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	the Bank of Ireland as at the close of business on the immediately preceding Business Day;
“Business Day”	means any week day other than a Saturday or Sunday on which banks are open for domestic business in the city of Belfast;
“Default Interest Rate”	the Base Rate at the Due Date for payment of an amount under this Agreement plus two per cent per annum;
“Department”	means the Department of Enterprise, Trade and Investment;
“Dispute Resolution Framework Agreements”	means the agreement of that name between T&D, NIE Energy PPB, SONI Limited, and each Tenant to be entered into on or after SEM Go Live;
“Due Date”	as defined in clause 3.3;
“Lease”	means a lease listed in the Schedule to the Agreement, and the terms Demised Land and Demised Premises shall have the meaning given to such terms in the relevant Lease;
“Licence”	means any licence granted under the Order;
“NIE Energy Supply Licence”	means the licence granted to Northern Ireland Electricity plc under the Order on 31 March 1992, which is to be transferred to NIE Energy Limited, pursuant to a statutory scheme on or around SEM Go Live;
“Order”	means the Electricity (Northern Ireland) Order 1992;
“Party”	each person who is a party to this Agreement and any successor(s) in title to, or permitted assign(s) of, such person, together the “Parties”;
“Plant”	means fixed and movable items other than Apparatus;
“Power Purchase Agreement”	shall have the meaning given to the term in the Supply Licence;
“PPB Amount”	means the amount determined as the PPB Amount in accordance with Annex 1 of the NIE Energy Supply Licence;
“Protected Information”	shall, in relation to T&D have the meaning given

to it in Condition 10 of the Transmission Licence and, in relation to NIE Energy PPB have the meaning given to it in Condition 49 of the NIE Energy Supply Licence;

“PSO Charges”	shall have the meaning given to the term in Condition 24A of the Transmission Licence;
“Relevant Persons”	means the holders of Supply Licences and, where directed by the Authority, specified persons or classes of persons exempt from the requirement to hold a Supply Licence under the Order;
“Regulations”	means the Electricity Supply Regulations (Northern Ireland) 1991;
“SEM” or “Single Electricity Market”	means the single wholesale electricity market for the Island of Ireland, implemented in Northern Ireland pursuant to Section 23 of the Northern Ireland (Miscellaneous Provisions) Act 2006;
“SEM Go Live”	means the time and date designated as such by the Authority (with the consent of the Department) for the purpose of Licences, being the commencement date for a number of matters including the Single Electricity Market;
“Supplier”	means the holder of a Supply Licence;
“Supply Licence”	means a licence to supply electricity granted under the Order;
“T&D Licence”	means the licence granted to T&D under Art 10(1) (b) of the Order;
“Tenant”	a counterparty to a Lease (other than T&D); and
“Transmission Licence”	means the licence to participate in the transmission of electricity granted to T&D under the Order.

1.2 In this Agreement a reference to a document shall (unless the context otherwise requires) be a reference to such document as in effect from time to time and to such document as it may be amended, supplemented or replaced from time to time.

2. Notification of charges relating to the PPB Amount

2.1 Unless provided prior to the effective date of this Agreement, NIE Energy PPB shall notify to T&D the PPB Amount for the period from 1 November 2007 to 30 September 2008 as soon as reasonably practicable after entering into this Agreement and, in any event, by such date as the Authority may direct.

- 2.2 NIE Energy PPB shall each year notify to T&D by such date as is agreed between the parties consistent with the tariff timescales in that year its:
- 2.2.1 annual PPB Amount for the following tariff period from 1 October of that year to 30 September of the following year; and
 - 2.2.2 a schedule of monthly charges in relation to the PPB Amount for such tariff period, in such amounts each month as NIE Energy PPB considers appropriate (the figure for each month being known as the “Monthly Amount”).
- 2.3 NIE Energy PPB may on thirty (30) business days notice (or such shorter period as the Parties may agree) notify to T&D any mid-year adjustments to its schedule of monthly charges or to the overall PPB Amount, and such revised schedule of monthly charges and/or revised annual PPB Amount shall take effect on expiry of the notice period.

3. Invoicing and Payment

- 3.1 Where in any month the Monthly Amount is positive, NIE Energy PPB shall invoice T&D within five (5) business days following the end of the relevant calendar month for the Monthly Amount due in that month, or at such dates as are otherwise agreed between T&D and NIE Energy PPB from time to time.
- 3.2 Where in any month the Monthly Amount is negative, T&D shall invoice NIE Energy PPB within five (5) business days following the end of the relevant calendar month for the Monthly Amount due in that month, or at such dates as are otherwise agreed between T&D and NIE Energy PPB from time to time.
- 3.3 The Party in receipt of an invoice (the “Paying Party”) under clauses 3.1 and 3.2 shall pay the invoice within the later of the fifteenth business day following the end of the relevant calendar month or ten (10) business days after the invoice date (being the “Due Date” for the purposes of this Agreement).
- 3.4 If the Paying Party wishes to raise a bona fide dispute in relation to an invoice, then:
- (a) it must provide written notice of the dispute, the reason for the dispute and the amount in dispute to the other Party;
 - (b) it must still pay the amount not in dispute on or before the Due Date;
 - (c) the Parties shall use all reasonable endeavours to resolve the dispute in good faith;
 - (d) where the dispute remains unresolved after twenty (20) Business Days of the Paying Party notifying the other Party of the dispute pursuant to clause 3.4(a) above, either Party may refer the dispute to resolution in accordance with clause 5 below.

- 3.5 All payments including, without limitation, the monthly charges relating to the PPB Amount under this Agreement shall be made in pounds sterling by the variable direct debit method, or such other form of banker's automated payment or other payment method or currency as shall be agreed by the Parties, to the account number, bank and branch as the Party receiving payment may from time to time notify other Party.
- 3.6 All payments payable under this Agreement are (unless otherwise agreed between the Parties) exclusive of VAT, which shall be added to such payments, if applicable, at the rate applicable at such time. All invoices issued pursuant to this Agreement must be valid VAT invoices and shall set out the requisite details of the taxable supply to which the given invoice relates.
- 3.7 All payments under this Agreement shall (except to the extent otherwise required by law) be paid in full, free and clear of and without deduction, set off or deferment, save as otherwise agreed by the Parties or pursuant to a direction, other decision or award following a dispute referred in accordance with clause 5 below.
- 3.8 If any charges or payments payable under this Agreement are not paid on or before the Due Date, unless otherwise agreed between the Parties, the Paying Party shall pay interest at the Default Interest Rate on the unpaid charge or payment from the Due Date until the day on which payment is made.
- 3.9 Nothing in this Agreement shall be construed as preventing the Party issuing an invoice from withdrawing and replacing (without affecting the Due Date for payment) any invoice or associated statement before the Due Date for payment of such invoice where the Party issuing the invoice is aware of any error in such invoice or associated statement.

4. Matters relating to the Lease, buy-out agreement and Power Purchase Agreements

- 4.1 Where in relation to the Leases T&D has received, or is intending to serve, a notice relating to termination of a Lease, and there is a Generating Unit Agreement in effect in relation to the relevant power station, T&D shall consult with and obtain NIE Energy PPB's prior consent before serving or responding to any such notice, granting a supplemental lease or otherwise dealing with the Lease in a manner that may impact on the Power Purchase Agreements with the Tenant.
- 4.2 T&D shall exercise such rights available to it under the Lease in relation to NIE Energy PPB assets that are or may be located on the Demised Land to seek to ensure that NIE Energy PPB's assets continue to be treated and take the benefit of the rights available to T&D under the Lease in relation to Landlord's Equipment (as defined in the relevant Lease).
- 4.3 Where NIE Energy PPB becomes liable to make a payment to a Tenant under the Power Purchase Agreements between NIE Energy PPB and the Tenant as a consequence of actions taken by T&D or the Tenant under or pursuant to the Lease (including the exercise of any right in the Lease), T&D shall pay to NIE Energy PPB a sum equivalent to such PPB liability to the relevant Tenant.

- 4.4 Subject to clause 4.5, NIE Energy PPB shall pay to T&D in such amounts and at such frequency as is required by T&D to ensure that T&D can meet in full the cost of servicing the buy-out agreement (being the contract entitled “Availability payment buy-out contract” dated 6 December 2000 between the Licensee and Premier Power Limited) in each payment period under the buy-out agreement, together with any additional costs which are incurred under the buy-out agreement by reason of any Increase in Tax (as such term is defined in the buy-out agreement).
- 4.5 Clause 4.4 shall not apply where (and for so long as) T&D is permitted to recover in full the cost of servicing the buy-out agreement (as referred to in clause 4.4) directly through the Transmission Licence (other than through the "PPBt" term referred to in Annex 1 of the Transmission Licence).
- 4.6 NIE Energy PPB may reasonably request the assistance of T&D in ensuring that NIE Energy PPB can exercise its rights, fulfil its obligations or otherwise carry out its role under the Power Purchase Agreements in accordance with its obligations under the NIE Energy Supply Licence. Subject to payment of reasonable costs incurred by T&D in providing such assistance, and subject to T&D’s obligations under the Transmission Licence, T&D shall provide such information and exercise such rights as are available to it as is required and requested by NIE Energy PPB pursuant to this clause.

5. Dispute Resolution

- 5.1 The Parties acknowledge that the operation of clauses 5.2 to 5.4 shall (in relation to a dispute that involves a Tenant) be subject to the provisions of the relevant Dispute Resolution Framework Agreement on and from the date that the relevant Dispute Resolution Framework Agreement with such Tenant is entered into and becomes effective.
- 5.2 All disputes (including disputes relating to variations of this Agreement) between the Parties in relation to the subject matter of this Agreement shall be resolved in accordance with this clause.
- 5.3 A Party may refer a dispute under this Agreement to the Authority for determination by notice to the Authority copied to the other Party.
- 5.4 Where the Authority notifies either Party that it will not determine a dispute referred under this clause then either Party may refer that dispute to the courts in Northern Ireland under clause 16 of this Agreement.
- 5.5 The Authority's determination of a dispute pursuant to this clause shall, without prejudice to any ability to apply for judicial review of any determination, be final and binding on the Parties.

6. Communications and Documentary Privilege

- 6.1 Except to the extent otherwise set out in this Agreement or otherwise agreed by the Parties, any notice, direction, request or other communication to be given by one

Party to the other under or in connection with the matters contemplated by this Agreement shall be sent to the address, facsimile number or person as one Party shall from time to time designate by written notice to the other.

6.2 Except to the extent otherwise set out in this Agreement or otherwise agreed by the Parties, any notice, direction, request or other communication to be given by one Party to the other under or in connection with the matters contemplated by this Agreement shall be in writing and shall be given by letter delivered by hand or sent by first class prepaid post (airmail if overseas) or facsimile or secure email, and shall be deemed to have been received:

6.2.1 in the case of delivery by hand, when delivered; or

6.2.2 in the case of first class prepaid post, on the second day following the day of posting or (if sent airmail overseas or from overseas) on the fifth day following the day of posting; or

6.2.3 in the case of facsimile or email transfer, on the date of dispatch provided:

(a) such date is a Business Day;

(b) the time of dispatch is within the hours of 08:00 hours and 15:00 hours at the place of receipt; and

(c) the recipient facsimile's device or computer confirms receipt of the transfer.

otherwise on the next following Business Day. If there is no confirmation of receipt, it shall not be deemed to be received.

6.3 Each Party shall use all reasonable endeavours to ensure that all information provided from that Party to another is accurate and complete and is submitted in good faith.

6.4 Neither Party shall be required to produce documents pursuant to any provision of this Agreement which such Party could not be compelled to produce in civil proceedings in any court in Northern Ireland or to supply information which such Party could not be compelled to give in evidence in any such proceedings.

7. Limitation of Liability

7.1 Subject to clause 7.2 and save where any provision of this Agreement provides for an indemnity, neither Party (the "Party Liable") nor any of its officers, employees or agents shall be liable to the other Party for loss arising from any breach of this Agreement howsoever caused (and whether as a result of the negligence of the Party Liable or otherwise) other than for loss directly resulting from such breach and which at the date hereof was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach.

- 7.2 Nothing in this Agreement shall exclude or limit the liability of the Party Liable for death or personal injury resulting from 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 and any loss or liability which such 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 clauses 7.2 and 7.4 neither Party, nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other Party for:
- 7.3.1 any loss of use, loss of profit, loss of revenue, loss of contract (other than this Agreement) or loss of goodwill;
- 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 whatsoever arising save as provided in clause 7.1.
- 7.4 Save as otherwise expressly provided in this Agreement, this clause 7 insofar as it excludes or limits liability shall override any other provisions of this Agreement provided that nothing in this clause 7 shall exclude or restrict or otherwise prejudice or affect any of:
- 7.4.1 the rights, powers, duties and obligations of any Party which are conferred or created by the Order, any Licence, or the Regulations; or
- 7.4.2 the rights, powers, duties and obligations of the Authority or the Department under the Order, any Licence or otherwise howsoever.
- 7.5 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 that either Party may possess in tort which shall include actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute, and releases the Party which is liable to 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 the same except as expressly provided herein.
- 7.6 Each of the sub-clauses of this clause 7 shall:
- 7.6.1 be constructed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable, the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the Parties;

7.6.2 survive termination of this Agreement in relation to matters arising during the term of this Agreement.

7.7 Each Party acknowledges and agrees that the other Party holds the benefit of clauses 7.1, 7.2 and 7.3 above for itself and as trustee and agent for its officers, employees and agents.

7.8 For the avoidance of doubt, nothing in this clause 7 shall prevent or restrict either Party enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Agreement.

7.9 Each Party hereby acknowledges and agrees that the provisions of this clause 7 are fair and reasonable having regard to the circumstances as at the date hereof.

8. Third party Rights

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

9. Transfers and Subcontracting

9.1 The rights, powers, duties and obligations of a Party under this Agreement are personal to that Party and that Party may not (subject to clause 9.2) assign or transfer the benefit or burden of those documents.

9.2 Upon the disposal by that Party of the whole of its business or undertaking it shall have the right to transfer its rights and obligations under this Agreement to the purchaser thereof on condition that the other Party agrees (such agreement not to be unreasonably withheld, provided always, that any failure to reach an agreement under this clause 9.2 may be referred by a Party as a dispute to the Authority under clause 5).

9.3 Each Party shall have the right to sub-contract or delegate the performance of any of its obligations or duties arising under this Agreement without the prior consent of any other Party. The subcontracting by a Party of the performance of any obligations or duties under this Agreement shall not relieve that Party from liability for performance of such obligation or duty.

10. Intellectual Property Rights

All intellectual property rights relating to the subject matter of this Agreement conceived, originated, devised, developed or created by a Party, its officers, employees, agents or consultants during the currency of this Agreement shall vest in such Party as sole beneficial owner thereof save where the Parties agree in writing or the provisions of this Agreement expressly state otherwise. Intellectual property rights in this clause 10 means patents, trade marks, service marks, rights in designs, trade names, copyrights and topography rights (whether or not any of the same are registered and including applications for registration of any of the same) and rights under licences and consents in relation to any of the same and all rights or forms of

protection of a similar nature or having equivalent or similar effect to any of the same which may subsist anywhere in the world.

11. Confidentiality

- 11.1 Subject to clauses 11.2 and 11.3, a Party shall not provide any Protected Information to the other pursuant to this Agreement unless the provision of such information is provided for in clause 4, or its provision is otherwise approved in writing in advance by the Authority.
- 11.2 Clause 11.1 shall not apply in relation to Protected Information permitted to be provided to T&D under condition 10 of the T&D Licence, provided that for the purposes of this clause 11.2, paragraph 4(c) of condition 10 of the T&D Licence shall be construed as not including reference to this Agreement.
- 11.3 Clause 11.1 shall not apply in relation to Protected Information permitted to be provided to NIE Energy PPB under condition 49 of the NIE Energy Supply Licence, provided that for the purposes of this clause 11.3, paragraph 4(c) of condition 49 of the NIE Energy Supply Licence shall be construed as not including reference to this Agreement.

12. Force Majeure

- 12.1 In relation to a Non-Performing Party (as defined below), “**Force Majeure**” means any event or circumstance, or number of events or circumstances, or combination thereof which is beyond the reasonable control of that Party, and which results in or causes the failure of that Party to perform any of its obligations under this Agreement including:
- 12.1.1 a force majeure event under a Power Purchase Agreement;
 - 12.1.2 war (whether declared or undeclared), threat of war, invasion, armed conflict, blockade or act of public enemy;
 - 12.1.3 revolution, riot, insurrection, public demonstration or other civil commotion;
 - 12.1.4 acts of terrorism, sabotage, fire, explosion, criminal damage or the threat of such acts;
 - 12.1.5 nuclear explosion, radioactive or chemical contamination or ionising radiation;
 - 12.1.6 any effect of the natural elements, including earthquake, flood, lightning, wind, drought, storm, unusually heavy or prolonged rain or accumulation of snow or ice;
 - 12.1.7 strikes and other labour disputes; or

12.1.8 Act of Parliament, other legislation, by-law or Directive (not being any order, regulation or directive made under Articles 35 to 38 inclusive of the Order);

provided however that mechanical or electrical breakdown or failure of Plant and/or Apparatus owned or operated by either Party due to the manner in which such Plant and/or Apparatus has been operated (whether or not by the relevant Party) shall not constitute Force Majeure and provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of either Party.

12.2 Where a Party (the “Non-Performing Party”) is unable to perform all or any of its obligations under the Agreement by reason of Force Majeure, this Agreement shall remain in effect but the Non-Performing Party’s relevant obligations and the corresponding obligations of the other Party owed to the Non-Performing Party under this Agreement shall be suspended provided that:

12.2.1 such suspension is of no greater scope and longer duration than is required by the Force Majeure;

12.2.2 the Non-Performing Party forthwith notifies the other Party of the circumstances of the Force Majeure, identifying the nature of the event, its expected duration, and the particular obligations thereby affected and furnishes reports at such intervals as the other Party may reasonably request, with respect thereto during the period of Force Majeure;

12.2.3 the Non-Performing Party uses all reasonable efforts to remedy its inability to perform;

12.2.4 no obligations of either Party that arose before the Force Majeure are excused as a result of Force Majeure; and

12.2.5 forthwith after the occurrence of the Force Majeure, the Parties consult with each other as how best to give effect to their obligations under this Agreement so far as is reasonably practicable during the period of Force Majeure.

13. Waiver

No delay or forbearance by either Party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair or be construed as a waiver of such right, power, privilege or remedy. For the avoidance of doubt, any waiver by either Party of the obligations of the other Party shall be evidenced by an agreement in writing signed by the Parties. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.

14. Data Protection

- 14.1 Each Party warrants that it has effected, and undertakes that it will during the term of this Agreement effect and maintain all such notifications and registrations as it is required to effect and maintain under the Data Protection Act 1998 to enable it to lawfully perform the obligations imposed on it by this Agreement.
- 14.2 Each Party undertakes to comply with the Data Protection Act 1998 in the performance of its obligations under this Agreement.
- 14.3 Each Party undertakes that, in any case where information to be disclosed by it under this Agreement may lawfully be disclosed only with the prior consent of the person to whom the information relates, it will use its reasonable endeavours to obtain such prior consent so as to enable it promptly to perform its obligations under, and as envisaged by, this Agreement.

15. Counterparts

This Agreement may be executed in one or more counterparts and by each Party on separate counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute one and the same instrument.

16. Governing Law and Jurisdiction

- 16.1 This Agreement shall be governed by and construed in all respects in accordance with the laws of Northern Ireland.
- 16.2 Subject and without prejudice to clauses 5 (Dispute Resolution) and 16.5, the Parties irrevocably agree that the courts in Northern Ireland are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceeding (together in this clause 16 referred to as "Proceedings") arising out of or in connection with this Agreement may be brought in such court.
- 16.3 Each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any Proceedings in any such court as is referred to in this clause and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agrees that judgement in any Proceedings brought in the courts of Northern Ireland shall be conclusive and binding upon such Party and may be enforced in the courts of any other jurisdiction.
- 16.4 Each Party which is not incorporated in any part of Northern Ireland agrees that if it does not have, or shall cease to have, a place of business in Northern Ireland, then it will promptly appoint some other person irrevocably to accept service of process on its behalf in any Proceedings in Northern Ireland.

16.5 For the avoidance of doubt, nothing contained in the foregoing provisions of this clause 16 shall be taken as permitting either Party to commence Proceedings in the courts where Clause 5 provides for the dispute to be referred to the Authority.

17. No Partnership

Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties.

18. Severance of Terms

If any provision of this Agreement is or becomes or is declared invalid, unenforceable or illegal by the courts of any competent jurisdiction to which it is subject or by order of any other Competent Authority such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality. In this Clause, "Competent Authority" shall mean the Department, the Authority and any local or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or the European Community.

19. Variations

The Parties acknowledge that amendments to this Agreement (including without limitation the schedules) require the prior written approval of the Authority and that the Parties may only agree an amendment to this Agreement where the Authority has notified the Parties in writing that such amendments may be made. The Parties shall provide the Authority with such information as it may direct in order to inform its decision under this Clause.

Signed by the duly authorised representatives of the Parties as an agreement on the date first written above

SIGNED

)

(Print Name)

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for and on behalf of

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NORTHERN IRELAND

ELECTRICITY PLC

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(Signature)

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SIGNED

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(Print Name)

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for and on behalf of

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NIE ENERGY LIMITED

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(Signature)

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