

CUSC - SECTION 5
EVENTS OF DEFAULT, DEENERGISATION,
AND DISCONNECTION

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CUSC - Section 5

Events of Default, Deenergisation, Disconnection and Decommissioning

5.1 DURATION AND TERMINATION

5.1.1 Licensed CUSC Parties

Upon either:

- (a) termination of all **Bilateral Agreements, Mandatory Services Agreements and Construction Agreements** entered into by a **User** and cessation of any other right to use the **National Electricity Transmission System** pursuant to Paragraph 3.8 or Paragraph 9.23; or
- (b) a **User** having a **Licence** but not yet being connected to or otherwise using the **National Electricity Transmission System**, until such time as the **User** accepts an **Offer** to connect to or use the **National Electricity Transmission System**,

a **User** with a **Licence** shall be or continue to be a **CUSC Party** but shall not (except in the case of Paragraph 5.1.5) have any further rights and obligations for the period of such dormancy under the **CUSC** (and shall be a “**Dormant CUSC Party**”) until the execution (or other entering into) of a **Bilateral Agreement** or commencement / recommencement of its right to use the **National Electricity Transmission System** pursuant to the **CUSC**. Termination or expiry of a particular **Bilateral Agreement, Mandatory Services Agreement or Construction Agreement** shall not, of itself, cause the relevant **User** to become a **Dormant CUSC Party**.

- 5.1.2 A **Dormant CUSC Party** may once it ceases to have a **Licence** which requires it to be a party to the **CUSC Framework Agreement**, by prior notice to **The Company** cease to be a **CUSC Party** from the date specified in such notice, on which date it shall cease to be a party to the **CUSC Framework Agreement**.

5.1.3 Non-Licensed CUSC Parties

Upon termination of all **Bilateral Agreements, Mandatory Services Agreements and Construction Agreements** entered into by a **User** and cessation of any other right to use the **National Electricity Transmission System** pursuant to

Paragraph 3.8 or Paragraph 9.23, a **User** without a **Licence** shall cease to be a **CUSC Party** from the date of cessation of the last such agreement or right to use, and shall on that date cease to be a party to the **CUSC Framework Agreement**.

- 5.1.4 A person ceasing to be a **CUSC Party** or becoming a **Dormant CUSC Party** shall not affect any rights or obligations of any **CUSC Party** which may have accrued to the date of termination or dormancy under the **CUSC**, any **Bilateral Agreement** or **Mandatory Services Agreement** or **Construction Agreement** or the **Charging Statements** or otherwise and shall not affect any continuing obligations of any other **CUSC Party** under the **CUSC**.

5.1.5 **Embedded Exemptable Large Power Station and Virtual Lead Parties**

A **User** in respect of an **Embedded Exemptable Large Power Station** or **Virtual Lead Party** shall (unless **The Company** agrees otherwise in writing, such agreement not to be unreasonably withheld or delayed), once it has acceded to the **CUSC Framework Agreement** continue to remain a **CUSC Party** and shall not be treated as a **Dormant CUSC Party** notwithstanding the provisions of Paragraph 5.1.1.

5.2 EMERGENCY DEENERGISATION

5.2.1 **Emergency Deenergisation by The Company**

If, in the reasonable opinion of **The Company**, the condition or manner of operation of the **National Electricity Transmission System** or a **User's System** or an **Interconnector** poses an immediate threat of injury or material damage to any person or to the **Total System** or to any **User's System** or to the **National Electricity Transmission System**, **The Company** shall have the right to:

- (a) **Deenergise that User's Equipment**, or
- (b) request the owner of the **Distribution System** to which that **User's Equipment** or equipment for which that **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is connected to **Deenergise that User's Equipment** or equipment for which that **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**),

if it is necessary or expedient to do so to avoid the occurrence of such injury or damage.

5.2.2 Emergency Deenergisation by a User

If, in the reasonable opinion of a **User**, the condition or manner of operation of the **National Electricity Transmission System**, the **Total System** or any other **User's System** poses an immediate threat of injury or material damage to any person or to its **User's System** or **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) that **User** shall have the right to **Deenergise** its **User's Equipment** or equipment for which that **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**), if it is necessary or expedient to do so to avoid the occurrence of such injury or damage.

5.2.3 Post Emergency Reenergisation

The Company or, as the case may be, the **User** shall **Reenergise** the **User's Equipment** at the **Connection Site** (or, in the case of the **User** the site of connection) or **The Company** shall request the owner/operator of the **Distribution System** to which the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is connected to **Reenergise** the **User's Equipment** at the site of connection, in each case as quickly as practicable after the circumstances leading to any **Deenergisation** under this Paragraph 5.2 have ceased to exist.

5.3 **GENERIC EVENTS OF DEFAULT AND DEENERGISATION**

5.3.1 Generic Events of Default

It shall be an **Event of Default** if:-

- (a) a **User** shall fail to pay (other than by inadvertent error in funds transmission which is discovered by **The Company**, notified to that **User** and corrected within 2 **Business Days** thereafter) any amount properly due or owing from that **User** to **The Company** pursuant to the **CUSC** or any **Bilateral Agreement** and such failure continues unremedied for 7 **Business Days** after the due date for payment; or
- (b) in respect of a **User**:-
 - (i) an order of the High Court in England and Wales or an order of the Court of Session in Scotland is made or an effective resolution passed for its insolvent winding up or dissolution; or

(ii) a receiver (which expression shall include an administrative receiver within the meaning of section 251 Insolvency Act 1986) of the whole or any material part of its assets or undertaking is appointed; or

(iii) an administration order under section 8 of the Insolvency Act 1986 is made or if a voluntary arrangement is proposed under section 1 of that Act; or

(iv) a **User** enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the **Authority**); or

(v) any of the events referred to in (i) to (iv) above has occurred and is continuing and a **User** is unable to pay its debts (within the meaning of section 123(l) or (2) of the Insolvency Act 1986 save that such sections shall have effect as if for £750 there was inserted £250,000 and a **User** shall not be deemed to be unable to pay its debts if any demand for payment is being contested in good faith by that **User** with recourse to all appropriate measures and procedures),

and in any such case within 28 days of his appointment the liquidator, receiver, administrative receiver, administrator, nominee or other similar officer has not provided to **The Company** a guarantee of future performance by the **User** of the **CUSC** and all **Bilateral Agreements, Construction Agreements** and **Mandatory Services Agreements** to which the **User** is a party in such form and amount as **The Company** may reasonably require.

5.3.2 Generic Deenergisation upon an Event of Default

Provided that at the time the failure specified in Paragraph 5.3.1(a) is still continuing or the circumstances referred to in Paragraph 5.3.1(b) still exist **The Company** may having given 48 hours notice of an **Event of Default Deenergise** all of the **User's Equipment** which is the subject of a **Bilateral Agreement** with that **User** or may as appropriate instruct the operator of a **Distribution System** to **Deenergise** such **User's Equipment** or in the case of an **Interconnector User** or **Interconnector Error Administrator** request the relevant **Interconnector Owner** to cease or procure the cessation of the transport of power across the **Interconnector** by or on behalf of that **User** provided that prior to **Deenergisation** the **User** may refer the matter to the **Dispute Resolution Procedure**.

5.3.3 BSC Deenergisation

The Company shall **Deenergise** the **User's Equipment** if it is so instructed by the **BSC Panel** at any time in accordance with the provisions of the **Balancing and Settlement Code**.

5.3.4 Generic Disconnection

If the **Event of Default** under Paragraph 5.3.2 or 5.3.3 is still continuing six months after the later of **Deenergisation** and the conclusion of the **Dispute Resolution Procedure** in favour of **The Company**, **The Company** may **Disconnect** all that **User's Equipment** at each **Connection Site** where that **User's Equipment** is connected and:-

- (a) the **User** shall remove any of the **User's Equipment**:
 - (i) in the case of **Connection Sites Onshore** on the **Relevant Transmission Licensee's** land within 6 months or such longer period as may be agreed between the **User** and the **Relevant Transmission Licensee**; or
 - (ii) in the case of **Connection Sites Offshore**, on or adjacent to the **Relevant Transmission Licensee's Offshore Platform** within a period agreed between the **User** and the **Relevant Transmission Licensee**.
- (b) in the case of
 - (i) **Connection Sites Onshore** **The Company** shall procure that the **Relevant Transmission Licensee** removes, any of the **Transmission Connection Assets** on the **User's** land within 6 months or such longer period as may be agreed between the **User** and the **Relevant Transmission Licensee**; or
 - (ii) **Connection Sites Offshore**, **The Company** shall procure that the **Relevant Transmission Licensee** removes, any of the **Transmission Connection Assets** on or adjacent to the **User's Offshore Platform** within a period agreed between the **User** and the **Relevant Transmission Licensee**;
- (c) the **User** shall pay to **The Company** forthwith all **Termination Amounts** and, in the case of a **User** in the category of a **Power Station** directly connected to the **National Electricity Transmission System** or with a **Bilateral Embedded Generation Agreement** the **Cancellation Charge**;and
- (d) the **User** if unlicensed shall cease to be a **CUSC Party** or if licensed shall become a **Dormant CUSC Party**, as the case may be, and Paragraph 5.1 shall apply.

5.4 SITE SPECIFIC DEENERGISATION AND DISCONNECTION

5.4.1 Site Specific Breach by the User

If a **User** shall be in breach of any of the provisions of the relevant **Bilateral Agreement**, or the provision of the **CUSC** in relation to that particular connection to and/or use of the **National Electricity Transmission System**, or (other than in relation to a **Supplier**, a **Small Power Station Trading Party**, an **Interconnector User** or an **Interconnector Error Administrator**) of the provisions of the **CUSC** enforcing the provisions of the **Grid Code** (but subject always to Paragraphs 6.3.3 and 6.3.4), and such breach causes or can reasonably be expected to cause a material adverse effect on the business or condition of **The Company**, a **Relevant Transmission Licensee** or other **Users** or the **National Electricity Transmission System** or any **User Systems** then **The Company** may:-

(a) where the breach is capable of remedy, give written notice to the **User** specifying in reasonable detail the nature of the breach and requiring the **User** within 28 days after receipt of such notice, or within any longer period agreed between **The Company** and the **User** to remedy the breach, the agreement of **The Company** not to be unreasonably withheld or delayed; or

(b) where the breach is incapable of remedy, give written notice to the **User** specifying in reasonable detail the nature of the breach and the reasons why the breach is incapable of remedy and requiring the **User** within 5 **Business Days** after receipt of such notice to undertake to **The Company** not to repeat the breach.

5.4.2 Grid Code Procedures - Future Compliance

Whenever **The Company** serves a notice on a **User** pursuant to Paragraph 5.4.1, **The Company** and the **User** shall discuss in good faith and without delay the nature of the breach and each shall use all appropriate procedures available to it under the **Grid Code** (including testing rights and the procedures set out in **OC5** (Testing and Monitoring)) in an attempt to establish as quickly as reasonably practicable a mutually acceptable way of ensuring future compliance by the **User** with the relevant provision of the **Grid Code**.

5.4.3 Site Specific Deenergisation

(a) If:

(i) a **User** fails to comply with any valid notice served on it by **The Company** in accordance with

Paragraph 5.4.1(a) or is in breach of any undertaking given in accordance with Paragraph 5.4.1(b) and such breach causes or can be reasonably expected to cause a material adverse effect on the business or condition of **The Company, a Relevant Transmission Licensee** or other **Users** of the **National Electricity Transmission System** or any **User System**; or

(ii) five **Business Days** have elapsed since the date of any valid notice served on the **User** in accordance with Paragraph 5.4.1(b) and no undertaking is given by the **User** in accordance with Paragraph 5.4.1(b);

The Company may:

- (iii) provided **The Company** has first complied with **OC5** Monitoring and Testing if appropriate **Deenergise the User's Equipment**; or
- (iv) provided **The Company** has first complied with **OC5** Monitoring and Testing if appropriate request the owner/operator of the **Distribution System** to which the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is or to which the **User's Customers** are connected to **Deenergise the User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) at the relevant site of connection or such **User's Customers** (as the case may be); or
- (v) in the case of an **Interconnector User** or **Interconnector Error Administrator** request the relevant **Interconnector Owner** to cease or procure the cessation of the transport of power by or on behalf of that **User** across the **Interconnector**,

upon the expiry of at least 48 hours prior written notice to the **User**, provided that at the time of expiry of such notice the breach concerned remains unremedied and that neither party has referred the matter to the **Dispute Resolution Procedure**. In such event **The Company** may:

- (aa) **Deenergise the User's Equipment**, or
- (bb) request the owner of the **Distribution System** to which the **User's Equipment** or equipment for

which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is or to which the **User's Customers** are connected to **Deenergise** the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) at the relevant site of connection or the **User's Customers** (as the case may be), or

- (cc) in the case of an **Interconnector User** or **Interconnector Error Administrator** request the relevant **Interconnector Owner** to cease or to procure the cessation of the transfer of power by or on behalf of that **User** across the **Interconnector**,

forthwith following completion of the **Dispute Resolution Procedure** and final determination of the dispute in **The Company's** favour, subject to **The Company** having given, in the case of **Deenergisation** of an **Embedded Small Power Station**, the relevant **User** not less than 24 hours prior written notice and at the expiry of such notice the breach concerned remaining unremedied.

- (b) If the **User** fails to comply with the **Grid Code** (but subject always to Paragraphs 6.3.3 and 6.3.4 of the **CUSC**) and the **Authority** makes a final order or a confirmed provisional order as set out in sections 25 and 26 of the **Act** against the **User** in respect of such non-compliance which order the **User** breaches **The Company** may in respect of the relevant **Connection Site(s)** or site(s) of connection:

- (i) **Deenergise** the **User's Equipment**, or

- (ii) request the owner of the **Distribution System** to which the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is connected to **Deenergise** the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**),

upon the expiry of at least 48 hours prior written notice to the **User** provided that at the time of expiry of the notice the **User** continues to fail to comply with the order.

5.4.4 Consequence on Transmission Licence and/or the ESO Licence

If a breach of the nature referred to in Paragraph 5.4.1 continues to the extent that it places or seriously threatens to place in the immediate future **The Company** in breach of the **ESO Transmission Licence** and/or places or seriously threatens to place in the immediate future any **Relevant Transmission Licensee** in breach of its transmission licence **The Company** may:

- (a) **Deenergise the User's Equipment**, at the relevant **Connection Site**,
- (b) request the owner of the **Distribution System** to which the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is or to which the **User's Customers** are connected to **Deenergise the User's Equipment** or equipment for which **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) at the relevant site of connection or such **User's Customer** (as the case may be), or
- (c) request the relevant **Interconnector Owner** to cease or procure the cessation of the transport of power by or on behalf of that **User** across the **Interconnector**,

upon the expiry of at least 12 hours, prior written notice to the **User**, provided that at the time of expiry of such notice the breach concerned remains unremedied.

5.4.5 Generic and Site Specific Reenergisation Disputes

- (a) If following any **Deenergisation** or cessation of use of an **Interconnector** pursuant to this Paragraph 5.4 or Paragraph 5.3.2 the relevant **User** applies to **The Company** for the **User's Equipment** to be **Reenergised** or for **The Company** to issue instructions that the **User's Customers** be **Re-energised** or for **The Company** to issue instructions to the owner/operator of the **Distribution System** to which the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is connected that it be **Re-energised** or to the relevant **Interconnector Owner** that transport of power across the **Interconnector** can restart, **The Company** shall notify its consent to the **User's Equipment** being **Re-energised** or transport across the **Interconnector** restarting forthwith upon the breach of the **CUSC** or the relevant **Bilateral Agreement** which give rise to the **De-energisation** either:-

- (i) being remedied; or
- (ii) ceasing to be material; or
- (iii) in the case of a **De-energisation** under 5.4.3 ceasing to be of a nature which can reasonably be expected to cause a material adverse effect on the business or condition of **The Company, a Relevant Transmission Licensee** or other **Users** of the **National Electricity Transmission System**; or
- (iv) in the case of a **De-energisation** under Paragraph 5.4.4 ceasing in **The Company's** opinion to place or seriously threaten to place in the immediate future **The Company** in material breach of the **ESOTransmission Licence** and/or places or seriously threatens to place in the immediate future any **Relevant Transmission Licensee** in material breach of its transmission licence,

and shall forthwith **Re-energise** the **User's Equipment** or issue instructions.

(b) If **The Company** shall refuse to **Re-energise** the **Users Equipment** or to issue instructions that the **User's Customers** be **Reenergised** or to issue instructions to the owner/operator of the **Distribution System** to which the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is connected that it be **Reenergised**, or to the relevant **Interconnector Owner** that transport of power can restart, or if the **User** is offered terms by **The Company** which the **User** does not accept, this shall be recognised as a dispute over the terms for connection and use of system which may be referred by the **User** to the **Authority** for determination under ~~Standard Condition—~~**E13C9** of the **ESOTransmission Licence**. If the **User** accepts any terms offered by **The Company** or determined by the **Authority** **The Company** shall **Reenergise** the **Users Equipment**, or request the owner of the **Distribution System** to which either the **User's Customers** or the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is/are connected to **Reenergise** the same or the relevant **Interconnector Owner** to restart that transport of power, forthwith after any request from the **User** for **The Company** to do so.

5.4.6 Specific Events of Default

Events of Default

5.4.6.1 Any of the following events shall constitute an **Event of Default**:

(a) If the breach which led to any **Deenergisation** pursuant to this Paragraph 5.4 remains unremedied at the expiry of at least 6 months after the date of such **Deenergisation**, **The Company** may declare by notice in writing to the **User** that such breach has become an **Event of Default** provided that:

(i) all disputes arising out of the subject-matter of this Paragraph 5.4 which are referred to the **Dispute Resolution Procedure** have been finally determined in favour of **The Company**; and

(ii) any reference to the **Authority** pursuant to Paragraph 5.4.5(b) hereof has then been finally determined in favour of **The Company** or any terms settled pursuant to such procedure have not been accepted by the **User**.

(b) If any or all of the **Events of Default** in Paragraph 5.3.1 has or have occurred.

Security Event of Default - User Meets The Company Credit Rating

5.4.6.2 In the case where a **User** meets **The Company Credit Rating** on signing a **Bilateral Connection Agreement** any of the following events shall constitute an **Event of Default**:-

(a) If the **User** fails to provide or procure that there is provided to **The Company** within the requisite time any relevant security satisfactory to **The Company** pursuant to Part III of Section 2 or Paragraph 5.4.6.2(c) or Section 14 of the **CUSC**.

(b) If having provided security satisfactory to **The Company** pursuant to Part III of Section 2 and Paragraph 5.4.6.2(c) or Section 14 of the **CUSC**:

(i) the **User** or any shareholder (whether direct or indirect) of the **User** or any other party who may at any time be providing security to **The Company** pursuant to the requirements of the

CUSC (or the relevant **Bilateral Connection Agreement**) takes any action whether by way of proceedings or otherwise designed or calculated to prevent, restrict or interfere with the payment to **The Company** of any amount so secured whether or not there shall be a dispute between the parties;

(ii) any party who may at any time be providing security to **The Company** pursuant to the provisions of the **CUSC** (or the relevant **Bilateral Connection Agreement**) fails to pay to **The Company** any sum demanded pursuant thereto.

- (c) (i) There is a material adverse change in the financial condition of the **User** such as to give **The Company** reasonable grounds for concluding that there is a substantial probability that the **User** will default in the payment of any sums due or to become due to **The Company** within the next following period of 12 months, in terms of or on termination of the relevant **Bilateral Connection Agreements**; or
- (ii) an event of default has occurred under any banking arrangements (as may be more particularly described in the relevant **Bilateral Connection Agreement**) (an event of default being for these purposes anything defined as such in such banking arrangements) put in place by the **User** in connection with a project for which security under this **CUSC** is required by **The Company** and as a result the banks who are party to such banking arrangement have taken steps to declare the principal of the advances under such arrangement immediately due and payable; or
- (iii) any other indebtedness of the **User** for the repayment of borrowed money (in a principal outstanding amount of not less than £1,000,000 (pounds sterling one million) or such greater figure specified in any **Bilateral Connection**

Agreement) has become due and payable prior to the stated date of maturity thereof by reason of any default or breach on the part of the **User** and the amount in question has not been paid by the **User** or re-financed by the **User** within a period of 28 days following the date upon which it was so declared due and payable,

and in any of (i) or (ii) or (iii) the **User** fails, within a period of 7 (seven) days following the date on which **The Company** gives the **User** notice in writing of one or other of the above events occurring to provide **The Company** with such security as **The Company** shall require to cover the **User's** payment obligations to **The Company** arising in the event of or which have arisen prior to termination of the relevant **Bilateral Connection Agreement** and which arise under the **CUSC**. The security to be provided shall be in a form satisfactory to **The Company** in accordance with its then current policy and procedures and in such amount as **The Company** shall specify to the **User** in the aforesaid notice.

Provided that (in relation to Paragraphs (i) or (ii) or (iii) above) if at any time after the putting in place of security under this Paragraph the **User** shall produce to **The Company** evidence to **The Company's** reasonable satisfaction that there is not a substantial probability of the **User** not being able to make payment to **The Company** of such sums within the next following period of twelve (12) months, **The Company** shall not require the **User** to provide the aforesaid security and shall release any such security then in place. This waiver is without prejudice to **The Company's** right to require security at any time thereafter in the event of any of the circumstances set out in Paragraph (i) and/or (ii) and/or (iii) subsequently occurring.

Security Event of Default - User Does Not Meet The Company Credit Rating

5.4.6.3 In the case where a **User** does not meet **The Company Credit Rating** on signing a **Bilateral Connection Agreement** any of the following events shall constitute an **Event of Default**:-

- (a) (i) There is a material adverse change in the financial condition of the **User** such as to give **The Company** reasonable grounds for concluding that there is a

substantial probability that the **User** will default in the payment of any unsecured sums due or to become due to **The Company** within the next period of 12 months, in terms of or on termination of the relevant **Bilateral Connection Agreements**; or

- (ii) an event of default has occurred under any banking arrangements (as may be more particularly described in the relevant **Bilateral Connection Agreement**), (an event of default being for these purposes anything defined as such in such banking arrangements) put in place by the **User** in connection with a project for which security under this **CUSC** is required by **The Company** and as a result the banks who are party to such banking arrangement have taken steps to declare the principal of the advances under such arrangement immediately due and payable; or
- (iii) any other indebtedness of the **User** for the repayment of borrowed money (in a principal outstanding amount of not less than £1,000,000 (pounds sterling one million) or such greater amount specified in any **Bilateral Connection Agreement**) has become due and payable prior to the stated date of maturity thereof by reason of any default or breach on the part of the **User** and the amount in question has not been paid by the **User** or refinanced by the **User** within a period of 28 days following the date upon which it was so declared due and payable.

And in any one of (i) or (ii) or (iii) the **User** fails:-

- (aa) within a period of 14 (fourteen) days following the date on which **The Company** gives notice of such circumstances to provide to **The Company** a cash deposit in a **Bank Account**, a **Performance Bond** or a **Letter of Credit** in favour of **The Company** and **Valid** at least up to the last day of the **Financial Year** in which

the event occurs for such amount representing **The Company's** reasonable estimate of all unsecured sums to become due to **The Company** in the period up to the end of the **Financial Year** in which the event occurs such sum to be specified in the said notice; or

- (bb) to subsequently provide such cash deposit or renew such **Performance Bond** or **Letter of Credit** (or such renewed **Performance Bond** or **Letter of Credit** provided under this paragraph) not less than 45 days prior to its stated expiry date for such amount representing **The Company's** reasonable estimate of the unsecured sums to become due to **The Company** in the next following **Financial Year** valid at least up to the last day of the next following **Financial Year** and to continue the provision of cash deposit, a **Performance Bond** or **Letter of Credit** in a similar manner, to such estimate of unsecured sums.

Provided that regarding any one of (i) or (ii) or (iii) if at any time after the putting in place of security under this Paragraph 5.4.6.3(a) the **User** shall provide to **The Company** evidence to **The Company's** reasonable satisfaction that there is not a substantial probability of the **User** being unable to make payment to **The Company** of any unsecured sums within the next following period of twelve (12) months, **The Company** shall not require the **User** to provide the aforesaid security and shall release any such security then in place. This waiver is without prejudice to **The Company's** right to require security at any time thereafter in the event of any of the circumstances set out in paragraph (i) and/or (ii) and/or (iii) in this Paragraph 5.4.6.3(a) subsequently occurring.

- (b) If the **User** fails to provide or procure that there is provided to **The Company** or at any time fails to maintain or procure that there is maintained in full force and effect the relevant security arrangement required under Part III of Section 2 or Paragraph 5.4.6.3(a) or to renew or revise

such security or to substitute any security with the required replacement security or to maintain or procure that there is maintained in full force and effect any such renewed, revised or substituted security as so required or if the **User** is otherwise in breach of any of its obligations under Paragraph 2.22.

- (c) If the **User** or any shareholder (whether direct or indirect) of the **User** takes any action whether by way of proceedings or otherwise designed or calculated to prevent restrict or interfere with the payment to **The Company** of any amount so secured or seeks or permits or assists others to do so, whether or not there shall be a dispute between the parties.
- (d) If any party who may at any time be providing or holding security in favour of **The Company** pursuant to Part III of Section 2 or Paragraph 5.4.6.3(a) fails to pay **The Company** any sum demanded in any **Notice of Drawing** pursuant thereto.

5.4.7 Specific Event of Default Disconnection

Once **The Company** has given a valid notice of an event of default pursuant to Paragraph 5.4.6 provided that the **Event of Default** is continuing **The Company** may give notice of termination to that **User** whereupon the relevant **Bilateral Agreement** or right to use the system shall terminate and:

- (a) **The Company** shall in relation to such an **Event of Default** of a **User** in relation to a **Connection Site**:
 - (i) **Disconnect** all the **User's Equipment** at the **Connection Site**; and
 - (ii) the **User** concerned shall remove any of the **User's Equipment**:
 - (aa) in the case of **Connection Sites Onshore** within six (6) months of the date of termination or such longer period as may be agreed between the **Relevant Transmission Licensee** and the relevant **User**; or
 - (bb) in the case of **Connection Sites Offshore**, on or adjacent to the **Relevant Transmission Licensee's Offshore Platform** within a period

agreed between the **User** and the **Relevant Transmission Licensee**; and

- (iii) in the case of **Connection Sites Onshore**, **The Company** shall procure that the **Relevant Transmission Licensee** removes, any of the **Transmission Connection Assets** on the land of the **User** concerned within 6 months or such longer period as may be agreed between the **User** and the **Relevant Transmission Licensee**; and,
- (iv) in the case of **Connection Sites Offshore**, **The Company** shall procure that the **Relevant Transmission Licensee** removes any of the **Transmission Connection Assets** on or adjacent to the **User's Offshore Platform** within a period agreed between the **User** and the **Relevant Transmission Licensee**.

Such **User** shall (notwithstanding any longer time for payment which but for such termination the **User** may have for payment pursuant to the **CUSC** or the relevant **Bilateral Agreement**) within 14 days from the date of termination pay to **The Company** all amounts due and owing on the date of such termination and be liable to pay to **The Company Termination Amounts** applicable to the **Connection Site** and, in the case of a **User** in the category of a **Power Station** directly connected to the **National Electricity Transmission System** the **Cancellation Charge**, such payments to be made within 14 days of the date of **The Company's** invoice(s) in respect thereof;

- (b)
 - (i) **The Company** shall request the owner of any **Distribution System** to which the **User** is connected to **Disconnect** all the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) at the site of connection;
 - (ii) **The Company** shall in relation to such an event of default of a **User** acting as a **Supplier** request the owner of the **Distribution System** to which any of that **User's Customer's** are connected to **Disconnect** such **User's Customer's**;
 - (iii) **The Company** shall in relation to such an **Event of Default** of a **User** acting as an **Interconnector User** or **Interconnector Error Administrator** request the relevant

Interconnector Owner to cease or procure the cessation of the transfer of power across the **Interconnector** by or on behalf of that **Interconnector User**; and

the **User** shall be obliged to pay to **The Company** forthwith the **Use of System Charges** due under the **CUSC** or the relevant **Bilateral Agreement** up to the end of the **Financial Year** in which **Termination** occurs and, in the case of a User with **Bilateral Embedded Generation Agreement** the **Cancellation Charge**.

5.5 BALANCING SERVICES USE OF SYSTEM CHARGES: EVENTS OF DEFAULT

5.5.1 Breaches

Notwithstanding any other provisions of this Paragraph 5.5 and/or Paragraph 5.3 of the **CUSC**, in relation to the payment of the **Balancing Services Use of System Charges** the following shall constitute breaches under the **CUSC** and/or the relevant **Bilateral Agreement**:-

- (a) the **User** in question shall fail to provide or maintain or renew in accordance with Paragraph 3.21 or Paragraph 9.22.3 (as appropriate) the requisite amount of **Security Cover**; or
- (b) the **User** shall fail to pay any sum payable by the **User** in respect of **Balancing Services Use of System Charges** to **The Company** within 3 **Business Days** of its due date; or
- (c) an event of default under Paragraph 5.3.1(b) of the **CUSC** has occurred provided always that the final Paragraph of Paragraph 5.3.1(b) of the **CUSC** referring to the provision of guarantees shall not apply.

5.5.2 Events of Default

Forthwith upon the occurrence of any of the breaches specified in Paragraph 5.5.1 then notwithstanding any other provisions of the **CUSC** or of any **Bilateral Agreement** to which the **User** is a party, and in addition to any rights it may have under the terms of the **CUSC**, **The Company** may upon reaching a bona fide conclusion that the reason for the failure by the **User** under Paragraph 5.5.1 is other than an administrative or banking error (having taken into account representations if any of the **User** made within 24 hours after the request therefor is made to the **User** by **The Company**, which request **The Company** shall be

obliged to make) by notice to the **User** declare such breach an event of default.

5.5.3 Deenergisation by User

If **The Company** declares an **Event of Default** under Paragraph 5.5.2 the **User** shall forthwith and in compliance with the instructions of **The Company** or (in the case of any connection to a **User System**) the owner of the **User System** to which the **User's Customers** are connected, **Deenergise** itself and/or its **Customers** or in the case of a **User** acting as an **Interconnector User** or **Interconnector Error Administrator** cease or procure the cessation of the transport of power by or on behalf of that **User** across the **Interconnector** as the case may be.

5.5.4 Deenergisation by The Company/User System Owner

If the **User** shall fail to take such action as is referred to in Paragraph 5.5.3 within 48 hours after the date of any such notice referred to therein **The Company** shall be entitled to:-

(a) request the owner of the **User System** to which the **User's Customers** and/or the **User** are connected, to **Deenergise** the **User's Customers** and/or the **User** (as the case may be) and to use all reasonable endeavours to effect or (as the case may be) give instructions to give effect to such **De-energisation** as quickly as practicable having regard to all the circumstances affecting such **De-energisation** (including any operational difficulties and relevant **Licence** duties); and/or

(b) **Deenergise** the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) at any **Connection Site(s)** which serves only the **User** or a customer of the **User**; and/or

(c) where the **User** is an **Interconnector User** request the relevant **Interconnector Owner** to cease or procure the cessation of the transfer of power by or on behalf of the **User** across the **Interconnector**.

5.5.5 BSUoS Event of Default

5.5.5.1 **The Company** may terminate the relevant **Bilateral Agreement** and all others to which the **User** is a party and revoke the **Use of System Supply Confirmation Notice** and **Use of System Interconnector Confirmation Notice** forthwith by notice to the **User** if:-

(a) **The Company** has given a valid notice of default pursuant to Paragraph 5.5.2; and

(b) such event of default remains unremedied at the expiry of the later of:-

(i) the period of 6 months from the date of such notice; and

(ii) where the **User** disputes bona fide the event of default and has promptly brought and is actively pursuing proceedings against **The Company** to determine the dispute, the date on which the dispute is resolved or determined.

Upon termination pursuant to this Paragraph the **User** shall pay to **The Company** the **Termination Amounts** calculated in accordance with the **Charging Statements** and, in the case of a **User** in the category of a **Power Station** directly connected to the **National Electricity Transmission System** or with a **Bilateral Embedded Generation Agreement**, the **Cancellation Charge** and shall disconnect all the **User's Equipment** at the **Connection Site** and:

aa) the **User** concerned shall remove any of the **User's Equipment**:

(i) in the case of **Connection Sites Onshore** on the **Relevant Transmission Licensee's** land within 6 months of the date of termination or such longer period as may be agreed between the **Relevant Transmission Licensee** and the **User**; or

(ii) in the case of **Connection Sites Offshore**, on or adjacent to the **Relevant Transmission Licensee's Offshore Platform** within a period agreed between the **Relevant Transmission Licensee** and the **User**; and

bb) in the case of **Connection Sites Onshore**, **The Company** shall procure that the **Relevant Transmission Licensee** removes, any of the **Transmission Connection Assets** on the land of the **User** concerned within 6 months or such longer period as may be agreed between the **User** and the **Relevant Transmission Licensee**; and

cc) in the case of **Connection Sites Offshore**, **The Company** shall procure that the **Relevant Transmission Licensee** removes any of the

Transmission Connection Assets on or adjacent to the **User's Offshore Platform** within a period agreed between the **User** and the **Relevant Transmission Licensee**; and

dd) the provisions of Paragraph 5.4.7 shall apply *mutatis mutandis*.

5.5.5.2 The service of a notice under Paragraph 5.5.5.1 and/or the expiry of a notice given under Paragraph 5.6 shall not relieve the **User** of its obligation under Paragraph 3.9.3 or Paragraph 9.10 or any **Bilateral Agreement** to which the **User** is a party to pay any outstanding **Balancing Services Use of System Charges** in respect of any **Settlement Day** which fell prior to the issue or expiry of (as the case may be) such a notice but for which the **Payment Date** fell after the date of the termination of the relevant **Bilateral Agreement** (or use of system not subject to a **Bilateral Agreement**).

5.6 NOTICE TO DISCONNECT

Without prejudice to Paragraph 5.2.2, each **User** shall, as between **The Company** and that **User**, give to **The Company** not less than 6 months written notice of any intention of the **User** to **Disconnect** the **User's Equipment**. In the absence of any specific notice to the contrary, any notice of **Disconnection** shall also be treated as a notice under CUSC Paragraph 6.30.1 decreasing **Transmission Entry Capacity** to zero with effect from the expiry of the period specified in the notice of **Disconnection**

5.7 DISCONNECTION

5.7.1 If notice to **Disconnect** is given by the **User** under Paragraph 5.6 hereof the **User** may upon expiry of the period specified in such notice and not before **Disconnect** the **User's Equipment**. At the expiry of such period the relevant **Bilateral Agreement** shall terminate and the following provisions shall apply.

5.7.2 The **User** shall be liable forthwith on the date the relevant **Bilateral Agreement** so terminates to pay to **The Company**:-

(a) **Connection Charges** and/or **Use of System Charges** to the end of the **Financial Year** in which termination occurs all such charges becoming immediately due and payable upon the termination of the relevant **Bilateral Agreement**; and

(b) **Termination Amounts** applicable to the **Connection Site**; and

(c) where the **User** is in the category of a **Power Station** directly connected to the **National Electricity Transmission**

System or with a Bilateral Embedded Generation Agreement Cancellation Charge,

such payments to be made within 28 (twenty eight) days of the date of **The Company 's** invoice in respect thereof.

5.7.3 Within 6 months of the date of such termination or such longer period as may be agreed between the **Relevant Transmission Licensee** and the **User** in the case of **Connection Sites Onshore**:

- (a) the **User** shall remove any of the **User's Equipment** on the **Relevant Transmission Licensee's** land; and
- (b) **The Company** shall procure that the **Relevant Transmission Licensee** removes, any of the **Transmission Connection Assets** on the land of the **User** concerned.

5.7.4 In the case of **Connection Sites Offshore** within a period agreed between the **Relevant Transmission Licensee** and the **User**:

- (a) the **User** shall remove any of the **User's Equipment** on or adjacent to the **Relevant Transmission Licensee's Offshore Platform**; and
- (b) **The Company** shall procure that the **Relevant Transmission Licensee** removes any of the **Transmission Connection Assets** on or adjacent to the **User's Offshore Platform** .

5.8 Not Used

5.9 NON-EMBEDDED CUSTOMERS

5.9.1 This Paragraph 5.9 provides for additional **Deenergisation** provisions which only apply in relation to **Users** acting in their category of connection and/or use as **Non-Embedded Customers**.

5.9.2 If the following condition ceases to be satisfied in respect of the **Supplier** supplying the **Connection Site The Company** may give written notice of that fact to the **User** and unless within 5 days of receipt of such notice the **User** advises **The Company** that it has contracted with an alternative **Supplier**, **The Company** shall be entitled to **Deenergise** the **Non-Embedded Customer's User's Equipment**:-

“the **Supplier** being authorised by a current **Supply Licence** to supply electricity to the premises to be supplied with electricity through the **Connection Site**.”

5.9.3 If there ceases to be a subsisting right of **Use of System** by a **Supplier** at the **Connection Site** who is liable to **The Company** for **Use of System Charges** in respect of **Demand** attributable to the **Connection Site**, **The Company** shall be entitled to **Deenergise** the **User's Equipment**.

5.9.4 Where:

(a) the **Supplier** is in breach of the **CUSC** relating to the supply to the **Connection Site** and accordingly **The Company** is permitted under the **CUSC** to **Deenergise** the **User's Equipment**; or

(b) an **Event of Default** under Paragraph 5.6 has occurred in relation to the **Supplier** with whom the **User** has a **Supply Agreement** and the relevant event is still continuing or the relevant circumstances still exist,

The Company may **Deenergise** the **User's Equipment** upon the expiry of at least 48 hours prior written notice to the **User** provided that at the time of expiry of such notice the breach concerned remains unremedied or (as the case may be) the reason permitting **Deenergisation** continues or the relevant **Event of Default** is still continuing and neither **The Company** nor the **Supplier** has referred the matter to the **Dispute Resolution Procedure**. In such event, **The Company** may **Deenergise** the **User's Equipment** forthwith following completion of the **Dispute Resolution Procedure** and final determination of the dispute in **The Company's** favour.

5.9.5 If a breach of the nature referred to in Paragraph 5.9.4 continues to the extent that it places or seriously threatens to place in the immediate future **The Company** in breach of the **ESQTransmission Licence** and/or places or seriously threatens to place in the immediate future any **Relevant Transmission Licensee** in breach of its transmission licence, **The Company** may **Deenergise** the **Non-Embedded Customer's Equipment** at the **Connection Site** upon the expiry of at least five (5) **Business Days** prior written notice to the **User**, provided that at the time of expiry of such notice the breach concerned remains unremedied.

5.10 RELEVANT INTERRUPTIONS

5.10.1 In the event of a **Relevant Interruption**, unless 5.10.7 applies, where the **Affected User** has not otherwise received compensation under the **Balancing and Settlement Code** **The Company** shall be liable to pay the **Affected User** upon request the **Interruption Payment** for the **Interruption Period**.

5.10.2 The **Interruption Payment** shall be paid by **The Company** to the **Affected User** within 28 days of the date of agreement as to the amount of the **Interruption Payment**.

5.10.3 The **Affected User** will take all reasonable steps to minimise the effect (and therefore the amount of the **Interruption Payment** sought as a consequence) of the **Relevant Interruption** on the operation of its business.

5.10.4 Subject to 5.10.10, the **Affected User** must request an **Interruption Payment** for a **Relevant Interruption** within 30 days of the end of the **Relevant Interruption** by submitting to **The Company** a completed **Loss of Transmission Access Compensation Claim Form**. No **Interruption Payment** will be payable by **The Company** if the **Interruption Payment** request falls outside this period.

5.10.5 **The Company** shall as soon as reasonably practicable after the end of the **Interruption Period** notify the **Affected User** where the **Relevant Interruption** was in accordance with **Emergency Deenergisation Instruction**.

5.10.6 **The Company** shall confirm to the **Affected User** whether or not an **Interruption** is a **Relevant Interruption** and confirm the **Interruption Payment** value within 60 days of that **Affected User** requesting an **Interruption Payment**, or use reasonable endeavours to agree with the **Affected User** when it shall provide such confirmation.

5.10.7.1 No **Interruption Payment** will be payable by **The Company** if the total agreed value of a claim under this Section 5.10 is less than the **Interruption Payment Threshold** unless the **Interruption Payment** is for a **Relevant Interruption** arising as result of a **Planned Outage**

5.10.7.2 The “**Interruption Payment threshold**” shall be £1, or such amount up to a maximum of £5,000 as may be determined by the **CUSC Modification Panel** from time to time. In the event of the **CUSC Modification Panel** varying the **Interruption Payment Threshold** such revised threshold shall apply from 30 days after such variation being notified to all **Users**.

5.10.8 If an **Affected User** and **The Company** cannot reach agreement under Section 5.10.2 or 5.10.6 the **Dispute Resolution Procedure** shall apply.

5.10.9 **The Company** shall report to the **CUSC Modification Panel** in respect of the claims processed under this Section 5.10, such report to detail the number of claims received, under investigation, validated or rejected in the reporting period. The frequency of the reporting will be decided by the **CUSC Modification Panel** and may be varied from time to time.

5.10.10 In respect of any **Relevant Interruptions** occurring before the date and time of implementation of **CUSC Modification Proposal CMP212**, the **Affected User** must request an **Interruption Payment** for a **Relevant Interruption** within 30 days of the date and time of implementation of **CUSC Modification Proposal CMP212**.

END OF SECTION 5