

Master Contract for Differences Agreement  
Between  
POWER NI ENERGY LIMITED POWER PROCUREMENT BUSINESS  
and  
[]

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**MASTER CONTRACT FOR DIFFERENCES AGREEMENT  
IMPORTANT NOTICE**

This form of Master Contract for Differences Agreement has been prepared by Power NI Energy Limited and made available to participants in the Single Electricity Market established in Northern Ireland and Ireland. It is the responsibility of any person using this form of agreement to ensure that its terms are legally binding, valid and enforceable and satisfy the user's commercial and legal requirements. Power NI Energy Limited nor any of its representatives or advisors involved in the preparation of this form of agreement shall be liable to any person, whether in contract, tort (including negligence and breach of duty) or otherwise for its use by any person or for any damages or losses arising from such use, and all such liability is hereby expressly disclaimed.

**THIS MASTER CONTRACT FOR DIFFERENCES AGREEMENT** is made the \_\_\_ day of \_\_\_\_\_ 200\_

**BETWEEN:**

- (1) The Party identified in Schedule 2 as Party A; and
- (2) The Party identified in Schedule 2 as Party B.

**RECITALS:**

- (A) Party A is a body corporate organised under the laws of its jurisdiction as defined in Schedule 2.
- (B) Party B is a body corporate organised under the laws of its jurisdiction as defined in Schedule 2.
- (C) The Parties have entered into and/or expect to enter into one or more Transactions that are or will be governed by this Master Agreement, which includes the Schedules and the Confirmation Letters exchanged between the Parties confirming those Transactions.

**AGREEMENT:**

**1. Definitions and Interpretation**

- 1.1 Capitalised words and phrases used in this Agreement (including the Recitals) have the meaning given to them in Part 1 of Schedule 1, unless the context requires otherwise.
- 1.2 Unless the context requires otherwise:
  - 1.2.1 the singular includes the plural and vice versa;
  - 1.2.2 a reference to any gender includes a reference to both other genders;
  - 1.2.3 "persons" includes individuals, firms, corporations, unincorporated associations and statutory authorities, and all references to persons shall include their successors and permitted assignees;
  - 1.2.4 a reference to any enactment, order, regulation, directive, code, licence or similar instrument includes all enactments or instruments made under it and any amendment, re-enactment or replacement of it;

- 1.2.5 a reference to any contract or agreement includes any variation, amendment, or supplement to it;
  - 1.2.6 a reference to a “Clause” is a reference to a clause in this Agreement;
  - 1.2.7 a reference to a Schedule, or to a Part of a Schedule, is a reference to a Schedule, or a Part of a Schedule, as the case may be, to this Agreement;
  - 1.2.8 a reference to time is a reference to time in the place identified in Part 2 of Schedule 1;
  - 1.2.9 a reference to a year is a reference to a calendar year;
  - 1.2.10 “includes” and its variations are to be construed without limitation;
  - 1.2.11 clause headings, clause descriptions and examples are for convenience only and do not affect the interpretation of this Agreement; and
  - 1.2.12 Schedules to this Agreement form an integral part of this Agreement as if they were incorporated in this Agreement and references to this Agreement shall, unless the context otherwise requires, be deemed to include the Schedules to this Agreement.
- 1.3 All data required for input into calculations in this Agreement shall be rounded to the number of decimal places shown in Part 2 of Schedule 1 before being used for the calculations. Results of the calculations shall also be rounded as shown in the Schedule. Payments shall be rounded to the nearest penny or whole cent, as specified in Part 2 of Schedule 1.
- 1.4 Nothing in this Agreement:
- 1.4.1 is intended to give, or shall give, either of the Parties any right to physical delivery of electricity; or
  - 1.4.2 is intended to create, or shall create, in favour of either Party any legal or beneficial interest of any nature whatsoever in any of the plant, power station or other asset of the other Party.
- 1.5 In entering into this Agreement, Party A and Party B both agree to comply with the terms and provisions of those parts of the auction rules applying to them relating to the entering into of any Transactions, and such auction rules shall be deemed to be set out in this Agreement and have effect as if part of this Agreement.

## **2. Commencement and Term**

This Agreement enters into effect when both Parties have signed it and continues unless and until terminated pursuant to Clause 10 (Termination) or Clause 17.3 (Replacement of the Single Electricity Market).

## **3. Transactions and their Confirmation Procedure**

### **3.1 Transactions**

- 3.1.1 The Parties have agreed that all Transactions will be governed by this Agreement.
- 3.1.2 All Transactions are entered into in reliance on the fact that this Agreement and all Confirmation Letters form a single agreement between the Parties.

- 3.1.3 If there is a conflict between the terms of a Confirmation Letter and the terms of this Agreement, the Confirmation Letter shall prevail for the purpose of the relevant Transaction.

### **3.2 Agreement of a Transaction**

The Parties intend that they be legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise).

### **3.3 Exchange of Written Confirmation Letters**

- 3.3.1 Unless otherwise agreed, the Seller shall, in respect of each Transaction, send to the Buyer by facsimile a written confirmation, substantially in the form set out in Schedule 4, of the Transaction (a "Confirmation Letter") recording the details of the Transaction within 2 Business Days of the Transaction having been entered into.
- 3.3.2 If the Buyer is satisfied that the Confirmation Letter accurately reflects the terms of the Transaction, the Buyer shall return the Confirmation Letter duly signed on its behalf to the Seller within 2 Business Days of receipt of the Confirmation Letter.
- 3.3.3 If the Buyer is not so satisfied, the Buyer shall inform the Seller of any inaccuracies within 2 Business Days of receipt of the Confirmation Letter from the Seller. If the Seller agrees that the Confirmation Letter is inaccurate, the Seller shall issue a new Confirmation Letter and the provisions of Clauses 3.3.1 and 3.3.2 shall apply with all necessary changes.
- 3.3.4 If the Buyer has not received a Confirmation Letter from the Seller within 2 Business Days of a Transaction having been entered into, the Buyer shall send to the Seller a Confirmation Letter, and Clauses 3.3.2 and 3.3.3 shall apply in relation to that Confirmation Letter by replacing all references to "Buyer" with "Seller" and all references to "Seller" with "Buyer" in those Clauses and by replacing the reference to "2 Business Days" with "4 Business Days".
- 3.3.5 Failure by either Party to send or return a Confirmation Letter shall not: (a) affect the validity or enforceability of any Transaction, or (b) be a breach of a material obligation under this Agreement under Clause 10.1.4.

### **3.4 Evidence of a Transaction**

- 3.4.1 The Parties consent to the recording of all telephone conversations between the Parties relating in whole or part to this Agreement including any Transaction. Each Party agrees to notify its employees or other relevant personnel of that consent and obtain their consent to that recording if required by law and agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any proceedings.
- 3.4.2 The evidence of the terms of a Transaction contained in recordings made under Clause 3.4.1 and in any undisputed Confirmation Letter shall prevail over other oral or written evidence.

## **4. Representations and Warranties**

- 4.1 Each Party gives the representations and warranties in Clause 4.2 to the other Party throughout the term (which representations and warranties are deemed to be repeated by each Party on each date on which a Transaction is entered into.)

- 4.2 The representations and warranties are that:
- 4.2.1 **(Status)** it is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation (and, if relevant under those laws, in good standing);
  - 4.2.2 **(Licence)** it holds an Electricity Licence;
  - 4.2.3 **(T&SC)** it is a party to the Trading and Settlement Code;
  - 4.2.4 **(Power)** it has the power (a) to execute this Agreement and any other documentation relating to this Agreement to which it is a party, (b) to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver, and (c) to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise that execution, delivery and performance;
  - 4.2.5 **(No violation or conflict)** the execution, delivery and performance referred to in Clause 4.2.4 do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or to any of its assets or any contractual restriction binding on or affecting it or any of its assets;
  - 4.2.6 **(Required Authorisations)** all governmental and other licences, authorisations, permits, consents, contracts and other approvals (if any) that are required to enable the Party to fulfil any of its obligations under this Agreement or any Credit Support Document to which it is a party (“Required Authorisations”) have been obtained and are in full force and effect and all conditions of any Required Authorisations have been complied with;
  - 4.2.7 **(Obligations Binding)** its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law);
  - 4.2.8 **(No Event of Default)** no Event of Default, or an event which with notice and/or lapse of time would constitute an Event of Default, has occurred with respect to it and no such event would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party;
  - 4.2.9 **(No Litigation)** no litigation, arbitration or administrative suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened against it or any of its Affiliates which would, if adversely determined, result in a Material Adverse Change in its financial condition or that is likely to affect the legality, validity or enforceability against it of this Agreement or that Credit Support Document or its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party;
  - 4.2.10 **(No reliance)** it is not relying upon any representations of the other Party other than those expressly set out in this Agreement;

- 4.2.11 **(Principal)** it has entered into and executed this Agreement as principal (and not as agent or in any other capacity, fiduciary or otherwise);
- 4.2.12 **(Risk Assumption)** it has entered into this Agreement and any Credit Support Document to which it is a party with a full understanding of its material terms and risks and is capable of assuming those risks;
- 4.2.13 **(No advice)** the other Party is not acting as a fiduciary or an adviser for it, nor has the other Party given to it any advice, representation, assurance or guarantee as to the expected performance, benefit or result of this Agreement; and
- 4.2.14 **(Accurate Information)** all applicable information that is furnished in writing, if any, by or on behalf of it to the other Party and is identified for the purpose of this Clause 4 is, as of the date it is furnished to the other Party, true, accurate and complete in every material respect.
- 4.2.15 **(Risk Management)** the exclusion in Article 19 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 will apply to it (and in relation to each Transaction to be entered into pursuant to this Agreement the requirements of Article 19(1)(c) and (d) will be satisfied).
- 4.2.16 **(UK FSMA compliance)** the Buyer warrants that it:
- (a) is a person to whom an unapproved financial promotion can be directed at pursuant to Article 49 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 being a company which satisfies one of the following conditions:
    - (i) a company which has a called-up share capital or net assets of not less than £5 million; or
    - (ii) a company which is a member of the same group as an undertaking which has a called-up share capital or net assets of not less than £5 million; or
    - (iii) a company which has more than 20 members, or which is a subsidiary undertaking of an undertaking which has more than 20 members, and which has a called-up share capital or net assets of not less than £500,000; or
    - (iv) a company which has more than 20 members, or which is a subsidiary undertaking of an undertaking which has more than 20 members and which is a member of the same group as an undertaking which has a called-up share capital or net assets of not less than £500,000, and
  - (b) has provided the Seller with a separate written confirmation that it satisfies one of the above conditions in Article 49 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 or that it will comply with any request from the Seller to provide such separate written confirmation.

4.3 Each Party represents, warrants and agrees that, in relation to this Agreement, the Transactions entered into hereunder and any process in relation to the entering into of such Transactions, the other Party will not have any obligations to it other than as counterparty under this Agreement

and, in particular, that the other Party is not providing it with any form of service or services, nor is the other Party acting in any way on its behalf or as its agent.

## **5. Payment Obligations**

- 5.1 For each Transaction entered into, the Seller shall pay the Buyer, in respect of each Trading Period in the Transaction Term, any Difference Payment in respect of the Settlement Quantity for that Trading Period that is payable by the Seller to the Buyer.
- 5.2 For each Transaction entered into, the Buyer shall pay the Seller, in respect of each Trading Period, any Difference Payment in respect of the Settlement Quantity for that Trading Period that is payable by the Buyer to the Seller.
- 5.3 This Clause 5 shall apply to all Transactions, and payment shall be made in accordance with Clause 6 (Billing and Payment). This Clause 5 shall survive termination of this Agreement.

## **6. Billing and Payment**

### **6.1 Monthly Statement**

On or before the 7th Business Day of the Month following each Month which is wholly or partly in the Transaction Term of a Transaction, the Seller for that Transaction shall send to the Buyer a written statement (“Monthly Statement”) showing for the preceding Month for that Transaction:

- 6.1.1 a summary for the Transaction, comprising:
- (i) product description;
  - (ii) the Strike Price;
  - (iii) the average SMP for the Month, calculated under Clause 6.2.1;
  - (iv) the difference between the Strike Price and the average SMP;
  - (v) the Contract Quantity;
  - (vi) the number of Trading Periods applicable to the product in the Month;
  - (vii) the Aggregate Settlement Quantity.
- 6.1.2 the amount owing to settle the Difference Payments owed by the Parties under Clause 5 for the Transaction for the Month, as calculated under Clause 6.2.2;
- 6.1.3 any amount owing from one Party to the other in respect of the Transaction pursuant to any other Clause in this Agreement;
- 6.1.4 the net amount payable from one Party to the other after taking into account all the matters set out above; and
- 6.1.5 if applicable, Value Added Tax (“VAT”) for the Month.

Where the Transaction Term of more than one Transaction falls within the Month for which the statement is being provided, the Seller may provide one Monthly Statement in respect of all such Transactions.



## **6.2 Calculations and multiple Transactions**

- 6.2.1 The average SMP for a Transaction for a Month is calculated by taking the average of the SMP in each Trading Period in which the Settlement Quantity for the Transaction is greater than zero; and where the same Settlement Quantities do not apply in all such Trading Periods, the average SMP shall be the weighted average SMP, calculated by taking the sum of (SMP \* Settlement Quantity \* duration of a Trading Period in hours) across all such Trading Periods and dividing that quantity by the Aggregate Settlement Quantity for the Month.
- 6.2.2 The amount owing to settle the Difference Payments owed by the Parties under Clause 5 for a Transaction for a Month is calculated by multiplying the value of item (iv) (the difference between the Strike Price and the average SMP) in Clause 6.1.1 by the value of the Aggregate Settlement Quantity. Where the average SMP is higher than the Strike Price, that amount is paid by the Seller to the Buyer, and where the average SMP is lower than the Strike Price, that amount is paid by the Buyer to the Seller.
- 6.2.3 The Seller and the Buyer may agree that where the Transaction Term of more than one Transaction (for which the Seller and Buyer are each the same Party) falls wholly in a Month, the Seller may in addition provide to the Buyer for the Month a statement summarising the information in Clause 6.1 for all such Transactions for the Month.

## **6.3 Payment Mechanics**

- 6.3.1 On the 12th Business Day of the Month in which the Monthly Statement is received by the Buyer or the 5th Business Day after receipt, whichever is the later (the “Due Date”), the Buyer or the Seller, as the case may be, shall pay to the other Party to whom it is due, the net amount payable in accordance with the Monthly Statement.
- 6.3.2 Payment shall be made by the Due Date in the Relevant Currency by direct bank transfer or equivalent transfer of immediately available funds to the Party to whom payment is due and to the credit of the account specified by that Party.
- 6.3.3 Where applicable, an amount equal to VAT payable to a Party shall not be required to be paid before the other Party provides it with an appropriate VAT invoice in relation to that amount. Each Party shall provide the other with any additional appropriate VAT invoices as required for the purposes of this Agreement.

## **6.4 Disputed Payments**

- 6.4.1 If a Party disputes in good faith any sum shown in the Monthly Statement received by it, or notified in accordance with Clause 6.8.2, as being payable by that Party, it shall make payment of any undisputed amount to be paid by it (if any) on or before the Due Date and shall give notice of the amount in dispute and the reasons for the dispute to the other Party.
- 6.4.2 The Parties shall seek in good faith to settle the disputed amount as soon as reasonably possible. If the Parties are unable to settle the dispute then, after 30 days from the date on which the notice of the dispute was given, either Party, without prejudice to Clauses 11.2 to 11.5 (Disputes) which Clauses may be invoked if the Parties agree, may take such action as is permitted by this Agreement including resorting to the courts.
- 6.4.3 Any adjustment payment required to be made in accordance with the resolution of a dispute shall be made within 3 Business Days of that resolution.

6.4.4 A Party shall not under any circumstances be entitled to initiate any dispute concerning any sum shown in, or which should have been shown in, a Monthly Statement beyond the period allowed for the raising of a "Settlement Dispute" by a "Participant" as both terms are defined and referred to in the Trading and Settlement Code.

## **6.5 Interest**

6.5.1 If a Party fails to pay to the other Party any amount due by the Due Date, interest shall be payable on that amount at an annual rate equal to the base lending rate for the Relevant Currency of the Relevant Bank applicable from time to time plus 3% compounded Monthly from and including the Due Date to but excluding the date payment is made.

6.5.2 If, following the resolution of a dispute or otherwise to correct any overpayment or underpayment, one Party is required to pay an amount to the other Party, interest shall be payable on that amount at an annual rate equal to the base lending rate for the Relevant Currency of the Relevant Bank plus 1% compounded Monthly from the original Monthly Statement Due Date or from the payment date (as applicable) if the dispute, overpayment or underpayment had not occurred, to, but excluding, the date payment is made.

6.5.3 If the rate in this Clause ceases temporarily or permanently to be published then the Party owed money may substitute a rate which it considers, acting reasonably, to be equivalent to that rate published by a clearing bank in the Relevant Bank Location.

## **6.6 Netting**

6.6.1 If on any date, the aggregate of the amounts referred to in Clauses 6.1.4 and 6.1.5 ("Statement Amounts") would otherwise be payable in the same currency by each Party to the other as a result of more than one Monthly Statement being issued then, on that date, each Party's obligation to make payment of any such amount will be automatically satisfied and discharged, and if the Statement Amount that would otherwise have been payable by one Party exceeds the Statement Amount that would otherwise have been payable by the other Party, it shall be replaced by an obligation upon the Party by whom the larger Statement Amount would have been payable to pay to the other Party the excess of the larger Statement Amount over the smaller Statement Amount.

## **6.7 Failure to Issue Monthly Statement**

6.7.1 If the Seller fails to issue a Monthly Statement in accordance with Clause 6.1 (Monthly Statement), then the Buyer may issue that Monthly Statement to the Seller and, once issued, that Monthly Statement shall be treated as a Monthly Statement issued by the Seller for the purposes of this Agreement.

6.7.2 Except as provided in this Clause 6, failure to issue a Monthly Statement shall not affect the rights and obligations of the Parties under this Agreement and shall not be a breach of a material obligation under this Agreement under Clause 10.1.4.

## **6.8 No Accurate Information**

6.8.1 If any information required to prepare a Monthly Statement is not available at the time that Monthly Statement is prepared, then a Party may prepare that Monthly Statement based on its reasonable estimate of that information. If information that was

estimated in order to prepare a Monthly Statement becomes available then within one Month after the end of the Month in which the relevant information became available either Party may, by notice to the other, require an adjustment payment to be made to reflect the newly available information. The adjustment payment shall be made within 5 Business Days of receipt of the notice together with interest calculated in accordance with the terms of this Agreement.

- 6.8.2 If there is any change to the information used to prepare a Monthly Statement after that Monthly Statement is received arising otherwise than as a result of a Settlement Rerun Statement issued following a Timetabled Settlement Rerun, then:
- (a) where that change derives from a revision of the average of the SMPs for each Trading Period in the Month of greater than 0.25%, then within one Month after the end of the Month in which the relevant change to the information became available either Party may, by notice to the other, require an adjustment payment to be made to reflect the changed information and the adjustment payment shall be made within 5 Business Days of receipt of the notice together with interest calculated in accordance with the terms of this Agreement; and
  - (b) where that change derives from a revision of the average of the SMPs for each Trading Period in the Month of equal to or less than 0.25% then the adjustment payment shall be made as if the changed information arose from the issue of a Settlement Rerun Statement and shall be paid in accordance with the timetable set out in clause 6.8.3.
- 6.8.3 If arising from the issue of a Settlement Rerun Statement issued following a Timetabled Settlement Rerun there is any change to the information used to prepare a Monthly Statement after that Monthly Statement is received or information that was estimated in order to prepare a Monthly Statement becomes available, then within one Month after the end of the Month in which the complete Settlement Rerun Statements for the month of re-settlement are issued either Party may, by notice to the other, require an adjustment payment to be made to reflect the changed or newly available information. The adjustment payment shall be made within 5 Business Days of receipt of the notice together with interest calculated in accordance with the terms of this Agreement.
- 6.8.4 This Clause 6 shall survive termination of this Agreement.

## **7. Confidentiality of Information**

- 7.1 The Parties shall treat the terms of this Agreement (including each Transaction) and all information provided under or in connection with this Agreement including Monthly Statements (together the “Confidential Information”) as confidential and shall not disclose the Confidential Information without the prior written consent of the other Party, save that consent shall not be required for disclosure:
- 7.1.1 to any director, employee or Affiliate of a Party, provided that person in turn is required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this Clause 7;
  - 7.1.2 to any person professionally engaged by a Party, provided that person is in turn required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this Clause 7;

- 7.1.3 to the extent required by any government department or agency or regulatory authority having jurisdiction over that Party (including the CER and NIAUR);
- 7.1.4 to any bank, other financial institution or rating agency to the extent required in relation to the financing of a Party's business activities, provided that the bank, or other financial institution or rating agency, as the case may be, is required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this Clause 7;
- 7.1.5 to the extent required by any applicable laws, judicial process or the rules and regulations of any recognised stock exchange;
- 7.1.6 to any intending assignee of the rights and interests of a Party under this Agreement or to a person intending to acquire an interest in a Party provided that the intending assignee or acquirer in turn is required to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this Clause 7;
- 7.1.7 to the extent that the Confidential Information is in or lawfully comes into the public domain other than by breach of this Clause 7;
- 7.1.8 to price reporting agencies in respect of Strike Price, Transaction Term and Trading Period volumes only.

## **8. Force Majeure and Electrical System Collapse**

- 8.1 If, for any reason publication of the SMP in respect of a Trading Period is delayed, Clause 6.7.1 applies.
- 8.2 If, in respect of a Trading Period, there is a Force Majeure event, then both Parties shall be relieved of their obligation to pay Difference Payment in respect of that Trading Period, which obligation shall be extinguished in respect of that Trading Period and not merely suspended.
- 8.3 In respect of any Trading Period that is an Electrical System Collapse Trading Period, for the purposes of Clauses 5.1 and 5.2, the amount that the Seller shall be required to pay the Buyer as the Difference Payment (or that the Buyer shall be required to pay the Seller as the Difference Payment, as the case may be) shall be equal to half the amount that would otherwise have been payable in respect of that Trading Period.

## **9. Liability**

### **9.1 No Consequential Loss**

Except to the extent included in any amounts to be paid under any Termination Payment, neither Party shall be liable to the other, whether in contract, tort (including negligence and breach of duty) or otherwise at law, for any loss of use, profits, contracts, production, revenue or for business interruption or for any consequential or indirect loss or damage of whatsoever nature and howsoever arising.

## **10. Termination**

### **10.1 Event of Default**

Event of Default means the occurrence at any time with respect to a Party (the "Defaulting Party") of any of the following events:

### 10.1.1 Insolvency

The Party:

- (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (ii) becomes insolvent or is unable to pay its debts as they become due or fails or admits in writing its inability generally to pay its debts as they become due;
- (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its examinership, winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, that proceeding or petition (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (ii) is not withdrawn, dismissed, discharged, stayed or restrained, in each case within 30 days of the institution or presentation of that proceeding or petition;
- (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (vi) seeks or becomes subject to the appointment of an administrator, examiner, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (vii) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets and that secured party maintains possession, or that process is not withdrawn, dismissed, discharged, stayed or restrained, in each case within 30 days of that event;
- (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in Clauses 10.1.1 (i) to (vii) (inclusive); or
- (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this Clause 10.1.1.

### 10.1.2 Representation or Warranty

Any representation or warranty made in this Agreement, or deemed to have been made or repeated, by a Party proves to have been false or materially misleading at the time it was made or was deemed to have been made.

### 10.1.3 Non-Payment

Subject to Clause 6.4 (Disputed Payments), a Party fails to pay any amount when due under this Agreement, and that failure is not remedied on or before the 3rd Business Day after the Non-Defaulting Party gives the Party notice of that failure.

#### **10.1.4 Material Obligations**

A Party fails to perform a material obligation under this Agreement (but other than an obligation referred to in Clause 10.1.3) and that failure is not remedied within 5 Business Days of the Non-Defaulting Party giving the Party notice of that failure.

#### **10.1.5 Credit Support**

- (i) The Party or any Credit Support Provider of the Party fails to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if that failure is continuing after any applicable grace period has elapsed;
- (ii) any Credit Support Document expires or terminates or fails or ceases to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of the Party under each Transaction to which the Credit Support Document relates without the written consent of the other Party; or
- (iii) the Party or any Credit Support Provider of that Party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, that Credit Support Document.

#### **10.1.6 Material Adverse Change**

In the reasonable opinion of the other Party, one or more events occur which cause a material adverse change in the financial standing or creditworthiness of the Party (unless all of the Party's financial obligations under this Agreement are fully guaranteed under a Credit Support Document), or any Credit Support Provider of the Party, and which affects the Party's, or the Credit Support Provider's, ability to perform its financial or other obligations under this Agreement or any Credit Support Document, respectively, ("Material Adverse Change") and the Party or the Credit Support Provider fails to procure a guarantee, letter of credit or other credit support from a person and in a form which is acceptable in the reasonable opinion of the other Party for the performance of its financial obligations under this Agreement or any Credit Support Document, respectively, within 3 Business Days of the other Party's written request for that guarantee, letter of credit or other credit support.

### **10.2 Termination Right**

- 10.2.1 If, at any time, an Event of Default has occurred and is continuing, the Non-Defaulting Party may designate a day as an early termination date (the "Early Termination Date") in respect of all outstanding Transactions between the Parties by giving not more than 20 days' notice to the Defaulting Party. This notice shall specify the relevant Event of Default. The Early Termination Date may not be earlier than the day the notice is given.
- 10.2.2 The right under Clause 10.2.1 is in addition to any other remedies available under this Agreement or at law.

- 10.2.3 The notice of the Early Termination Date shall be made in writing. Each Party shall make reasonable endeavours to contact the other Party by telephone in advance of sending the notice designating the Early Termination Date.

### **10.3 Early Termination Date**

- 10.3.1 If notice designating an Early Termination Date is given under Clause 10.2.1, the Early Termination Date will occur on the date so designated even if the circumstances giving rise to the Event of Default are no longer continuing.
- 10.3.2 With effect from the Early Termination Date: (a) no further payments or compliance with Clause 7 will be required in respect of any Transaction; and (b) the amount, if any, payable in respect of the Early Termination Date shall be determined pursuant to Clause 10.4 (Termination Payment).

### **10.4 Termination Payment**

- 10.4.1 On, or as soon as reasonably practicable after, the Early Termination Date, the Non-Defaulting Party shall in good faith calculate the termination payment (the "Termination Payment"), being the Loss for all Transactions.
- 10.4.2 "Loss" means an amount that the Non-Defaulting Party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with the termination of the Transactions, including any loss of bargain, cost of funding (based on actual costs of the Non-Defaulting Party whether or not greater than market costs) or, at the election of the Non-Defaulting Party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or re-establishing any related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment required to have been made and not made on or before the Early Termination Date. Loss does not include the Non-Defaulting Party's legal fees and out-of-pocket expenses. The Non-Defaulting Party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading traders in the wholesale electricity market in Ireland and Northern Ireland who are independent of the Parties.
- 10.4.3 The Non-Defaulting Party shall notify the Defaulting Party of the Termination Payment including detailed support for the Termination Payment calculation.
- 10.4.4 A Party shall not be required to enter into replacement transactions in order to determine the Termination Payment.
- 10.4.5 If the Termination Payment is a positive number, the Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party within 2 Business Days of delivery of invoice or notification of the Termination Payment amount (the "Termination Payment Date"), which amount shall bear interest calculated in accordance with Clause 6.5.1 (Interest).
- 10.4.6 If the Termination Payment is a negative number, the Non-Defaulting Party shall pay the Termination Payment to the Defaulting Party within 30 Business Days of the Termination Payment Date, which amount shall bear interest calculated in accordance with Clause 6.5.1 (Interest).
- 10.4.7 (i) The Non-Defaulting Party may, at its option, set off the Termination Payment against any or all other amounts owing (whether or not matured,

contingent or invoiced) between the Parties under this Agreement or under any other agreements, instruments or undertakings between the Parties.

- (ii) The right of setoff shall be without prejudice and in addition to any right of setoff, combination of accounts, lien, charge or other right to which any Party is at any time otherwise entitled (whether by operation of law, by contract or otherwise).
- (iii) If an amount is unascertained, the Non-Defaulting Party may reasonably estimate the amount to be set off. The Parties shall make any adjustment payment required within 3 Business Days of the amount becoming ascertained.

10.4.8 Disputed amounts under this Clause 10.4 shall be paid by the Defaulting Party subject to refund with interest calculated in accordance with Clause 6.5.2 (Interest) if the dispute is resolved in favour of the Defaulting Party.

10.4.9 Termination of this Agreement shall not affect:

- (i) any rights or obligations which may have accrued prior to such termination; and
- (ii) any rights or obligations of either Party under this Agreement which are expressly stated to continue beyond such termination.

10.4.10 Each Party acknowledges that payment obligations in Clause 10.4 are reasonable in light of the anticipated harm and difficulty of estimation or calculation of actual damages. Each Party waives the right to contest those payments as an unreasonable penalty.

## **10.5 Illegality**

If, due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of, any applicable law after that date, it becomes unlawful (other than as a result of a breach by the relevant Party of Clause 4.2.6) for a Party (the “Affected Party”)

- (i) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of that Transaction or to comply with any other material provision of this Agreement relating to that Transaction; or
- (ii) to perform, or for the Credit Support Provider of that Party to perform, any contingent or other obligation which the Party (or that Credit Support Provider) has under any Credit Support Document relating to that Transaction;(each an “Illegality”)

then, unless the Parties otherwise agree in writing, either Party may elect to terminate, liquidate and accelerate that Transaction in accordance with Clauses 10.2, 10.3 and 10.4, except that, for the purposes of Clause 10.2, either Party may designate an Early Termination Date and, for the purposes of Clause 10.3 and 10.4, references to the Defaulting Party will be read as references to the Affected Party, references to the Non-Defaulting Party will be read as references to the Party which is not the Affected Party, and references to “all Transactions” will be read as references to all Transactions affected by the Illegality. However, if both Parties are Affected



Parties, each Party shall determine the Termination Payment in respect of the terminated Transactions and the amount payable shall be the arithmetic average of the two Termination Payments.

## **10.6 Event of Default and Illegality**

If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

## **10.7 Change in Taxes**

If a change in taxes is specified in Schedule 2 and due to:

10.7.1 any action taken by a taxing authority or brought in a court of competent jurisdiction on or after the date on which a Transaction is entered into (regardless of whether that action is taken or brought with respect to a Party); or

10.7.2 a Change in Tax Law.

a Party (the “Affected Tax Party”) will, or there is substantial likelihood that it will, on the next Due Date either:

10.7.3 be required to pay an amount in respect of a Relevant Tax; or

10.7.4 receive a payment from which an amount is required to be deducted or withheld for or on account of a Relevant Tax and no additional amount is required to be paid in respect of that Relevant Tax;

other, in either case, than in respect of interest payable under this Agreement, (a “Relevant Change in Tax”), then the Affected Tax Party may give a notice electing to terminate, liquidate or accelerate that Transaction in accordance with Clauses 10.2, 10.3 and 10.4, except that, for the purposes of Clause 10.2, either Party may designate an Early Termination Date and, for the purposes of Clause 10.3 and 10.4, references to the Defaulting Party will be read as references to the Affected Tax Party, references to the Non-Defaulting Party will be read as references to the Party which is not the Affected Tax Party, references to “all Transactions” will be read as references to all Transactions affected by the Relevant Change in Tax, and the notice given by the Affected Tax Party electing to terminate, liquidate and accelerate the Transaction shall be deemed to be the notice to terminate, liquidate and accelerate to be given to the Non-Defaulting Party for the purposes of Clause 10.2. However, if both Parties are Affected Tax Parties, each Party shall determine the Termination Payment in respect of the terminated Transactions and the amount payable shall be the arithmetic average of the two Termination Payments.

10.7.5 “Change in Tax Law” means any enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date on which the relevant Transaction is entered into.

10.7.6 “Relevant Tax” means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest or penalties) that is imposed by any government or other taxing authority directly in respect of any payment, notification or nomination under this Agreement other than stamp, registration, documentation or similar tax. Relevant Tax does not include, without limitation, income tax, taxes on

the generation, transmission, distribution or use of electricity or taxes imposed generally on a Party's business.

## **11. Disputes**

- 11.1 (i) Subject to Clause 6.4 (Disputed Payments), each Party shall use good faith and reasonable commercial efforts to resolve informally any dispute arising out of this Agreement ("Dispute") within 30 days of receipt of notification of the Dispute by either Party.
- (ii) Each Dispute shall be referred to a designated senior representative of each of the Parties, who shall seek to resolve the Dispute.
- (iii) If such representatives resolve the Dispute, such resolution shall be reported in writing to and shall be binding upon the Parties.
- (iv) If such representatives do not resolve the Dispute within the 30 day period referred to above or a Party fails to appoint a representative within 10 days of written notice of the existence of the Dispute, either Party may proceed as set out below.
- 11.2 If the Dispute is required by this Agreement to be referred to an Expert the Dispute shall be escalated by issuing a written notice ("Expert Determination Notice") to the other Party, requiring the Dispute to be dealt with in accordance with Clause 11.3. In all other cases each Party may take such steps as it considers appropriate to resolve the Dispute.
- 11.3 Where an Expert Determination Notice is given in respect of the Dispute it shall be determined in accordance with Clauses 11.3.1 to 11.3.8.
- 11.3.1 (i) The Parties shall seek to agree the identity of an Expert. If the Parties do not agree the identity of an Expert within 5 Business Days of an Expert Determination Notice then either Party may apply to the President of the Law Society of the Relevant Jurisdiction to nominate an Expert to determine the Dispute requesting that the nomination be made within 10 Business Days of receipt of the application.
- (ii) The Parties shall jointly appoint the nominated or agreed Expert within 3 Business Days of the written agreement or receipt of a nomination pursuant to this Clause 11.3.1, failing which either Party may, by written notice to the Expert and the other Party, appoint the Expert.
- 11.3.2 No person shall be appointed as an Expert in any Dispute in respect of which that person has any personal, financial or professional interest except by prior written consent of the Parties, and the Parties shall make appointments subject to the proposed Expert disclosing to the Parties any circumstances likely to create a presumption of bias or prevent a prompt resolution of the Dispute.
- 11.3.3 The Expert shall act as an expert and not as an arbitrator. The Expert shall have the power to make determinations as he or she thinks fit, including determinations as to the Parties' contractual rights and obligations and amounts owed by one Party to the other (including the awarding of costs).
- 11.3.4 Where a Dispute is referred to an Expert the procedures to be followed shall be as determined by the Expert subject only to the following, which the Parties shall reflect in the Expert's terms of reference:

- (i) the Expert shall have the power to determine requirements for hearings and the form and timing of submissions (subject to any procedures agreed between the Parties and notified to the Expert);
  - (ii) all written communications or submissions received by the Expert shall be made available to both Parties;
  - (iii) the Expert shall prepare a preliminary determination and provide such preliminary determination, together with written reasons for the preliminary determination, to the Parties within 30 Business Days of appointment or by such later date as the Expert may specify but no later than 90 Business Days after appointment; and
  - (iv) the Parties shall have the right to submit written comments on such preliminary determination within 7 Business Days of receipt. The Expert shall take account of such comments and shall be required to issue a final determination within 20 Business Days of the expiry of such 7 Business Day period.
- 11.3.5 Subject to any award of costs, including legal costs, by the Expert in its final determination:
- (i) the Expert's costs shall be borne equally by the Parties, and the Parties shall make such payments on account of the Expert's costs as the Expert may reasonably require; and
  - (ii) each Party shall bear its own cost and expenses, including those of all advisers, witnesses and employees retained by it.
- 11.3.6 The Parties shall comply with any determinations of an Expert in relation to the conduct of proceedings instituted pursuant to this Clause 11.
- 11.3.7 In the event that an Expert becomes unwilling or unable to act in relation to a Dispute or fails to make a determination within the timescales required by this Agreement, then either Party may by written notice to the other (“Substitution Notice”) require a substitute Expert to be appointed in accordance with the procedure specified in Clause 11.3. For this purpose, Clause 11.3.1 shall be interpreted as if the words “a Substitution Notice” were included in place of “an Expert Determination Notice”.
- 11.3.8 The determination of the Expert in relation to a Dispute subject to Expert determination shall be final, conclusive and binding upon the Parties except in the case of fraud or manifest error.
- 11.4 During the course of any Expert determination under this Clause 11:
- (i) the Parties shall continue to perform their respective obligations under this Agreement; and
  - (ii) neither Party shall exercise any other remedies arising by virtue of the matters in dispute.
- 11.5 If as a result of any Expert determination the Parties are required to vary this Agreement then the provisions of Clause 16.4 (Amendments) shall apply.

## **12. Governing Law and recourse to Courts of Competent Jurisdiction**

12.1 This Agreement and any matter arising out of or relating to or in any way connected with its subject matter (including any Transaction) shall be interpreted, construed and governed by the laws of the Relevant Jurisdiction.

12.2 Subject to the referral of any matter to an Expert under this Agreement, the Parties submit to the exclusive jurisdiction of the courts of the Relevant Jurisdiction in connection with this Agreement (including any Transaction).

## **13. Taxes**

Each Party shall be responsible for the discharge of any income, corporation or other relevant taxation of income or gain or liability arising out of any amount received by it from the other Party under this Agreement.

## **14. Assignment**

### **14.1 Prohibition of Assignment**

Subject to Clause 14.2, neither Party shall assign or transfer to any person any of its rights or obligations in respect of this Agreement (including any Transaction) without the written consent of the other Party (which consent shall not be unreasonably withheld or delayed). For these purposes it shall be unreasonable to withhold consent in the case of an assignee that is demonstrably capable of fulfilling the obligations of the assignor under this Agreement, has a financial standing no worse than that of the assignor as at the date the assignor became a Party to this Agreement and as of the date it entered into the relevant Transactions and provided it is demonstrably capable of continuing to provide security and/or performance assurance at least equal to that provided (or required to be provided) by the assignor.

### **14.2 Assignment to Affiliates**

A Party may assign and transfer its rights and obligations under this Agreement to an Affiliate on notice to, but without the consent of the other Party, provided that the assignor remains liable for the performance of any obligations that the Affiliate fails to perform (even if that Affiliate ceases to be an Affiliate of the assignor).

### **14.3 Assignment by way of Security**

Either Party may assign its rights under this Agreement by way of security to or in favour of any bank or financial institution in relation to the financing of that Party's business activities.

### **14.4 Assignment in the case of Termination**

A Party may assign all or any part of its interest in any Termination Payment payable to it from a Defaulting Party under Clause 10.4.

### **14.5 No adverse assignment**

A Party may not assign or transfer to any person any of its rights or obligations in respect of this Agreement (including any Transaction) without the written consent of the other Party if that assignment or transfer would render any right of the other Party in respect of this Agreement unenforceable, the performance of any obligation by either Party in respect of this Agreement illegal or adversely affect the other Party's position in relation to Tax.

## **15. Notices**

- 15.1 Except where expressly provided otherwise in this Agreement, any notice or other written communication authorised or required by this Agreement to be given or sent by either Party to the other (a “Communication”) shall be in writing and signed by a duly authorised representative of the sender.
- 15.2 Communications shall either be personally delivered or be sent by pre-paid registered post (airmail if overseas), facsimile or e-mail.
- 15.3 Communications shall be sent to the address, facsimile number or e-mail specified for the receiving Party in Schedule 2 and shall be marked to the attention of the individual named in Schedule 2. Either Party may, by written notice to the other, change its contact details given in Schedule 2.
- 15.4 Communications delivered in accordance with Clause 15.2 and Clause 15.3 are taken to have been effective as follows:
- 15.4.1 If delivered by hand, on the Business Day of delivery or on the 1st Business Day after the date of delivery if delivered on a day other than a Business Day;
  - 15.4.2 if sent by first class post, on the 2nd Business Day after the day of posting or, if sent from one country to another, on the 5th Business Day after the day of posting;
  - 15.4.3 if sent by facsimile transmission and a valid transmission report confirming good receipt is generated, on the day of transmission if transmitted before 1800 hours on a Business Day or otherwise on the 1st Business Day after transmission;
  - 15.4.4 in the case of e-mail, on the day of receipt if received before 1800 hours on a Business Day, or otherwise on the first Business Day after receipt.
- 15.5 In proving service of the Communication, it shall be sufficient to show that delivery by hand was made or that the envelope containing the Communication was properly addressed and posted by pre-paid registered post or that the facsimile was despatched and a confirmatory transmission report received or that the sender of the e-mail received an acknowledgment from the receiving Party's IT system.

## **16. General**

- 16.1 Severability
- 16.1.1 Any provision of this Agreement which is or becomes illegal, invalid or unenforceable, shall be deemed to be deleted to the extent of the illegality, invalidity or unenforceability, and the remaining provisions (and that provision, to the extent not so deleted) shall remain in full force and effect.
  - 16.1.2 In the circumstances contemplated by this Clause 16.1, the Parties shall negotiate in good faith to agree a mutually satisfactory provision to be substituted for the provision affected which as nearly as possible gives effect to their intentions and their legal and commercial objectives as expressed in this Agreement.

## **16.2 Enforcement of judgments**

Each Party agrees that a finding or conclusion of an Expert, determination by an Expert in accordance with Clause 11 (Disputes), or a judgment in any proceedings brought or pertaining

to this Agreement in the courts of the Relevant Jurisdiction shall be conclusive and binding upon each Party and may be enforced in the courts of any other jurisdiction.

### **16.3 Waiver**

- 16.3.1 No delay by or omission of either Party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver of that right, power, privilege or remedy.
- 16.3.2 Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise of that right, power, privilege or remedy or the exercise of any other right, power, privilege or remedy.
- 16.3.3 No waiver of any breach of this Agreement shall (unless expressly agreed in writing) be construed as a waiver of a future breach of the same term or as authorising the continuation of the particular breach.

### **16.4 Amendments**

This Agreement can be amended only by written agreement between the Parties signed by their duly authorised representatives.

### **16.5 Entire agreement**

- 16.5.1 This Agreement together with any other document expressed to be incorporated herein constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes and extinguishes any representations previously given or made other than those included in this Agreement and any other document expressed to be incorporated herein.
- 16.5.2 Each Party acknowledges and agrees that on entering into this Agreement it does not rely on, and shall have no remedy in respect of, any warranty, representation, undertaking or assurance (whether negligently or innocently made) of any person other than as expressly set out in this Agreement as a representation, and that liability in respect of any such warranty, representation, undertaking or assurance is expressly excluded.
- 16.5.3 Nothing in this Clause limits or excludes any liability for fraud in relation to any such representation, warranty, undertaking or assurance.

### **16.6 Conflict**

If there is any inconsistency between a provision in this Agreement (for this purpose excluding the Schedules) and a provision in a Schedule, the provision in this Agreement prevails to the extent of the inconsistency.

### **16.7 Relationship**

- 16.7.1 This Agreement shall not be interpreted or construed to create any joint venture, agency or partnership between the Parties or to impose any partnership obligation or liability on either Party.
- 16.7.2 Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be the agent or representative of, or otherwise to bind, the other Party.

## **16.8 Third Party Rights**

Subject to any rights that may accrue to any successor or permitted assigns of the Parties, no provision of this Agreement shall be construed as creating any rights enforceable by a third party and all third party rights implied by law are, to the extent permissible by law, excluded from this Agreement.

## **17. Changes to the Trading and Settlement Code**

### **17.1 Parties to seek to reach agreement**

Subject to Clause 10.5 (Illegality), if:

17.1.1 there are any changes to the Trading and Settlement Code or any other rules and procedures of the Market Operator with which either Party is required to comply in order to trade electricity as contemplated by this Agreement (whether made at the direction of any government, governmental body, regulator, competent authority or otherwise); and

17.1.2 as a result, either Party is unable to comply with one or more provisions of this Agreement;

then, at the written request of either Party, the Parties shall, in good faith, seek to agree the amendments (if any) necessary or appropriate to take account of those changes, so that this Agreement may continue in force and continue to provide for the settlement of the respective Settlement Quantities at the relevant Strike Prices and during the relevant periods as agreed for each Transaction. The Parties expressly agree that the purpose of any such amendments is solely to enable the mechanics of this Agreement to be changed so that they effectively integrate with the changes to the Trading and Settlement Code or the other rules and procedures. Any new costs, expenses or risks (including any costs, expenses or risks arising from changes in the way in which transmission or distribution losses or constraints are dealt with) which arise due to the changes and are not of a type provided for in this Agreement are not intended to be allocated from one Party to the other by virtue of this Clause 17.1 (unless expressly agreed by the Parties). Any such changes to the Trading and Settlement Code or any other rules and procedures of the Market Operator shall not constitute Force Majeure for the purposes of this Agreement.

### **17.2 References to Expert**

If the Parties fail to agree under Clause 17.1 on whether or not any such amendments are necessary or appropriate or the nature or extent of any such amendments, then after 60 days from the date on which the written request was given, either Party may refer the matter for resolution under Clause 11 by giving notice to the other Party and the matter shall be subject to Expert determination.

### **17.3 Replacement of the Single Electricity Market**

Either Party may terminate this Agreement on notice if the Single Electricity Market is replaced (including by way of changes to the Trading and Settlement Code) in the Republic of Ireland or in Northern Ireland by arrangements for the wholesale trading of electricity not involving a compulsory, gross pool, such termination to take effect no sooner than the end of the Transaction Term of all Transactions entered into prior to the notice of termination being given by the terminating Party.

**18. Execution in Counterparts**

This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, any of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Agreement.

**IN WITNESS** of the agreement reached between them, the Parties have executed this Master Agreement with effect from the date set out at its head.

Signed by

.....

..... PRINT

NAME

Duly authorised for and on behalf of the Seller

In the presence of:

..... (Witness)

..... (Address)

.....

Date .....

Signed by

.....

..... PRINT

NAME

Duly authorised for and on behalf of the Buyer

In the presence of:

..... (Witness)

..... (Address)

.....

Date .....



# Schedule 1

## Definitions and Rounding

### Part 1: Defined Terms

The following are defined terms used in this Agreement:

<b>“Affiliate”</b>	means in relation to any Party, any holding company or subsidiary or any subsidiary of a holding company of the relevant Party, in each case within the meaning of section 155 of the Companies Act 1963 (Ireland) where the law applicable to this Agreement is the law of Ireland, and section 4 of the Companies (Northern Ireland) Order 1986 (Northern Ireland) where the law applicable to this Agreement is the law of Northern Ireland;
<b>“Aggregate Settlement Quantity”</b>	means the sum of the Settlement Quantity in MW multiplied by the duration of a Trading Period in hours across all Trading Periods in the Month (stated in MWh);
<b>“Agreement”</b>	means this Master Contract for Differences Agreement, including all Schedules and Transactions, between the Buyer and Seller named in Schedule 2;
<b>“Business Day”</b>	means a weekday (other than a Saturday or Sunday) which is not a public holiday or bank holiday in Ireland or Northern Ireland;
<b>“Buyer”</b>	means for a Transaction the Party agreed to be the Buyer and identified as such in the Confirmation Letter;
<b>“CER”</b>	means the Commission for Energy Regulation of the Republic of Ireland;
<b>“Change in Tax Law”</b>	has the meaning given in Clause 10.7.5;
<b>“Communication”</b>	has the meaning given in Clause 15.1;
<b>“Confidential Information”</b>	has the meaning given in Clause 7;
<b>“Confirmation Letter”</b>	has the meaning given in Clause 3.3.1;
<b>“Contract Quantity”</b>	at any time and in respect of any Transaction, means the contract quantity for that Transaction as agreed between the Parties and specified in the Confirmation Letter for that Transaction;
<b>“Credit Support Document”</b>	has the meaning specified in Schedule 2;
<b>“Credit Support Provider”</b>	has the meaning specified in Schedule 2;

<b>“Defaulting Party”</b>	has the meaning given in Clause 10.1;
<b>“Difference Payment”</b>	means the payment referred to in Clause 5.1 and calculated under Schedule 3;
<b>“Due Date”</b>	has the meaning given in Clause 6.3.1;
<b>“Early Termination Date”</b>	means the date of Early Termination referred to in Clause 10.2.1;
<b>“Electrical System Collapse Trading Period”</b>	means a Trading Period in which Electrical System Collapse as defined in Trading and Settlement Code has occurred and Administered Settlement (as defined in that Code) has been implemented;
<b>“Electricity Licence”</b>	means in Ireland or Northern Ireland an electricity generation licence or an electricity supply licence, transmission system operation licence, distribution system operator licence or transmission system owner licence (as the context may require) granted by the Regulatory Authorities;
<b>“Euro” and “€”</b>	means the single currency of participating Member States of the European Union and which is the lawful currency of Ireland;
<b>“Event of Default”</b>	has the meaning set out in Clause 10.1;
<b>“Expert”</b>	means in relation to a dispute, an independent expert experienced and skilled (and so far as possible, an acknowledged expert) in the field that is the subject of the dispute;
<b>“Force Majeure”</b>	means in respect of a Trading Period, where no SMP is to be calculated and published in respect of the Trading Period on a permanent basis (but for the avoidance of doubt does not include delay, EPUS Failure (as defined in the Trading and Settlement Code) or calculation of SMP under Administered Settlement);
<b>“Loss”</b>	has the meaning given in Clause 10.4.2;
<b>“Master Agreement”</b>	means this Master Contract for Differences Agreement including all Schedules;
<b>“Material Adverse Change”</b>	has the meaning given in Clause 10.1.6;
<b>“Month”</b>	means a period beginning at 00:00 hours on the first day of a calendar month and ending at 24:00 hours on the last day of the calendar month and “Monthly” shall be construed accordingly;
<b>“Monthly Statement”</b>	has the meaning given in Clause 6.1;

<b>“NIAUR”</b>	means the Northern Ireland Authority for Utility Regulation;
<b>“Non-Defaulting Party”</b>	means the Party who is not the Defaulting Party;
<b>“Party”</b>	means each of the parties identified in Schedule 2 and their respective permitted legal successors and assigns and “Parties” means both of them;
<b>“Pounds Sterling”, “Sterling” and “£”</b>	mean the lawful currency of the United Kingdom;
<b>“Regulatory Authorities”</b>	means the NIAUR and CER or either one of them as the context admits or requires;
<b>“Relevant Bank”</b>	means the bank identified as such in Schedule 2;
<b>“Relevant Bank Location”</b>	means the bank in the location specified in Schedule 2;
<b>“Relevant Change in Tax”</b>	has the meaning given in Clause 10.7.4;
<b>“Relevant Currency”</b>	means the currency specified as such in Schedule 2 to this Agreement;
<b>“Relevant Jurisdiction”</b>	means the jurisdiction specified as such in Schedule 2;
<b>“Relevant Tax”</b>	has the meaning given in Clause 10.7.6;
<b>“Seller”</b>	means for a Transaction the Party agreed to be the Seller and identified as such in the Confirmation Letter;
<b>“Settlement Day”</b>	has the meaning given in the Trading and Settlement Code;
<b>“Settlement Quantity”</b>	means for a Transaction and a Settlement Period where the Parties Agree that only a percentage of the Contract Quantity is used to calculate the Difference Payment, the quantity representing the percentage; and otherwise is equal to the Contract Quantity;
<b>“Settlement Rerun Statement”</b>	has the meaning given in the Trading and Settlement Code;
<b>“SEM” or “Single Electricity Market”</b>	means the arrangements for wholesale trading of electricity on the island of Ireland through a compulsory pool effective since 1 November 2007;
<b>“SMP”</b>	means in any Trading Period the System Marginal Price for that Trading Period calculated under the Trading and Settlement Code charged to persons buying from the SEM including any settlement rerun leading to a recalculation of the SMP in respect of energy (but not capacity, ancillary or system support services) and includes the SMP when set to any Administered Price, any Market Price Cap and any

Market Price Floor (as defined in the Trading and Settlement Code). Where the SMP is calculated in one currency (e.g. €/MWh) then where this Agreement requires it to be expressed in the other currency, the exchange rate applicable to the Trading Period under the T&SC shall be used;

**“Statement Amounts”**

has the meaning given in Clause 6.6.1;

**“Strike Price”**

means for a Transaction, the strike price agreed by the Parties and expressed in Euro/MWh or Sterling/MWh as applicable and included on the Transaction’s Confirmation Letter in Schedule 4. This price is exclusive of applicable Taxes;

**“Substitution Notice”**

has the meaning given in Clause 11.3.7;

**“Tax”**

means any tax, levy, impost, duty, charge, assessment or fee of any nature that is imposed by any Government or any taxing authority;

**“Term”**

means with respect to this Agreement, the period commencing on the date this Agreement comes into effect in accordance with Clause 2 and continuing until the date determined under Clause 2 or until it is otherwise terminated in accordance with its terms (if sooner);

**“Termination Payment”**

has the meaning given in Clause 10.4.1;

**“Termination Payment Date”**

has the meaning given in Clause 10.4.5;

**“Timetabled Settlement Rerun”**

has the meaning given in the Trading and Settlement Code;

**“Trading and Settlement Code” or “T&SC”**

means the code of that name which sets out the rules and procedures for an electricity trading and settlement system for the SEM and including any replacement of that code (whether by way of regulation or other instrument);

**“Trading Period”**

has the meaning given in the Trading and Settlement Code;

**“Transaction”**

means an oral or written agreement between the Parties to undertake one or more transactions for the calculation and payment of difference payments by reference to SMP, which agreement, amongst other things, supplements this Master Agreement (or incorporates the terms of this Master Agreement by reference) and includes details of the Transaction Term, the Contract Quantity, the Settlement Quantity and the Strike Price;

**“Transaction Term”**

means, for a Transaction, the period from the start of the first Trading Period covered by the Transaction until the time the Transaction expires or is terminated; and

**“VAT”**

Value Added Tax and its abbreviation “VAT” means the tax applied in the UK pursuant to the Value Added Tax Act 1994, as amended and as implemented and construed by statutory instruments and regulations, or the tax applied in the Republic of Ireland pursuant to the Value Added Tax Act 1972 as amended and construed, whichever is appropriate.

**Part 2: Rounding rules and References to Time**

The following are the rounding rules.

Variables Measured in	Decimal places
MW	3
MWh	3
€ or £	2
€/MWh or £/MWh	2
€/GJ or £/GJ	2

**Rounding of payments:**

Payments shall be rounded to the nearest penny or whole cent as applicable. The average SMP and the weighted average SMP values are not rounded.

## **Schedule 2**

### **Part 1: Party Information and Elections**

#### **1. Party details**

##### **Party A**

Name of Party: Power NI Energy Limited, company number NI 027394 (in its capacity as the Power Procurement Business)

Address of Party: Greenwood House, 64 Newforge Lane, Belfast, BT9 5NF

Place of incorporation of Party (jurisdiction): Northern Ireland

##### **Notices**

Address: Unit 2, Forestgrove Business Park  
Newtownbreda Road  
Belfast  
BT8 6AW

Facsimile: 02890 690539

Attention (position): Power Procurement Manager

Telephone: 02890 661100

E-mail: Roy.Foreman@powerni.co.uk

##### **Party B**

Name of Party:

Address of Party:

Place of incorporation of Party (jurisdiction):

##### **Notices**

Address:

Facsimile:

Attention (position):

Telephone:

E-mail:

## **2. Confirmations**

Confirmation Letters shall be sent by facsimile only.

## **3. Elected Terms**

3.1 Relevant Bank (Clause 6.5): Bank of Ireland

3.2 Relevant Bank Location (Clause 6.5.3): United Kingdom

3.3 Relevant Currency (Clause 6.5 and payment): Pounds Sterling

3.4 Relevant Jurisdiction:

For the purposes of Clause 11 (Disputes), the Relevant Jurisdiction shall be England and Wales.

For the purposes of Clauses 12 (Governing Law) and 16.2 (Enforcement of judgments), the Relevant Jurisdiction shall be Northern Ireland.

3.5 Change in Taxes (Clause 10.7)

The change in taxes provisions in Clause 10.7 shall not apply to either Party.

## **4. Credit Support Documents**

4.1 Power NI Energy Limited (Party A)

Power NI Energy Limited shall not provide any form of Credit Support.

4.2 Party B

4.2.1 Party B shall provide a Credit Support Document if its Credit Rating (where such Party holds a Credit Rating at the date of this Master Agreement or is given a Credit Rating after the date of this Master Agreement) is withdrawn (or it otherwise ceases to be rated) or that Party is rated by neither S&P or Moody's (nor holds any equivalent rating by any alternative rating agency agreed between the Parties from time to time nor holds such credit status which in the opinion of Party A, provides equivalent comfort) or is at any time rated below:

- (a) where Party B is not a financial institution, either "A-" by S&P or "A3" by Moody's (or the equivalent rating by any alternative rating agency agreed between the Parties from time to time). Where Party B has more than one Credit Rating, the lower Credit Rating will apply; or

- (b) where Party B is a financial institution, either “A-” by S&P or “A3” by Moody’s (or the equivalent rating by any alternative rating agency agreed between the Parties from time to time). Where Party B has more than one Credit Rating, the lower Credit Rating will apply.

“Credit Rating” means, in respect of an entity any of the following: (i) the long-term, unsecured, unsubordinated (unsupported by third party credit enhancement) public debt rating; (ii) the debt issuer’s credit rating; or (iii) the corporate credit rating given to that entity, in each of cases (i) to (iii) by Standard & Poor’s Rating Group (a division of The McGraw-Hill Companies, Inc.) (S&P) or Moody’s Investors Service Inc (Moody’s) or any other rating agency or agencies agreed by the Parties.

“Credit Support Document” shall mean any Letter of Credit or Deposit Account as may be provided to Party A from time to time by a Credit Support Provider in respect of Party B’s obligations under this Master Agreement and/or any Transaction in an amount satisfactory to Party A (the Party receiving the benefit of the Credit Support Document).

“Credit Support Provider” shall mean any provider of a Credit Support Document (which in relation to a Deposit Account means the bank at which such Deposit Account is held) in respect of Party B’s obligations under this Master Agreement and/or any Transaction as agreed between the Parties from time to time.

“Deposit Account” means a deposit account at a bank in the UK that has a Credit Rating of either “A-” by S&P or “A3” by Moody’s (and where the bank has more than one Credit Rating, the lower Credit Rating will apply) where: (a) the account is in the joint name of the Parties; (b) the whole of the right, title and interest in the account (including interest) of Party B, as the Party providing the deposit is charged in favour of Party A, as the Party receiving the benefit of the deposit, as security for the Party B’s obligations to Party A under this Master Agreement; (c) both Parties have irrevocably instructed the bank to make payments to Party A against the sole signature of Party A; (d) the bank has agreed that the amounts standing to the credit of the account must not be set off or otherwise applied by the bank in respect of any indebtedness of the Party B or any other person owing to the bank; (e) the amounts standing to the credit of the account will not be paid to Party B without the prior written agreement of Party A; and (f) otherwise in form and substance satisfactory to Party A.

“Letter of Credit” means an irrevocable standby letter of credit payable on demand in form and substance satisfactory to the Party A (the Party receiving the benefit of such letter of credit) and issued or confirmed by a financial institution whose Credit Rating is at least “A-” by S&P or “A3” by Moody’s or the equivalent rating by any alternative rating agency agreed between the Parties.

“Credit Support Confirmation Letter” means a written confirmation, substantially in the form set out in Schedule 5, of the amount of the Credit Support Document required by Party A, to be put in place by Party B.

4.2.2 Party B shall provide credit support on the following basis:

- (a) Where Party A requires Party B to provide credit support in respect of any Transaction or Transactions under this Master Agreement, Party A shall send to Party B a Credit Support Confirmation Letter, confirming the amount of the Credit Support Document required to be put in place by Party B;
- (b) Party A may from time to time calculate Party B’s total credit exposure in respect of all Transactions under this Master Agreement and may from time to time notify Party B of any required increase or decrease in the amount of



any Credit Support Document, including as may be further provided for in any Credit Support Confirmation Letter; and

- (c) Party B shall put in place the required Credit Support Document and/or revise the amount of any Credit Support Document, within 5 Business Days of receipt of:
  - (i) the relevant Credit Support Confirmation Letter; and/or
  - (ii) any subsequent notification from Party A of any required increase or decrease in the amount of the Credit Support Document.

## **Part 2 Other changes to the Master Agreement**

The following amendments shall apply to the Master Agreement.

### **5. Representations and Warranties (Clause 4)**

5.1 In Clause 4.2.8, insert “and is continuing” after “has occurred with respect to it”.

### **6. Termination - Events of default (Clause 10)**

6.1 In Clause 10.1.2, insert the words “or repeated” at the end of the clause.

6.2 In Clause 10.1.5(i), insert the words “and where no grace period is specified, the applicable grace period shall be 3 Business Days” before the semi-colon.

6.3 Clause 10.1.6 (Material Adverse Change) shall not apply.

6.4 The following additional Event of Default shall be included as clause 10.1.7.

#### **“10.1.7 Merger Without Assumption**

The Party or any Credit Support Provider of such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:

- (1) the resulting, surviving or transferee entity fails to assume all the obligations of such Party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party to this Agreement; or
- (2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.”

## Schedule 3

### Difference Payments

#### A. Strike Price

The Strike Price for a Transaction is as agreed between the Parties and recorded in that Transaction's Confirmation Letter. The Confirmation Letter will specify whether this is expressed in €/ MWh or £/ MWh.

#### B. SMP Reference Price

The SMP is the reference price for each Trading Period and is used to calculate Difference Payments. It shall be expressed in €/ MWh or £/MWh according to the currency chosen for the Strike Price.

#### C. Difference Payment due to Seller

For each Transaction and subject to the terms of the Transaction as recorded in the relevant Confirmation, the Difference Payment due to Seller ("DPS") for a Trading Period is calculated as follows:

$$DPS_{tp} = 0.50 * \text{Max} (0, (SP_{tp} - SMP_{tp}) * SQ_{tp})$$

where:

$SMP_{tp}$  is the SMP in €/MWh or £/MWh, as applicable, for the Trading Period;

$SP_{tp}$  is the Strike Price in €/MWh or £/MWh, as applicable, for that Transaction applicable to the Trading Period; and

$SQ_{tp}$  is the Settlement Quantity (in MW) for that Transaction applicable to the Trading Period.

#### D. Difference Payment due to Buyer

For each Transaction and subject to the terms of the Transaction as recorded in the relevant Confirmation Letter, the Difference Payment due to Buyer ("DPB") for a Trading Period is calculated as follows:

$$DPB_{tp} = 0.50 * \text{Max} (0, (SMP_{tp} - SP_{tp}) * SQ_{tp})$$

where:

$SMP_{tp}$  is the SMP in €/MWh or £/MWh, as applicable, for the Trading Period;

$SP_{tp}$  is the Strike Price in €/MWh or £/MWh, as applicable, for the Trading Period; and

$SQ_{tp}$  is the Settlement Quantity (in MW) for that Transaction applicable to the Trading Period.

## Schedule 4

### Confirmation Letter

(To be typed on letterhead of Seller)

This confirmation letter shall confirm the Transaction agreed to on ..... between  
..... (Buyer) and  
.....(Seller).

This Confirmation Letter is being provided pursuant to and in accordance with the Master Contract for Differences Agreement dated ..... between Buyer and Seller, and constitutes part of and is subject to the terms and provisions of such Master Contract for Differences Agreement. Terms used but not defined in this Confirmation Letter shall have the meanings given to them in the Master Contract for Differences Agreement.

**Total Volume (MWh)**

**Strike Price(s) (Relevant Currency/MWh)**

**Transaction Term:**

From the start of the Settlement Period beginning at [time] on [date] until the end of the Settlement Period beginning at [time] on [date].

**Contract Quantity:**

**Settlement Quantity:**

[Specify "Contract Quantity" or the percentage of the Contract Quantity and the times during which those percentages apply whether the same percentages apply on Business Days and other information relevant to the product sold.]

**Difference Payment Calculation:**

As specified in Schedule 3 unless a different calculation is specified here.

If this Confirmation Letter correctly sets out the terms of our agreement, please sign and return a copy of this Confirmation Letter within 2 Business Days from receipt of this Confirmation Letter. If you believe that this Confirmation Letter does not correctly set out the terms of our agreement, send a response within 2 Business Days from receipt of this Confirmation Letter, which sets out in detail the alleged inaccuracy.

If your response contains additional or different terms from those set out in this Confirmation Letter and/or the Master Contract for Differences Agreement, they shall only become part of the Transaction if we expressly agree in a supplemental written confirmation.

[Seller]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone No: \_\_\_\_\_  
Fax: \_\_\_\_\_

[Buyer]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone No: \_\_\_\_\_  
Fax: \_\_\_\_\_

Signed: \_\_\_\_\_  
Duly authorised on behalf of Seller  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Duly authorised on behalf of Buyer  
Date: \_\_\_\_\_

## Schedule 5

### Form of Credit Support Confirmation Letter

This Credit Support Confirmation Letter confirms the amount of the Credit Support Document required by NIE Energy, in its capacity as the Power Procurement Business (Party A and the Seller) to be put in place by ..... (Party B and the Buyer), for the Transactions entered into under the Master Agreement dated ..... between Buyer and Seller.

The amount of the Credit Support Document to be put in place by the Buyer is in accordance with the terms of the Master Agreement.

Terms used but not defined in this Credit Support Confirmation Letter shall have the meanings given to them in the Master Agreement.

#### 1. Transaction references

1.1 Credit Support Confirmation Letter sets out the amount of the Credit Support Document to be put in place by the Buyer following the Transactions entered into below:

Auction Code	Auction Date	Transaction reference number(s)
CFDNIE ENERGY09-01	[xx/xx/09]	
CFDNIE ENERGY09-02	[xx/xx/09]	
CFDNIE ENERGY09-03	[xx/xx/09]	
CFDNIE ENERGY09-04	[xx/xx/09]	
CFDNIE ENERGY09-05	[xx/xx/09]	
CFDNIE ENERGY09-06	[xx/xx/09]	
CFDNIE ENERGY09-07	[xx/xx/09]	

#### 2. Credit Support details

2.1 Subject to paragraph 2.2, the amount of the Credit Support Document that the Buyer must initially provide in accordance with Schedule 2 of the Master Agreement is equal to:

**15% of the MAXIMIM [ACV<sub>q</sub>]**

where

**ACV<sub>q</sub> = Aggregate Contract Value for quarter “q”**

$$= \sum_t SP_t * QSQ_t$$

where

**q means either (09Q4) or (10Q1) or (10Q2) or (10Q3)**

**t** means all transactions “t” existing in quarter “q”.

**The Quarterly Settlement Quantity (QSQ<sub>t</sub>)** for each transaction “t” shall be the summation of the Aggregate Settlement Quantity (as defined in the Master Agreement) for each month in quarter “q”, multiplied by 0.5 to give a MWh value.

**Strike Price (SP<sub>t</sub>)** shall be the Strike Price detailed in the Confirmation Letter for each Transaction “t” in quarter “q”.

2.2 The figure 15% in paragraph 2.1 represents the Seller’s reasonable estimate of the likely percentage difference between the Strike Price and the average projected SMP over any Quarter. If the Seller determines in its discretion that SMP volatility has increased, then it may request an increase in the amount of the Credit Support Document and the Buyer shall increase the amount of the Credit Support Document to the required level within 5 Business Days of the request. The Seller will provide to the Buyer the Seller’s methodology for determining the likely percentage difference between the Strike Price and projected SMP.

Please sign and return a copy of this Credit Support Confirmation Letter within [3] Business Days from receipt of this Credit Support Confirmation Letter confirming that the required Credit Support Document has been put in place.

Seller	Buyer
Name: .....	Name:.....
Title: .....	Title: .....
Title: .....	Title: .....
Phone No:.....	Phone No:.....
Fax: .....	Fax:.....
Signed:.....	Signed: .....
Duly authorised on behalf of Seller	Duly authorised on behalf of Buyer
Date:.....	Date:.....