity Transfers

- 7.1 A Capacity Holder shall be entitled to transfer its rights to use Units at any time following the publication of the relevant Final Auction Allocation Confirmation, provided that:
- (a) the Capacity Holder gives Moyle a notice of the Capacity Transfer (“**Capacity Transfer Notice**”) that complies with this Clause 7;
  - (b) the Capacity Transfer is made to a person who has an Interconnector Unit registered in respect of the Moyle Interconnector and is a party to a Moyle Interconnector Capacity Framework Agreement in the same form as this Agreement who has not been suspended pursuant to Clause 11.3 of such agreement;
  - (c) any Capacity Transfer Notice must specify whole Units and the duration of the Capacity Transfer must be for a minimum period of one hour and must be specified in whole hours (“**Capacity Transfer Period**”);
  - (d) the MW profile being subject to Capacity Transfer is the same for each Trading Day associated with the Capacity Transfer;
  - (e) the Capacity Holder has at least as many Units as the number it wishes to transfer in each Trading Period of each associated Trading Day (taking into account any reduction(s) due to previous Capacity Transfer(s), Resale Request(s) or Curtailment(s));
  - (f) at the time it gives the Capacity Transfer Notice, the Capacity Holder is not in default under this Agreement and its rights to use Units and participate in auctions have not been suspended; and
  - (g) the proposed Capacity Transfer will not result in the proposed transferee having acquired more than the permitted capacity allocation, as determined by the Authority from time to time.
- 7.2 A Capacity Holder may give more than one Capacity Transfer Notice covering the same period of time, subject to each notice complying with this Agreement. Any Capacity Transfer covering more than one calendar month must be notified in separate Capacity Transfer Notices, one for each affected month.
- 7.3 The Capacity Transfer does not modify the Timescale or any other categorisation upon which the Units were initially acquired.
- 7.4 The Capacity Transfer Notice submitted by the Capacity Holder making the Capacity Transfer must:

- (a) subject to Clause 8, be submitted via the Moyle Auction Platform;
  - (b) identify the Capacity Holder making the Capacity Transfer;
  - (c) identify the Capacity Holder to whom the Units are being transferred;
  - (d) state the Capacity Transfer Period;
  - (e) specify the Trading Periods of the Trading Days in which the Capacity Transfer is to be made; and
  - (f) state the number and category (if applicable) (including the Trading Period) of the Units the subject of the Capacity Transfer Notice.
- 7.5 A Capacity Holder giving a Capacity Transfer Notice must promptly respond to Moyle's satisfaction to any request by Moyle for clarification of the Capacity Transfer Notice.
- 7.6 Moyle will acknowledge receipt of Capacity Transfer Notices. Moyle may reject any Capacity Transfer Notice that is invalid or that purports to make a Capacity Transfer in circumstances not permitted by this Clause 7 or if the Capacity Holder has failed to respond satisfactorily to a request under Clause 7.5 in relation to that Capacity Transfer Notice.
- 7.7 A Capacity Transfer Notice cannot be withdrawn without the consent of Moyle and the Capacity Holder to whom that Capacity Transfer has been made.
- 7.8 Moyle shall inform each Capacity Holder party to a Capacity Transfer whether the Capacity Transfer Notice is registered.
- 7.9 A Capacity Transfer Notice is valid only when confirmed by the Capacity Holder to whom the Capacity Transfer was made within [ • ] for each relevant Timescale. Both Capacity Holders who are party to the Capacity Transfer will be informed by Moyle of its successful registration.
- 7.10 Where the Capacity Holder to whom the Capacity Transfer was made does not confirm the Capacity Transfer Notice during the relevant period of time, the Capacity Transfer Notice is not valid and the Capacity Holder who had sought to make the Capacity Transfer remains the Unit Holder of the Units. Both Capacity Holders who had been party to the attempted Capacity Transfer will be informed by Moyle of the failure of completion of the Capacity Transfer.
- 7.11 Moyle may, by giving notice to both the Capacity Holder who made a Capacity Transfer and the Capacity Holder to whom the capacity was

transferred, terminate any Capacity Transfer with immediate effect upon:

- (a) termination of this Agreement or the corresponding agreement of the other Capacity Holder; or
- (b) if a notice of suspension is delivered under Clause 11.3 of this Agreement such agreement; or the corresponding agreement of the other Capacity Holder.

## **8. Unavailability of Moyle Auction Platform**

- 8.1 If the Moyle Auction Platform fails and, in the reasonable opinion of Moyle, it is not practicable to operate a Capacity Transfer or a Resale Request electronically, Moyle may use an alternative procedure by email, post or fax, as specified from time to time, in order to conduct the Relevant Capacity Trade(s) or Resale(s) and to allocate the Units resulting from such Capacity Transfer(s) or Resale Requests(s).
- 8.2 If such alternative procedure cannot, in the reasonable opinion of Moyle, be implemented as necessary to enable Capacity Transfer(s) or Resale Requests(s) to be conducted, such Capacity Transfer(s) or Resale Requests(s) will be deferred. If deferral is not considered by Moyle as being possible, the Capacity Transfer(s) or Resale Requests(s) will be cancelled and all Resale Requests and Capacity Transfer Notices already submitted will automatically be cancelled.

## **9. Interconnector Outages and Curtailment Compensation**

- 9.1 Moyle will publish an indicative schedule of Outages for the forthcoming year. The schedule will specify the expected start and end dates of each Outage and the expected Available Transfer Capacity during each Outage.
- 9.2 Moyle will update the information given under 9.1 as soon as practicable after it becomes aware of any significant changes to the date or duration of relevant Outages.
- 9.3 Moyle will use reasonable endeavours to ensure that the information provided under this Clause 9 is accurate and that Outages take place as indicated by the information.
- 9.4 Notwithstanding Clause 9.3, each Capacity Holder acknowledges that circumstances may arise that require Moyle to take Outages at times other than those planned and therefore Moyle remains free to plan and execute any Outages that it considers necessary.
- 9.5 The Available Transfer Capacity at any time may be greater than expected due to circumstances such as early return to service after an Outage or rescheduling of an Outage. If Available Transfer Capacity increases, Moyle will use reasonable endeavours to notify all Capacity

Holders of its availability promptly and will allocate the unsold capacity in the next available auction.

- 9.6 Moyle will notify Capacity Holders of any Forced Outages as soon as reasonably practicable. Following this initial notice, Moyle will as soon as reasonably practicable provide Capacity Holders with information about the Forced Outage including, where possible, its anticipated duration and the expected Available Transfer Capacity during the Forced Outage.
- 9.7 Without prejudice to Clause 12, Moyle shall have no liability to whatsoever to the Capacity Holder in respect of Outages, whether in contract or otherwise, save to the extent expressly provided under this Agreement.
- 9.8 If the Moyle Interconnector is Curtailed in any Trading Period in which the Capacity Holder holds capacity, the Capacity Holder shall be entitled to a rebate of the Unit Price (“**Curtailed Compensation**”) to the extent that it is affected by such Curtailment.
- 9.9 The amount of the Curtailed Compensation payable in the circumstances referred to in Clause 9.8 in respect of any Trading Period shall be calculated as:

$$CC_{tp} = UP_{tp} \times (1 - ATC_{tp}/NomTC_{tp} \times ICE_{tp})/2$$

Where:

**CC<sub>tp</sub>** means Curtailed Compensation for the relevant Trading Period (expressed in £)

**UP<sub>tp</sub>** means the weighted average Unit Price payable by the Capacity Holder in respect of the Units in that Trading Period;

**ATC<sub>tp</sub>** means the Available Transfer Capacity in that Trading Period;

**NomTC<sub>tp</sub>** means the Nominal Transfer Capacity in that Trading Period;

**ICE<sub>tp</sub>** means the Interconnector Capacity Entitlement of the Capacity Holder in that Trading Period;

- 9.10 The Capacity Holder acknowledges that if at any time the Available Transfer Capacity is reduced due to technical, operational or other reasons, the amount of capacity that the Capacity Holder is entitled to use may be reduced accordingly and, if so, the Capacity Holder (to the extent such reduction can be made by the Capacity Holder consistent with the provisions of the Trading and Settlement Code and the Balancing and Settlement Code) shall be responsible for making any appropriate adjustments to any Commercial Offer Data at that time in

accordance with the Trading and Settlement Code and adjustments to any contract and physical notifications under the Balancing and Settlement Code and the GB Grid Code and shall indemnify Moyle for any costs, losses or expenses it may incur as a result of the Capacity Holder failing to comply with its obligations hereunder.

- 9.11 Subject to Clause 9.8, Moyle shall have no liability in respect of any reductions in Available Transfer Capacity or any restriction on the import of electricity from the Pool or export of electricity from the Pool whether pursuant to the Trading and Settlement Code or otherwise (and, in particular, shall have no liability for any loss or damage of any kind suffered by a Capacity Holder as a result of their trading position being affected by a Modified Interconnector Unit Nomination) or any imbalance charges, whether resulting from a failure to make such adjustments or otherwise.
- 9.12 If there is a capacity shortage in any Settlement Period in a given direction leading to the potential Curtailment of Units for the subject of a Resale Request by a Capacity Holder (but not already resold), the corresponding notifications for Resale shall be cancelled in their entirety, without credit from Moyle and the corresponding Units are retained by the Capacity Holder. These Units shall then be subject to Curtailment.
- 9.13 If there is a capacity shortage in any Settlement Period in a given direction leading to the potential Curtailment of Units notified for Capacity Transfer by a Capacity Holder to Moyle:
- (a) if the Capacity Transfer has been confirmed by the Capacity Holder to whom the Capacity Transfer was made before the Curtailment, the Units are Curtailed and a credit is made to such Capacity Holder in accordance with Clause 9.9;
  - (b) if the Capacity Transfer has not been confirmed by the Capacity Holder to whom the Capacity Transfer is being made before the Curtailment, the Capacity Transfer is cancelled in its entirety by Moyle, the corresponding Units are returned to the Capacity Holder which submitted the associated Capacity Transfer Notice and no credit is due to the party which had not confirmed the Capacity Transfer. These Units are then subject to Curtailment.

## 10. **Payment**

- 10.1 Moyle shall prepare an Invoice which shall specify:
- (a) the monthly instalments payable by the Capacity Holder in respect of the portion related to month M+1 of Long-Term Units, the Product Period of which is equal or greater than one month, and the allocation of which will have taken place before the date of the relevant invoice. The monthly instalment

payable is calculated as the product of the aggregate MW of the corresponding Units and the Unit Price across the total Product Period, prorated by one month over the total number of months in the Product Period, rounded down to the nearest penny for each monthly instalment, with the balance in the last monthly instalment.

- (b) the monthly instalments payable by the Capacity Holder in respect of the portion related to month M of Long-Term Units, the Product Period of which is equal or greater than one month, and the allocation of which will have taken place after or on the Invoice Date of month M-1. The monthly instalment payable is calculated as the product of the aggregate MW of the corresponding Units and the Unit Price across the total Product Period, prorated by one month over the total number of months in the Product Period, rounded down to the nearest penny for each monthly instalment, with the balance in the last monthly instalment.
- (c) the amount payable by the Capacity Holder in respect of Units, the Product Period of which is less than one (1) month and starts in month M-1, calculated as the product of the aggregate MW of the corresponding Units and the Unit Price;
- (d) the monthly instalments payable by Moyle to the Capacity Holder in respect of the portion related to month M+1 of Resale Proceeds Payment in respect of Units Product Period of which is equal or greater than one month, and the allocation of which will have taken place before the Invoice Date of month M. The monthly instalment receivable is calculated as the product of the Resold Unit Quantity and the Unit Resale Price, prorated by one month over the total number of months in the Product Period, rounded down to the nearest penny for each monthly instalment, with the balance in the last monthly instalment.
- (e) the monthly instalments payable by Moyle to the Capacity Holder in respect of the portion related to month M of the Resale Proceeds Payment in respect of Units the Product Period of which is equal or greater than one month, and the Resale of which will have taken place after or on the Invoice Date of month M-1. The monthly instalment receivable is calculated as the product of the Resold Unit Quantity and the Unit Resale Price, prorated by one month over the total number of months in the Product Period, rounded down to the nearest penny for each monthly instalment, with the balance in the last monthly instalment;
- (f) the Resale Proceeds Payment in respect of Units, the Product Period of which is less than one Month and starts M-1, calculated as the product of the Resold Unit Quantity and the Unit Resale Price;

- (g) the amount payable by Moyle in respect of Unused Units and in respect of Trading Days within M-1, calculated as the product of the aggregate MW of the Unused Units and the corresponding Unit Price of the auction at which the Unused Units are re-allocated;
- (h) any amounts of Curtailment Compensation payable or credits due to the Capacity Holder by Moyle pursuant to Clause 9;
- (i) any amount payable by the Capacity Holder to Moyle for any training requested by the Capacity Holders, in addition to the standard training provided for the use of the Moyle Auction Platform;
- (j) any taxes payable by the Capacity Holder or Moyle in respect of amounts in the invoice;
- (k) the Capacity Holder's share of any Pass Through Charges, calculated according to their allocated proportion of capacity on the Moyle Interconnector from time to time;
- (l) the total amounts payable by the Capacity Holder to Moyle under that invoice (or receivable by the Capacity Holder from Moyle under that invoice); and
- (m) any other information legally required to be included in the invoice.

10.2 Moyle shall invoice the Capacity Holder for the payments specified in Clause 10.1 for each Payment Period and may do so during the period of 10 Business Days before the start of each Payment Period.

10.3 The Capacity Holder must pay all invoices under Clause 10.2 free of any charge, set off or counterclaim, within 10 Business Days of their receipt by making payment to Moyle's bank account notified to the Capacity Holder by Moyle for the purposes of this Agreement from time to time. If any amount in an invoice is in dispute, then the Capacity Holder must pay the undisputed amount of the invoice. Any dispute in relation to an invoice must be notified as soon as practicable after receipt of the invoice and must be resolved in accordance with Clause 14.

10.4 Interest will be charged on overdue amounts (including any amounts the subject of a dispute and subsequently found to be payable) after as well as before judgement on a daily basis at a default rate which is three percentage points per annum above the base lending rate of the Bank of Ireland from the date due for payment until the date paid.

## 11. Default and Termination

11.1 Unless expressly agreed otherwise by the parties, all Capacity Contracts and all rights to use a Capacity Holder's ICE shall terminate immediately upon:

- (a) the Capacity Holder ceasing to have an Interconnector Unit registered in respect of the Moyle Interconnector; or
- (b) a breach of the Security Requirements by the Capacity Holder.

11.2 If at any stage the Capacity Holder neither is a party to a subsisting Capacity Contract nor has made an offer to acquire Units of Capacity pursuant to any Relevant Access Arrangements, either party may, by notice in writing to the other, terminate this Agreement, such termination to take place on the date specified in the notice or, if no date is specified upon the date that the notice is deemed to have been received pursuant to Clause 18.3. In the event of termination of this Agreement pursuant to this Clause 11.2, neither party shall have any obligation to the other, save in respect of its continuing obligations under this Agreement.

11.3 A party ("**First Party**") may by notice in writing to the other party ("**Defaulting Party**") terminate this Agreement and/or all or any Capacity Contracts with effect from the date specified in the notice in the circumstances set out in Clause 11.5. If the Defaulting Party is the Capacity Holder, Moyle may, in the alternative or in addition, give the Capacity Holder notice suspending the right of the Capacity Holder to use its ICE under all or any Capacity Contracts or to participate in any further auctions until it gives a further notice lifting the suspension or terminating this Agreement provided that where Moyle has:

- (a) suspended the right of the Capacity Holder to use its ICE pursuant to this Clause 11.3 and the Capacity Holder is no longer a Defaulting Party for the purposes of this Clause 11; and
- (b) Moyle has entered into a contract with a third party for the use of any applicable Units by that third party,

then the period of suspension shall be extended until the contract referred to in Clause 11.3(b) has terminated or expired. Where the right of the Capacity Holder to use its ICE is suspended under this Clause 11.3, the Capacity Holder shall not be relieved of its payment obligations in respect of any applicable Units and Moyle shall be entitled to offer for resale or resell such Units and the Capacity Holder shall not be entitled to any compensation or rebates in respect of same.

11.4 Termination of an individual Capacity Contract shall be without prejudice to any other Capacity Contracts entered into between Moyle and the Capacity Holder which have not terminated or expired. If this

Agreement is terminated pursuant to Clause 11.3, all Capacity Contracts and all rights in respect of the Capacity Holder's ICE shall also be immediately terminated.

11.5 The circumstances referred to in Clause 11.3 are:

- (a) the Defaulting Party fails to pay any amount which is not the subject of a bona fide dispute due for payment to the First Party under this Agreement and such default continues unremedied after the expiry of 10 Business Days after the date on which the First Party has notified the Defaulting Party of the default; or
- (b) the Defaulting Party is in Material Breach and:
  - (i) (where the breach is capable of remedy) the First Party has given notice to the Defaulting Party of the breach but the breach has not been remedied within 28 Business Days of such notification; or
  - (ii) (where the breach is not capable of remedy) the First Party has given notice of the breach to the Defaulting Party requiring an undertaking to the reasonable satisfaction of the First Party that the breach will not be repeated and specifying the steps the Defaulting Party will take to ensure compliance with the undertaking and that undertaking has not been given within 28 Business Days of the notice or having been given, has been breached; or
- (c) the Defaulting Party is in breach of any Applicable Law or the First Party has been advised by a Competent Authority that the Defaulting Party is in breach of any Applicable Law
- (d) the Defaulting Party:
  - (i) subject to Clause 11.6, is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986 or Article 103(1) and (2) of the Insolvency (Northern Ireland) Order) 1989) or if any voluntary agreement is proposed in relation to it under section 1 of that Act or Article 14 of that Order or it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the First Party);
  - (ii) has a receiver (which expression includes an administrative receiver within the meaning of section 29 of the Insolvency Act 1986 and an administrative receiver within the meaning of Article 5(1) of the Insolvency (Northern Ireland) Order 1989) of the whole

or any material part of its assets or undertaking appointed provided that, notwithstanding the above, this provision shall not apply if a receiver has been appointed over all or substantially all of the Defaulting Party's assets for so long as such receiver is honouring such party's obligations under this Agreement;

- (iii) has an administration order under section 8 of the Insolvency Act 1986 or Article 21 of the Insolvency (Northern Ireland) Order 1989 made in relation to it;
- (iv) passes any resolution for winding-up;
- (v) becomes subject to an order by the High Court for winding-up; or
- (vi) anything analogous to, or having a substantially similar effect to, any of the circumstances listed in Clauses 11.5(d)(i) to 11.5(d)(v) occurs in relation to that party in any jurisdiction.

11.6 For the purposes of Clause 11.5(d)(i), Section 123(1)(a) of the Insolvency Act 1986 and Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 shall have effect as if for "£750" there was substituted "£10,000".

11.7 Moyle may by 7 days notice in writing to the Capacity Holder terminate this Agreement and/or all or any Capacity Contracts with effect from the date specified in the notice if Moyle, in its absolute discretion, determines that any of the following events have occurred:

- (a) any investigation or enforcement action is commenced or any matter being raised by the European Commission under the EC Treaty;
- (b) any action being brought by any third party against Moyle and/or the Transmission System Operator in a court of competent jurisdiction in reliance on the EC Treaty and/or the Competition Act 1998;
- (c) any action being taken by or any matter is raised by the Authority under any of the Competition Act 1980, the Competition Act 1988 or the Enterprise Act 2002 or by any other person responsible for enforcing the provisions of such Acts or any other Competent Authority under corresponding legislation in the Republic of Ireland;
- (d) any action being taken against Moyle and/or the Transmission System Operator by any third party in a court of competent jurisdiction in connection with any Relevant Access

Arrangements or any allocation of the right to use Units of capacity pursuant to such Relevant Access Arrangements; or

- (e) any enforcement or other action being taken against Moyle and/or the Transmission System Operator by the Authority or any third party in reliance on the terms of the Transmission Licences in connection with any Relevant Access Arrangements or any allocation of the right to use Units of capacity pursuant to such Relevant Access Arrangements.

11.8 Where this Agreement and/or any Capacity Contracts are terminated in circumstances where Moyle is the Defaulting Party under Clause 11.3 or pursuant to Clause 11.7, then Moyle must, within 10 Business Days of a request of the Capacity Holder repay to the Capacity Holder any advance payments made in respect of Units of capacity relating to the period after termination of any Capacity Contract takes effect, as calculated under this Clause 11.8.

11.9 Where this Agreement terminates pursuant to Clause 11.1 and/or where the Capacity Holder is the Defaulting Party pursuant to Clause 11.3, the Capacity Holder shall within 15 Business Days of receipt of an invoice for the same, pay to Moyle the Termination Amount.

## 12. **Liability**

12.1 Subject to Clauses 12.2 and 12.3, each party agrees and acknowledges that neither party (“**Party Liable**”) nor any of its officers, employees or agents is liable to the other party for loss arising from any breach of this Agreement and/or any Capacity Contracts other than for loss directly resulting from such breach and which at the Commencement Date was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:

- (a) physical damage to the property of either party or their respective officers, employees or agents; and/or
- (b) the liability of the other party to any other person for loss in respect of physical damage to the property of any person.

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

12.3 Subject to Clause 12.2, and in the case of the Capacity Holder without prejudice to Clauses 10 and 11.9, neither the Party Liable nor any of its

officers, employees or agents is in any circumstances whatsoever liable to the other party for:

- (a) any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or
- (b) any indirect or consequential loss, or
- (c) loss resulting from the liability of the other party to any other person howsoever and whensoever arising save as provided in Clauses 12.1 and 12.2.

12.4 Each party acknowledges and agrees that the other party holds the benefits of Clauses 12.1, 12.2 and 12.3 for itself and as trustee and agent for its officers, employees and agents.

12.5 For the avoidance of doubt, nothing in this Clause 12 prevents or restricts either party enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Agreement and/or any Capacity Contract.

12.6 Each party acknowledges and agrees that this Clause 12 is fair and reasonable having regard to the circumstances as at the Commencement Date.

12.7 The rights and remedies provided by this Agreement to the parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of this Agreement and all Capacity Contracts including without limitation any rights either party may possess in tort which shall include actions brought in negligence and/or nuisance. Accordingly, each party waives to the fullest extent possible all such rights and remedies provided by common law or statute, and releases the other party, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Agreement and all Capacity Contracts and undertakes not to enforce any of them except to the extent provided for in this Agreement.

### 13. **Force Majeure**

13.1 If an event of Force Majeure occurs in relation to a party (“**Non-Performing Party**”) this Agreement remains in effect but subject to Clauses 13.2, 13.3 and 13.5, the Non-Performing Party’s relevant obligations under this Agreement and any Capacity Contracts and the corresponding obligations of the other party under this Agreement and any Capacity Contracts are suspended to the extent it is unable to perform those obligations by reason of the Force Majeure event.

- 13.2 The Non-Performing Party must use all reasonable efforts to remedy its inability to perform and to mitigate the effects of any event of Force Majeure.
- 13.3 The Non-Performing Party must give the other party prompt written notice describing the circumstances of Force Majeure, including the nature of the event and its expected duration, and must continue to furnish regular reports during the period that is affected by the event of Force Majeure. The Non-Performing Party must afford the other party reasonable opportunity for obtaining further information about the circumstance of Force Majeure and the steps the Non-Performing Party is taking under Clause 13.2.
- 13.4 As soon as practicable after the occurrence of the Force Majeure event the parties must discuss how best to continue to perform their obligations as far as possible in accordance with this Agreement and any Capacity Contracts.
- 13.5 An event of Force Majeure does not excuse either party from its payment obligations under this Agreement.

#### 14. **Disputes**

- 14.1 Except as otherwise expressly provided for in this Agreement, any disagreement, difference of opinion or other dispute between Moyle and the Capacity Holder in relation to this Agreement or any Capacity Contract (“**Dispute**”) shall be resolved in accordance with this Clause 14.
- 14.2 Where there is a Dispute, a representative of each of Moyle and the Capacity Holder with authority to resolve the Dispute must meet within 10 Business Days of a request to meet made by either party and seek to resolve the Dispute. If the parties are unable to resolve the Dispute within 28 Business Days of the meeting (or such longer time as may be agreed) then the parties may agree to refer the Dispute to arbitration pursuant to the rules of the Electricity Arbitration Association in force from time to time. In default of that agreement within 5 Business Days of either party making a request to agree, each party may take such other action in relation to the Dispute as it considers appropriate.
- 14.3 The law of Northern Ireland is the proper law of reference to arbitration under this Clause and the provisions of the Arbitration Act 1996 (as from time to time amended) apply to any such arbitration.
- 14.4 Nothing in this Clause 14 prevents either party from at any time seeking interim or interlocutory relief from a court.

**15. Entire Agreement**

15.1 Subject to Clause 15.2, this Agreement and all Capacity Contracts constitute the whole and only agreement between the parties relating to the subject matter of this Agreement and the Capacity Contracts and supersede and extinguish any prior drafts, previous agreements, undertakings, representations, warranties (unless and to the extent that such representations and/or warranties were made fraudulently) and arrangements of any nature whatsoever, whether or not in writing between the parties, in connection with the subject matter hereof.

15.2 Nothing in Clause 15.1 affects the validity or enforceability of any Existing Capacity Agreement.

**16. Waiver**

16.1 No omission to exercise or delay in exercising any right, power or remedy provided by law or under this Agreement or any Capacity Contract shall constitute a waiver of such right, power or remedy or any other right, power or remedy or impair such right, power or remedy. No single or partial exercise of any such right, power or remedy precludes or impairs any other or further exercise thereof or the exercise of any other right, power or remedy provided by law or under this Agreement or any Capacity Contract.

16.2 Any waiver of any right, power or remedy under this Agreement or any Capacity Contract must be in writing and may be given subject to any conditions thought fit by the grantor. Unless otherwise expressly stated any waiver is effective only in the instance and only for the purpose for which it is given.

**17. Variation**

No variation to this Agreement or any Capacity Contract shall be of any effect unless it is expressly contemplated by this Agreement or is agreed in writing, signed by or on behalf of each party.

**18. Notices**

18.1 All notices and other communications to be given under or in connection with this Agreement or any Capacity Contract must (except where expressly provided otherwise) be in writing and must either be delivered by hand or sent by first class pre-paid post or by facsimile transmission or by electronic mail. Delivery by courier is regarded as delivery by hand.

18.2 All communications must be sent to the address of the relevant party, the facsimile number set out below, or to such other address or facsimile number of a party as may be notified by that party from time to time. Each communication must be marked for the attention of the relevant person.

**Moyle:**

Moyle Interconnector Limited  
First Floor, The Arena Building  
85 Ormeau Road  
Belfast BT7 1SH  
For the attention of: The Finance Department  
Fax number: +44 28 9024 9673

E-Mail: [notices@moyleinterconnector.com](mailto:notices@moyleinterconnector.com)

**Capacity Holder:**

As set out in Item 4 of Schedule 1.

- 18.3 Subject to Clause 18.4, a communication is deemed to have been received:
- (a) if delivered by hand, at the time of delivery; or
  - (b) if sent by first class pre-paid registered post, at the expiration of two clear days after the time of posting; or
  - (c) if sent by facsimile, at the time of completion of transmission by the sender; or
  - (d) by electronic mail confirmed by a recorded delivery message.

If a communication would otherwise be deemed to have been received outside of normal business hours (being 9:00 a.m. to 5:30 p.m. on a Business Day) under this Clause 18, it is deemed to have been received at the opening of business on the next Business Day.

- 18.4 A notice of termination under this Agreement other than when delivered by hand will be taken to have been delivered at the time of receipt by the Defaulting Party.
- 18.5 Service of notices by electronic mail or other electronic methods of writing shall only be effective under this Agreement if such notices are transmitted by means of a pdf or equivalent scanned version of a signed notice.
- 18.6 For the purposes of this Clause 18:
- (a) words in electronic form shall be deemed to be “writing” for the purposes of all application legislation where “writing” is required; and
  - (b) electronic evidence shall be admissible in any court or other quasi-judicial proceedings between the parties.

## 19. Confidentiality

19.1 Each party (“**Recipient**”) must in relation to the Confidential Information of the other party (“**Disclosing Party**”), during and for a period of 12 months after expiry or termination of this Agreement, preserve the confidentiality of the Confidential Information of the Disclosing Party other than for the purpose for which it was disclosed except:

- (a) in any of the circumstance set out in Clause 19.2 below, to the extent necessary in the relevant circumstance; or
- (b) to the extent otherwise expressly permitted by this Agreement; or
- (c) with the prior consent in writing of the Disclosing Party.

19.2 The circumstances referred to in Clause 19.1(a) are:

- (a) where the Confidential Information is required to be disclosed in accordance with this Agreement;
- (b) where Moyle discloses the Confidential Information of the Capacity Holder to a Competent Authority, the Transmission System Operator or the Interconnector Administrator or otherwise in accordance with its obligations under its Transmission Licence or the Trading and Settlement Code;
- (c) if, and to the extent, after giving reasonable notice to the Disclosing Party, the Recipient discloses the Confidential Information to any person:
  - (i) in compliance with any requirement under any Applicable Law;
  - (ii) in response to a requirement of any regulatory authority or other competent authority to which the parties are subject where such requirement has the force of law;
  - (iii) in order to obtain clearance or consents from a regulatory authority;
  - (iv) in response to a requirement of any stock exchange or the Panel on Take-Overs and Mergers;
  - (v) pursuant to the arbitration rules for the Electricity Arbitration Association or pursuant to any judicial or other arbitral process or tribunal of competent jurisdiction; and
  - (vi) to any person in connection with the provision or proposed provision of finance or refinance or insurance

coverage to that Party, to any person who has provided such finance or refinance or such insurance coverage, to any agent or trustee for any such person and to the advisors of any such person, agent or trustee;

- (d) where the Confidential Information is required to be disclosed to any employee, director, agent, consultant or professional advisor of the Recipient, in each case, subject to the person's agreement to maintain confidentiality.

## 20. **Assignment and Novation**

20.1 Subject to Clause 20.2, neither party may assign, novate or otherwise transfer this Agreement without the prior consent of the other party.

20.2 Notwithstanding Clause 20.1: Moyle shall be entitled, without the consent of the Capacity Holder:

- (a) to assign, charge or otherwise encumber this Agreement, any Capacity Contract or any of its rights or benefits under this Agreement or any Capacity Contract by way of security to any provider of finance or re-finance to Moyle or to any agent or trustee on their behalf; or
- (b) to assign or novate this Agreement, any Capacity Contract or any of its rights or benefits under this Agreement or any Capacity Contract to any third party which acquires the right to offer capacity on the Moyle Interconnector and, in the event that Moyle elects to novate this Agreement or Capacity Contract the Capacity Holder shall execute on demand any documents required to give effect to such novation.

## 21. **Agency and Subcontracting**

21.1 Moyle may at any time appoint any person as agent or sub-contractor to exercise all or any of its rights and/or perform all or any of its obligations under this Agreement, the Relevant Access Arrangements or any Capacity Contract.

21.2 The Capacity Holder acknowledges that as at the Commencement Date, the Transmission System Operator has been appointed as Moyle's agent for the purposes of offering the right to use Units of capacity and for administering the Relevant Access Arrangements.

21.3 The Capacity Holder shall comply with any written directions from Moyle in connection with the matters in respect of which the Capacity Holder shall deal with an agent or sub-contractor appointed pursuant to Clause 21.1 instead of or in addition to Moyle.

22. **Severance**

Each of the provisions of this Agreement and the Capacity Contracts is severable. If any such provision is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity or enforceability in that jurisdiction of the remaining provisions of this Agreement and/or the Capacity Contracts shall remain in full force and effect and shall continue to bind the parties.

23. **Survival**

23.1 The expiry or termination of this Agreement or any Capacity Contract does not affect any rights or obligations which may have accrued prior to such expiry or termination and does not affect continuing obligations of each of the parties under this Agreement which are expressed to continue after such expiry or termination.

23.2 Without limitation to the generality of Clause 23.1, Clauses 1, 4, 10, 11, 12.1, 12.2, 12.3, 12.4 and 13 to 26 shall survive termination of this Agreement.

24. **Governing law**

This Agreement and each Capacity Contract shall be governed by and construed in accordance with the law of Northern Ireland and the Courts of Northern Ireland have exclusive jurisdiction in relation to any matter arising under or in respect of this Agreement and each Capacity Contract.

25. **Change in Circumstances**

25.1 If there is a Change in Circumstances which changes the operation or effect of this Agreement or any Capacity Contract as originally intended by the parties, then either party may notify the other that it wishes to review this Agreement or any Capacity Contract and the parties shall meet and discuss in good faith the amendments that should be made to this Agreement or any Capacity Contract in order to reflect the original intent of the parties.

25.2 For the purpose of Clause 25.1, a “Change in Circumstances” occurs if after the Commencement Date any law is passed, made, brought into force, issued, amended or revoked or ceases to have effect or there is any change in any trading arrangements affecting the Moyle Interconnector, or the terms of any System Documents, or any licence or document issued pursuant to a condition of any licence is amended.

26. **Rights of Third Parties**

A person who is not a party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Agreement or any Capacity Contract but this clause does not affect any right or remedy of a third party which exists or is available apart from that Act.

**EXECUTED** as an agreement this

day of

20

**SIGNED** by (name) )  
for and on behalf of Capacity Holder )  
in the presence of: )  
)

Signature

Signature

Name

Position

**SIGNED** by (name) )  
for and on behalf of **MOYLE** )  
**INTERCONNECTOR LIMITED** )  
in the presence of: )  
)

Signature

Signature

Name

Position

## Schedule 1

### The Capacity Holder

- |               |   |                |
|---------------|---|----------------|
| <b>Item 1</b> | <b>Name of Capacity Holder</b>            | [ ● ]          |
| <b>Item 2</b> | <b>Co. Registration Details</b>           | [ ● ]          |
| <b>Item 3</b> | <b>Registered Office</b>                  | [ ● ]          |
| <b>Item 4</b> | <b>(a) Address for service of Notices</b> | [As above/ ● ] |
|               | <b>(b) Responsible Person</b>             | [ ● ]          |
|               | <b>(c) Fax Number</b>                     | [ ● ]          |
|               | <b>(d) E-mail Address</b>                 | [ ● ]          |
|               | <b>(e) Telephone Number</b>               | [ ● ]          |
|               | <b>(f) EIC/EAN Code</b>                   | [ ● ]          |

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<sup>1</sup> To be kept under review to determine whether there is there any SEM specific data that will be required at the stage of signing this Agreement to enable Moyle and/or SONI to comply with their communications obligations under the TSC. Note clause 4.1(c).

## **Schedule 2**

### **Nominations**

#### **Interconnector Capacity Entitlement**

1. Moyle shall maintain a report (entitled the ICE Portfolio) on the Moyle Auction Platform, which shall provide the latest ICE for each Capacity Holder in respect of a given Trading Period.

#### **Nominations**

2. In respect of each hour in a Trading Day for which a Capacity Holder has Units acquired in a Long Term Auction, such Capacity Holder may Nominate to Moyle during the Nomination Window their intention to utilise such Units.
3. Subject to paragraph 5, the Nomination for each hour in the Trading Day must be expressed in whole MW, with a single value, greater than or equal to zero, for each hour.
4. Moyle will reject a Nomination in its entirety for the Trading Day where the corresponding Nomination(s) in one or more hours exceed(s) the ICE acquired by the Capacity Holder in Long Term Auctions.
5. Nominations shall be submitted in the formats specified by Moyle from time to time having regard to the ENTSO-E recommendations and/or to any other technical recommendations.
6. Provided that Nomination is in the required format and is not otherwise rejected in accordance with this Schedule 2, Moyle will acknowledge receipt of the Nomination to Capacity Holders by a message indicating that the Nomination has been correctly registered.
7. Only Nominations confirmed as correctly registered shall be valid.
8. Nominations may not be modified by the Capacity Holder after the Nomination Gate Closure.
9. Where the Capacity Holder fails to make a Nomination or a default Nomination in a direction, the Capacity Holder shall be deemed to have made Nomination of zero.

#### **Default Nominations**

10. Each Capacity Holder may elect to activate a Default Nomination.
11. Where a Capacity Holder has activated a Default Nomination, all Nominations in respect of a given Trading Day will be automatically generated at the value of the Default Nomination for each hour of that Trading Day.

12. The registered Default Nomination is considered as a schedule of Nominations submitted by the Capacity Holder at the Nomination Window. This Nomination shall be valid once confirmed as such by Moyle, having regard to the requirements of this Schedule 2.
13. The Capacity Holder may modify the Nomination resulting from the Default Nomination within the relevant Nomination Window.
14. The Capacity Holder may deactivate its Default Nomination on the Moyle Auction Platform at any time. Where such deactivation takes place during a relevant Nomination period, any existing valid Nomination resulting from a Default Nomination shall remain unchanged.

### **Communications Failures**

15. Each Capacity Holder must notify its Nominations electronically, save that in the event of a problem of communication between the Capacity Holder and the Moyle Auction Platform, the Capacity Holder may use an alternative valid means of communication, other than the failed communication channel. The Capacity Holder shall cover its own costs in doing so.
16. In the event of technical difficulties with the Moyle Auction Platform, Moyle may be forced to cancel a Nomination Gate Closure. In that case, Moyle shall inform the Capacity Holders as soon as practicable of such cancellation.

## Schedule 3

### Security Requirements

#### 1. Definitions

For the purposes of this Schedule 3, the following terms shall have the following meanings:

**“Approved Credit Rating”** means (in the case of Capacity Contracts with a term of up to one year) an A-1/P-1 short term rating from both Moody’s and Standard & Poor’s and (in the case of Capacity Contracts with a term in excess of one year) a minimum medium term rating of A/A2 from both Moody’s and Standard & Poor’s and in either case is not on credit watch with a negative outlook; provided that a Capacity Holder who does not have an A-1/P-1 short term rating or (as the case may be) an A/A2 medium term rating shall nevertheless be deemed to have an Approved Credit Rating if Moyle is satisfied, in its absolute discretion, that the Capacity Holder has a level of financial strength which is not less than that of a person with an A -1/P-1 short term rating or (as the case may be) an A/A2 medium term rating;

**“Credit Cover”** has the meaning given in paragraph 3 of this Schedule 3.

**“Deposit Account”** means a deposit account at a bank in the United Kingdom that satisfies the criteria outlined in the definition of Qualifying Issuer where:

- (a) the account is in the joint names of Moyle and the Capacity Holder;
- (b) interest on the amount deposited in the account accrues for the benefit of the Capacity Holder, after any deduction for any tax or bank charges;
- (c) Moyle and the Capacity Holder have irrevocably instructed the bank to make payments to Moyle against the sole signature of Moyle;
- (d) the bank has agreed that the amount deposited in the account must not be set off or otherwise applied by the bank in respect of any indebtedness of the Capacity Holder, Moyle or any other person; and
- (e) amounts (other than interest) standing to the credit of the account will not be paid to the Capacity Holder without the prior written agreement of Moyle;

**“Guarantor”** has the meaning given in paragraph 3(a)(iii) of this Schedule 3;

**“Letter of Credit”** means an unconditional irrevocable stand-by letter of credit from a Qualifying Issuer in the form set out in Appendix 2 to this Schedule 3 approved by Moyle issued for the account of the Capacity Holder in sterling in favour of Moyle and allowing for partial drawings and providing for the payment to Moyle forthwith on demand by any UK clearing bank or

such other bank as Moyle may approve and which is available for payment at a branch of the issuing bank;

“**Qualifying Issuer**” means a legal person which either:

- (a) possesses a current A rating or better awarded by Standard & Poor’s Rating Services or a current A2 rating or better awarded by Moody’s Investors Service. Inc. in respect of its most recent unsecured (and unsubordinated) long term debt issue on any capital market or, if the said agencies should both cease to publish such ratings, possesses an equivalent rating from another ratings agency of equal repute; or
- (b) is otherwise approved by Moyle and, is permitted to accept deposits pursuant to Part IV of the Financial Services and Markets Act, 2000,

provided that if any person previously possessing the rating set out in (a) above should cease to possess such rating or, being admitted to be a Qualifying Issuer by virtue only of approval pursuant to paragraph (b), should be the subject of a notice by Moyle to the Capacity Holder to the effect that the issuer has, in the reasonable opinion of Moyle, suffered a material adverse change in its financial condition since its approval, such person shall cease to be a Qualifying Issuer;

## 2. **Approved Credit Rating**

- (a) Unless otherwise agreed by Moyle at its sole discretion, if at the beginning of any Product Period, the Capacity Holder does not have an Approved Credit Rating, then by the date of commencement of the Product Period (or such later date as is agreed by Moyle at its sole discretion) the Capacity Holder must provide the Credit Cover.
- (b) If at any time during any Product Period the Capacity Holder ceases to have an Approved Credit Rating, it must within 10 Business Days of so ceasing, provide the Credit Cover.

## 3. **Credit Cover**

- (a) If the Capacity Holder is required to provide Credit Cover, it must deliver to Moyle and subsequently maintain security against payment default in the form of:
  - (i) a Letter of Credit; or
  - (ii) a cash deposit in an interest bearing joint Deposit Account; or
  - (iii) such other form as Moyle agrees (which may, if agreed by Moyle include a parent company guarantee from an entity that has an Approved Credit Rating (“**Guarantor**”) in favour of Moyle in the form set out in Appendix 1 to this Schedule 3),

as security for payment of all monies due to Moyle under this Agreement, including payment of the Termination Amount. The

amount of the Credit Cover must be the amount calculated under paragraph 3(g) of this Schedule 3.

- (b) In the event that:
- (i) the Guarantor ceases to hold an Approved Credit Rating; or
  - (ii) the issuer of the Letter of Credit under Clause 3(a)(i) ceases to be a Qualifying Issuer;

then the Capacity Holder shall within 5 Business Days procure that Moyle is the beneficiary of either (i) a replacement guarantee complying with the provisions of paragraph 3(a)(iii) of this Schedule 3 or (ii) a Letter of Credit or replacement letter of credit (as the case may be) substantially in the form set out in Appendix 2 to this Schedule 3 issued by a Qualifying Issuer.

- (c) Moyle shall be entitled to make a demand up to the full amount under a Letter of Credit in any of the following circumstances:
- (i) non-payment of any amount due if failure to make payment is not remedied on or before the 5<sup>th</sup> Business Day after notice of that failure is given in accordance with the terms of this Agreement;
  - (ii) the issuer of the Letter of Credit ceases to be a Qualifying Issuer and such Letter of Credit is not replaced by another instrument which conforms with the provisions of paragraph 3(a)(iii) of this Schedule 3 within 5 Business Days of demand to that effect addressed by Moyle to the Capacity Holder;
  - (iii) the amount of the Credit Cover at any time falls below the minimum required amount under paragraph 3(g) of this Schedule 3; or
  - (iv) if:
    - (A) the Product Period exceeds one year; and
    - (B) a Letter of Credit has been delivered for the Capacity Holder pursuant to this Agreement; and
    - (C) such Letter of Credit (or replacement or extension thereof) has a scheduled expiry date earlier than the end of the Product Period; and
    - (D) the Capacity Holder fails to procure that, not later than 15 Business Days prior to the scheduled date of expiry of such Letter of Credit (or of any replacement or extension):

- (I) a replacement or extended Letter of Credit is delivered to Moyle; or
  - (II) Moyle is the beneficiary of a guarantee complying with the provisions of paragraph 3(a)(iii) of this Schedule 3.
- (d) The following provisions shall apply to amounts received by Moyle following a demand pursuant to paragraphs 3(c)(iv)(B) or 3(c)(iv)(D) of this Schedule 3 (“**Relevant Amounts**”):
  - (i) All Relevant Amounts shall be credited to an interest bearing account of Moyle in the United Kingdom with a clearing bank and shall at all times be segregated from all other monies of Moyle and shall be free from any encumbrance arising or subsisting in favour of any person other than Moyle.
  - (ii) All Relevant Amounts (and all interest thereon) shall be held on trust by Moyle for the benefit of the Capacity Holder and Moyle in accordance with the provisions of this paragraph 3(d) and the bank with which such monies are held shall be notified of such trust and of the beneficial interest of the Capacity Holder in such monies.
  - (iii) Moyle shall be entitled to withdraw amounts from such account and apply the same in each of the circumstances where Moyle would otherwise have been entitled to make a demand under a Letter of Credit pursuant to paragraph 3(c)(i) of this Schedule 3 had such an instrument been issued in its favour at such time.
  - (iv) If at any time at which monies are held by Moyle on trust for the Capacity Holder the Capacity Holder provides to Moyle a letter of credit or a guarantee which conforms with the provisions of paragraph 3(b) of this Schedule 3, then Moyle shall return to the Capacity Holder all monies then held by Moyle on such trust.
  - (v) If at any time following the termination of this Agreement there are no amounts due and payable by the Capacity Holder which are unpaid and no party to this Agreement remains under any obligation actual or contingent the observance or performance of which would give rise to an obligation on the Capacity Holder to make a payment under this Agreement, the trust created pursuant to this paragraph 3(d) shall be wound up and any monies then held by Moyle on such trust shall be returned to the Capacity Holder.
  - (vi) The perpetuity period under the rule against perpetuities, if applicable to any trust arising pursuant to this paragraph 3(d), shall be the period of eighty years from the date of such trust arising.

- (e) Moyle will release Credit Cover (and in the case of a cash deposit, any interest accrued in respect of the cash deposit, less any bank and similar charges and any taxes deducted by the bank) to the Capacity Holder within 10 Business Days of the later of:
  - (i) the Expiry Date; and
  - (ii) the date when the Capacity Holder has paid all amounts owing by it in respect of this Agreement.
- (f) Return of Credit Cover is without prejudice to the rights of Moyle under this Agreement and does not relieve the Capacity Holder of any of its obligations or any liability in respect of this Agreement.
- (g) The amount of Credit Cover required to be provided on any day (“**D**”) during a Product Period shall be the aggregate of an amount which is not less than the Capacity Holder’s aggregate liability for Capacity Charges during the three Month period commencing on day D under all Capacity Contracts to which the Capacity Holder is a party.

#### 4. **Changes to Security Requirements**

- (a) Subject to paragraph 4(b), Moyle may vary the Security Requirements at any time by notice in writing to the Capacity Holder, such variation to take effect from the date specified by Moyle in the notice to the Capacity Holder (the “**Variation Date**”).
- (b) Unless otherwise agreed between the parties Moyle may not vary the Security Requirements in respect of any contract for the right to use Units of capacity during the relevant Product Period and, therefore, any variation of Security Requirements notified by Moyle to the Capacity Holder will only apply in respect of rights to use Units of capacity which take effect after the Variation Date.

**Appendix 1**  
**Form of Guarantee**

**DATED**                    20[ ]

(1) GUARANTOR

and

(2) MOYLE INTERCONNECTOR LIMITED

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PARENT COMPANY GUARANTEE

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THIS GUARANTEE is made by way of deed on [ ], 20

BETWEEN:

- (1) [GUARANTOR] of [ ] (the “**Guarantor**”); and
- (2) MOYLE INTERCONNECTOR LIMITED, having its registered office at First Floor The Arena Building; 85 Ormeau Road; Belfast BT7 1SH (“**Moyle**”).

WHEREAS:

- A. [*Capacity Holder*] (the “**Capacity Holder**”) has entered into an interconnector capacity agreement (the “**Capacity Agreement**”) dated [ ] with Moyle.
- B. The Guarantor is the parent company of the Capacity Holder and has agreed to guarantee all the payment obligations of the Capacity Holder under the Capacity Agreement in accordance with the terms and conditions of this Guarantee.

IT IS AGREED as follows:

Unless the contrary intention appears or otherwise defined in this Guarantee, terms defined in the Capacity Agreement shall have the same meaning in this Guarantee.

## **1. Guarantee**

- 1.1 The Guarantor, as primary obligor and not merely as surety, irrevocably and unconditionally:
  - (a) guarantees to Moyle the full and prompt performance by the Capacity Holder of its payment obligations under the Capacity Agreement (the “**Liabilities**”) and undertakes that it shall, if and each time the Capacity Holder is in default in the payment of any of the Liabilities, pay on demand the unpaid balance of every sum due and payable by the Capacity Holder in respect of any of the Liabilities; and
  - (b) indemnifies Moyle on demand in respect of any loss or liability suffered by Moyle as a result of any obligation guaranteed by the Guarantor pursuant to paragraph (a) above becoming unenforceable, invalid or illegal as if the obligation had not become unenforceable, invalid or illegal.

## **2. Preservation of rights**

- 2.1 The obligations of the Guarantor under this Guarantee shall constitute and be continuing obligations and extend to the ultimate balance of the Liabilities notwithstanding any settlement of account or other matter or thing whatsoever, and in particular but without limitation, shall not be considered satisfied by

any intermediate payment or satisfaction of all or any of the Liabilities and shall continue in full force and effect until final payment in full of all the Liabilities.

- 2.2 The obligations of the Guarantor under this Guarantee are in addition to and not in substitution for any other security which Moyle may now or in the future hold in relation to the Liabilities or any of them and may be enforced without Moyle first having recourse to any such security and without Moyle first taking steps or proceedings against the Capacity Holder. In the event that Moyle brings proceedings against the Capacity Holder, the Guarantor shall be bound by any findings of fact, interim or final award or judgment made by an arbitrator or the court in such proceedings.
- 2.3 Neither the obligations of the Guarantor under this Guarantee nor the rights, powers and remedies conferred upon Moyle by this Guarantee or by law shall be discharged, impaired or otherwise affected, in whole or in part, by:
- (a) the winding-up, dissolution, administration or reorganisation of the Capacity Holder or any change in its status, function, control or ownership;
  - (b) any of the Liabilities or any of the obligations of the Capacity Holder under the Capacity Agreement or any other security in respect of the Liabilities being or becoming illegal, invalid or unenforceable in any respect;
  - (c) time or other indulgence being granted or agreed to be granted by Moyle or any other person to, or any composition or other arrangement made with or accepted from (i) the Capacity Holder in respect of the Liabilities or any of them or (ii) any person in respect of any such security;
  - (d) any amendment to, or any variation, waiver or release of any of the Liabilities or any such security;
  - (e) any failure to enforce, realise or fully to realise the value of, or any release, discharge, exchange or substitution of, any such security;
  - (f) any failure (whether intentional or not) to take, or fully to take, or perfect any security now or hereafter agreed to be taken in relation to the Liabilities or any of them;
  - (g) the release of any other person under the terms of any composition or arrangement with any creditor thereof; or
  - (h) any other act, event or omission (whether or not known to the Guarantor or Moyle) which, but for this Clause 2.3, would or might operate to discharge, impair or otherwise affect any of the obligations of the Guarantor under this Guarantee or any of the rights, powers or remedies conferred upon Moyle by law to the intent that the

Guarantor's obligations under this Guarantee shall remain in full force and this Guarantee shall be construed accordingly as if there were no such act, event or omission.

- 2.4 The Guarantor by this Guarantee authorises the Capacity Holder and Moyle to make any addendum or variation to the Capacity Agreement, the due and punctual performance of which addendum and variation shall likewise be guaranteed by the Guarantor in accordance with the terms of this Guarantee.
- 2.5 Where any settlement or discharge (whether in respect of the obligations of the Capacity Holder or otherwise) is made in whole or in part, or any arrangement is made on the faith of any payment, security or other disposition which is avoided or has to be repaid on bankruptcy, liquidation or otherwise without limitation, the liability of the Guarantor under this Guarantee shall continue and Moyle shall be entitled to recover the value or amount of such obligations subsequently as if such settlement or discharge had not occurred. Moyle shall be entitled to concede or compromise any claim that any payments, security or other disposition is liable to avoidance or repayment.
- 2.6 Until all amounts which may be or become payable under the Capacity Agreement or this Guarantee have been irrevocably paid in full:
- (a) the Guarantor shall not as a result of this Guarantee or any payment or performance under this Guarantee be subrogated to any right or security of Moyle or, in competition with Moyle, claim or prove against the Capacity Holder or any other person or demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of this provision shall be held by the Guarantor in trust for and shall be promptly paid to Moyle; and
  - (b) the Guarantor shall not hold any security from the Capacity Holder in respect of this Guarantee and any such security which is held in breach of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to Moyle.
- 2.7 Until all amounts which may be or become payable under the Capacity Agreement have been irrevocably paid in full, if (notwithstanding the provisions of clause 2.6) the Guarantor has any rights of subrogation against the Capacity Holder or any rights to prove in a liquidation of the Capacity Holder, the Guarantor agrees to exercise such rights in accordance with the directions of Moyle.

### **3. Payments**

All payments to be made by the Guarantor to Moyle hereunder shall be made in pounds sterling without set-off or counterclaim and without any deduction or withholding whatsoever. If the Guarantor is obliged by law to make any deduction or withholding from any such payment, the amount due from the

Guarantor in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, Moyle receives a net amount equal to the amount Moyle would have received had no such deduction or withholding been required to be made.

#### **4. Representations and Warranties**

The Guarantor represents and warrants to Moyle as follows:

(a) **Status**

- (i) It is a limited liability company, duly incorporated and validly existing under the laws of the jurisdiction of its incorporation; and
- (ii) it has the power to own its assets and carry on its business as it is being conducted.

(b) **Powers and authority**

It has the power to enter into and perform, and has taken all necessary action to authorise the entry into, performance and delivery of, this Guarantee and the transactions contemplated hereby.

(c) **Legal validity**

This Guarantee constitutes its legal, valid and binding obligation enforceable against it.

(d) **Non-conflict**

The entry into and performance by it of, and the transactions contemplated by, this Guarantee do not and will not:

- (i) conflict with any existing law or regulation or judicial or official order; or
- (ii) conflict with its constitutional documents; or
- (iii) conflict with any document which is binding upon it or any of its assets.

(e) **Authorisations**

All authorisations required to be obtained by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, this Guarantee have been obtained or effected (as appropriate) and are in full force and effect.

(f) **No reliance**

That it has not entered into this Guarantee in reliance upon, nor has it been induced to enter into this Guarantee by any representation, warranty or undertaking made by or on behalf of Moyle (whether expressed or implied and whether pursuant to statute or otherwise) which is not set out in this Guarantee.

**5. Notices**

5.1 Any notice to or demand on the Guarantor to be served under this Guarantee may be delivered or sent by first class recorded delivery post or facsimile transmission to the Guarantor at its address appearing in this Guarantee or at such other address as it may have notified to Moyle in accordance with this clause.

5.2 Any notice or demand served under Clause 5.1 shall be deemed to have been served:

- (a) if delivered, at the time of delivery; or
- (b) if posted, at 10.00 a.m. on the second Business Day after it was put into the post; or
- (c) if sent by facsimile process, at the expiration of 2 hours after the time of despatch, if despatched before 3.00 p.m. on any Business Day, and in any other case at 10.00 a.m. on the next Business Day.

5.3 In proving service of a notice or demand it shall be sufficient to prove that delivery was made or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter or that the facsimile message was properly addressed and despatched, as the case may be.

**6. Interest**

The Guarantor hereby agrees to pay interest on all moneys due from it from the date of demand until payment (as well after as before any demand or judgment or the liquidation, administration or other incapacity of the Capacity Holder) at the rate from time to time calculated in accordance with the Capacity Agreement or at such higher rate as may from time to time be payable by the Capacity Holder or would have been payable but for the liquidation, administration or other incapacity of the Capacity Holder or any arrangement or composition with the creditors of the Capacity Holder upon such days and upon such terms as Moyle may from time to time determine.

**7. Assignment**

Moyle shall be entitled by notice in writing to the Guarantor to assign the benefit of this Guarantee at any time to any person to whom it assigns or

transfers its rights under the Capacity Agreement without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this Guarantee.

**8. Severability**

The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.

**9. Governing Law and Jurisdiction**

This Guarantee shall be governed by and construed in accordance with the laws of Northern Ireland and the courts of Northern Ireland shall have exclusive jurisdiction in relation to any matter arising under or in respect of this Guarantee.

IN WITNESS WHEREOF this Guarantee has been duly executed as a deed and has been delivered on the day and year first above written.

Executed for and on behalf of )  
Moyle Interconnector Plc )  
by:- )

.....  
Director

.....  
Director/Secretary

Executed for and on behalf of )  
*[the Guarantor]* )  
by:- )

.....  
Director

.....]  
Director/Secretary



This letter of credit shall be governed by and construed in accordance with the laws of England, and for our benefit only, the courts of England shall have exclusive jurisdiction to settle any disputes arising out of this letter of credit. This letter of credit is subject to the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication No. 600 insofar as the same are applicable (but so that Article 32 thereof shall be deemed excluded and the second sentence of Article 36 thereof shall be deemed excluded for this purpose with effect that, if this letter of credit expires during any interruption of business referred to in the first sentence of such Article, the Bank shall remain liable to make payment under this letter of credit in respect of any demand no later than 15 Business Days after it has notified the Beneficiary that its business has ceased to be so interrupted).

The terms of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this letter of credit.

Yours faithfully,

For and on behalf of  
[BANK]

.....  
Name:

Title:

## CERTIFICATE

**This certificate forms an integral part of [Bank], London's  
Letter of Credit No. [ ] and must remain attached hereto**

[On headed paper of Beneficiary]

Date:  
[ ]

We refer to:

- (a) the interconnector capacity agreement in relation to the Moyle Interconnector, made between, Beneficiary and [ ] (the “**Applicant**”) dated [ ], 20 (the “**Capacity Agreement**”); and
- (b) the letter of credit No. [ ] issued on [ ] by [BANK] for a maximum aggregate amount of Sterling £[ *Amount of Security Amount still to be determined under the terms of the Capacity Agreement* ] (less any amounts previously drawn down) (the “**Letter of Credit**”).

We hereby demand payment of £[ ] under the Letter of Credit and hereby certify that:

- (i) This Demand is made under the Letter of Credit;
- (ii) Either:
  - (a) The Applicant has failed to meet its payment obligations to us under the Capacity Agreement and written demand has been made upon the Applicant for due performance of its payment obligations; or
  - (b) the Applicant has failed to provide a replacement Letter of Credit in accordance with the terms of Clause 5.4 of the Capacity Agreement.
- (iii) Payment should be made to the account referred to in the Letter of Credit or such other account as may be agreed between us.

Yours faithfully,

For and on behalf of  
Beneficiary

## Schedule 4

### Moyle Interconnector Framework Deed

This **DEED** is made on the    day of                    200

#### **BETWEEN:**

- (1)     **SONI LIMITED**, a company registered in Northern Ireland (Registered Number NI38715) whose registered office is at 12 Manse Road, Belfast BT6 9RT (“SONI”)
- (2)     [*Name of Moyle Capacity Holder*] registered in [*jurisdiction*] (Registered Number [*number*]) whose registered office is at [*address*] (the “Moyle Capacity User”)

#### **RECITALS:**

- (A)     SONI is authorized under the Transmission Licence to participate in the transmission of electricity and carries on the Transmission System Operator Business (as defined in the Transmission Licence).
- (B)     Moyle owns the Interconnector and is authorised to participate in the transmission of electricity across the Interconnector under the Moyle Licence. It maintains the Interconnector and grants third parties rights to use the capacity of the Interconnector under arrangements established under the Moyle Licence from time to time and on the terms of the Moyle Capacity Agreements. Moyle has appointed SONI to operate the Interconnector.
- (C)     In order for transfers of electricity across the Interconnector to take effect, certain administrative functions must be performed and an Interconnector Administrator and an Interconnector Error Administrator must be appointed under the BSC and the TSC. SONI performs the functions of the Interconnector Administrator and Interconnector Error Administrator under the TSC and the BSC and the other Moyle Administration Functions in order to facilitate use of the Interconnector, subject to each User of Interconnector capacity executing and delivering a current Moyle Interconnector Framework Deed as a condition of its right to use capacity, and subject to cost recovery and on a no liability basis.
- (D)     The Moyle Capacity User wishes to participate in transactions for the sale and purchase of electricity that will involve the transfer of electricity between Scotland and Northern Ireland using the Interconnector. The TSC, the BSC, the Moyle Capacity Agreements, the Moyle Interconnector Procedures, and the provisions of this Deed establish the arrangements under which SONI will perform the Moyle Administration Functions.
- (E)     The Moyle Capacity User has therefore executed this Deed in favour of SONI, as required by the Moyle Capacity Agreement.

**NOW IT IS AGREED AS FOLLOWS:**

**1. Definitions and interpretation**

1.1 In this Deed the following words and phrases bear the following meanings except where the context requires otherwise:

“BM Unit Identifier”	as defined in the CUSC;
“BSC”	means the Balancing and Settlement Code of Great Britain;
“Claim”	means any claim or demand for any Loss in respect of the performance or non-performance by any SONI Party of any obligation or the exercise by any SONI Party of or failure by any SONI Party to exercise any power or right, in each case in respect of any Moyle Administration Function whether such claim or demand is in respect of breach of contract, tort (including negligence), breach of duty (statutory or otherwise) or any other ground;
“Excluded Loss”	means Energy Costs, consequential, indirect or incidental loss or damage, economic loss, loss of actual or anticipated profits or savings, loss of sales or turnover, loss of production, loss of or damage to reputation, loss of goodwill, loss of business opportunity, and loss of customers;
“Energy Allocation”	as defined in the Moyle Interconnector Procedures;
“Energy Costs”	means amounts paid for or in respect of electricity, whether under a bilateral contract or a contract for differences or by way of payments under the BSC or the TSC for differences between nominated volumes of electricity and metered volumes;
“Interconnector”	means the electrical interconnector between Scotland and Northern Ireland which is owned by Moyle;
“Interconnector Administrator”	as defined in the BSC and/or the TSC, as the circumstances require;
“Interconnector BM Unit”	means an Interconnector BM Unit as defined in the BSC and/or an Interconnector Unit as defined in the TSC, as the circumstances require;
“Interconnector Error”	means in relation to the BSC, the BM Unit Metered Volume (as that term is defined in the BSC) for the relevant Interconnector BM Unit of the Interconnector Error Administrator and in relation to the TSC means the Metered Generation (as defined in the TSC) for the

	Interconnector Error Unit;
“Interconnector Error Administrator”	has the meaning given to it in the BSC (in relation to that role under the BSC) and/or (as the circumstances require) means the person who has registered the Interconnector Error Unit for an interconnector under the TSC;
“Interconnector Error Expenses”	means the costs, charges and expenses incurred by the Interconnector Error Administrator (whether ultimately borne by the Interconnector Error Administrator or not) in relation to any Interconnector Error, and shall include, but not be limited to, charges imposed on Trading Parties (as that term is defined in the BSC) under the BSC and any charges that may be imposed now or in the future under the TSC;
“Interconnector Error Unit”	as defined in the TSC;
“Loss”	means any and all losses of whatever nature (including Excluded Losses), judgments, remedies, claims, debts, damages, expenses and liabilities (including legal costs);
“Market Start Date”	as defined in the TSC;
“Moyle”	means Moyle Interconnector Limited;
“Moyle Administration Function”	means any of the functions described in the Moyle Interconnector Procedures and the functions of the Interconnector Administrator under the TSC and BSC, the Interconnector Error Administrator under the TSC and BSC, the operator of the Interconnector and agent for submission of Physical Notifications under clause 3 of this Deed;
“Moyle Capacity Agreement”	means a Moyle Interconnector Capacity Framework Agreement with Moyle pursuant to which Moyle grants rights to use the capacity of the Interconnector together with each capacity contract as defined in that agreement;
“Moyle Capacity Party”	means the Moyle Capacity User and any of its officers, employees and agents and any person with whom the Moyle Capacity User enters into a contract for or in respect of the sale or purchase of electricity involving the transfer of electricity between Scotland and Northern Ireland;
“Moyle Capacity User”	means the Party executing this Deed in favour of SONI Limited, being a party to a Moyle Capacity Agreement or someone to whom capacity has been assigned in accordance with that agreement;
“Moyle Interconnector Procedures”	means the procedures for use of the Interconnector established by SONI in its capacity as Interconnector

Administrator as may be amended by SONI from time to time;

“Moyle Licence”	means any licence from time to time held by Moyle under the Order or any other relevant law of any jurisdiction (including Northern Ireland and Great Britain) which authorises Moyle to participate in the transmission of electricity or participate in the operation of the Interconnector;
“Party” or “Parties”	either or both of SONI Limited and the Moyle Capacity User, as the context requires;
“Physical Notification”	as defined in the BSC;
“SONI Party”	means SONI and its officers, employees and agents, now and in the future;
“Termination”	includes rescission, revocation and cancellation and “Terminate” shall be construed accordingly;
“Transmission Licence”	means the licence to participate in the transmission of electricity granted to SONI Limited under the Electricity (Northern Ireland) Order 1992;
“TSC”	means the Single Electricity Market Trading and Settlement Code, as further defined in the Transmission Licence.

1.2 The rules of interpretation under the Moyle Capacity Agreement, with any necessary change, shall apply to the interpretation of this Deed as if set out in it.

1.3 This Deed is made by the Moyle Capacity User in favour of SONI and its officers, employees and agents whether SONI is carrying on the Moyle Administration Functions as principal or as agent.

## **2. Terms of use**

2.1 Subject to clause 2.3, the Moyle Capacity User agrees that as between the Moyle Capacity User and SONI, the Moyle Administration Functions are carried out by SONI on the terms of and subject to this Deed and the Moyle Interconnector Procedures.

2.2 Subject to clause 2.3, the Moyle Capacity User agrees to be bound by and to comply with the terms of this Deed and the Moyle Interconnector Procedures.

2.3 Clauses 2.1 and 2.2 are without prejudice to the terms of the TSC, the BSC and any Moyle Capacity Agreement in respect of the Interconnector and do not relieve the Moyle Capacity User from any of its obligations under those instruments.

2.4 The Moyle Capacity User acknowledges and agrees that:

- 2.4.1 the TSC provides for the Interconnector Administrator to submit the Active Interconnector Unit Capacity Holding Data (as defined in the TSC);
- 2.4.2 the TSC provides for Interconnector Users to submit Commercial Offer Data (as defined in the TSC);
- 2.4.3 SONI is entitled to submit Active Interconnector Unit Capacity Holding Data of zero in the circumstances contemplated by the Moyle Interconnector Procedures;
- 2.4.4 where zero values are submitted as contemplated in clause 2.4.3 the Interconnector User will not be able to use the Interconnector;
- 2.4.5 under the Moyle Capacity Agreement, the TSC, the BSC and/or the CUSC, there are circumstances in which no transfers of electricity across the Interconnector will take place; and
- 2.4.6 SONI shall have no liability to either party to a transaction involving a transfer of electricity between Scotland and Northern Ireland in any of the circumstances contemplated in clauses 2.4.3, 2.4.4 and 2.4.5.

### **3. Submission of Physical Notifications**

- 3.1 The Moyle Capacity User hereby appoints SONI as its agent for the purpose of submitting Physical Notifications in respect of Transfer Nominations in accordance with the Moyle Interconnector Procedures.
- 3.2 The Moyle Capacity User hereby undertakes that it will not itself submit Physical Notifications relating to use of capacity of the Interconnector.
- 3.3 The Moyle Capacity User shall indemnify the SONI Parties against any Losses that any SONI Party may incur in connection with a breach by the Moyle Capacity User of the undertaking in clause 3.2.

### **4. Waiver and indemnity**

- 4.1 Subject to paragraph 4.3, the Moyle Capacity User hereby waives to the fullest extent permissible by law, and releases each SONI Party in respect of, any and all Claims, howsoever arising, the Moyle Capacity User may have against any SONI Party.
- 4.2 The Moyle Capacity User shall indemnify and hold harmless each SONI Party on demand from and against any Claim made by the Moyle Capacity User or any Moyle Capacity Party.
- 4.3 Nothing in this Deed shall exclude or limit the liability of either Party for death or personal injury resulting from its negligence or that of any of its officers, employees or agents nor for any liability in respect of fraudulent misstatement. Without prejudice to the terms of the BSC, the TSC or the CUSC, clause 4.1 is not intended by the Parties to limit or exclude the liability of either Party to the other where such liability arises as the result of a breach of an obligation owed

by a Party under the terms of the TSC, the BSC or the CUSC in that Party's capacity as a party to the relevant code.

- 4.4 The Moyle Capacity User shall indemnify and hold harmless SONI on demand from and against all Interconnector Error Expenses suffered or incurred by SONI arising out of or in connection with any failure by the Moyle Capacity User to comply with the terms of this Deed or the Moyle Interconnector Procedures and notwithstanding any right that SONI might have, but for payment by the Moyle Capacity User under this clause 4.4, to recover some or all of those Interconnector Error Expenses under any other instrument.
- 4.5 Without prejudice to clause 4.1 or clause 4.3 and except where this Deed provides for an indemnity, the Parties agree that neither Party nor any of its officers, employees or agents shall be liable to the other Party nor to any of that Party's officers, employees or agents in any circumstances in respect of any Excluded Loss.

## **5. Term and Termination**

- 5.1 This Deed shall come into effect on the later of the date of its execution and delivery by the Moyle Capacity User and the SEM Market Start Date and shall continue in full force and effect notwithstanding any amendment, variation or replacement of the TSC or BSC the Moyle Interconnector Procedures, the Transmission Licence or any Moyle Capacity Agreement.
- 5.2 Subject to clauses 5.3 and 5.4, this Deed may not be Terminated by either Party for so long as the Moyle Capacity User remains a party to a Moyle Capacity Agreement.
- 5.3 If SONI ceases to be Interconnector Administrator under the BSC, then SONI's appointment as agent for the Moyle Capacity User under clause 3.1 of this Deed terminates with effect from the time that SONI ceases to perform that function.
- 5.4 If SONI ceases to be Interconnector Administrator or Interconnector Error Administrator under the TSC or the BSC, SONI shall give notice to the Moyle Capacity User of the cessation of such role and shall have no liability to the Moyle Capacity User whatsoever for ceasing to carry out any of the Moyle Administration Functions.
- 5.5 The Termination of this Deed does not affect any rights or obligations which may have accrued prior to such Termination.
- 5.6 Clauses 4 (waiver and indemnity), 5.5 (accrued rights), 6.2 (third party rights) 6.3 (law and jurisdiction) and 6.4 (dispute resolution) shall survive the Termination of this Deed.

## 6. Disclosure

- 6.1 The Moyle Capacity User agrees that SONI is permitted to disclose information relating to the use by the Moyle Capacity User of the Interconnector where necessary to enable SONI to perform the Moyle Administration Functions, including disclosure of:
- 6.1.1 the BM Unit Identifiers of the Moyle Capacity User (if any) to Moyle in order to enable Moyle to perform its roles under the CUSC; and
  - 6.1.2 information relating to transfers over the Interconnector including Modified Interconnector Unit Nominations, Dispatch Quantities and Metered Quantities (each as defined in the TSC) for the purpose of the TSC, BSC, CUSC (as defined in the BSC) and the Moyle Interconnector Procedures.
- 6.2 If the Moyle Capacity User is under a legal obligation to protect the interests of any third person in any information reasonably likely to be disclosed by SONI under clause 6.1, then the Parties shall discuss in good faith mutually acceptable arrangements to protect the interests of that third party in that information in accordance with the relevant legal obligation.

## 7. General

- 7.1 ***Third Party Rights:*** Subject to this clause, a person who is not a Party has no right, and is not intended by the Parties to have any right, under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed, but this clause does not affect any right or remedy of a third party which exists or is available apart from that Act. The Parties intend that the indemnity under clause 4.2 of this Deed shall be enforceable by the SONI Parties.
- 7.2 Notwithstanding clause 7.1 above, this Deed may be Terminated, amended or varied by the Parties without notice to or the consent of any SONI Party (other than SONI) even if, as a result, that SONI Party's right to enforce a term of this Deed may be varied or extinguished.
- 7.3 ***Law and Jurisdiction:*** Without prejudice and subject to clause 7.4, this Deed shall be governed by and construed in accordance with the laws of Northern Ireland and the Courts of Northern Ireland shall have exclusive jurisdiction in relation to any matter arising under or in respect of this Deed.
- 7.4 ***Waiver:*** No omission to exercise or delay in exercising any right, power or remedy ("Right") provided by law or under this Deed shall constitute a waiver of any such Right, or any other Right, and no single or partial exercise of any Right precludes or impairs any other or further exercise or the exercise of any other Right provided by law or under this Deed. Any waiver of any Right under this Deed must be in writing and may be subject to such conditions as the grantor thinks fit.
- 7.5 ***Assignment:*** Neither Party may assign the benefit of this Deed without the prior written consent of the other Party. This Deed is binding upon and enures for the benefit of the permitted assigns of each of the Parties.

7.6 **Severance:** Each of the provisions of this Deed is severable. If any such provision is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, such illegality, invalidity or unenforceability shall not prejudice the legality, validity or enforceability in that jurisdiction of the remaining provisions of this Deed which shall remain in full force and effect and continue to bind the Parties.

7.7 **Deed:** This Deed shall take effect as a deed notwithstanding that it may not have been executed as a deed by one or more of the Parties.

## **8. Variation and replacement of this Deed**

8.1 No variation to this Deed shall be of any effect unless it is expressly contemplated by this Deed or is agreed in writing, signed by or on behalf of each Party.

8.2 Nothing in this clause 8 prevents SONI from requiring Moyle to prescribe a new form of Moyle Interconnector Framework Deed for the purposes of Moyle Capacity Agreements. The Moyle Capacity User acknowledges that it will be required to execute and deliver to SONI any such new form of deed to replace this Deed as a condition of its right to use capacity.

## **9. Disputes**

9.1 Any difference or dispute of whatever nature between the Parties arising out of or in connection with this Deed (“Dispute”) must be resolved in accordance with this clause 9.

9.2 Where there is a Dispute, a representative of each of SONI and the Moyle Capacity User with authority to resolve the Dispute must meet within 10 Business Days of a request to meet made by either Party and seek to resolve the Dispute. If the Parties are unable to resolve the Dispute within 28 Business Days of the meeting (or such longer time as may be agreed) then the Parties may agree to refer the Dispute to arbitration pursuant to the rules of the Electricity Arbitration Association in force from time to time. In default of that agreement within 5 Business Days of either Party making a request to agree, each Party may take such other action in relation to the Dispute as it considers appropriate.

9.3 The law of Northern Ireland is the proper law of reference to arbitration under this clause and the provisions of the Arbitration Act 1996 (as from time to time amended) apply to any such arbitration.

9.4 Nothing in this clause 9 prevents either Party from at any time seeking interim or interlocutory relief from a court.

**IN WITNESS WHEREOF** this deed has been duly executed and delivered by the Parties as a deed on the day and year first written above.

**SIGNED and DELIVERED AS A DEED** by )  
***[INSERT NAME OF MOYLE CAPACITY USER]***)  
acting by )  
Director )  
(Name) ..... )  
Director/Secretary )  
(Name) ..... )

**SIGNED and DELIVERED AS A DEED** by )  
**SONI LIMITED**)  
acting by )  
Director )  
(Name) ..... )  
Director/Secretary )  
(Name) ..... )