

Dated _____/_____/ **2004**

ELECTRICITY SUPPLY BOARD

-and-

THE VIPP SUPPLIER

NON GREEN VIPP5 AUCTION AGREEMENT

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THIS AGREEMENT is made the _____ day of _____ 2004

BETWEEN:

- (1) **ELECTRICITY SUPPLY BOARD** having its principal offices at 27 Lower Fitzwilliam Street Dublin 2 (“ESB”); and
- (2) **THE PARTY NAMED IN SECTION 1 OF SCHEDULE 2** whose registered office is located at the address set out in Section 1 of Schedule 2 (“VIPP Supplier”).

RECITALS:

- (A) The Commission issued the Invitation to Bid and conducted the Non Green VIPP5 Auction for the option to purchase energy from ESB.
- (B) The VIPP Supplier submitted bids in response to the Invitation to Bid, which have been recommended by the Commission and accepted by ESB.
- (C) ESB has agreed to be the counter party to the VIPP Supplier Bilateral Contract Nominations and the VIPP Supplier has agreed to pay ESB the charges detailed in the Agreement subject to the terms and conditions of the Agreement.
- (D) The Commission has approved and implemented modifications to the Trading and Settlement Code incorporating a limitation to Top Up as defined in the Trading and Settlement Code and a provision for a VIPP5 scheme, where VIPP is treated as a non-Green energy supply contract with access to Spill, Top-Up and Secondary Top-Up

THE PARTIES AGREE as follows:

1. Definitions and Interpretation

- 1.1 In the Agreement except where the context otherwise requires the following words and expressions shall have the meanings set opposite them:

“Act” means the Electricity Regulation Act, 1999 as amended;

“Active Option” means a Firm or Non-Firm Contracted Option that is used to meet the energy requirements of the VIPP Supplier in the Payment Period. This Contracted Option shall incur the full Option Fee. This Contracted Option must be nominated as an Active Option;

“Additional Charges” means the charges calculated in accordance with Schedule 1 hereto and payable by the VIPP Supplier.

“Affiliate”	means in relation to either Party, any holding company or subsidiary or any subsidiary of a holding company of the relevant Party, in each case within the meaning of the Companies Acts 1963 to 2001 inclusive;
“Agreement”	means this Non Green VIPP5 Auction Agreement and its schedules;
“Approved Credit Rating”	means a credit rating for long term debt of at least A2 given by Moodys and/or A given by Standard & Poors and/or an equivalent rating given by another internationally recognised credit rating agency reasonably satisfactory to ESB;
“Assignee”	has the meaning given to it in Clause 16.2;
“Auction Clearing Price”	means the following. If the auction is under-subscribed then the Auction Clearing Price is the Auction Reserve Price. If the auction is over-subscribed, or fully subscribed, then the Auction Clearing Price is the price of the lowest winning bid as defined in The Invitation To Bid;
“Auction Reserve Price”	means the minimum price at which bids will be accepted as stated in “The Invitation to Bid in the Non Green VIPP5 Auction” as issued by CER.
“Bid Form”	means the Bid Form submitted by the VIPP Supplier in response to the Invitation to Bid;
Bilateral Contract Report”	means the report of the same name issued pursuant to the Trading and Settlement Code by the Settlement System Administrator;
“Bilateral Contract Nomination”	means a Non Green Bilateral Contract Nomination submitted by the VIPP Supplier to the Settlement System Administrator pursuant to the Trading and Settlement Code;
“Booking Fee”	means a fee of 25% of the Option Fee for Non-Firm Options from April 2005 until the end of October. Non-Firm Options for January, February and March in 2005 will have no Booking Fee. In the case of Firm Options, the Booking Fee for January and February of 2005 shall be 15% and 20% of the Option Fee respectively, and 25% of the Option Fee from March 2005 until the end of October;

“Business Day”	means any day other than a Saturday, a Sunday or a Public Holiday in Ireland;
“Change in Circumstance”	has the meaning given to it in Clause 20.2;
“Commission” or “CER”	means the Commission for Energy Regulation established pursuant to Section 8 of the Act;
“Confidential Information”	has the meaning given to it in Clause 15;
“Competent Authority”	has the meaning given to it in the Trading and Settlement Code;
“Contracted Option Nomination”	means the nomination that the VIPP Supplier must submit to ESB detailing the number of Contracted Options that it wishes to hold as Active Options, Exercisable Options and Relinquished Options. The format of this nomination is detailed in Schedule 3;
“Contracted Options”	means the total of the Firm Contracted Options and the Non-Firm Contracted Options;
“Defaulting Party”	has the meaning given to it in Clause 7.3;
“Demand Forecast”	means the forecast of the VIPP Suppliers VIPP load for each hour of the Payment Period. The format of this forecast is detailed in Schedule 4;
“Distribution Use of System Agreement”	means the agreement of that name entered into pursuant to Section 34 of the Act;
“Dispute”	has the meaning given to it in Clause 10;
“Eligible Customer”	has the meaning given to the term “eligible customer” in Section 27 of the Act;
“Energy Charge”	means in respect of a Trading Period the charge calculated for that Trading Period in accordance with Section 3 of Schedule 1;
“ESB”	means Electricity Supply Board;
“ESB 2005 Price Proposal”	means the ESB 2005 Price Proposal paper published on the CER website as document CER04/249.
“Escrow Account”	has the meaning given to it in Clause 6.3.2;
“EURIBOR”	means in relation to any sum, the rate per annum for deposits in Euro for the Specified Period applicable thereto which appears on Dow Jones

(formerly Telrate) (or any successor service) page 248 (or any relevant successor page). If no such quotation is available, EURIBOR will be the rate per annum for deposits in Euro determined to be equal to the arithmetic mean (rounded upwards to four decimal places) of the six month rates at which at least three banks who generally provided quotes on Dow Jones (formerly Telrate) page 248 when quotations were last available thereon was offering to prime banks in the European Interbank Market deposits in Euro and for the specified period at or about 11:00 am on the relevant rate fixing day. For the purposes of this definition “Specified Period” means the period in respect of which EURIBOR falls to be determined in relation to such sum;

- “Euro” or “€”** means the single currency of participating Member States of the European Union;
- “Exercisable Option”** means a Firm or Non-Firm Contracted Option that a VIPP Supplier retains the right to use at a future date not later than ten months from the start of the Non Green VIPP5 Auction Agreement. This Contracted Option must be nominated as an Exercisable Option;
- “Expiry Date”** means the 31st December 2005, unless extended at the sole discretion of ESB until the commissioning of the Tynagh generation plant detailed in CER licence number Gen2004/02-01,;
- “Firm Contracted Option”** means a Contracted Option that the VIPP supplier was awarded in the auction as a Firm Contracted Option;
- “First Party”** has the meaning given to it in Clause 7.3;
- “Force Majeure”** means any one of the events, conditions or happenings as set out in Clause 9;
- “Framework Agreement”** has the meaning given to it in the Trading and Settlement Code;
- “Good Industry Practice”** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;

- “Grid Code”** means the “grid code” as defined in Section 2(1) of the Act;
- “Invitation to Bid”** means the Invitation to Bid in the Non Green VIPP5 Auction issued by the Commission with Close of Bids on 12th November 2004;
- “Letter of Credit”** means an irrevocable standby letter of credit in such form as ESB may approve issued for the account of the VIPP Supplier in favour of ESB, allowing for partial drawings and providing for the payment to ESB forthwith on first written demand, by any bank which meets the following criteria:
- (a) banks with a long-term credit rating of at least AA (Standard and Poor) or AA2 (Moody’s) or equivalent. AA minus will not suffice, or
 - (b) holders of banking licences issued under Section 9 of the Central Bank Act 1971, with total balance sheets assets of not less than €1,269 million equivalent or whose parent bank, where such a holder is a branch or subsidiary, has total balance sheet assets of not less than €2,697 million equivalent and a rating not less than A/A2, or
 - (c) subsidiaries of branches of international banks, operating in Ireland, provided that the parent bank meets the criteria at (a) or has total balance sheet assets of not less than €2,697 million or equivalent and a credit rating of at least A/A2;
- “Material Breach”** means:
- (a) any breach of this Agreement which has a material adverse effect on the ability of a party to enjoy the rights conferred on it by this Agreement having regard to all the circumstances including, without limitation, the nature of the relationship between the parties, the interests of other parties under the Trading and Settlement Code, the obligations of ESB under its statutory and licence obligations, the nature of the breach (and in particular

whether it is intentional, negligent or otherwise) and the consequences of the breach; and/or

- (b) any breach of this Agreement, which is not a Material Breach, that has occurred twice or more in any three (3) month period (calculated on a rolling basis), including nominating for an amount of energy in excess of the Supplier's Maximum Contracted Energy; and/or
- (c) breach of any of the representations and warranties set out in Clause 2; and/or
- (d) failure on the part of the VIPP Supplier to hold security cover in accordance with Clause 6 of the Agreement; and/or
- (e) failure on the part of the VIPP Supplier to relinquish options as outlined in Schedule 1 section 1.1.9; and/or
- (f) any breach of the Act, the Trading and Settlement Code, the Transmission Use of System Agreement, the Distribution Use of System Agreement or the Grid Code;

“Maximum Contracted Energy” shall be calculated as the product of 0.5 and the Active Options for the relevant Payment Period with the result being expressed in units of MWh;

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

“Meter Registration System Operator” or “MRSO” has the meaning given to it in the Trading and Settlement Code;

“Non-Firm Contracted Option” means a Contracted Option that the VIPP Supplier has been awarded in the auction as a Non-Firm Contracted Option. If the VIPP Supplier nominates a Non-Firm Contracted Option as a Exercisable Option in January, February or March 2005 the VIPP Supplier will not be liable for a Booking Fee in relation to this Contracted Option for these months. From April 1st 2005 if the VIPP Supplier nominates this Contracted Option as an Exercisable Option then a Booking Fee will be payable monthly;

“Non Green VIPP5 Auction”	means the auction for options to purchase energy described in the ‘Invitation to Bid in the Non Green VIPP5 Auction’ issued by CER;
“Non-Performing Party”	has the meaning given to it in Clause 9.1;
“Option Charge”	means in respect of a Payment Period, the charge for the Payment Period calculated in accordance with Section 2 of Schedule 1;
”Option Fee”	means the fee that a VIPP Supplier shall pay for each Active Option per Payment Period. This shall be equal to the Auction Clearing Price;
“Option Unit”	has the meaning given to it in the Invitation to Bid;
“Party”	means a party to the Agreement;
“Payment Period”	means a calendar month;
“Public Holidays”	means a day other than a Saturday or Sunday on which the main Dublin retail banks are not generally open for business. For 2005 it means the following days; 3rd January 2005 17 th March 2005 25 th March 2005 28 th March 2005 2 nd May 2005 6 th June 2005 1 st August 2005 31 st October 2005 26 th December 2005 27 th December 2005
“Qualifying Guarantee”	shall have the meaning given to it in Clause 6.3.3;
“Relevant Supplier”	means a supplier licensed under section 14(1)(b) of the Act;
“Relinquished Option”	means a Firm or Non-Firm Contracted Option that a VIPP Supplier nominates as a Relinquished Option. The VIPP Supplier incurs no Fees for Relinquished Options but loses all rights to these Contracted Options. There is no refund of Booking Fees paid if an Exercisable Option is nominated as a Relinquished Option;
“Security Cover”	has the meaning given to it in Clause 6.3;

“Settlement Day”	has the meaning given to it in the Trading and Settlement Code;
“Settlement Period”	has the meaning given to it in the Trading and Settlement Code;
“Settlement System Administrator” or “SSA”	means the party authorised to perform the functions detailed in Clause 1.4.(B) of the Trading and Settlement Code;
“Supply Period”	means the period commencing at the time determined under Clause 3.2 and ending at the close of the last Settlement Period of the Expiry Date;
“Trading and Settlement Code”	has the meaning given to it in Statutory Instrument No. 49 of 2000 entitled Electricity Regulation Act, 1999 (Trading Arrangements in Electricity) Regulations 2000;
“Trading Day”	has the meaning given to it in the Trading and Settlement Code;
“Trading Period”	has the meaning given to it in the Trading and Settlement Code;
“Transmission System”	has the meaning given to it in the Trading and Settlement Code;
“Transmission Use of System Agreement”	means the agreement of that name entered into pursuant to Section 34 of the Act;
“VIPP Demand Notification”	shall be the VIPP Suppliers energy demand specified in the Bilateral Contract Nomination.
“VIPP Supplier”	means the party identified in Section 1 of Schedule 2;
“WPDRS”	means the winter peak demand reduction scheme.

1.2 In the Agreement, unless the context requires otherwise, any reference to:

1.2.1 the singular shall include the plural and vice versa;

1.2.2 any gender reference shall be deemed to include references to the masculine, feminine and neuter genders;

- 1.2.3 the word “including” and its variations shall be construed without limitation;
- 1.2.4 any reference to “writing” or “written” shall include all methods of reproducing words in a legible and non-transitory form;
- 1.2.5 any words importing persons or parties shall include individuals, firms and corporations, joint ventures, trusts, unincorporated associations and organisations, partnerships and any other entity, in each case whether or not having a separate legal personality and any references to persons shall include their legal successors and permitted assignees;
- 1.2.6 any reference to legislation, regulations, directives, orders, instruments, codes or other enactments shall include any amendments, modifications, extensions, replacements or re-enactments thereof then in force;
- 1.2.7 unless otherwise specified:
- (a) any reference in the Agreement to a "Clause" is a reference to a Clause contained in the Agreement;
 - (b) any reference to a "Schedule" is a reference to a Schedule to the Agreement;
 - (c) any reference to a “Section” is a reference to a Section to a Schedule to the Agreement; and
 - (d) any reference to an “Appendix” is a reference to an Appendix to the Agreement.
- 1.2.8 any reference to another agreement or document, or any deed or other instrument (including the Grid Code, the Metering Code, or the Trading and Settlement Code) shall be construed as a reference to that other agreement, or document, deed or other instrument as the same may have been, or may from time to time be, amended, varied, supplemented, substituted or novated;
- 1.2.9 any terms which are defined in the Act, the Grid Code, the Metering Code or the Trading and Settlement Code and which are not otherwise defined in the Agreement shall have the meanings ascribed to them in the relevant code or the Act;
- 1.2.10 any terms not defined in either the Agreement, the Grid Code, the Metering Code or the Trading and Settlement Code shall have the meaning commonly used in electric utility practice or the English language, as appropriate;
- 1.2.11 any reference to a month or year shall be construed as reference to a calendar month or year, as the case may be;
- 1.2.12 where reference is made to an amount or sum, it is to an amount or sum denominated in Euro unless specified otherwise;

- 1.2.13 the table of contents and Clause headings are inserted for ease of reference only and shall be ignored for the purpose of the construction of the Agreement;
- 1.2.14 all terms which have been defined in the Agreement shall have their initial letters in capital typescript whenever and wherever they appear in the Agreement;
- 1.2.15 in the event of inconsistency between the provisions of the Agreement and the Grid Code, the Metering Code or the Trading and Settlement Code (as the case may be), the provisions of the Grid Code, the Metering Code or the Trading and Settlement Code (as the case may be) shall prevail to the extent of such inconsistency unless the contrary intention is explicit. In the event of inconsistency between the Agreement and any other agreement between the Parties relating to connection to the Transmission System, the Agreement shall prevail to the extent of such inconsistency unless the contrary intention is explicit;
- 1.2.16 any reference to time shall be construed as local time.

2. Representations and Warranties

- 2.1 The VIPP Supplier represents and warrants as follows;
 - (a) that it has a licence to supply electricity pursuant to section 14(1)(b) of the Act;
 - (b) that it has signed the Framework Agreement and is a party to the Trading and Settlement Code;
 - (c) it has signed a Transmission Use of System and a Distribution Use of System Agreement; and
 - (d) Neither the VIPP Supplier nor any of its customers who are supplied with electricity under this Agreement (and hence have been assigned a Market ID ending in 'J') are participants in the WPDRS. It shall be presumed that the VIPP Supplier and/or any of its customers are participants if they are included on the WPDRS list provided by ESB National Grid, or Eirgrid as appropriate ("the list") and the list shall be conclusive evidence for the purpose of this Sub-Clause.

3. Commencement and Duration

- 3.1 This Agreement shall commence on the date it is executed by ESB and shall continue in full force and effect until the Expiry Date, unless it is terminated earlier in accordance with its terms.
- 3.2 The Supply Period shall start at the beginning of 1st January 2005.
- 3.3 The VIPP Supplier shall nominate its Contracted Options as set out in Schedule 1 Part 1.

4. Agreement to Trade

- 4.1 Subject to Clause 4.2, during the Supply Period ESB agrees to act as seller in respect of Bilateral Contract Nominations made to the SSA by the VIPP Supplier in accordance with the Agreement and the Trading and Settlement Code, and the VIPP Supplier agrees to pay ESB, for the following:
 - 4.1.1 the Contracted Options at the Option Charge set out in Schedule 1; and
 - 4.1.2 in each Trading Period the Energy Charge as determined in Schedule 1; and
 - 4.1.3 The VIPP Supplier shall ensure that neither it nor its customers are participants in the WPDRS. However, in the event that either the VIPP Supplier or any of its customers are or become a participant, ESB shall be entitled to payment as set out in section 3.5 of Schedule 1 . Such payments shall be without prejudice to and in addition to any other remedy which ESB may have under the Agreement or in law or equity.
- 4.2 Before supply can commence under Clause 4.1:
 - 4.2.1 the VIPP Supplier must have complied with the requirements in the Trading and Settlement Code; and
 - 4.2.2 the VIPP Supplier agrees to provide ESB as and when required with any data, including without limitation WPDRS data, ESB may require to determine payments under the Agreement.
- 4.3 The parties agree and acknowledge that:
 - 4.3.1 the VIPP Supplier shall generate a Bilateral Contract Nomination in respect of the VIPP Supplier's purchase of energy under this Agreement. Such Bilateral Contract Nomination shall not exceed the Maximum Contracted Energy, be made in accordance with the Trading and Settlement Code and identify the seller with the SSA assigned market participant ID for ESB as the Generator.

- 4.4 If the VIPP Supplier's Bilateral Contract Nomination exceeds the Maximum Contracted Energy then the VIPP Supplier will be in breach of this contract and shall be liable to pay Additional Charges to ESB, as detailed in Schedule 1, Section 3. More than one breach shall constitute a Material Breach

5. Payment

- 5.1 The VIPP Supplier shall pay to ESB the Option Charge for each Payment Period in the Supply Period, as calculated under Schedule 1 Section 2 and the Energy Charge for each Trading Period in the Supply Period, as calculated under Section 3 of Schedule 1.
- 5.2 No delay in submitting a Settlement Statement or an Invoice Document shall prejudice the obligation of a Party to make payment of the amount due.
- 5.3 ESB shall invoice the VIPP Supplier for Option Charges following receipt of the supplier's notification of options. These Option Charges are to be paid within 10 days of sending of such invoices..
- 5.4 ESB shall invoice the VIPP Supplier for the Energy Charges for all Trading Periods in each Payment Period and any other charges arising under Clause 4.1, and shall do so no sooner than two (2) Business Days following the receipt of the Bilateral Contract Report from the Settlement System Administrator for the last Settlement Day of the relevant Payment Period. In the event of a Bilateral Contract Report from the Settlement System Administrator not being available or delayed, a substitute report as determined in Clause 5.3.1 shall be used for invoicing purposes.
- 5.4.1 In the first instance, the Bilateral Contract Report issued by the Settlement System Administrator shall detail the Bilateral Contract Nomination for each VIPP Supplier. If a complete Bilateral Contract Report for each Settlement Day in a Payment Period has not been received by ESB within twenty one (21) Business Days of the end of the Payment Period then ESB will calculate the Energy Charges as if the Bilateral Contract Report showed a demand in each Trading Period equal to 80% of the VIPP Suppliers Maximum Contracted Energy. When the Bilateral Contract Report becomes available, revised energy charges shall be calculated by ESB and an appropriate adjustment shall be made to the next Energy Charge invoice.
- 5.5 The VIPP Supplier shall pay all sums due in respect of invoices under Clauses 5.2 and 5.3, free of any charge, set off or counterclaim, within ten (10) Business Days of their receipt by making payment by electronic transfer of funds to ESB's bank account notified to the VIPP Supplier by ESB for the purposes of the Agreement from time to time. Where the amount invoiced is less than €1,200.00 then payment may be made by cheque.

- 5.6 If any amount in an invoice is in Dispute, then the VIPP Supplier shall pay the total amount of the invoice. Any Dispute in relation to an invoice must be notified by the VIPP Supplier to ESB as soon as practicable but not later than five (5) Business Days after receipt of the invoice.
- 5.7 Interest will be charged on any overdue amounts (including any amounts the subject of a dispute and subsequently found to be payable) after as well as before judgement on a daily basis at a default rate which is two percentage points per annum above EURIBOR from the date due for payment until the date paid.
- 5.8 Value Added Tax, at the rate and to the extent applicable at the time of supply, will be applied as an additional charge, where applicable, to all charges made under the Agreement.
- 5.9 Invoices issued under Clause 5.3 will identify the nett amounts of the Contracted Energy Charge, Over Notification Charge, Additional Charges, charges from supplying a WPDRS participant, VAT and the total amount due separately.

6. Security

- 6.1 Unless the VIPP Supplier has an Approved Credit Rating, then it must within 10 Business Days of receipt of request for security cover provide to ESB the security cover referred to in Clause 6.3. If the VIPP Supplier does not comply with this Clause 6, ESB may in its discretion by notice to the VIPP Supplier terminate the Agreement with effect from the date specified in the notice. If the agreement is terminated arising from non-delivery of Security Cover under the terms of this Clause 6.1, the VIPP Supplier shall remain liable for 1 month's Option Charge.
- 6.2 If the VIPP Supplier has an Approved Credit Rating, it must immediately notify ESB if its credit rating changes, including giving details of its revised credit rating. If its credit rating ceases to be an Approved Credit Rating, then the VIPP Supplier must within 10 Business Days of it so ceasing provide the Security Cover referred to in Clause 6.3.
- 6.3 If this Clause 6.3 applies, the VIPP Supplier must deliver to ESB and subsequently maintain Security Cover in the form of:
- 6.3.1 a Letter of Credit; or
 - 6.3.2 a cash deposit in an interest bearing deposit account at a bank that satisfies the criteria as outlined in the definition of Letter of Credit (an "Escrow Account"); or
 - 6.3.3 a guarantee in the form set out in Schedule 5 issued by an entity with an Approved Credit Rating (a "Qualifying Guarantee") together with evidence and a legal opinion satisfactory to ESB that the Guarantor has the capacity to give such a guarantee and that the guarantee is validly executed and enforceable;

as security for payment of all monies due to ESB under this Agreement. The amount of Security Cover shall be the amount calculated under Clause 6.4 and notified in writing by ESB to the VIPP Supplier from time to time.

Notwithstanding the foregoing provisions of this Clause, ESB, at its sole discretion, may accept an alternate form of Security Cover.

6.4 The minimum amount of the Security Cover is calculated as follows:

$$SC = (1+VR)*[1*((FCO+NFCO)*ACP)+(1460 *A*EPP_0)]$$

Where:

SC is the amount of the Security Cover in €

FCO is the number of Firm Contracted Options that the VIPP Supplier was awarded in the auction as detailed in Section 3 of Schedule 2;

NFCO is the number of Non Firm Contracted Options that the VIPP Supplier was awarded in the auction as detailed in Section 3 of Schedule 2;

ACP is the Auction Clearing Price as detailed in Section 3 of Schedule 2;

A is the total number of Contracted Options; and

EPP₀ is the Initial Energy Purchase Price as defined in Section 3.3 of Schedule 1.

VR is the VAT Rate applicable at that time.

6.5 Substitute and replacement Security Cover:

6.5.1 If the bank issuing the VIPP Supplier's Letter of Credit ceases to have the credit rating set out in the definition of Letter of Credit the VIPP Supplier shall forthwith procure an alternate Security Cover in compliance with Clause 6.3.

6.5.2 If the entity providing the VIPP Supplier's Qualifying Guarantee ceases to have an Approved Credit Rating the VIPP Supplier shall forthwith procure an alternate Security Cover in compliance with Clause 6.3.

6.6 Where at the end of any month the then existing amount of Security Cover is less than the amount of Security Cover that would be required by ESB if the amount of Security Cover was recalculated under Clause 6.4, ESB shall notify the VIPP Supplier of the recalculated amount of Security Cover in writing, whereupon the VIPP Supplier shall forthwith procure that ESB receives the necessary additional Security Cover within 10 Business Days.

6.7 The Security Cover (and in the case of a cash deposit, any interest accrued in respect of the cash deposit, less any bank and similar charges and any taxes deducted by the bank) will be returned to the VIPP Supplier within ten (10) Business Days of termination of the Agreement only if the VIPP Supplier has paid all amounts owing by it in respect of the Agreement. Return of the Security Cover is without prejudice to the rights of ESB under the Agreement and does not

relieve the VIPP Supplier of any of its obligations or any liabilities in respect of the Agreement.

7. Default and Termination

- 7.1 The VIPP Supplier or ESB may by notice in writing to the other Party to the Agreement terminate the Agreement with effect from the date specified in the notice if ESB ceases to hold any necessary regulatory licence and/or statutory authority to be a counter party to Bilateral Contract Nominations made to the SSA by the VIPP Supplier in accordance with the terms of the Agreement and the Trading and Settlement Code.
- 7.2 ESB may by notice in writing to the VIPP Supplier terminate this Agreement with effect from the date specified in the notice if the VIPP Supplier ceases to be a Relevant Supplier.
- 7.3 A party to the Agreement (“First Party”) may by notice in writing to the other party to the Agreement (“Defaulting Party”) terminate the Agreement with effect from the date specified in the notice if:
- 7.3.1 the Defaulting Party fails to pay any amount due for payment to the First Party under the Agreement and such default continues unremedied after the expiry of ten (10) Business Days after the date on which the First Party has notified the Defaulting Party of the default;
 - 7.3.2 the Defaulting Party is in Material Breach and (where the breach is capable of remedy) the First Party has given notice to the Defaulting Party of the breach but the breach has not been remedied within ten (10) Business Days of such notification and (where the breach is not capable of remedy) the First Party has given notice of the breach to the Defaulting Party requiring an undertaking to the reasonable satisfaction of the First Party that the breach will not be repeated and specifying the steps the Defaulting Party will take to ensure compliance with the undertaking and the undertaking has not been given or has been breached within ten (10) Business Days of the notice having been given; or
 - 7.3.3 the Defaulting Party:
 - (a) is unable to pay its debts within the meaning of section 214 of the Companies Act 1963 (and a Party shall not be deemed to be unable to pay its debts if any demand for payment is being contested in good faith by the Party concerned with recourse to all appropriate measures and procedures) or if it enters into any voluntary scheme, agreement or arrangement (other than for the purpose of solvent reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the First Party);
 - (b) has a receiver (which expression shall include an examiner within the meaning of the Companies Act 1990) appointed over the whole or any material part of its assets or undertaking;

- (c) passes any resolution for winding-up;
 - (d) becomes subject to an order by the High Court for winding-up;
 - (e) ceases to be a Relevant Supplier; or
 - (f) ceases to be a party to the Trading and Settlement Code, Transmission Use of System Agreement or Distribution Use of System Agreement; or
- 7.3.4 anything analogous to, or having a substantially similar effect to, any of the events or any circumstances specified in Clause 7.3.3 occurs in any jurisdiction in relation to the Defaulting Party.
- 7.4 ESB may by notice in writing to the VIPP Supplier terminate the Agreement with effect from the date specified in the notice if in respect of any aspect of the Non Green VIPP Auction, including the conduct by the Commission of the auction or its implementation by ESB, any of the following events occur:
- 7.4.1 enforcement action is commenced or threatened by the European Commission under the EC Treaty;
 - 7.4.2 any finding by a court of competent jurisdiction in reliance on the EC Treaty and/or the Competition Acts 1991-2002 to the effect that ESB is in breach of its obligations under such provisions or which has the effect of rendering the Agreement less commercially advantageous to ESB;
 - 7.4.3 When the new Market Arrangements for Electricity come into effect;
 - 7.4.4 If either party gives written notice following failure to agree to changes following a Change in Circumstance; or
 - 7.4.5 Commissioning of the Tynagh generation plant detailed in CER licence number Gen2004/02-01.
- 7.5 Where termination occurs under Clause 7, ESB shall, within ten (10) Business Days of a request by the VIPP Supplier repay to the VIPP Supplier any advance payments of Option Charges relating to the period after termination takes effect, as calculated under this Clause, less any amount outstanding for unpaid Energy Charges relating to the period before termination. ESB shall not be liable to the VIPP Supplier for any other amounts in respect of compensation, cost, claim, expense or liability of any kind whatsoever suffered, incurred or claimed by the VIPP Supplier. The amount of the refund is calculated as follows:
- 7.5.1 for the Payment Period in which the termination takes effect, an amount equal to the Option Charges for the Payment Period, divided by the total number of Trading Days in the Payment Period and multiplied by the number of whole Trading Days remaining in the Payment Period after termination takes effect; and

7.5.2 if the VIPP Supplier has paid the Option Charges for the Payment Period commencing after the Payment Period in which termination has taken effect, then that amount.

8. Liability

- 8.1 Subject to Clause 8.2 each party to the Agreement agrees and acknowledges that neither party (“Party Liable”) nor any of its officers, employees or agents is liable to the other party for loss arising from any breach of the Agreement other than for loss directly resulting from such breach and which at the date of the Agreement was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:
- 8.1.1 physical damage to the property of either party or their respective officers, employees or agents; and/or
 - 8.1.2 the liability of the other party to any other person for loss in respect of physical damage to the property of any person.
- 8.2 Nothing in the Agreement excludes or limits the liability of the Party Liable for death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents and the Party Liable shall indemnify and keep indemnified the other party, its officers, employees or agents from and against all such loss or liability which the other party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents.
- 8.3 Subject to Clause 8.2, neither the Party Liable nor any of its officers, employees or agents is in any circumstances whatsoever liable to the other party for:
- 8.3.1 any loss of profit, loss of revenue, loss of use, loss of bargain, loss of contract or loss of good will; or
 - 8.3.2 any indirect or consequential loss; or
 - 8.3.3 loss resulting from the liability of the other party to any other person howsoever and whensoever arising save as provided in Clause 8.1 and 8.2.
- 8.4 Each party acknowledges and agrees that the other party holds the benefits of Clause 8.1, 8.2 and 8.3 for itself and as trustee and agent for its officers, employees and agents.
- 8.5 Each of Clause 8.1, 8.2, 8.3, 8.4, and this Clause 8.5 shall survive termination of the Agreement.
- 8.6 Nothing in Clauses 8.1 to 8.5 inclusive shall prevent or restrict either Party enforcing any obligations (including suing for a debt) owed to it under or pursuant to the Agreement.
- 8.7 The rights and remedies provided by the 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 the Agreement including without limitation any rights either party may possess in tort which shall include actions brought in negligence and/or nuisance. Accordingly, each party waives to the fullest extent possible all such rights and remedies provided by common law or statute, and releases the other party, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect in respect of the matters dealt with the Agreement and undertakes not to enforce any of them except to the extent provided for in the Agreement.

- 8.8 Each party acknowledges and agrees that Clause 8.1 to 8.7 inclusive are fair and reasonable having regard to the circumstances as at the date of execution of the Agreement.

9. Force Majeure

- 9.1 Force Majeure means in relation to any event or circumstance or number of events or circumstances or combination thereof which is beyond the reasonable control of such Party (the “Non-Performing Party”) and which could not have been avoided through the use of Good Industry Practice and which results in or causes the failure of that Party to perform any of its obligations under the Agreement, including but not limited to:
- 9.1.1 acts of terrorism;
 - 9.1.2 war (whether declared or undeclared), threat of war, act of public enemy, blockade, revolution, riot, insurrection, public demonstration, civil commotion, invasion or armed conflict;
 - 9.1.3 sabotage or acts of vandalism, criminal damage or the threat of such acts;
 - 9.1.4 extreme weather or environmental conditions including lightening, earthquake, flood, wind, drought, storm, fire, landslip, accumulation of snow or ice, natural disasters and phenomena including meteorites, the occurrence of pressure waves caused by aircraft or other aerial devices travelling at supersonic speeds, impact by aircraft, volcanic eruption, explosion including nuclear explosion, radioactive or chemical contamination or ionising radiation;
 - 9.1.5 any change of legislation, governmental order, restraint or directive having the effect of shutting down or reducing the supply of electricity to the Eligible Customer or which prohibits (by rendering unlawful) the operation of the Eligible Customer and such operation cannot be made lawful by a modification to the Eligible Customer’s installation or a change in operating practice;
 - 9.1.6 a strike, walkout, lock-out or any other form of industrial action by persons employed by the Non-Performing Party or by an Affiliate of the Non-Performing Party or by any contractor, subcontractor or agent of the affected Party or any such Affiliate;

- 9.1.7 any strike which is part of a labour dispute of a national character occurring in Ireland or which is part of a national electrical industry strike within Ireland;
- 9.1.8 the inability at any time or from time to time of the Transmission or Distribution System to be capable of lawfully and safely supplying electricity to the Eligible Customer;
- 9.1.9 the act or omission of any contractor or supplier of either Party but only if due to an event which, but for the contractor or supplier not being a party to this Agreement, would have been Force Majeure;
- 9.1.10 an electricity generation capacity shortfall whereby ESB does not have sufficient generation capacity to fulfil its obligations under the Agreement.

Provided that Force Majeure shall not include:

- (a) lack of funds and/or the inability of a Party to pay;
 - (b) mechanical or electrical breakdown or failure of machinery or plant owned or operated by either Party other than as a result of the circumstances identified in Clauses 9.1.1 to 9.1.10 above;
 - (c) any of the events referred to in Clause 13 or 20 resulting in modifications in the Agreement; or
- 9.2 Except as otherwise provided in the Agreement, where a Non-Performing Party is rendered wholly or partially unable to perform all or any of its obligations under the Agreement by reason of Force Majeure, except for an obligation to make payment of money, the 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 the Agreement which are obligations affected by Force Majeure shall be suspended provided that such suspension shall be of no greater scope and no longer duration than is required by the Force Majeure. Further:
- 9.2.1 as soon as reasonably practicable, the Non-Performing Party shall notify the other Party of the circumstances of Force Majeure, identifying the nature of the event, its expected duration, and the particular obligations thereby affected and furnish reports at such intervals as the other Party may reasonably request, with respect thereto during the period of Force Majeure;
 - 9.2.2 the Non-Performing Party shall use all reasonable efforts to remedy this inability to perform and to resume full performance of its obligations under the Agreement;
 - 9.2.3 no obligations of either Party that arose before the Force Majeure and which can reasonably be expected to be performed are excused as a result of Force Majeure;

- 9.2.4 forthwith after the occurrence of the Force Majeure, each Party shall use all reasonable endeavours to consult with the other as to how best to give effect to their obligations under the Agreement so far as is reasonably practicable during the period of Force Majeure; and
 - 9.2.5 the Non-Performing Party on being able to resume full performance of its obligations under the Agreement, shall provide the other Party with written notice to that effect, without delay.
 - 9.2.6 insofar as possible the Non-Performing Party shall seek to mitigate the consequences of the Force Majeure.
- 9.3 Clause 9.2 shall not require the settlement of any strike, walkout, lock-out or other labour dispute on terms which, in the sole judgement of the Party involved in the dispute, are contrary to its interests. It is understood and agreed that the settlement of strikes, walkouts, lock-outs or other labour disputes shall be entirely within the discretion of the Non-Performing Party.

10. Disputes

- 10.1 A “Dispute” means any dispute or difference of whatever nature between ESB and the VIPP Supplier arising from the Agreement except for a dispute or difference in relation to a Change in Circumstances. A dispute or difference of whatever nature in relation to Change in Circumstances will be dealt with as outlined in Clause 20.
- 10.2 Either Party may notify the other Party following the occurrence or discovery of any item or event which the notifying Party acting in good faith considers to be a Dispute under the Agreement.
- 10.3 If considered appropriate the relevant Party may, by notice to the other Party and within fifteen (15) Business Days of a notification under Clause 10.2, appoint a senior company official with expertise or experience in the area in which the Dispute arises and who has no prior direct involvement with the subject matter of the particular Dispute, to represent them and meet with the representative of the other Party within fifteen (15) Business Days of the last date on which a Party receives notification of the Dispute, to attempt in good faith to satisfactorily resolve the Dispute. Such representatives may be accompanied by such other persons which the representatives consider have appropriate expertise to assist in resolving the Dispute.
- 10.4 In the event that the Dispute is not resolved within ten (10) Business Days from the date of the meeting referred to in Clause 10.3 then the Dispute unless it is a Dispute arising under Clause 5 of the Agreement shall be referred to the Commission for determination in such manner as the Commission considers reasonable.

- 10.5 A Dispute arising under Clause 5 of the Agreement which has not been resolved within ten (10) Business Days from the date of the meeting referred to in Clause 10.3 may be referred by either Party to the Commission for determination in such manner as the Commission considers reasonable.
- 10.6 Both Parties shall have the right to bring Court proceedings for any Dispute arising under Clause 5 of the Agreement and any referral under Clause 10.5 shall be without prejudice to this right.
- 10.7 Unless they agree otherwise, the Parties shall bear their own costs and expenses of any referral to the Commission under Clauses 10.4 or 10.5.
- 10.8 Disputes related to the Bilateral Contract Report amounts will be directed to the Settlement System Administrator by complainant. Any determination by the Settlement System Administrator will be adjusted for in a subsequent invoice.

11. Entire Agreement

- 11.1 This Agreement contains and expressly refers to the entire agreement between the parties with respect to its subject matter and expressly excludes any warranty, condition or other undertaking implied at law or by custom or howsoever otherwise and supersedes all previous agreements and understandings between the Parties (other than as provided for in the Agreement) with respect to its subject matter and each of the Parties acknowledges and confirms that it does not enter into the Agreement in reliance on any representation, warranty or other undertaking by the other party not fully reflected in the Agreement.

12. Waiver

- 12.1 No delay, omission or forbearance by either party in exercising any right, power, privilege or remedy under the Agreement shall operate to impair or be construed as a waiver of such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any further exercise thereof or other right, power, privilege or remedy.

13. Variation

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

14. Notices

- 14.1 All notices and other communications to be given under or in connection with the Agreement shall (except where expressly provided otherwise) be in writing and shall either be delivered by hand or sent by ordinary pre-paid post or by facsimile transmission. Delivery by courier is regarded as delivery by hand.
- 14.2 All communications must be sent to the address of the relevant party, the facsimile number set out below, or to such other address or facsimile number of a

party as may be notified by that party from time to time. Each communication must be marked for the attention of the relevant person.

ESB

(Excepting Settlement Data, VIPP Notifications, Invoices and related queries which are to be directed as per Schedule 3)

Facsimile: (01) -7027285

Telephone: (01)-7026838

For the attention of:

Mr. Michael G. White, Manager Regulation,
Power Generation, ESB Generation

VIPP Supplier:

As set out in Section 1 of Schedule 2.

- 14.3 Subject to Clause 14.4, a communication is deemed to have been received:
- 14.3.1 if delivered by hand, at the time of delivery;
 - 14.3.2 if sent by ordinary pre-paid post, at the expiration of two (2) Business days after the time of posting; and
 - 14.3.3 if sent by facsimile, at the time of completion of transmission by the sender.
 - 14.3.4 if a communication would otherwise be deemed to have been received outside of normal business hours (being 9.30a.m. to 5.30 p.m. on a Business Day) under this Clause 14, it is deemed to have been received at commencement of normal business hours on the next Business Day.
- 14.4 A notice of termination under the Agreement other than when delivered by hand will be deemed to have been delivered at the time of receipt by the Defaulting Party.

15. Confidentiality

- 15.1 Each Party shall treat any and all information and data disclosed to it by the other Party in connection with the Agreement in any form whatsoever, and the Agreement itself, (the “Confidential Information”) as confidential and proprietary, shall preserve the secrecy of the Confidential Information and shall not use the Confidential Information for any purpose other than solely in connection with the Agreement.
- 15.2 For the purposes of this Clause 15, the term Confidential Information shall not include information which:
- 15.2.1 at the time of disclosure or at any time thereafter is in, or becomes part of, the public domain other than through a breach of the provisions of this Clause 15; or

- 15.2.2 the Party receiving the information can prove that the information was already known to it or was independently acquired or developed by it without being in breach of its obligations under this Clause 15; or
 - 15.2.3 became available to the Party receiving the information from another source in a non-confidential manner otherwise than in breach of an obligation of confidentiality; or
 - 15.2.4 is published by or the publication of which is required by a Competent Authority.
- 15.3 Notwithstanding the provisions of Clause 15.1, Confidential Information may be disclosed by a party:
- 15.3.1 to those of the shareholders, owners, directors, officers, employees, agents, consultants, contractors, advisers, investors, insurers or lenders of such party or its Affiliates who need to know the Confidential Information for the Agreement for the purpose of carrying out the Agreement (and for no other purpose) provided that:
 - (a) the recipient agrees to keep the Confidential Information confidential on terms no less onerous than contained in this Clause 15; and
 - (b) the disclosing party shall be responsible for ensuring that the recipient observes and complies with such obligation to keep the Confidential Information confidential and shall accordingly be responsible for any failure of the recipient to do so;
 - 15.3.2 as may be ordered or required by any applicable law or a Competent Authority;
 - 15.3.3 as may be required by the regulations of any recognised stock exchange upon which the share capital of the party (or any parent undertaking of the party) is or is proposed to be from time to time listed or dealt in, and the party making the disclosure shall, if reasonably practicable prior to making the disclosure, and in any event as soon as reasonably practicable thereafter, supply the other party with a copy of such disclosure or statement and details of the persons to whom the Confidential Information is to be, or has been, disclosed. Where a copy of such disclosure or statement has been supplied prior to making the disclosure, the other party may give comments on that disclosure or statement to the party proposing to make it. The party proposing to make the disclosure shall, if reasonably practicable in the time available, consult with the other party as to any such comments and consider whether the disclosure is to be amended to take into account the comments;
 - 15.3.4 as may be required to comply with the requirements of the Grid Code, Metering Code, Trading and Settlement Code or the Agreement;
 - 15.3.5 by either party as may be necessary to comply with any obligation under any licence granted to it under the Act;

- 15.3.6 by ESB as may be necessary to enable ESB to operate the Transmission or Distribution System or arising from any planning, connection or related information requirements.
 - 15.3.7 by ESB as may be necessary in relation to an application by any person for a connection to ESB Transmission System;
 - 15.3.8 as may be required by a Court, arbitrator or administrative tribunal or an expert in the course of proceedings before it to which the disclosing party is a party; or
 - 15.3.9 as may be agreed in writing by the parties prior to disclosure by the party disclosing such Confidential Information.
- 15.4 All information supplied by or on behalf of a Party to the Agreement shall remain the sole and exclusive property of such Party and the Agreement shall not operate to transfer ownership or any interest whatsoever therein, and the other Party to the Agreement shall, if requested by the Party disclosing the information following termination of the Agreement, promptly return to such Party all documents and any copies, extracts, notes or similar materials containing or based in whole on such information.
- 15.5 The provisions of this Clause 15 shall survive the termination of the Agreement for a period of five (5) years.
- 15.6 The parties to the Agreement shall, insofar as is reasonably practicable, ensure that any copies of the Confidential Information, whether in hard copy or computerised form, will clearly identify the Confidential Information as confidential.
- 15.7 Subject to Clause 15.3, no public announcement or statement regarding the signature, performance or termination of, or otherwise in relation to, the Agreement shall be issued or made by a party to the Agreement unless the other party to the Agreement shall have first been furnished with a written copy of the proposed announcement or statement and shall have approved it (such approval not to be unreasonably withheld or delayed).

16. Assignment

- 16.1 ESB may assign or transfer the benefit or obligations of the Agreement to its legal successors in title or to an ESB wholly owned subsidiary company or an Affiliate.
- 16.2 With the prior written consent of ESB (such consent not to be unreasonably withheld or delayed), the VIPP Supplier may assign whole Option Units to any Relevant Supplier who is also a party to the Trading and Settlement Code, Transmission Use of System Agreement and Distribution Use of System Agreement at the time the assignment takes effect (“Assignee”). ESB’s consent under the Clause may be conditional on any of the following:-
- 16.2.1 the VIPP Supplier notifying ESB of the number of Option Units being assigned, the corresponding prices under the Agreement of each of the

Option Units being assigned, as specified in Schedule 2, the identity of the Assignee and any other information reasonably requested by ESB;

- 16.2.2 the VIPP Supplier notifying the Commission of any information relating to the assignment requested by the Commission;
- 16.2.3 at the request of ESB, the VIPP Supplier entering into a variation to the Agreement with ESB to reflect the assignment of the Option Units;
- 16.2.4 the Assignee entering into an agreement with ESB in substantially the same form as the Agreement in respect of the Option Units assigned to it;
- 16.2.5 the Assignee satisfying ESB that it has an Approved Credit Rating or providing Security Cover in respect of the Option Units; and
- 16.2.6 the consent of the Commission.

- 16.3 Unless ESB agrees otherwise, any assignment under Clause 16.2 will only take effect from the beginning of the Settlement Day starting on the first day of the month after all relevant consents and documents relating to the assignment have been completed to ESB's satisfaction

17. Severance

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

18. Survival

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

19. Governing law and Jurisdiction

- 19.1 The Agreement shall be governed by and construed in accordance with the law of Ireland and the Courts of Ireland shall have exclusive jurisdiction in relation to any matter arising under or in respect of the Agreement.

20. Change in Circumstances

- 20.1 If there is a Change in Circumstance (or where a Change in Circumstances is imminent) (as defined below), then either Party may notify the other that it wishes to review the Agreement and the Parties shall meet and discuss in good faith the amendments that should be made to the Agreement in order to reflect the original intent of the Parties. If agreement can not be reached in 15 business days from

the date of notification then either Party may opt to terminate the Agreement by giving 5 days written notice to the other Party.

20.2 For the purposes of Clause 20.1, a “Change in Circumstance” occurs if after the date of the Agreement any law is passed, made, brought into force, issued, amended or revoked or ceases to have effect that affects this Agreement, or the terms of any of the Trading and Settlement Code, Grid Code, or any licence or document issued pursuant to a condition of any licence are modified and/or which adversely affects ESB’s costs of supply under this Agreement (including any change in relevant tax or environmental laws). A “Change in Circumstance” shall also be deemed to occur if the CER approves any change to the published tariffs of ESB. In addition, any change to the methodology by which CO₂ costs are applied shall be deemed a Change in Circumstance. If the Agreement is to be extended into 2006, a new VIPP price will apply, which will be based on prices and costs at that time, and therefore such extension shall be considered a Change in Circumstance..

EXECUTED as an agreement this _____ day of _____ in the year 2004.

SIGNED by (name) _____, for and on behalf of the

Electricity Supply Board in the presence of (witness) _____,

Signatory:

Witness:

Signature _____

Signature _____

Position _____

Position _____

SIGNED by (name) _____, for and on behalf of the VIPP Supplier

(VIPP Supplier name) _____ in the presence of (witness)

_____,

Signatory:

Witness:

Signature _____

Signature _____

Position _____

Position _____

Schedule 1

1. Nomination of Contracted Options.

- 1.1 The VIPP Supplier shall nominate their Contracted Options as Active Options, Exercisable Options or Relinquished Options.
- 1.1.1 The Contracted Option Nomination must be received by ESB 7 business days prior to the start of each month. Subject to Section 1.1.5, if in any month a valid Contract Option Nomination is not received, then the last valid Contract Option Nomination shall be deemed to be the Contract Option Nomination for that month, and this will form the basis of the invoice for that month.
- 1.1.2 Firm Contracted Options and Non-Firm Contracted Options shall be nominated separately and shall sum to the Contracted Options.
- 1.1.3 A Contracted Option that has been nominated as an Active Option may not be nominated as an Exercisable Option in future months.
- 1.1.4 All Exercisable Options must be nominated as Relinquished Options before any Active Options can be nominated as Relinquished Options, except as noted in section 1.1.8.
- 1.1.5 Once a Contracted Option has been nominated as a Relinquished Option the VIPP Supplier loses all rights to that Contracted Option and may not nominate it as either an Active Option or an Exercisable Option in future months
- 1.1.6 From 2nd November 2005 all Contracted Options shall either be Active Options or Relinquished Options. Contracted Options that are not nominated as Active Options shall be deemed to be Relinquished Option.
- 1.1.7 ESB Independent Energy Limited (ESBIE) are limited in that they are prohibited from exercising VIPP Options such that their cumulative volume of Synergen purchases and active VIPP Options will not exceed the lower of 400MW or the volume available to the next largest Independent Supplier from any combination of its own (or affiliated) generation sources, Active VIPP Options or Synergen purchases.
- 1.1.8 No Supplier may hold VIPP5 Options that would give them more than a total of 400MW equivalent capacity from Synergen Purchases, generation plant owned by itself (either directly or through an affiliate in a group structure) plus VIPP5 Options. A Supplier's total equivalent capacity will be calculated as the sum of Active VIPP5 Options, Synergen purchases and generation plant owned by itself (either directly or through an affiliate in a group structure) but excluding inter-connector capacity, green energy and small (<15MW) CHP. If they exceed this limit then they must

relinquish contracted VIPP5 Options such that they no longer exceed this limit. In the case of contracted VIPP5 Options relinquished under 1.1.9 the Supplier is free to relinquish any combination of Firm, non-Firm, Active, Exercisable or Longer-Term Contracted Options in order to reduce its capacity to 400MW.

- 1.1.9 The CER will inform both ESB and the relevant Supplier when either conditions specified in 1.1.7 or 1.1.8 apply. In both cases this will allow the Supplier to nominate Options with one weeks notice notwithstanding section 1.1.1. Failure to relinquish the options over and above the limit outlined in 1.1.8 will be a Material Breach
- 1.2 In order to allow ESB to nominate plant, VIPP suppliers shall supply ESB with a Demand Forecast at the same time as their Contracted Option Nomination.

2. Option Charge.

- 2.1 The Option Fee shall be the Auction Clearing Price as determined in Section 3 of Schedule 2.
- 2.2 The Option Charge for each Payment Period in the Supply Period is the total of all charges below:
- 2.2.1 The sum of the Contracted Options nominated as Active Options multiplied by the Option Fee;
- 2.2.2 The sum of the Firm Contracted Options nominated as Exercisable Options multiplied by the Booking Fee;
- 2.2.3 For Payment Periods April 2005 to December 2005 inclusive the sum of the Non-Firm Contracted Options nominated as Exercisable Options multiplied by the Booking Fee. (For the months of January to March 2005 no charge shall be made for Non-Firm Contracted Options nominated as Exercisable Options); and
- 2.2.4 Any rebate of Booking Fees paid for Exercisable Options that have been nominated as Active Options as determined in Section 2.3 of this Schedule
- 2.3 Contracted Options nominated as Relinquished Options shall incur no fees and the VIPP Supplier loses all rights to these Contracted Options.
- 2.4 For each Contracted Option, which had previously been nominated as an Exercisable Option, nominated for the Payment Period as an Active Option a

rebate will be made of all Booking Fees paid to date. The maximum rebate in any one month will not exceed the Option Fee.

3. Energy Charge.

3.1 The Energy Charge for a Trading Period is calculated as follows:

$$EC = CEC + ONC$$

Where

EC is the Energy Charge for the Trading Period

CEC is the Contracted Energy Charge

ONC is the Over Notification Charge

3.2 The Contracted Energy Charge for a Trading Period is calculated as follows:

For all Trading Periods

$$CEC = \text{Min}(\text{VDN}, \text{MCE}) * \text{EPP}_t$$

Where:

VDN is the VIPP Supplier's VIPP Demand Notification for that Trading Period (in MWh)

MCE is the Maximum Contracted Energy;

EPP_t is the Energy Purchase Price for that Trading Period calculated under Section 3.3 below.

3.3 The Energy Purchase Price for a Trading Period is calculated as follows:

$$\text{EPP}_t = \text{EPP}_0 + \text{MFI}_t$$

Where

EPP_0 has the value €42.90/MWh,

EPP_t is the Energy Purchase Price in €/MWh applying in Payment Period t.

MFI_t is the Monthly Fuel Indexation adjustment, calculated subject to Section 6 of this Schedule.

3.4 The Additional Charges are called the Over Notification Charge (ONC). Over Notification Charge (ONC) for a Trading Period is calculated as follows:

$$\text{ONC} = (\text{Max}(\text{VDN} - \text{MCE}, 0) * \text{STU}) + 100.00 * \text{Num_days}$$

Where

MCE is the Maximum Contracted Energy

VDN is the VIPP Supplier's VIPP Demand Notification for that Trading Period (in MWh);

STU is the relevant Secondary Top-Up appropriate to the relevant Trading Period, as published by the SSA.

Num_days is the number of days in which the nomination exceeded the MCE. Note that each such incident counts as a breach of contract.

- 3.5 VIPP Suppliers, with a market ID ending in 'J', shall not register any of their customers for the WPDRS. Registration of VIPP customers to the WPDRS shall constitute a breach of the Agreement and, without prejudice to any other provision in the Agreement, shall give rise to a payment (which shall be due and owing and recoverable as a debt from the VIPP Supplier) calculated as follows:

$$\text{WEC} = \text{WSP} + 100.00 * \text{N}$$

WEC WPDRS Energy Payment by VIPP Supplier to ESB

WSP Sum of all payments made to the Supplier, arising from or in connection with, participation in the WPDRS that have not already been charged for under this Schedule previously

N Number of customers participating in the WPDRS

4. VIPP5 Monthly Fuel Indexation

4.1 The Monthly Fuel Indexation adjustment (MFI_t) is calculated for each Payment Period during the term of the contract. The MFI_t is calculated on the basis of the difference in Base Energy Price for the relevant Payment period (BEP_t) and the Base Energy Price for January 2005 (BEP_0).

$$MFI_t = \begin{cases} \text{If the } BEP_t \text{ value is above the deadband:} \\ \text{MAX}[(BEP_t - \text{MAX}(BEP_0, BEP_{DB})), 0], \\ \\ \text{If the } BEP_t \text{ value is below the deadband:} \\ \text{MIN}[(BEP_t - \text{MIN}(BEP_0, BEP_{DB})), 0] \end{cases}$$

Where

MFI_t is the Monthly Fuel Indexation adjustment

BEP_t is the Base Energy Price for Payment Period (t), calculated subject to Section 4.4 of this Schedule.

BEP_0 is the Base Energy Price for January 2005 calculated subject to Section 4.4 of this Schedule, i.e. one of the deadband limits.

BEP_{DB} is the other deadband limit set using the prices below.

For the Agreement, a deadband in fuel indexation will operate. One of the deadband limits will be set by the Base Energy Price in January. The other will be set by applying the fuel indexation formulae to the 2005 forward fuel prices in the ESB 2005 Price Proposal, using the same financial exchange rates that are applied to the January 2005 BEP_t price. These prices are as follows:

Fuel	Price
Coal	\$83.94/t
Oil	\$180.81/t
Gas	27.14£p/th

4.2 The Base Energy Price for each Payment Period shall be calculated before the start of the Payment Period and a revised value of the Energy Purchase Price derived. ESB will notify the VIPP Supplier of the revised Energy Purchase Price at least two Business Days before the commencement of the Payment Period.

4.3 For the period of VIPP5 a portion of the commodity element of the Energy will be fixed.

4.4 The Base Energy Price is calculated as follows:

$$BEP = (b_{cv} * F_{cv}) + (b_{oilv} * F_{oilv}) + (b_{gv} * F_{gv}) + (b_{cf} * F_{cf}) + (b_{oilf} * F_{oilf}) + (b_{gf} * F_{gf})$$

Where

b_{cv} a constant factor reflecting exposure to coal, efficiency of conversion and the variable portion of the commodity, (cf. table in section 6.5);

b_{oilv} a constant factor reflecting exposure to fuel oil, efficiency of conversion and the variable portion of the commodity (cf. table in section 6.5);

b_{gv} a constant factor reflecting exposure to gas, efficiency of conversion and the variable portion of the commodity (cf. table in section 6.5);

b_{cf} a constant factor reflecting exposure to coal, efficiency of conversion and the fixed portion of the commodity (cf. table in section 6.5);

b_{oilf} a constant factor reflecting exposure to fuel oil, efficiency of conversion and the fixed portion of the commodity (cf. table in section 6.5);

b_{gf} a constant factor reflecting exposure to gas, efficiency of conversion and the fixed portion of the commodity (cf. table in section 6.5);

F_{cv} is the realised energy price of coal, in €MWh_{INT} (NCV), in any month M, calculated according to Section 6.6 of this Schedule;

F_{oilv} is the realised energy price of oil, in €MWh_{INT} (NCV), in any month M, calculated according to Section 6.7 of this Schedule;

F_{gv} is the realised energy price of gas, in €MWh_{INT} (NCV), in any month M, calculated according to Section 6.8 of this Schedule;

F_{cf} is the realised energy price of coal, in €MWh_{INT} (NCV), calculated according to Section 6.6 of this Schedule, using commodity values pertaining to the first month of the VIPP5 agreement, and foreign exchange values pertaining to the relevant payment period;

F_{oilf} is the realised energy price of fuel oil, in €MWh_{INT} (NCV), calculated according to Section 6.7 of this Schedule, using commodity values pertaining to the first month of the VIPP5 agreement, and foreign exchange values pertaining to the relevant payment period;

F_{gf} is the realised energy price of gas, in €MWh_{INT} (NCV), calculated according to Section 6.8 of this Schedule, using commodity values pertaining to the first month of the VIPP5 agreement, and foreign exchange values pertaining to the relevant payment period;

4.5 The 'b values' as used in the formula have the following values:

Coal	b_{cv}	1.1166
	b_{cf}	0.0000
Oil	b_{oilv}	0.6501

	b_{oilf}	0.0000
Gas	b_{gv}	0.1905
	b_{gf}	0.5714

4.6 The realised energy price of coal (F_{cv}) is calculated as follows:

$$F_{cv} = \left[\frac{API2}{X_d} + D_c \right] \times K_c$$

Where

- API2 = the arithmetic average in US\$/tonne, for the three month period M-4, M-3 and M-2, of the weekly quotes of the API2 index, rounded to the nearest cent, as published by Tradition Financial Services, London;
- X_d = the Euro/US Dollar Foreign Exchange rate as published on the 15th day of M-1 by the European Central Bank (ECB) at 14:15 ECB time, subject to the Preceding Day business convention;
- D_c = excise duty, taxes or other levies imposed on coal, it's by-products or arising from coal usage;
- K_c = constant to convert €/tonne to €/MWh_{INT};

4.7 The realised energy price of oil (F_{oilv}) is calculated as follows:

$$F_{oilv} = \left[\frac{P_{LS}}{X_d} + D_{oil} \right] \times K_{oil}$$

P_{LS} = the arithmetic average of the high quotations for all trading days in the 3 month period M-4, M-3 and M-2, of 1% sulphur Fuel Oil cargoes CIF NWE (Basis ARA), in US Dollars per tonne, rounded to the nearest cent, as shown in Platt's Oilgram Price Report as published by McGraw-Hill Inc.;

X_d = the Euro/US Dollar Foreign Exchange rate as published on the 15th day of M-1 by the European Central Bank (ECB) at 14:15 ECB time, subject to the Preceding Day business convention;

D_{oil} = excise duty, taxes or other levies imposed on fuel oil, it's by-products, or arising from fuel oil usage;

K_{oil} = constant to convert €/tonne to €/MWh_{INT};

4.8 The realised energy price of gas (F_{gv}) is calculated as follows:

$$F_{gv} = \left[\frac{(G \times S) + T_{UK}}{X_s} + T_{IRL} + D_g \right] \times K_g$$

Where

- G = the IPE Monthly Index for M-1, as published by PH Energy Analysis in the publication “European Spot Gas Markets”.
- S = a “swing premium” of 1.12 to reflect the lower load factor of deliveries to ESB compared with the flat (100% take and pay) values expressed in the index.
- X_s = the Euro/Sterling Foreign Exchange rate as published on the 20th day of M-1 by the European Central Bank (ECB) at 14:15 ECB time, subject to the Preceding Day business convention;
- T_{UK} = transport charge from UK NBP to Moffat (including, but not limited to, UK commodity throughput charge, Moffat Exit charge, Moffat Agency costs and UK smearing charges;
- T_{IRL} = Irish transport charge appropriate to ESB generation plant;
- D_g = excise duty, taxes or other levies imposed on gas, its by-products, or arising from gas usage;
- K_g = constant to convert €/therm (GCV) to €/MWh_{INT} (NCV);

4.9 The resolution of variables used in the calculations in Section 6 of this schedule, will be to the level defined for each variable, or if not defined, to the level published for published variables. Any other variables and all intermediate and final calculations will be rounded to four places of decimals.

Schedule 2

This schedule is the Annexure to the Bid Form of the VIPP Supplier, as signed by ESB

Schedule 3

VIPP Options Notification Details**Description**

This Schedule specifies the format and content of VIPP Options notifications to be sent to ESB

Data Flow

Sender of File: VIPP Supplier
Receiver of File: ESB (Risk & Settlement)

Address for all VIPP Options Notifications

All VIPP Options Notification communications should be sent to the following e-mail address : VIPP_SETTLEMENT@esb.ie

The “Subject” line must contain the reference: VIPP Options Notification

Frequency

A separate file should be sent for each Payment Period to arrive at such a time as detailed in Schedule 1 of this agreement.

File Format

The data format for the notification will be as a comma separated value (CSV) file contained as an attachment within an e-mail.

CSV File Name

The CSV file name should consist of the SSA assigned VIPP Supplier Market Participant Id, file ID, the date and file version number as follows:

AAAA_ON_YYYYMMDD_NN.csv

where

AAAA represents the place holder for the SSA assigned VIPP Supplier Market Participant ID.

ON is the file ID.

YYYYMMDD represents the first Settlement Day for which Option Notification contained in the file refers to.

NN is the version number of the file, where 01 represents the first file sent for the Payment Period in question. For subsequent versions of the file the version number must be assigned sequentially. It is important to note the file with the highest version number will over write all data received previously for that Payment Period.

Failure of E-mail Systems

In the event of the loss of communication via e-mail facilities for the transfer of VIPP Option Notifications, the delivery of the standard format CSV file by floppy disk / compact disk will be accepted in exceptional circumstances subject to the normal time table as set out in this Non Green VIPP5 Agreement.

VIPP Option Notifications by facsimile or on paper based media will not be accepted.

VIPP Supplier – VIPP Options Notification
--

The Options Notification will consist of a header record, detail record(s) and a trailer record.

Header Record:

Field Name	Field Type / Length	Description
Header	1 character in length	Always 'H'
VIPP Supplier Market Participant Id	4 characters	The unique SSA assigned Market Participant ID of the VIPP Supplier who is the common party to all the inter trades identified in the Settlement Day and who was assigned the VIPP Supplier PIN contained in this header record.
Nomination Month	Month e.g. Jan, Feb, Mar, Apr etc.,	The Month to which the Forecast Options nominations in the file relate. Format is 'MMM'
VIPP Supplier PIN	6 digit number	Unique number assigned to each VIPP Supplier for settlement confidentiality purposes. The number used is that of the VIPP Supplier identified in this header record. (See Notes 7.)
Forecast Demand Notification CSV File Version Number	2 digit number	2 digit number corresponding to the CSV file version number in which this header record is contained.

Detail Record:

Field Name	Field Length / Type	Description
Firm Active Options	3 digit number Format - nnn	Firm Contracted Option that is used to meet the energy requirements of the VIPP supplier in the Payment Period
Firm Exercisable Options	3 digit number Format - nnn	Firm Contracted option that the VIPP Supplier does not nominate as an Active Option, but retains the right to use at a future date, not later than six months from the start of the Non green VIPP5 Agreement.
Firm Relinquished Options	3 digit number Format - nnn	Firm Contracted Option that a supplier no longer wishes to hold.
Non Firm Active Options	3 digit number Format - nnn	Non Firm Contracted Option that is used to meet the energy requirements of the VIPP supplier in the Payment Period
Non Firm Exercisable Options	3 digit number Format - nnn	Non Firm Contracted option that the VIPP Supplier does not nominate as an Active Option, but retains the right to use at a future date, not later than six months from the start of the Non green VIPP5 Agreement.
Non Firm Relinquished Options	3 digit number Format - nnn	Non Firm Contracted Option that a supplier no longer wishes to hold.

Trailer Record

Field Name	Field Type / Length	Description
Trailer	1 Character	Always 'T'
Control Check	Numeric	The sum of the values of the contracted options in the detail records.

Notes

1. The VIPP Supplier will notify Risk & Settlement Manager in writing of the source e-mail address from which the VIPP Options Notifications will be sent from.
2. The VIPP Options Notification will be SSA Settlement Day based and covers the time period 00:00–23:59, where 59 is taken to mean up to and including the 59th minute of that hour for each Settlement Day of the Payment Period.

3. Use is made of SSA Settlement Period Id as a reference number for the settlement period within a settlement day. Period Id's are assigned sequentially to each period. Period 1 identifies the first half-hour period which covers the period 00:00-00:29, where 29 is taken to mean up to and including the 29th minute of that hour.
4. A contact person must be nominated for the VIPP Supplier, responsible for the VIPP Options Notification transfer process.
5. VIPP Suppliers will adhere to the VIPP5 Agreement settlement timetable when sending files.
6. The VIPP Supplier PIN will be assigned to each VIPP Supplier on entering into a Non Green VIPP5 Agreement. The PIN will be known only to the VIPP Supplier and EMC Settlement processes.
7. Uppercase characters are to be used throughout for file naming and record details.

Schedule 4

VIPP Supplier Demand Forecast Notification Details**Description**

This Schedule specifies the format and content of VIPP Supplier Demand Forecast notifications to be sent to ESB

Data Flow

Sender of File: VIPP Supplier

Receiver of File: ESB (Risk & Settlement)

Address for all VIPP Supplier Demand Forecast Notifications

All VIPP Supplier Demand Forecast Notification communications should be sent to the following

e-mail address: VIPP_SETTLEMENT@esb.ie

The “Subject” line must contain the reference: VIPP Supplier Demand Forecast Notification

Frequency

A separate file should be sent for each Payment Period at such a time as detailed in Schedule 1 of this Agreement.

File Format

The data format for the notification will be as a comma separated value (CSV) file contained as an attachment within an e-mail.

CSV File Name

The CSV file name should consist of the SSA assigned VIPP Supplier Market Participant Id, file ID, the date and file version number as follows:

AAAA_DF_YYYYMMDD_NN.csv

where

AAAA represents the place holder for the SSA assigned VIPP Supplier Market Participant ID.

DF is the File ID.

YYYYMMDD represents the first Settlement Day for which the Demand Forecast data contained in the file refers to.

NN is the version number of the file, where 01 represents the first file sent for the Payment Period in question. For subsequent versions of the file the version number must be assigned sequentially. It is important to note the file with the highest version number will over write all data received previously for that Payment Period.

Failure of E-mail Systems

In the event of the loss of communication via e-mail facilities for the transfer of VIPP Supplier Demand Forecast Notifications, the delivery of the standard format CSV file by floppy disk / compact disk will be accepted in exceptional circumstances subject to the normal time table as set out in this Non Green VIPP5 Agreement.

VIPP Supplier Demand Notifications by facsimile or on paper based media will not be accepted.

VIPP Supplier – VIPP Demand Forecast Notification
--

The Demand Forecast Notification will consist of a header record, detail record(s) and a trailer record.

Header Record:

Field Name	Field Type / Length	Description
Header	1 character in length	Always 'H'
VIPP Supplier Market Participant Id	4 characters	The unique SSA assigned Market Participant ID of the VIPP Supplier who is the common party to all the inter trades identified in the Settlement Day and who was assigned the VIPP Supplier PIN contained in this header record.
Forecast Month	Month e.g. Jan, Feb, Mar, Apr etc.,	The month to which the Forecast Demand figures in the file relate. Format is 'MMM'
VIPP Supplier PIN	6 digit number	Unique number assigned to each VIPP Supplier for settlement confidentiality purposes. The number used is that of the VIPP Supplier identified in this header record. (See Notes 7.)
Forecast Demand Notification CSV File Version Number	2 digit number	2 digit number corresponding to the CSV file version number in which this header record is contained.

Detail Record:

Field Name	Field Length / Type	Description
Settlement Date	DATE	The settlement date to which the Forecast Demand figures in the file relate. Format is 'YYYYMMDD'
Settlement Period No	2 digits - format nn	Use is made of SSA Settlement Period Id as a reference number for the settlement period within a settlement day. Period Id's are assigned sequentially to each period.
Forecast Demand Quantity	7 digit number with 3 decimal places. Format - nnnn.nnn	The forecasted demand quantity for the period of the settlement day expressed in MWh

Trailer Record:

Field Name	Field Type / Length	Description
Trailer	1 Character	Always 'T'
Control Count	Numeric	The number of records in the file excluding the header and trailer records.
Control Check	Numeric (with up to three places of decimals)	The sum of the values of the forecasted demand quantity in the detail records.

Notes

1. The VIPP Supplier will notify Risk & Settlement Manager in writing of the source e-mail address from which the VIPP Supplier Demand Forecast Notifications will be sent from.
2. The VIPP Supplier Demand Forecast Notification will be SSA Settlement Day based and covers the time period 00:00–23:59, where 59 is taken to mean up to and including the 59th minute of that hour for each Settlement Day of the Payment Period.
3. Use is made of SSA Settlement Period Id as a reference number for the settlement period within a settlement day. Period Id's are assigned sequentially to each period. Period 1 identifies the first half-hour period which covers the period 00:00-00:29, where 29 is taken to mean up to and including the 29th minute of that hour.
4. A contact person must be nominated for the VIPP Supplier, responsible for the VIPP Supplier Demand Forecast Notification transfer process.
5. VIPP Suppliers will adhere to the VIPP5 Agreement settlement timetable when sending files.
6. The VIPP Supplier PIN will be assigned to each VIPP Supplier on entering into a Non Green VIPP Agreement. The PIN will be known only to the VIPP Supplier and EMC Settlement processes.
7. Uppercase characters are to be used throughout for file naming and record details.

Schedule 5

THIS DEED OF GUARANTEE, dated as of [] (the "Guarantee") is given by the [INSERT] ("**Guarantor**" which expression shall include its legal successors and permitted assigns), in favour of the Electricity Supply Board of Lower Fitzwilliam Street, Dublin 2 of Ireland ("**Seller**" which expression shall include its legal successors and permitted assigns) in connection with an agreement of [insert date] herewith ("the Agreement") between (1) **Seller** and (2) [Insert details] (the "**Principal**") to sell energy capacity and discounted energy.

1. **Guarantee**

1.1 In consideration of the agreement of Seller to enter into the Agreement with the Principal, the Guarantor unconditionally and irrevocably:

1.1.1 guarantees to Seller as a primary obligation the due performance of all the obligations and liabilities of the Principal under the Agreement including, without limitation, the due payment and discharge to Seller on first written demand of all monies due and owing by the Principal to Seller, its successors and assigns arising from or under the Agreement; and

1.1.2 agrees as a primary obligation to indemnify Seller from time to time on demand from and against any loss incurred by Seller as a result of any such obligation or liability being or becoming void, voidable, unenforceable or ineffective as against the Principal for any reason whatsoever, whether or not known to Seller, the amount of such loss being the amount which Seller would otherwise have been entitled to recover from the Principal.

1.2 The guarantee and indemnity contained in Clause 1.1 are in respect of all of the obligations and liabilities of the Principal to Seller under or arising out of the Agreement (the "**Obligations**") which have (or, but for any invalidity, voidability, unenforceability or ineffectiveness as contemplated in Clause 1.1.2, would have) accrued due or become payable from or by the Principal to the Beneficiary up to the date of payment under this Guarantee.

2. **Nature of Guarantee**

The Guarantor agrees that Seller may resort to the Guarantor for payment of the Obligations as though the Guarantor were the principal obligor whether or not Seller shall have resorted to any collateral security, or whether Seller shall have proceeded against the Principal or any other obligor principally or secondarily liable under the Agreement. Accordingly, the Guarantor waives all and any rights as guarantor that may at any time be inconsistent with this provision.

3. **Preservation of Rights**

Neither the obligations of the Guarantor contained in this Guarantee nor the rights, powers and remedies conferred in respect of the Guarantor upon Seller by this Guarantee or by law shall be discharged, impaired or otherwise affected by:

- 3.1.1 the winding-up, dissolution, administration or reorganisation of the Principal or any other person or any change in its status, function, control or ownership;
 - 3.1.2 any of the Obligations or any of the other obligations of the Principal or any other person under any security relating to any of the Obligations being or becoming illegal, invalid, unenforceable or ineffective in any respect;
 - 3.1.3 any time or other indulgence being granted or agreed to be granted to the Principal or any other person in respect of any of the Obligations or under any other security;
 - 3.1.4 any amendment to, or any variation, waiver or release of, any of the Obligations or of any person under any other security;
 - 3.1.5 any failure to take, or fully to take, any security agreed to be taken in relation to any of the Obligations;
 - 3.1.6 any failure to realise or fully to realise the value of, or any release, discharge, exchange or substitution of, any security taken in respect of any of the Obligations; or
 - 3.1.7 any other act, event or omission which, but for this Clause 3.1, might operate to discharge, impair or otherwise affect any of the obligations of the Guarantor contained in this Guarantee or any of the rights, powers or remedies conferred upon Seller by this Guarantee or by law.
- 3.2 Any settlement or discharge given by Seller to the Guarantor in respect of the Guarantor's obligations under this Guarantee or any other agreement reached between Seller and the Guarantor in relation to it shall be, and be deemed always to have been, void if any act on the faith of which Seller gave the Guarantor that settlement or discharge or entered into that agreement is subsequently avoided by or in pursuance of any provision of law.
- 3.3 Seller shall not be obliged before exercising any of the rights, powers or remedies conferred upon it in respect of the Guarantor by this Guarantee or by law:
- 3.3.1 to make any demand of the Principal;
 - 3.3.2 to take any action or obtain judgment in any court against the Principal;

- 3.3.3 to make or file any claim or proof in a winding-up or dissolution of the Principal; or
 - 3.3.4 to enforce or seek to enforce any security taken in respect of any of the obligations of the Principal in respect of the Obligations.
- 3.4 The Guarantor agrees that, so long as the Principal is under any actual or contingent obligations in respect of any of the Obligations, the Guarantor shall not exercise any rights which the Guarantor may at any time have by reason of performance by it of its obligations under this Guarantee:
- 3.4.1 to be indemnified by the Principal or to receive any collateral from the Principal; and/or
 - 3.4.2 to claim any contribution from any other guarantor of any of the Obligations; and/or
 - 3.4.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of Seller in respect of any of the Obligations of any other security taken pursuant to, or in connection with, any of the Obligations by Seller.

4 Representations and Warranties

The Guarantor represents that:

- 4.1.1 it is a corporation duly organised under the laws of [insert] and has and will have the necessary power to enable it to enter into and perform its obligations under this Guarantee;
- 4.1.2 this Guarantee constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms;
- 4.1.3 all necessary authorisations to enable it to enter into this Guarantee have been obtained and are and will remain in full force and effect;
- 4.1.4 the execution, delivery and performance of this Guarantee will not conflict with (a) any agreement binding on it or any of its assets; (b) its constitutive documents; or (c) any applicable law.

5 Consents, Waivers and Renewals

The Guarantor agrees that Seller may at any time and from time to time, either before or after the maturity thereof, without notice to or further consent of the Guarantor, extend the time or payment of, exchange or surrender any collateral for, waive or review any of the terms of the Agreement and may also make any agreement with the Principal under the Agreement for the extension, renewal, payment, compromise, discharge, or release of obligations therein, in whole or in part, or for any modification of the terms thereof without in any way impairing or affecting this Guarantee.

6 Agreements

The Guarantor confirms that it has been provided with a certified copy of the Agreement referred to in this Guarantee and has understood its contents.

7 Guarantor Assertions

Notwithstanding any provision of this Guarantee to the contrary, the Guarantor shall be entitled to assert all defences and circumstances excusing performance which the Principal would be properly entitled to assert under the Agreement against Seller its successors and assigns and in particular the Guarantor shall be entitled to assert as a defence to any claim for payment that such payment obligation has been previously discharged or is not due under the terms of the Agreement provided that nothing in this clause 7 shall allow the Guarantor to assert a defence or excuse performance of the Principal in circumstances where the Principal would by the terms of the Agreement or otherwise by the operation of law be prevented from taking such action.

Notwithstanding anything to the contrary contained or implied herein, the liability of the Guarantor under this Guarantee shall not in any event exceed the obligations of the Principal set forth in the Agreement.

8 Partnership

No changes in the constitution of the Principal and/or change in the ownership or status of the Principal (whether by reason of amalgamation, reconstruction, liquidation or otherwise) shall impair or discharge the liability of the Guarantor under this Guarantee notwithstanding any provisions to the contrary in the Partnership Act 1890 or the Companies Acts 1963 –2001 except insofar as an alternative form of security which is acceptable to Seller is provided to Seller.

9 Expenses

The Guarantor agrees to pay on demand reasonable out-of-pocket expenses (including without limitation reasonable fees and expenses of legal counsel) in any way relating to the enforcement or protection of the rights of Seller under this Guarantee.

10 Subrogation

Upon payment of the Obligations owing to Seller, the Guarantor shall be subrogated to the rights of Seller against the Principal and Seller agrees to take, at the Guarantor's expense, such steps as the Guarantor may reasonably request to implement such subrogation.

11 Notice

Any and all notices or demands pursuant to this Guarantee shall be in writing and signed by (or by some person duly authorized by) Seller and may be served by sending it by recorded delivery letter to the Guarantor at the address first given above marked for the attention of [function to be inserted]. Any notice so served shall be effective when received at the recipient party's address.

Any demand made by Seller hereunder shall be in writing and shall specify all relevant details of the Obligations which have arisen and shall be signed by a duly authorised officer of Seller.

12 Termination

It is understood and agreed that this Guarantee shall continue in full force and effect with respect to the Obligations until the Obligations have been discharged in full and Seller has given the Guarantor written notice to that effect such notice not to be unreasonably withheld or delayed.

13 Miscellaneous

This Guarantee shall be binding on the Guarantor and its successors or assigns and shall enure for the benefit of and be enforceable by Seller and its successors and assigns but so that the Guarantor may not assign or transfer any of its right or obligations under this Guarantee except with the prior written consent of the Guarantor.

14 Governing Law

This Guarantee shall be governed by and construed in accordance with the laws of Ireland.

IN WITNESS WHEREOF this Guarantee has been executed the day and year first before written above.

Signed, Sealed and Delivered
under the Common Seal of
Guarantor

Signed, Sealed and Delivered
under the Common Seal of
Seller