

Schedule 5

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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 120 Malone Road, Belfast BT9 5HT (“SONI”)
- (2) [*Name of Moyle Capacity User*] registered in [*jurisdiction*] (Registered Number [*number*]) whose registered office is at [*address*] (the “Moyle Capacity User”)

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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.

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Deleted: SONI operates the NIE System and the Interconnector on an integrated basis. As at the BETTA Effective Date, SONI does so as agent for NIE. It is anticipated that SONI will be granted a licence under the Order requiring it to carry on the Transmission System Operation Business in the capacity of principal from which time SONI will also operate the Interconnector in the capacity of principal.¶ (D)

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NOW IT IS AGREED AS FOLLOWS:

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1. Definitions and interpretation

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

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“BM Unit Identifier” as defined in the CUSC;

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“BSC” means the Balancing and Settlement Code of Great Britain;

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“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;

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“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;

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“Energy Costs” means amounts paid for or in respect of electricity, whether under a bilateral contract or a contact for differences or by way of payments under the BSC or the TSC for differences between nominated volumes of electricity and metered volumes;

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“Interconnector” means the electrical interconnector between Scotland and Northern Ireland which is owned by Moyle;

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“Interconnector Administrator” as defined in the BSC and/or the TSC, as the circumstances require;

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“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;

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“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

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“Interconnector Error Administrator”

Interconnector Error Unit;
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;

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“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;

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Deleted: 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 transmit electricity or participate in the operation of the Interconnector;

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“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

means the procedures for use of the Interconnector established by SONI in its capacity as Interconnector

<u>Procedures</u>	<u>Administrator as may be amended by SONI from time to time;</u>	Deleted: ¶
"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"	<u>as defined</u> in the BSC;	Deleted: has the meaning given to it
<u>"SONI Party"</u>	<u>means SONI and its officers, employees and agents, now and in the future;</u>	Deleted: "Registration"
<u>"Termination"</u>	<u>includes rescission, revocation and cancellation and "Terminate" shall be construed accordingly;</u>	Deleted: means the formal notification to SONI in accordance with the Moyle Interconnector Procedures of a trading relationship relating to the Interconnector and in respect of which Transfer Nominations may be made;
<u>"Transmission Licence"</u>	<u>means the licence to participate in the transmission of electricity granted to SONI Limited under the Electricity (Northern Ireland) Order 1992;</u>	Deleted: "SONI Party"
<u>"TSC"</u>	<u>means the Single Electricity Market Trading and Settlement Code, as further defined in the Transmission Licence.</u>	Deleted: means SONI and NIE and each of their officers, employees and agents, now and in the future; Deleted: "Termination" Deleted: includes rescission, revocation and cancellation and "Terminate" shall be construed accordingly.
1.2	The rules of interpretation under the <u>Moyle Capacity Agreement</u> , with any necessary change, shall apply to the interpretation of this Deed as if set out in it.	Deleted: Code
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;	Deleted: in its capacity Deleted: for NIE
2. Terms of use		Deleted: <#>This Deed takes effect in favour of NIE and its officers, employees and agents for so long as NIE carries on the Transmission System Operation Business and operates the Interconnector as principal through its agent SONI,¶
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.	Deleted: ,
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.	Deleted: Interim Settlement Arrangements
2.3	Clauses 2.1 and 2.2 are without prejudice to the terms of the <u>TSC, the BSC</u> 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;	Deleted: s Deleted: nor impose obligations on the Moyle Capacity User under those instruments that it does not already have apart from this Deed
2.4	The Moyle Capacity User acknowledges and agrees that:	Deleted: 6 DECEMBER 2006¶
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- 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.

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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

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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.

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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.

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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.

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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.

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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

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6.1.2 information relating to transfers over the Interconnector including Modified Interconnector Unit Nominations, Despatch 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.

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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

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interests of that third party in that information in accordance with the relevant legal obligation.

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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.

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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.

Deleted: <#>Dispute Resolution: Any difference or dispute of whatever nature between the Parties arising out of or in connection with this Deed must be resolved in accordance with paragraph 20 of the Code.¶

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.

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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))

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SIGNED and DELIVERED AS A DEED by)
SONI LIMITED)

acting by)

Director)
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Director/Secretary)
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“Code”

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means the Interim Settlement Code established by NIE under the Transmission Licence, as that Code may be amended or replaced from time to time;