

2003 Agreement: 10 November 2003

MOYLE INTERCONNECTOR LIMITED

- and -

[] as THE CAPACITY HOLDER

MOYLE INTERCONNECTOR CAPACITY AGREEMENT

1. Definitions and Interpretation.....	1
2. Commencement and duration	1
3. Agreement to sell.....	4
4. Payment	4
5. Security	5
6. Default and Termination.....	8
7. Liability.....	11
8. Force Majeure.....	12
9. Disputes	13
10. Entire Agreement.....	13
11. Waiver.....	13
12. Variation	14
13. Notices	14
14. Confidentiality	15
15. Assignment	16
16. Severance.....	17
17. Survival.....	17
18. Governing law	17
19. Change in Circumstances.....	17
20. Rights of Third Parties.....	17
Schedule 1 Part I Glossary	20
Part II Interpretation	27
Schedule 2 Capacity Charges	29
Schedule 3	30
Schedule 4 Form of Guarantee.....	31
Schedule 5 Form of Letter of Credit.....	38

THIS AGREEMENT is made the day of 20

BETWEEN:

- (1) **MOYLE INTERCONNECTOR LIMITED**, having its registered office at Capital House, 3 Upper Queen Street, Belfast, BT1 6PU (“**Moyle**”); and
- (2) **THE PARTY NAMED IN PARAGRAPH 1.3 OF SCHEDULE 2** whose registered office is located at the address set out in Schedule 3 (“**the Capacity Holder**”, which expression shall include its permitted successors and assigns).

RECITALS:

- (A) The Transmission System Operator, acting on behalf of Moyle, issued the Invitation to Bid and conducted the Interconnector Auction for the sale of units of capacity.
- (B) The Capacity Holder submitted bids in response to the Invitation to Bid which have been accepted by the Transmission System Operator acting on behalf of Moyle.
- (C) Moyle has agreed to sell to the Capacity Holder and the Capacity Holder has agreed to buy from Moyle the Units of Contracted Capacity on the Moyle Interconnector for the Capacity Period subject to the terms and conditions of this Agreement.

THE PARTIES AGREE as follows:

1. Definitions and Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, capitalised words and phrases have the meaning given to them in Part I of Schedule 1.
- 1.2 The rules of interpretation applicable to this Agreement are set out in Part II of Schedule 1.

2. Commencement and duration

- 2.1 This Agreement shall commence on the date it is executed by both parties and, subject to Clause 2.2, shall continue in full force and effect until the Expiry Date, unless it is terminated earlier in accordance with its terms.
- 2.2 The parties may agree to extend this Agreement until a date agreed between them in writing (“Extended Expiry Date”).
- 2.3 The Capacity Period starts at 06.00 hrs on the date specified in paragraph 1.5 of Schedule 2 and is for a period of [] years.

2.4 Conditions

The right to utilise any Unit of Contracted Capacity is conditional on this Agreement being in force and the person utilising the capacity (whether the Capacity Holder or a person to whom the capacity has been assigned using the procedure in Appendix 1):

- 2.4.1. having entered into, and at all times being a party to, an Interim Settlement Agreement; and

2.4.2. complying at all times with its obligations under Clause 5.

2.5 Capacity Holders Entitlement

2.5.1 Subject to Clause 2.6.4, each Unit of Contracted Capacity entitles the Capacity Holder (or the person to whom such capacity has been assigned using the procedure in Appendix 1) to use Available Transfer Capacity on the Moyle Interconnector by submitting nominations in accordance with the Settlement Arrangements and to have those nominations taken into account in settlement under those arrangements, but only:

- (a) for transfers in the direction of the Units of Contracted Capacity;
- (b) during the Capacity period (unless suspended or terminated) ; and
- (c) for transfers up to the amount permitted under the Interim Settlement Arrangements at the relevant time.

2.5.2 Use of Units of Contracted Capacity is subject to and on the terms of this Agreement.

2.6 Additional Conditions

2.6.1 If:-

- (a) the Available Transfer Capacity is reduced below the Nominal Transfer Capacity for more than 24 consecutive hours by reason of the occurrence of an Outage Event; and
- (b) the quantity of electricity (the “Reduced Quantity”) transferred across the Moyle Interconnector for the Capacity Holder in any Settlement Period is less than the quantity (the “Nominal Quantity”) which would have been so transferred if the Available Transfer Capacity had not been reduced by such Outage Event;

the Capacity Holder shall be entitled to a rebate of the Capacity Charges applicable to each Settlement Period during which the Available Transfer Capacity is reduced by the Outage Event (for so long as such reduction continues). The amount of the rebate of the Capacity Charges (the “Rebate in Capacity Charges”) payable during such Settlement Period shall be calculated as:

$$RCC_{sp} = CC_{sp} \times (1 - (RQ/NQ))$$

Where:

RCC_{sp} means the Rebate in Capacity Charge for the relevant Settlement Period (expressed in £)

CC_{sp} means the Capacity Charges applicable to the relevant Settlement Period, calculated by dividing the Capacity Charges for the Payment Period in which that Settlement Period falls by the number of Settlement Periods in such Payment Period (expressed in £)

RQ means the Reduced Quantity for the relevant Settlement Period (expressed in MWh)

NQ means the Nominal Quantity for such Settlement Period (expressed in MWh)

- 2.6.2 The Capacity Holder acknowledges that if at any time the Available Transfer Capacity is reduced by the Transmission System Operator due to technical, operational or other reasons, the amount of capacity that the Capacity Holder is entitled to use shall be reduced accordingly and the Capacity Holder (to the extent such reduction can be made by the Capacity Holder consistent with the provisions of the Interim Settlement Arrangements) shall be responsible for making any appropriate reductions in any energy nominations under the Interim Settlement Arrangements at that time in accordance with the Interim Settlement Arrangements 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. Moyle shall have no responsibility for making any reductions in such energy nominations or for any imbalance charges, whether resulting from a failure to make such reductions or otherwise. No rebate of Capacity Charges is payable for any reduction of capacity available to the Capacity Holder, unless the Capacity Holder is entitled to a rebate pursuant to Clause 2.6.1.
- 2.6.3 For the avoidance of doubt, the Capacity Holder shall be solely responsible for entering into and complying with all such agreements, codes and other documents (including without limitation the Settlement Arrangements and any similar arrangements in force in Scotland and/or in respect of the SP System) which require to be entered into and complied with by persons who use or are granted rights to use the NIE System or the SP System for transporting electricity to or from Northern Ireland or to or from Scotland through the Moyle Interconnector (such agreements, codes and documents being together the "System Documents"). Moyle shall have no liability with respect to such matters. The Capacity Holder acknowledges that the allocation of Units of Contracted Capacity to the Capacity Holder pursuant to this Agreement does not give the Capacity Holder the right to use the NIE System or the SP System or to submit nominations under the Interim Settlement Arrangements, and it is the responsibility of the Capacity Holder to acquire such rights by entering into and complying with such System Documents as are relevant.
- 2.6.4 Units are contractual rights and do not confer proprietary rights or any other right or interest in the Moyle Interconnector. The sale of Units of Contracted Capacity under this Agreement does not affect the rights of the Transmission System Operator to determine the level of transfers over the Moyle Interconnector from time to time which shall apply to the terms of this Agreement, as if determined by Moyle. Similarly, Moyle remains free to make other commercial arrangements relating to capacity on the Moyle

Interconnector, including sale of short-term rights where longer-term rights (such as Units) are not being used.

- 2.6.5 The provisions of Appendix 3 shall apply in respect of any Units of Contracted Capacity which are designated in paragraph 2 of Schedule 2 as Interruptible Moyle Import. These provisions shall (in the event of any conflict or inconsistency between these provisions and any of the other provisions of this Agreement) take precedence over any of such other provisions. Accordingly, any provision of this Agreement (excluding Appendix 3) which, if it were to be given effect, applied, performed or enforced, would result in an outcome which is in conflict or inconsistent with the provisions of Appendix 3 shall, to the extent of such conflict or inconsistency, not be given effect, applied, performed or enforced.
- 2.6.6 A copy of the form of agreement which will be used to record the terms and conditions of any grant of short term rights to Moyle Interconnector import capacity is set out in Appendix 4.

3. Agreement to sell

- 3.1 Moyle agrees to sell and the Capacity Holder agrees to buy during the Capacity Period the Units of Contracted Capacity for the Capacity Charges specified in this Agreement.

4. Payment

- 4.1 The Capacity Holder must pay to Moyle:
- 4.1.1 the Capacity Charges for each Payment Period during the Capacity Period as set out in paragraph 1.1 of Schedule 2, taking into account any Rebate in Capacity Charges calculated in accordance with Clause 2.6.1 for a previous Payment Period; and
- 4.1.2 amounts to reimburse Moyle for such (if any) payments as are made (whether directly or indirectly) by Moyle in respect of SP Use of System Charges, as calculated under paragraph 1.4 of Schedule 2.
- 4.2 Moyle must invoice the Capacity Holder for Capacity Charges and other payments specified in Clause 4.1 for each Payment Period and may do so during the period of 10 Business Days before the start of each Payment Period.
- 4.3 The Capacity Holder must pay all invoices under Clause 4.2 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 9.

- 4.4 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.
- 4.5 Value Added Tax, at the rate and to the extent applicable will be applied to all charges made under this Agreement.

5. Security

- 5.1 If at any time the Capacity Holder does not have an Approved Credit Rating, then it must on the date of this Agreement (or such later date as is agreed by Moyle at its sole discretion) or where after the date of this Agreement it ceases to have an Approved Credit Rating, within 10 Business Days of so ceasing, provide the security cover referred to in Clause 5.2. If the Capacity Holder does not comply with this Clause, Moyle may in its discretion by notice to the Capacity Holder given at any time terminate this Agreement with effect from the date specified in the notice.
- 5.2 If this Clause 5.2 applies, the Capacity Holder must deliver to Moyle and subsequently maintain security against payment default ("Security Cover") in the form of:
 - 5.2.1 a Letter of Credit; or
 - 5.2.2 a cash deposit in an interest bearing joint Deposit Account; or
 - 5.2.3 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 Schedule 4),

as security for payment of all monies due to Moyle under this Agreement, including payment of the Termination Amount. The amount of the Security Cover must be the amount calculated under Clause 5.7.

- 5.3 In the event that:
 - 5.3.1 the Guarantor ceases to hold an Approved Credit Rating; or
 - 5.3.2 the issuer of the Letter of Credit under Clause 5.2.1 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 Clause 5.2.3 or (ii) a Letter of Credit or replacement letter of credit (as the case may be) substantially in the form set out in Schedule 5 issued by a Qualifying Issuer.

- 5.4 Moyle shall be entitled to make a demand up to the full amount under a Letter of Credit in any of the following circumstances:
- 5.4.1 non-payment of any amount due if failure to make payment is not remedied on or before the 5th Business Day after notice of that failure is given in accordance with the terms of this Agreement; or
 - 5.4.2 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 Clause 5.3 within 5 Business Days of demand to that effect addressed by Moyle to the Capacity Holder; or
 - 5.4.3 if:
 - (a) the Capacity 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 Capacity 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 Clause 5.2.3.
- 5.5 All the amounts received by Moyle following a demand pursuant to Clause 5.4.2 or 5.4.3 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. Such 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 Clause 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. 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 Clause 5.4.1 had such an instrument been issued in its favour at such time. If at any time at which monies are so 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 Clause 5.3, then Moyle shall return to the Capacity Holder all monies then so held by Moyle on such trust. 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 clause shall be wound up and any monies then held by Moyle on such trust shall be returned to the Capacity Holder. The perpetuity period under the rule against perpetuities, if applicable to any trust arising pursuant to this Clause, shall be the period of eighty years from the date of such trust arising.

- 5.6 Moyle will release Security 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 date of termination of this Agreement; and (ii) the date when the Capacity Holder has paid all amounts owing by it in respect of this Agreement. Return of Security 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.
- 5.7 The amount of Security Cover will be equal to the Capacity Holder's liability for 3 months Capacity Charges.
- 5.8 The Capacity Holder may, once the unexpired part of the Capacity Period is less than 6 months (and provided that no amounts are overdue for payment under this Agreement by the Capacity Holder at the date of the request) from time to time request that the amount of Security Cover be reduced to an amount which is not less than 100 per cent of the Capacity Charges which are scheduled to become due for payment by the Capacity Holder after the date of the request

6. Default and Termination

- 6.1 If the Interim Settlement Agreement to which the Capacity Holder is a party terminates, then (unless expressly agreed otherwise by the parties) this Agreement terminates forthwith.
- 6.2 A party ("First Party") may by notice in writing to the other party ("Defaulting Party") terminate this Agreement with effect from the date specified in the notice in the circumstances set out in Clause 6.3. 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 the Units of Contracted Capacity until it gives a further notice lifting the suspension or terminating this Agreement provided that where Moyle has:
 - (i) suspended the right of the Capacity Holder to use Units of Contracted Capacity pursuant to this Clause and the Capacity Holder is no longer a 'Defaulting Party' for the purposes of this Clause 6; and
 - (ii) Moyle has entered into a contract with a third party for the sale of such Units of Contracted Capacity,

then the period of suspension shall be extended until the contract referred to in sub-paragraph (ii) above has been terminated or expired.

6.3 The circumstances referred to in Clause 6.2 are:

6.3.1 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

6.3.2 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

6.3.3 the Defaulting Party:

(a) subject to Clause 6.4, 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);

(b) 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 ;

- (c) 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;
- (d) passes any resolution for winding-up;
- (e) becomes subject to an order by the High Court for winding-up;
or
- (f) anything analogous to, or having a substantially similar effect to, any of the circumstances listed in paragraphs (a) to (e) above occurs in relation to that party in any jurisdiction.

6.4 For the purposes of Clause 6.3.3(a) above, 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".

6.5 Moyle may by 7 days notice in writing to the Capacity Holder terminate this Agreement with effect from the date specified in the notice if in respect of any aspect of the Interconnector Auction any of the following events occur:

- 6.5.1 any investigation or enforcement action is commenced or any matter being raised by the European Commission under the EC Treaty;
- 6.5.2 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;
- 6.5.3 any action being taken by or any matter is raised by the Director General of Fair Trading or by the Authority under any of the Fair Trading Act 1973, the Competition Act 1980, the Competition Act 1988 and the Competition Act 1998;
- 6.5.4 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 the conduct of the Interconnector Auction;
- 6.5.5 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 the Interconnection Auction,

and Moyle may in its discretion determine whether such an event occurs. Clause 6.6 applies in the event of termination under this Clause.

6.6 Where this Agreement is terminated in circumstances where Moyle is the Defaulting Party under Clause 6.2 or pursuant to Clause 6.5, then Moyle must, within 10 Business Days of a request of the Capacity Holder repay to the Capacity Holder any advance payments of Capacity Charges relating to the

period after termination takes effect, as calculated under this Clause. The amount of the refund is calculated as follows:

- 6.6.1 for the Payment Period in which the termination takes effect, an amount equal to the Capacity Charges for that Payment Period, divided by the total number of Trading Days in the Payment Period and multiplied by the number of whole Trading Days remaining in the Payment Period after termination takes effect; and
 - 6.6.2 if the Capacity Holder has paid the Capacity Charges for the Payment Period commencing after the Payment Period in which termination takes effect, then that amount.
- 6.7 Where this Agreement terminates pursuant to Clause 5.1, Clause 6.1 and/or where the Capacity Holder is the Defaulting Party pursuant to Clause 6.2, the Capacity Holder shall, subject to Clause 9, within 15 Business Days of receipt of an invoice for the same, pay to Moyle the Termination Amount.

7. Liability

- 7.1 Subject to Clauses 7.2 and 7.3, 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 other than for loss directly resulting from such breach and which at the date of this Agreement was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:
- 7.1.1 physical damage to the property of either party or their respective officers, employees or agents; and/or
 - 7.1.2 the liability of the other party to any other person for loss in respect of physical damage to the property of any person.
- 7.2 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.
- 7.3 Subject to Clause 7.2 and in the case of the Capacity Holder without prejudice to Clauses 4 and 6.7, neither the Party Liable nor any of its officers, employees or agents is in any circumstances whatsoever liable to the other party for:
- 7.3.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or
 - 7.3.2 any indirect or consequential loss, or

- 7.3.3 loss resulting from the liability of the other party to any other person howsoever and whensoever arising save as provided in Clauses 7.1 and 7.2.
- 7.4 Each party acknowledges and agrees that the other party holds the benefits of Clauses 7.1, 7.2 and 7.3 for itself and as trustee and agent for its officers, employees and agents.
- 7.5 Each of Clauses 7.1, 7.2, 7.3, 7.4 and this Clause 7.5 shall survive termination of this Agreement.
- 7.6 For the avoidance of doubt, nothing in this Clause 7 prevents or restricts either party enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Agreement.
- 7.7 Each party acknowledges and agrees that this Clause 7 is fair and reasonable having regard to the circumstances as at the date of execution of this Agreement.
- 7.8 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 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 undertakes not to enforce any of them except to the extent provided for in this Agreement.

8. Force Majeure

- 8.1 If an event of Force Majeure occurs in relation to a party ("Non-Performing Party") this Agreement remains in effect but subject to Clauses 8.2, 8.3 and 8.5, the Non-Performing Party's relevant obligations under this Agreement and the corresponding obligations of the other party under this Agreement are suspended to the extent it is unable to perform those obligations by reason of the Force Majeure event.
- 8.2 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.
- 8.3 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 8.2.

- 8.4 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.
- 8.5 An event of Force Majeure does not excuse either party from its payment obligations under this Agreement.

9. Disputes

- 9.1 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 ("Dispute") must be resolved in accordance with this Clause 9.
- 9.2 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.
- 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 prevents either party from at any time seeking interim or interlocutory relief from a court.

10. Entire Agreement

This Agreement constitutes the whole and only agreement between the parties relating to the subject matter of the Agreement and supersedes and extinguishes 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.

11. Waiver

- 11.1 No omission to exercise or delay in exercising any right, power or remedy provided by law or under this Agreement 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.

- 11.2 Any waiver of any right, power or remedy under this Agreement 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.

12. Variation

No variation to this Agreement 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.

13. Notices

- 13.1 All notices and other communications to be given under or in connection with this Agreement 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. Delivery by courier is regarded as delivery by hand.
- 13.2 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
3 Wellington Park
Malone Road
Belfast
BT9 6DJ

Facsimile: +44 28 9092 3381
Telephone: +44 28 9092 3341
For the attention of the Managing Director

Capacity Holder:

As set out in Schedule 3.

- 13.3 Subject to Clause 13.4, a communication is deemed to have been received:
- 13.3.1 if delivered by hand, at the time of delivery;
- 13.3.2 if sent by first class pre-paid registered post, at the expiration of two clear days after the time of posting; and

13.3.3 if sent by facsimile, at the time of completion of transmission by the sender.

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 13, it is deemed to have been received at the opening of business on the next Business Day.

13.4 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.

14. Confidentiality

14.1 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 the term 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:

14.1.1 in any of the circumstance set out in Clause 14.2 below, to the extent necessary in the relevant circumstance; or

14.1.2 to the extent otherwise expressly permitted by this Agreement; or

14.1.3 with the prior consent in writing of the Disclosing Party.

14.2 The circumstances referred to in Clause 14.1.1 above are:

14.2.1 where the Confidential Information is required to be disclosed in accordance with this Agreement;

14.2.2 where Moyle discloses the Confidential Information of the Capacity Holder to the Authority, NIE or the Transmission System Operator;

14.2.3 if, and to the extent, after giving reasonable notice to the Disclosing Party, the Recipient discloses the Confidential Information to any person:

(a) in compliance with any requirement under the Order or any other law;

(b) 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;

(c) in order to obtain clearance or consents from a regulatory authority;

- (d) in response to a requirement of any stock exchange or the Panel on Take-Overs and Mergers;
- (e) 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
- (f) 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;

14.2.4 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.

15. Assignment

15.1 Subject to Clause 15.3, neither party may assign, novate or otherwise transfer this Agreement without the prior consent of the other party.

15.2 With the prior consent of Moyle (such consent not to be unreasonably withheld or delayed), the Capacity Holder may assign the rights to any of its Units of Contracted Capacity to any person ("Assignee") who is party to an Interim Settlement Agreement at the time the assignment takes effect. Moyle's consent under this clause may be given subject to any of the following:

15.2.1 the Capacity Holder notifying Moyle of the number of Units of Contracted Capacity being assigned and the identity of the Assignee and any other information reasonably requested by Moyle;

15.2.2 at the request of Moyle, the Capacity Holder entering into a variation to this Agreement with Moyle to reflect the assignment of the Units of Contracted Capacity;

15.2.3 the Assignee entering into an agreement with Moyle in substantially the same form as this Agreement in respect of the Units of Contracted Capacity assigned to it;

15.2.4 the Capacity Holder remaining fully liable for the payment of all and any charges payable in respect of the assigned Units of Contracted Capacity under this Agreement; and

15.2.5 the Assignee not having acquired more than the permitted capacity allocation, as determined by the Authority from time to time.

15.3 Notwithstanding Clause 15.1, Moyle shall be entitled, without the consent of the Capacity Holder:-

- (a) to assign, charge or otherwise encumber this Agreement or any of its rights or benefits under this Agreement by way of security to any provider of finance or re-finance to Moyle or to any agent or trustee on their behalf; and
- (b) to assign, novate or otherwise transfer its rights and/or obligations under this Agreement to NIE (and, if it does so, NIE may re-assign, novate back or otherwise re-transfer this Agreement to Moyle).

16. Severance

Each of the provisions of this Agreement 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 shall remain in full force and effect and shall continue to bind the parties.

17. Survival

The expiry or termination of this Agreement 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.

18. Governing law

This Agreement 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.

19. Change in Circumstances

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

19.2 For the purpose of Clause 19.1, a "Change in Circumstances" occurs if after the date of this Agreement any law is passed, made, brought into force, issued, amended or revoked or ceases to have effect or the terms of any of the Supply Competition Code, Grid Code, Northern Ireland Fuel Security Code, or any licence or document issued pursuant to a condition of any licence is amended.

20. Rights of Third Parties

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

Signature

Name

Position

Schedule 1

Part 1

"Agreement"	means this Interconnector Capacity Agreement;
"Approved Credit Rating"	means (in the case of 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 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;
"Assignee"	has the meaning given to it in Clause 15.2;
"Authority"	means the Northern Ireland Authority for Energy Regulation (or such successor body or authority as may replace it);
"Available Transfer Capacity"	means in relation to a Settlement Period for a Trading Day, the maximum amount of electricity that may be transferred over the Moyle Interconnector in that Settlement Period as determined pursuant to the Interim Settlement Code;
"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 Holder"	means the party identified in paragraph 1.3 of Schedule 2;
"Capacity Charges"	means in respect of a Payment Period, the Capacity Charges for the Payment Period as set out in paragraph 1 of Schedule 2 (and so that, for the purposes of Clause 2.6.1, the Capacity

Charges applicable to a Settlement Period in a given Payment Period shall be the Capacity Charges for that Payment Period, divided by the number of Settlement Periods in such Payment Period);

"Capacity Period"

means the [] year period specified in paragraph 1.5 of Schedule 2;

"Change in Circumstances"

has the meaning given to it in Clause 19.2;

"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 (i) the terms of this Agreement (excluding paragraphs 1.1 and 2 of Schedule 2) and (ii) any item of information which:

- (a) is in the public domain; or
- (b) 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 14) is aware;

"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;

“Discount Rate”

means LIBOR as at the date of termination plus one per cent;

"Expiry Date"

means the date specified in paragraph 1.6 of Schedule 2;

"Extended Expiry Date"

means the date agreed between the parties in accordance with Clause 2.2;

"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. 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 and/or Scotland shall not constitute Force Majeure;

"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;
"Guarantor"	has the meaning given in Clause 5.2.3;
"Interconnector Auction"	means the auction for Units described in the Invitation to Bid;
"Interim Settlement Agreement"	means an agreement in the form of the pro forma agreement of that name referred to in the Transmission Licences and approved by the Authority, as amended from time to time;
"Interim Settlement Arrangements"	means the Interim Settlement Code and Interim Settlement Agreement taken together;
"Interim Settlement Code"	means the Code of that name prepared in accordance with the Transmission Licences and approved by the Authority, as amended from time to time;
"Invitation to Bid"	means the invitation to bid for capacity on the Moyle Interconnector issued by the Transmission System Operator on behalf of Moyle and dated [●] 2002;
"Letter of Credit"	means an unconditional irrevocable stand-by letter of credit from a Qualifying Issuer in the form set out in Schedule 5 approved by Moyle issued for the account of the Capacity Holder in sterling in favour of Moyle, having a scheduled expiry date not earlier than one year after the start of the Capacity Period 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;

“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’
"Material Breach"	means any breach of this Agreement which has a material adverse effect on the ability of a party to enjoy the rights conferred on it by this Agreement 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;
"Moyle Interconnector"	means, the electrical interconnector between Scotland and Northern Ireland 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 SP System;
"NIE"	means Northern Ireland Electricity plc;
“NIE System”	means the electricity transmission system in Northern Ireland;
“Nominal Transfer Capacity”	means, in relation to any Settlement Period in which the Available Transfer Capacity is reduced by reason of the occurrence of an Outage Event, the maximum amount of electricity (as referred to in the definition of Available Transfer Capacity and as determined by the Transmission Survey Operator on behalf of Moyle) which would have represented the Available Transfer Capacity had the Available Transfer Capacity not been reduced by such Outage Event;

"Order"	means the Electricity (Northern Ireland) Order 1992 as amended from time to time;
"Outage Event"	means, without prejudice to Clause 2.6.2, any breakdown or failure of, or any other event or occurrence, in each case originating from, the Moyle Interconnector (which expression shall, for the purposes of this definition only, exclude the Moyle Interconnector's connections to the SP System and the NIE System);
"Payment Period"	has the meaning given to it in Schedule 2;
"Qualifying Issuer"	<p>means a legal person which either:</p> <ul style="list-style-type: none"> (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, <p>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;</p>
"Renewable Output Factor or ROF Agreement"	means an agreement in the form of the proforma agreement of that name referred to in the Transmission Licences and approved by the Authority, as amended from time to time;

“ROF Arrangements”	means the Renewable Output Factor Agreement and ROF Code, taken together;
“ROF Code”	means the renewable output factor code prepared in accordance with the Transmission Licences and approved by the Authority, as amended from time to time;
"Security Cover"	has the meaning given to it in Clause 5.2;
“Settlement Agreement”	means, as the context requires, an Interim Settlement Agreement and/or a Renewable Output Factor Agreement and/or such other agreement(s) and/or document(s) as are in force from time to time and make provision for the settlement of electricity in Northern Ireland;
“Settlement Arrangements”	means, as the context requires, the Interim Settlement Arrangements and/or the ROF Arrangements and/or such other arrangements as are in force from time to time and make provision for the settlement of electricity in Northern Ireland;
"Settlement Period"	has the meaning given to it in the Interim Settlement Code;
“SP”	means SP Transmission Limited (Registered No SC189126);
“SP Licences”	means the generation, transmission and supply licences held by SP and its affiliates at the date hereof (as such licences may be amended or varied or substituted from time to time pursuant to the Electricity Act 1989 and, where the context permits, shall include any other transmission licence which may from time to time be in force in respect of the part of the transmission system in Scotland to which the Moyle Interconnector is connected);
“SP System”	means the electricity transmission system specified in the SP Licences;
“Termination Amount”	means an amount equal to the net present value of the Capacity Charges and any payments that may have become due under Clause 4.1.2 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 the Discount Rate 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 of Contracted Capacity to third parties who have an Approved Credit Rating or provide Security Cover in accordance with Clause 5.2 during the unexpired part of the Capacity Period, assuming for this purpose that Moyle will use its reasonable endeavours to maximise the amount of such revenues;

"Trading Day" has the meaning given to it in the Interim Settlement Code;

"Transmission Licences" means the licence granted to NIE and/or the licence granted to Moyle under Article 10(1)(b) of the Order, as the context requires;

"Transmission System Operator" means the person who from time to time performs the function of operating the NIE System and the Moyle Interconnector;

"Unit" means capacity on the Moyle Interconnector as described in and subject to this Agreement, having a term, transfer direction and nominal MW value (at the Auchencrosh connection point of the Moyle Interconnector) as described in the Interconnector Auction by reference to each type of block offered. The nominal MW value of a Unit may vary during the year (eg 5MW in Winter and 3MW in Summer);

"Units of Contracted Capacity" means the Units allocated to the Capacity Holder in the Interconnector Auction corresponding to the bids accepted by Moyle as indicated in paragraph 2 of Schedule 2.

Part II

2. Interpretation

2.1 In this Agreement (including its Schedules and Appendices), unless the context otherwise requires:

2.1.1 the singular includes the plural and vice versa;

2.1.2 references to one gender include all other genders;

- 2.1.3 references to persons include bodies corporate, unincorporated associations and partnerships, in each case whether or not they have a separate legal personality;
- 2.1.4 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;
- 2.1.5 the word "including" and its variations are to be construed without limitation;
- 2.1.6 reference to any legislation, regulation, directive, order, instrument, code or any enactment shall include any modification, extension or re-enactment of it then in force;
- 2.1.7 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;
- 2.1.8 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;
- 2.1.9 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.

Schedule 2

1. Capacity Charges

- 1.1 The Capacity Charge for each Payment Period is [●] pounds sterling (£[●]), subject to RPI Indexation in respect of the second and any subsequent year of the Capacity Period.
- 1.2 A Payment Period is a calendar month and the first Payment Period is the calendar month commencing [].
- 1.3 The Capacity Holder is _____
- 1.4 The Capacity Holder must pay to Moyle on request such sums as are necessary to reimburse Moyle for the part of the payments made to SP in respect of Use of System Charges (including as appropriate Infrastructure Generation Charges, Infrastructure Demand and System Service Charges) which is referable to the Units of Contracted Capacity. Further details are set out in Appendix 2.
- 1.5 The Capacity Period shall be for a period of [] years from 06:00 hours on [] and ending on the Expiry Date.
- 1.6 The Expiry Date shall be immediately before 06:00 hours on [].

2. Units of Contracted Capacity

[NOTE: Insert description of Units of Contracted Capacity including the capacity profile - This will reflect the capacity (distinguishing between Import/Export) in respect of which the Capacity Holder's auction bids have been accepted].

Schedule 3

Address of Capacity Holder

Address

.....

Fax:

E-mail:

Schedule 4

FORM OF GUARANTEE

DATED 20[]

(1) GUARANTOR

and

(2) MOYLE INTERCONNECTOR LIMITED

PARENT COMPANY GUARANTEE

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 [120 Malone Road, Belfast, BT9 5HT] ("**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

Schedule 5

FORM OF IRREVOCABLE LETTER OF CREDIT

[On the letterhead of [Bank]]

To: Beneficiary

Attention: []
[], 20

Date:

Dear Sirs,

We refer to the interconnector capacity agreement in relation to the Moyle Interconnector, between Beneficiary and [*Capacity Holder*] (the "**Applicant**") dated [], 20 , as such agreement may be amended or restated from time to time (the "**Capacity Agreement**").

We establish this irrevocable letter of credit in your favour available for drawing in one or more amounts up to a maximum aggregate amount of £[*Amount of Security Amount still to be determined under the terms of the Capacity Agreement*] (less any amounts previously drawn down) upon your written demand.

Your demand shall be in the form of the Certificate attached to this letter of credit with the blanks completed as appropriate.

Payment will be made by us not later than one business day (i.e. a day on which the banks are open for business in Belfast and London) after receipt of your demand.

Payment by us under this letter of credit shall be in Sterling for same day value and shall be paid to your account at [*details of account*] or to the account designated in your demand.

This letter of credit expires at 3:00 p.m. London time on [] for presentation of your demand at our counters.

Any demand or communication from you to us in respect of this letter of credit shall refer to this letter of credit and be made in writing, sent by postage prepaid registered mail or tested telex (telex number [*Bank's telex number*]) or delivered by hand to us at [*address of Bank*], or such other address and/or telex number as we may specify in writing. In any event, each demand and communication must be addressed "To the attention of Documentary Credits dept. [] and pre-advised by fax to [Bank's Doc. Credits dept. fax no.].

This letter of credit is an independent obligation and shall not in any way be amended or amplified by reference to any document, instrument or agreement referred to in this letter of credit or to which this letter of credit relates.

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, 1993 Revision, International Chamber of Commerce Publication No. 500 insofar as the same are applicable (but so that Article 41 thereof shall be deemed excluded and the second sentence of Article 17 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

Appendix 1

Assignment of Interconnector Capacity

This form is to be used for assignments of capacity as referred to in Clause 2.4 of the Interconnector Capacity Agreement (but does not constitute an assignment of this Agreement under Clause 15).

The Capacity Holder may assign the right to use Units using the form of notice below. An assignment using this procedure does not relieve the Capacity Holder of any of its obligations under this Agreement. An assignment using this procedure must satisfy the following requirements.

- (a) The person taking the assignment (“Assignee”) must be party to an Interim Settlement Agreement.
- (b) The Assignee must have agreed with Moyle, by signing the notice, to the terms and conditions of use of the Units as set out in this Agreement (other than those relating to charges and rebates) and must have undertaken to Moyle to be bound by and comply with those terms and conditions. Notwithstanding clause 7 of this Agreement, if this requirement (b) has not been satisfied for any reason, the Capacity Holder must indemnify Moyle and its employees and agents against any losses or costs (including legal costs) any of them may suffer in connection with any claim by the Assignee or its employees or agents relating to the assignment or the Assignee’s use of the Units.
- (c) The period of the assignment must commence not sooner than 3 Business Days after the notice is received by Moyle.
- (d) The period of the assignment must, unless otherwise agreed with Moyle, be for one or more whole months and must commence at the start of first Trading Day in a month.
- (e) The capacity subject to the assignment must be in whole number of MW.

FORM OF ASSIGNMENT NOTICE

From **(Capacity Holder)**
Date
Address
.....
E-mail
Fax

To Transmission System Operator
Castlereagh House Control Centre
12 Manse Road
Belfast BT6 9RT
Fax: 02890 707560
E-mail: robin.mccormick@soni.ltd.uk

(for itself and on behalf of Moyle Interconnector Limited)

The Capacity Holder named above hereby assigns the (export/import) * capacity ofMW on the Moyle Interconnector for the period from 06.00 hrs ondate to 06.00 hrs ondate to the following Participants in the Interim Settlement Arrangements.

- MW to (Name of Assignee)
- MW to (Name of Assignee)
- MW to (Name of Assignee)

In making this assignment, the Capacity Holder acknowledges that the obligation to pay the charges associated with this allocation of capacity do not transfer with this assignment.

Signed

.....
Capacity Holder

* delete as applicable

Agreement from Assignees as to terms of use

Each of the Assignees identified above agrees with Moyle Interconnector Limited (“Moyle”) to the terms and conditions of use of the Units as set out in the Interconnector Capacity Agreement between Moyle and the Capacity Holder named above (other than those relating to charges and rebates) and undertakes to Moyle to be bound by and comply with those terms and conditions.

Signed

.....
Assignee

.....
Assignee

.....
Assignee

Appendix 2

Scottish Power Indicative Transmission Use of System Charges

1. Under the present contractual arrangements between Moyle and SP, Moyle will pay SP's transmission use of system charges on behalf of all Moyle Interconnector Capacity Holders (MICHs).
2. The use of system charges will be passed through to all MICHs as a separate charge.
3. SP's use of system charges will be levied on the basis of the higher of the Infrastructure Demand and System Service charges for transits from Scotland to Northern Ireland and Infrastructure Generation charges for transits from Northern Ireland to Scotland.

Note:

1. The chargeable demand for the purpose of exports from Scotland to Northern Ireland is the maximum demand at the interconnector metering at Auchencrosh for each monthly period.
2. SP system service and infrastructure demand charges will be billed monthly on the basis of an estimated maximum demand equivalent to the secured auction capacity in kW and a deemed power factor of 0.95.
3. Reconciliation of SP's use of system charges will be made twice yearly. No interest charges would apply to the reconciliation payments.
4. All MICHs will be liable for system service and infrastructure demand charges according to their allocated proportion of interconnector capacity.

For further information on SP transmission charges please refer to SP's Statement of Charges for use of the Transmission System and the Connection to the Transmission System.

Appendix 3

Interruptible Moyle Import

- 1 The Capacity Holder agrees with Moyle that the Transmission System Operator may at any time and from time to time without limit interrupt the right of the Capacity Holder to utilise all or any of the Units of Contracted Capacity in accordance with the TSO Interruption Procedures (as defined below) (and the expression “**interrupt**” and its derivatives shall be construed accordingly), if the Transmission System Operator determines that it is appropriate to interrupt, having regard to any conditions or combination of conditions on or affecting the NIE System and/or the Moyle Interconnector.
- 2 During the period of any interruption, as determined in accordance with the foregoing provisions of this Appendix, the Capacity Holder will have no right to utilise the Units of Contracted Capacity which have been interrupted by the Transmission System Operator. Notwithstanding Clause 2.6, the Capacity Holder will not be entitled to any rebate of, or reduction in, the Capacity Charges on account of any interruption.
- 3 The Capacity Holder agrees that any decision by the Transmission System Operator to interrupt will be final and binding on the Capacity Holder and no such decision will be capable of being questioned or challenged by the Capacity Holder or any other person.
- 4 Neither Moyle nor the Transmission System Operator will have any liability or responsibility of whatsoever nature to the Capacity Holder in respect of any loss, cost or liability which may be suffered or incurred as a result of any interruption.
- 5 As used in this Appendix “TSO Interruption Procedures” means the procedures from time to time employed by the Transmission System Operator for reducing the capacity available to Capacity Holders who hold capacity which is designated as Interruptible Moyle Import, including the procedures for the posting of information on the Moyle Interconnector Trading System and/or for the emailing of changes in the Available Transfer Capacity to Capacity Holders.

Appendix 4

Agreement recording the Grant of Short Term Rights to Moyle Interconnector Import Capacity

SONI Limited, acting for and on behalf of Moyle Interconnector Limited (“**Moyle**”), and [●] (the “**Capacity Holder**”) hereby agree that the Capacity Holder will be granted a right to use [●] Megawatts of the import capacity of the Moyle Interconnector on a short term basis as detailed in the Appendix hereto (such right being the “**Short Term Capacity Right**”) on the following terms and conditions:-

- (a) all the provisions of the Capacity Agreement (other than the Excluded Provisions, as defined below) dated [] entered into between Moyle and the Capacity Holder (“the **Capacity Agreement**”) shall apply to the Short Term Capacity Right as fully and effectually as if they were repeated in this Agreement and as if the references therein to Units of Contracted Capacity were references to the Units detailed in the Appendix hereto;
- (b) the Short Term Capacity Right:-
 - (i) will commence at the time stated in column 1 of the Appendix;
 - (ii) will end at the time stated in column 2 of the Appendix; and
 - (iii) be in respect of the number of MW set out in column 3 of the Appendix.
- (c) the Capacity Holder will pay to Moyle the charges described in the Appendix;
- (d) as used in this Agreement, “Excluded Provisions” means:
 - (i) Clause 5 of, Schedule 2 (other than paragraph 1.4), Schedules 4 and 5 and the Appendices to, the Capacity Agreement; and
 - (ii) any other provisions of the Capacity Agreement which SONI, acting for and on behalf of Moyle, determines to be in conflict or inconsistent with the provisions of this Agreement.
- (e) unless otherwise specified or the context otherwise requires, all words and expressions used herein which are defined in the Capacity Agreement shall have the same meaning in this Agreement as they have in the Capacity Agreement.

SIGNED)
for and on behalf of)
SONI LIMITED (acting as agent for)
MOYLE INTERCONNECTOR LIMITED))
by
in the presence of: (Signature)

Signature :
Name :
Position :

SIGNED)
for and on behalf of)
[CAPACITY HOLDER])

by
in the presence of: (Signature)

Signature :
Name :
Position :

Appendix

1	2	3
Start Time	End Time	Number of MW

The Capacity Holder will pay the following charges (in cleared funds) to Moyle not later than [●].