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**WESSEX POWER NETWORKS PLC**

**and**

**TARTAN ELECTRICITY SUPPLIES LTD**

**\* \* \* \* \***

**AGREEMENT FOR USE OF THE  
ELECTRICITY DISTRIBUTION SYSTEM OF  
WESSEX POWER NETWORKS**

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**Note:** Any of the Relevant Charging Statements defined under Condition 1 of the Agreement, namely:

- the Condition 4A Charging Statement,
- the Condition 14A Charging Statement,
- the Condition 36C Charging Statement, and
- (if in force) the Condition 48 Charging Statement

may be obtained on application to the Company's Use of System Agreement Contract Manager identified at Clause 24.5 of the Agreement, or can be downloaded from the Company's website on [www.wessexpower.com](http://www.wessexpower.com).

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**THIS** AGREEMENT is made the first day (1 January) of 2006:

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**BETWEEN:**

- (1) **Wessex Power Networks plc**, a company incorporated in England and Wales with registered number 123456, whose registered office is at 23 The High Street, Dorchester, in the county of Dorset, England (the **Company**);
- and

- (2) **Tartan Electricity Supplies Ltd**, a company incorporated in Scotland with registered number 654321, whose registered office is at 32 The Low Street, Edinburgh, Scotland (the **User**).

each a **party**, and together the **parties**.

**WHEREAS:**

- (A) The Company is obliged by Condition 4D of its Electricity Distribution Licence to offer to enter into an agreement with the User for the provision of Use of Distribution System in accordance with the requirements set out in that Condition.
- (B) The Company has accordingly agreed to provide Use of Distribution System to the User on the terms and conditions set out in this Agreement.

**THE PARTIES NOW AGREE** as follows:

**1. DEFINITIONS AND INTERPRETATION**

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

<b>Accreditation</b>	means accreditation of any relevant person and certification of that person's business processes by the Accreditation Authority and <b>Accredited</b> and <b>Accrediting</b> shall be construed accordingly.
<b>Accreditation Authority</b>	means the Performance Assurance Board (as defined in the Balancing and Settlement Code, when Accrediting persons pursuant to Section J of the Balancing and Settlement Code).
<b>Act</b>	means the Electricity Act 1989 (as from time to time amended).
<b>Affiliate</b>	in relation to either party means any holding company of that party, any subsidiary of that party or any subsidiary of a holding company of that party, in each case within the meaning of Sections 736, 736A and 736B of the Companies Act 1985.
<b>Authority</b>	means the Gas and Electricity Markets Authority as established by Section 1 of the Utilities Act 2000.
<b>Balancing and Settlement Code</b>	means the Balancing and Settlement Code dated 14 August 2000, including all Party Service Lines and BSC Procedures (as therein defined) made under it, as modified from time to time.
<b>BSC</b>	means the Balancing and Settlement Code.

<b>CMRS</b>	means the Central Meter Registration Service as defined in the Balancing and Settlement Code.	Deleted: "..." Deleted: ; Deleted: "..."	... [1] ... [2]
<b>Competent Authority</b>	means the Secretary of State, the Authority, and any local or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of the government of the United Kingdom or of the European Union.	Deleted: ; Deleted: "Condition 14A Charging Statement"	... [3]
		Deleted: "Condition 4A Charging Statement"	... [4]
		Deleted: "Condition 36C Charging Statement"	... [5]
<b>Connection Agreement</b>	means an agreement between the Company and any Customer which provides that the Customer has the right for that Customer's Installation to be and remain directly or indirectly connected to the Distribution System.	Deleted: "Condition 48 Charging Statement"	... [6]
		Deleted: "..."	... [7]
		Deleted: ;	
<b>Contract</b>	means a Supply Contract or Power Purchase Contract.	Deleted: "..."	... [8]
<b>Contract Manager</b>	has the meaning given to that term in Clause 24.6.1.	Deleted: "..."	... [9]
<b>Cover</b>	has the meaning given to that term in Schedule 1.	Deleted: "..."	... [10]
<b>Connection and Use of System Code</b>	means the Connection and Use of System Code (and the CUSC Framework Agreement by which such code is made binding) established pursuant to Condition C7F of NGET's Transmission Licence (as modified from time to time).	Deleted: "... (CUSC)"	... [11]
		Deleted: ;	
<b>CUSC</b>	means the Connection and Use of System Code.		
<b>CUSC Framework Agreement</b>	means the agreement of that title, in the form approved by the Secretary of State, by which the CUSC is made contractually binding between the parties to that agreement, as amended from time to time with the approval of the Secretary of State.	Deleted: "..."	... [12]
		Deleted: ;	
<b>Customer</b>	means a Demand Customer or a Generator.	Deleted: "..."	... [13]
<b>Customer's Installation</b>	means any structures, equipment, lines, appliances or devices used or to be used by a Customer and connected or to be connected directly or indirectly to the Distribution System.	Deleted: "..."	... [14]
		Deleted: ;	
<b>Daily Statement</b>	means a statement based on the Supercustomer DUoS Report and providing the data items set out in Data Transfer Catalogue D0242 as amended from time to time in accordance with the provisions of the Master Registration Agreement.	Deleted: "..."	... [15]
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		Deleted: "..."	... [16]
<b>Data Aggregator</b>	has the meaning given to that term in the Balancing and Settlement Code.	Deleted: ;	
		Deleted: "..."	... [17]
<b>Data Collector</b>	means a person appointed to provide data retrieval and/or data processing services (the terms <b>data retrieval</b> and <b>data processing</b> being defined in paragraph 11 of Condition 36A of the Electricity Distribution Licence).	Deleted: ;	
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<b>Data Protection Act</b>	means the Data Protection Act 1998.	Deleted: "...";	... [19]
<b>Data Transfer Catalogue</b>	means the catalogue of data flows, data definitions and data formats as annexed to the Master Registration Agreement.	Deleted: "..."	... [20]
		Deleted: "..."	... [21]
<b>Data Transfer Network</b>	means the electronic network provided as part of the Data Transfer Service.	Deleted: ;	
		Deleted: "..."	... [22]
<b>Data Transfer Service</b>	means the service to be provided by the Data Transfer Service Controller and described in Condition 38 of the Electricity Distribution Licence.	Deleted: ;	
		Deleted: "..."	... [23]
		Deleted: ;	



<b>Distribution Business</b>	has the meaning given to that term in the Electricity Distribution Licence.	Deleted: "... [24]
<b>Distribution Code</b>	means the distribution code established pursuant to Condition 9 of the Electricity Distribution Licence.	Deleted: ; [25]
<b>Distribution Services Area</b>	has the meaning given to the term <b>distribution services area</b> in paragraph 5(b) of Condition 2 of the Electricity Distribution Licence.	Deleted: "... [26]
<b>Distribution System</b>	means the Company's distribution system (such system having the same meaning given to that term in the Electricity Distribution Licence).	Deleted: " [27]
<b>Electricity Distribution Licence</b>	means a distribution licence granted <b>or treated as granted</b> to the Company pursuant to Section 6(1)(c) of the Act.	Formatted: Font: Bold [28]
<b>Electricity Supply Licence</b>	means a supply licence granted <b>or treated as granted</b> to the User pursuant to Section 6(1)(d) of the Act.	Deleted: "... [29]
<b>Enabling Agreement</b>	means an agreement for the provision of Exempt Supply Services.	Deleted: "... [30]
<b>Energise</b>	means, in relation to any Metering Point or Metering System, deliberately to allow the flow of electricity:	Deleted: "... [31]
	(a) in the case an Exit Point, from the Distribution System through the relevant Exit Point (or, in the case of an Unmetered Supply, any one or more of the relevant Exit Points) to; and/or	Deleted: "... [32]
	(b) in the case of an Entry Point, via the Distribution System through the relevant Entry Point (or, in the case of an Unmetered Supply, one or more of the relevant Entry Points) from,	Deleted: "... [33]
	a Customer's Installation where such a flow of electricity has never previously existed.	Deleted: "... [34]
<b>Energisation Works</b>	means the movement of any switch or the addition of any fuse or meter to Energise a Metering Point or Metering System.	Deleted: "... [35]
<b>Entry Point</b>	means a point of connection at which electricity is exported onto the Distribution System from a Generator's Installation or a User's Installation or <b>from</b> the distribution system of another person.	Deleted: ; [36]
		Deleted: "ESPR" [37]
<b>Equivalent Meter</b>	means an equivalent half-hourly meter as defined by the Unmetered Supplies Procedure.	Deleted: "... [38]
<b>ESPR</b>	means the Electricity (Standards of Performance) Regulations 2005 (SI 2005/1019) as amended or re-enacted from time to time.	Deleted: "... [39]
<b>Exempt Supplier</b>	means a person who is authorised to supply electricity by an exemption granted under Section 5 of the Act.	Deleted: ; [40]
<b>Exempt Supply Services</b>	means exempt supply services as defined in Condition 51 of the Electricity Supply Licence.	Deleted: "... [41]
<b>Exit Point</b>	means a point of connection at which electricity is imported from the Distribution System to a Demand Customer's Installation or User's Installation or the distribution system of another person.	Deleted: ; [42]
<b>Extra-Settlement Determination</b>	has the meaning given to that term in the Balancing and Settlement Code.	Deleted: "... [43]
		Deleted: ; [44]

<b>Force Majeure</b>	means any event or circumstance which is beyond the reasonable control of either party and which results in or causes the failure of that party to perform any of its obligations under this Agreement, including act of God, strike, lockout or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, explosion, fault or failure of plant or machinery which (in each case) could not have been prevented by Good Industry Practice, governmental restraint, Act of Parliament, other legislation, bylaw and Directive (not being any order, regulation or direction under Section 32, 34 or 35 of the Act), or the failure of any generator or NGET to deliver electricity to the Company or any deficiency in such delivery to the extent that such failure or deficiency or the consequences thereof could not have been prevented by Good Industry Practice by the Company: provided that lack of funds shall not be interpreted as a cause beyond that party's reasonable control.	Deleted: "..." ... [45]
<b>Gateway</b>	has the meaning given to that term in the Data Transfer Service Agreement.	Deleted: '...'; ... [46]
<b>Generator</b>	means a person who generates or proposes to generate electricity for the purpose of supplying consumers of electricity via the Distribution System and who may from time to time be supplied with electricity by the User (or another electricity supplier) through an Exit Point.	Deleted: "..." ... [47]
<b>Good Industry Practice</b>	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.	Deleted: ; Deleted: "..." Page Break ... [48]
<b>Grid Code</b>	has the meaning given to that term in NGET's Transmission Licence.	Deleted: ; Deleted: "..." ... [50]
<b>Implementation Scheme</b>	has the meaning given to that term in the Balancing and Settlement Code.	Deleted: "..." ... [51]
<b>Initial Account</b>	has the meaning given to that term in Clause 7.3.	Deleted: ; Deleted: "..." ... [52]
<b>Initial Settlement Run</b>	has the meaning given to that term in the Balancing and Settlement Code.	Deleted: "..." ... [53]
<b>Interim Information Settlement Run</b>	has the meaning given to that term in the Balancing and Settlement Code.	Deleted: ; Deleted: "..." ... [54]
<b>Invoice Date</b>	means a date on which an account (including an Initial Account or Reconciliation Account) is produced by the Company pursuant to this Agreement.	Deleted: "..." ... [55]
<b>kVA</b>	means kilovoltamperes.	Deleted: M...; ... [56]
<b>kVAr</b>	means kilovoltamperes reactive.	Deleted: "..." ... [57]
<b>kVArh</b>	means kilovoltampere hours reactive.	Deleted: "..." ... [58]
<b>kW</b>	means kilowatt.	Deleted: "..." ... [59]
<b>kWh</b>	means kilowatt hours.	Deleted: "..." ... [60]
<b>Late Payment Notice</b>	has the meaning given to that term in Clause 8B.1.	Deleted: "..." ... [61]
<b>Line Loss Factor</b>	has the meaning given to that term in the Balancing and Settlement Code.	Deleted: "..." ... [62]
<b>Line Loss Factor Class</b>	has the meaning given to that term in the Balancing and Settlement Code.	Deleted: ; Deleted: "..." ... [63]
		Deleted: ; Deleted: "..." ... [64]



<b>Market Domain I.D.</b>	has the meaning given to that term in the Data Transfer Service Agreement	Deleted: "... [65] Deleted: ;
<b>Master Registration Agreement</b>	means the agreement of that name dated 1 June 1998 as modified from time to time	Deleted: "... [66] Deleted: ;
<b>Maximum Export Capacity</b>	means the maximum amount of electricity, as agreed with the Company, expressed in kilowatts or kilovoltamperes which is generated by a Generator and exported onto the Distribution System via an Entry Point	Deleted: "... [67] Deleted: ;
<b>Maximum Import Capacity</b>	means the maximum amount of electricity, as agreed with the Company, expressed in kilowatts or kilovoltamperes which is requested by the relevant Customer to be imported from the Distribution System via an Exit Point	Deleted: "... [68] Deleted: ;
<b>Meter Administrator</b>	means a duly Accredited person appointed by the User to administer an Equivalent Meter pursuant to the Unmetered Supplies Procedure	Deleted: "... [69] Deleted: ;
<b>Meter Operation Services Agreement</b>	means any agreement between the Company in its capacity as Meter Operator and the User for the provision of meter operation services to be provided by the Meter Operator	Deleted: "... [70] Deleted: ;
<b>Meter Operator</b>	means a person appointed by the User, or where applicable the Customer, to provide the services described in paragraph 3 of Condition 36 of the Electricity Distribution Licence in relation to the relevant Metering Point and Accredited by the Accreditation Authority or deemed to be Accredited pursuant to the terms of the Implementation Scheme and where appropriate the Meter Operator Agent (as defined in the Balancing and Settlement Code)	Deleted: "... [71] Deleted: ;
<b>Meter Operator Code of Practice</b>	means Schedule 2 of the Meter Operator Code of Practice Agreement as amended from time to time	Deleted: "... [72] Deleted: ;
<b>Meter Operator Code of Practice Agreement</b>	means the agreement of that name dated 8 September 1998, as amended from time to time	Deleted: "... [73] Deleted: ;
<b>Metering Point</b>	means the point, determined according to the principles and guidance given at Schedule 9 of the Master Registration Agreement, at which a supply to (export) or from (import) a Distribution System: <ul style="list-style-type: none"> <li>(a) is or is intended to be measured; or</li> <li>(b) where metering equipment has been removed, was or was intended to be measured; or</li> <li>(c) in the case of an Unmetered Supply under the Unmetered Supplies Procedure, is deemed to be measured,</li> </ul> where in each case such measurement is for the purposes of ascertaining the User's liabilities under the Balancing and Settlement Code	Deleted: "... [74] Deleted: ;
<b>Metering System</b>	means a metering system registered in CMRS in accordance with the provisions of the BSC	Deleted: "... [75] Deleted: ;
<b>MPAS</b>	has the meaning given to that term in the Master Registration Agreement	Deleted: "... [76] Deleted: ;
<b>MPAS Provider</b>	means the Company in its capacity as the person who provides the services described in Condition 14 of the Electricity Distribution Licence	Deleted: "... [77] Deleted: ;
<b>NGET</b>	means National Grid Electricity Transmission plc (being the company with the registered number 02366977)	Deleted: "... [78] Deleted: a...; [79]

**NGET's Transmission Licence**

means the licence granted or treated as granted under Section 6(1)(b) of the Act to NGET as amended from time to time.

**Operational Metering Equipment**

means metering equipment suitable to provide the Company with such data as it requires for use of system or operational purposes.

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**Payment Default**

has the meaning given to that term in Clause 8B.1.

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**Post-Final Settlement Run**

has the meaning given to that term in the Balancing and Settlement Code.

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**Power Purchase Contract**

means a contract between the User and a Generator for the purchase by the User of electricity generated by such Generator and (if agreed in such contract) the sale of electricity to the Generator by the User.

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**Prescribed Period**

has the meaning given to that term in regulation 3 of the ESPR.

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**Prescribed Sum**

has the meaning given to that term in regulation 3 of the ESPR.

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**Profile Class**

has the meaning given to that term in the Balancing and Settlement Code.

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**Quarter**

means the period of three months commencing on 1 January, 1 April, 1 July and 1 October in each year.

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**Radio Teleswitch Agreement**

means the agreement of that name dated 1 April 2001 as amended from time to time and detailing the rights and obligations of, among others, the Company and the User in relation to the use of radio teleswitches.

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Deleted: [28 September 1999][...] ...; [89]

**Reconciliation Account**

has the meaning given to that term in Clause 7.4.

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**Reconciliation Run**

has the meaning given to the term "Reconciliation Settlement Run" in the Balancing and Settlement Code.

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**Re-energise**

means, in relation to any Metering Point or Metering System, deliberately to allow the flow of electricity:

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(a) in the case an Exit Point, from the Distribution System through the relevant Exit Point (or, in the case of an Unmetered Supply, any one or more of the relevant Exit Points) to; and/or

(b) in the case of an Entry Point, to the Distribution System through the relevant Entry Point (or, in the case of an unmetered supply, any one or more of the relevant Entry Points) from,

a Customer's Installation where such flow of electricity was previously prevented by De-energisation Works.

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**Re-energisation Works**

means the movement of any switch, the replacement of any fuse or meter, or the taking of any other step to Re-energise a Metering Point or Metering System.

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**Registration Notice**

means a notice sent to the MPAS Provider by either the User or the Company, as the case may be, instructing the MPAS Provider to change the status of a Metering Point in the way set out in the notice.

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**Regulations**

means the Electricity Safety, Quality and Continuity Regulations 2002 (SI 2002/2665) as amended or re-enacted from time to time.

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**Related Undertaking**

in relation to either party means any undertaking in which that party has a participating interest as defined in Section 260 of the Companies Act 1985.

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### **Relevant Charging Statement**

means, as the case may require, any of the following:

- (a) the statement prepared by the Company in relation to charges for use of system for the time being in force pursuant to Condition 4A of the Electricity Distribution Licence;
- (b) the statement prepared by the Company in relation to charges for the provision of MPAS for the time being in force pursuant to Condition 14A of the Electricity Distribution Licence;
- (c) the statement prepared by the Company in relation to charges for basic metering services and data services (each as respectively defined in the Electricity Distribution Licence) for the time being in force pursuant to Condition 36C of the Electricity Distribution Licence; and
- (d) the statement prepared by the Company and for the time being in force pursuant to Condition 48 of the Electricity Distribution Licence in relation to charges in respect of losses incurred by a supplier in complying with a last resort supply direction (as described in the Electricity Distribution Licence).

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### **Relevant Exempt Supplier**

means an Exempt Supplier which has entered into an Enabling Agreement with the User in respect of supplies of electricity to Customers of that Exempt Supplier.

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### **Relevant Instruments**

means:

- (a) the Act and all subordinate legislation made under it as amended from time to time;
- (b) the Data Protection Act and all subordinate legislation made under it as amended from time to time;
- (c) the Electricity Distribution Licence and the Electricity Supply Licence, and any determination, direction, consent or notice made or issued by the Authority pursuant to the terms thereof;
- (d) the Data Transfer Service Agreement;
- (e) the Master Registration Agreement;
- (f) the Connection and Use of System Code; and
- (g) the Balancing and Settlement Code,

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and, whether under any of the foregoing or otherwise, all authorisations, approvals, licences, exemptions, filings, registrations, notarisations, consents and other matters which are required, or which the Company acting in accordance with Good Industry Practice would obtain, in connection with the provision of the services under this Agreement, of or from any Competent Authority.

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### **Revenue Protection Code of Practice**

means the code of practice of that name, detailing the rights and obligations of, among others, the Company and the User in relation to the prevention of meter interference and other forms of illegal abstraction of electricity, as amended from time to time in accordance with its terms.

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### **Secretary of State**

has the meaning given to that expression in the Interpretation Act 1978.

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### **Security and Safety of Supplies Statement**

means the statement prepared by the Company in relation to security and safety of supplies for the time being in force pursuant to Condition 6 of the Electricity Distribution Licence.

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<b>Settlement</b>	has the meaning given to that term in the Balancing and Settlement Code	Deleted: "... [97]
<b>Settlement Class</b>	has the meaning given to that term in the Balancing and Settlement Code	Deleted: ;
<b>Settlement Day</b>	has the meaning given to that term in the Balancing and Settlement Code	Deleted: "... [98]
<b>Settlement Run</b>	means, as appropriate, an Initial Settlement Run, Reconciliation Settlement Run, or Interim Information Settlement Run	Deleted: ;
<b>Settlement Administration Agent</b>	has the meaning given to that term in the Balancing and Settlement Code	Deleted: "... [99]
<b>Standard Settlement Configuration</b>	has the meaning given to that term in the Balancing and Settlement Code	Deleted: ;
<b>Supercustomer DUoS Report</b>	means a report of profiled data by Settlement Class providing the data items set out in Data Transfer Catalogue D0030 (as amended from time to time in accordance with the provisions of the Master Registration Agreement)	Deleted: "... [100]
<b>Supplier Volume Allocation Agent</b>	has the meaning given to that term in the Balancing and Settlement Code	Deleted: M... [101]
<b>Supply Business</b>	has the meaning given to that term in the Electricity Supply Licence	Deleted: "... [102]
<b>Supply Contract</b>	means a contract (whether oral, in writing or deemed) between the User or any Relevant Exempt Supplier and a Demand Customer for a supply of electricity to such Demand Customer through an Exit Point	Deleted: ;
<b>Supply Number</b>	has the meaning given to that term in the Master Registration Agreement	Deleted: "... [103]
<b>SVAA</b>	means the Supplier Volume Allocation Agent	Deleted: ;
<b>System Outage</b>	means in relation to the Distribution System a planned or unplanned interruption to the flow of electricity through the whole or part of the Distribution System implemented by or on behalf of the Company for safety or system security reasons or to enable the Company to inspect or effect alterations, maintenance, repairs or additions to any part of the Distribution System	Deleted: "... or "SV... [105]
<b>Transactional Charges</b>	has the meaning given to that term in Clause 8A.1	Deleted: ;
<b>Unit</b>	means kilowatt hour	Deleted: "... [106]
<b>Unit Rate</b>	means a charge in pence and/or pound(s) applied to a Unit	Deleted: "... [107]
<b>Unmetered Connection Agreement</b>	means a Connection Agreement relating to an Unmetered Supply which regulates (amongst other things) the preparation and keeping up-to-date of an inventory of the Customer's Installation	Deleted: ;
<b>Unmetered Supplies Certificate</b>	means a certificate issued by the Company in its sole discretion to a Customer under the Unmetered Supplies Procedure which states (amongst other things) the Supply Numbers of the Metering Points by reference to which the Company has authorised the Customer to receive Unmetered Supplies	Deleted: "... [108]
<b>Unmetered Supplies Procedure</b>	means Section S of the Balancing and Settlement Code and BSC Procedure BSCP 520 established under the Balancing and Settlement Code and any replacement or substitute BSC Procedure from time to time in force	Deleted: "... [109]
		Deleted: ;
		Deleted: "NGET's Transmission Licence" [110]
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**Unmetered Supply** means a supply of electricity the quantity of which the Company through the issue of a relevant Unmetered Supplies Certificate has authorised not to be measured by physical metering equipment.

**Use of Distribution System** means the use of the Distribution System for the passing of electricity into the Distribution System and for the conveyance of such electricity by the Company through the Distribution System to Exit Points or from Entry Points.

**Use of System Charges** has the meaning given to that term in Clause 6.1.1 (and, for the avoidance of doubt, such charges may include Transactional Charges).

**User's Installation** means structures, equipment, lines, appliances or devices connected or to be connected to the Distribution System at any Exit Point or Entry Point used or to be used by the User in connection with this Agreement.

**Value Added Tax** has the meaning given to that term in the Value Added Tax Act 1994 and any tax of a similar nature which may be substituted for or levied in addition to it.

**Working Day** has the meaning given to that term in Section 64 of the Act.

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

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- 1.2.1 “person” includes a reference to a body corporate, association or partnership;
- 1.2.2 the singular shall include the plural and vice versa;
- 1.2.3 this “Agreement” shall mean this Agreement and the schedules;
- 1.2.4 a Clause or Schedule is a reference to a clause of or schedule to this Agreement;
- 1.2.5 writing includes all methods of reproducing words in a legible and non-transitory form;
- 1.2.6 a charging period is, subject to any contrary indication, a reference to the period specified in the Relevant Charging Statement (or, if no period is specified therein, a calendar month); and
- 1.2.7 a term that is stated to have “the meaning given to that term in the Balancing and Settlement Code” is, where the Balancing and Settlement Code contains more than one definition of that term, a reference to the meaning given to that term in Annex X-1 of the Balancing and Settlement Code.

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1.3 The headings in this Agreement are for ease of reference only and shall not affect its interpretation.

1.4 In this Agreement, references to “include” or “including” are to be construed without limitation to the generality of the preceding words.

## 2. CONDITIONS PRECEDENT

- 2.1 The provisions of Clauses 4, 6, 7, 8, 10 and 12 to 16 inclusive of this Agreement are conditional upon each of the following conditions precedent being fulfilled:
- 2.1.1 the User holding an Electricity Supply Licence or being exempt from the requirement to hold such a licence pursuant to Section 5 of the Act;
  - 2.1.2 the Company holding an Electricity Distribution Licence;
  - 2.1.3 both parties being a party to the Connection and Use of System Code and any necessary supplemental agreement pursuant to it;
  - 2.1.4 both parties being a party to the Balancing and Settlement Code;
  - 2.1.5 there being in full force and effect as between the parties the Master Registration Agreement and the Data Transfer Service Agreement, such agreements being unconditional save for any conditions that this Agreement becomes unconditional; and
  - 2.1.6 the provision by the User of any Cover that may be required by the Company in accordance with Schedule 1.
- 2.2 If the conditions precedent set out in Clause 2.1 are not fulfilled at the date hereof, each party shall take all appropriate steps within its power to procure the fulfilment of those conditions relating to it which have not already been fulfilled.
- 2.3 Once each of the conditions precedent in Clause 2.1 has been fulfilled, each party shall take all appropriate steps within its power to keep such conditions precedent relating to it fulfilled throughout the term of this Agreement.
- 2.4 If any of the conditions precedent set out in Clause 2.1 has not been fulfilled or waived within three months of the execution of this Agreement, then, subject to any accrued rights and obligations of either party (including any claim that either party may have pursuant to the provisions of Clause 2.2 or 2.3), this Agreement shall automatically terminate.

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## 3. CONTRACTS WITH CUSTOMERS

- 3.1 The User shall ensure that, on each occasion on which it or any Relevant Exempt Supplier enters into a Contract (whether written, oral, or deemed), the terms set out in Schedule 2, or other terms having the same effect as those terms, are presented within that Contract in the same manner and with the same prominence as the other terms of the Contract, and shall on request provide the Company with accurate and complete copies of the User's then current Contract.
- 3.2 The User shall not (and shall procure that any agent of the User shall not):
- 3.2.1 pledge the credit of the Company in any way;
  - 3.2.2 make or give any representation or warranty in relation to the Company unless the representation or warranty itself has been expressly approved in writing by the Company; and
  - 3.2.3 agree or purport to agree to any obligations on the Company.
- 3.3 The User shall indemnify the Company against all actions, proceedings, costs, demands, claims, expenses, liability, loss or damage arising from, or incurred by the Company as a consequence of, the User or any other Relevant Exempt Supplier failing to comply with Clause 3.1 or 3.2. Where the User or any other Relevant Exempt Supplier does not on the Company's reasonable request, in the context of an actual or threatened dispute, difference or disagreement with the relevant Customer, provide sufficient evidence to establish in any such case that the terms set out in Schedule 2 (or other terms having the same effect as those terms) were incorporated into the relevant Contract in accordance with Clause 3.1, then the User shall indemnify the Company as if no such terms had been incorporated into the relevant Contract. Where such records are released to the Company, they shall be subject to the Company's obligations of confidentiality under Clause 20.

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- 3.4 The User shall not make or permit any variation of the terms in Schedule 2 to take effect without the prior written consent of the Company. In the event that the User makes or permits any such variation, Clause 3.3 shall apply to the terms as if the terms set out in Schedule 2 had not been incorporated into the Contract. Deleted: Deleted:
- 3.5 Where the User or any Relevant Exempt Supplier has incorporated the terms set out in Schedule 2 into the Contract and the Company intends to negotiate non-standard terms to apply in respect of the connection in addition to or in substitution for the terms in Schedule 2 incorporated into that Contract, the Company shall notify the User of the non-standard terms as soon as they have been agreed to apply in respect of that connection. Deleted: Supply
- 3.6 Where non-standard terms are agreed, the Company shall notify the User as soon as is reasonably practicable of any non-standard terms which affect the Use of System Charges payable in respect of that Customer.
- 3.7 Subject to Clause 3.8, the User shall on request and as soon as is reasonably practicable make any variation to the terms of any Contract that the Company reasonably requires in connection with the distribution of electricity in accordance with the provisions of the relevant Contract and subject only to the obligations of the User to comply with the Relevant Instruments. Deleted:
- 3.8 Where any dispute arises under Clause 3.7, either party shall be entitled to refer the matter to the Authority as if it were a dispute falling within Condition 4E of the Electricity Distribution Licence.

## 4. USE OF SYSTEM

- 4.1 Subject to the terms of this Agreement, the Company shall convey electricity through the Distribution System to each Exit Point and from each Entry Point relating to a Metering Point or Metering Points registered to the User under the Master Registration Agreement, subject to any arrangements made between the respective Customers and the Company and the requirements (if any) of the respective Customers agreed between such Customers and the Company up to the Maximum Capacity (if any), and subject to such variations (if any) as may be permitted by the Regulations.
- 4.2 The obligation of the Company to convey electricity to a particular Exit Point or from a particular Entry Point pursuant to Clause 4.1 is in each case subject to:
- 4.2.1 there being a Connection Agreement in full force and effect relating to the connection of the relevant Customer's Installation or that the terms in Schedule 2, or other terms having the same effect as those terms, have been incorporated into the relevant Contract;
- 4.2.2 the Company receiving confirmation that a Meter Operator, Data Collector and Data Aggregator, which in each case has been Accredited, have been appointed for each Metering Point relating to Customers to be supplied through such Exit Point or Entry Point (except that no Meter Operator is required to be appointed in relation to an Unmetered Supply) ;
- 4.2.3 subject to Clause 12.9, the Company receiving confirmation that metering equipment has been installed in accordance with Clause 12;
- 4.2.4 where applicable, the Company receiving confirmation that the User has given notice of that Exit Point or Entry Point (as the case may be) to NGET pursuant to the Connection and Use of System Code and the Grid Code (where appropriate); and Deleted: NGC
- 4.2.5 the Company not being entitled under Schedule 6 of the Act to De-energise an Exit Point or Entry Point.
- 4.3 In addition to the conditions set out in Clause 4.2, the obligation of the Company to convey electricity to an Exit Point is also subject to: Deleted:
- 4.3.1 the User being validly registered under the Master Registration Agreement in respect of each Metering Point relating to Demand Customers to be supplied by the User through such Exit Point;
- 4.3.2 the User being authorised by its Electricity Supply Licence to supply electricity to each of the premises to be supplied with electricity through such Exit Point;



4.3.3 where the User intends to ~~provide~~ any Unmetered Supply to a Demand Customer, there being in full force and effect in relation to each relevant Exit Point an Unmetered Supplies Certificate and an Unmetered Demand Connection Agreement;

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4.3.4 where the User intends to ~~provide~~ an Unmetered Supply to a Demand Customer which is to be submitted to Settlement on the basis of half-hourly data generated by an Equivalent Meter, a Meter Administrator having been and remaining appointed by the User; and

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4.3.5 the User being party to agreements with the Company or a third party for ~~provision of the services of~~ (i) ~~basic~~ meter asset provision and (ii) ~~basic~~ meter operation, ~~(within the meaning given to those terms in Condition 36 of the Electricity Distribution Licence)~~. In the event that the User is not a party to such agreements, the Company shall be entitled to provide such services and to pass on ~~to and recover from the User~~ the costs of so doing.

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4.4 In addition to the conditions set out in Clause 4.2, the obligation of the Company to convey electricity from an Entry Point is also subject to:

4.4.1 the User being validly registered under the Master Registration Agreement in respect of each Metering Point that is an Entry Point; and

4.4.2 where the Metering Point is also an Exit Point, the User or another supplier being validly registered under the Master Registration Agreement for the supply of electricity at such Entry Point.

## 5. COMMENCEMENT AND DURATION

5.1 Subject to Clause 2, and to Clause 5.2, this Agreement shall take effect on the date hereof and shall continue in force until terminated in accordance with the provisions of Clause 18.

5.2 From the date hereof, the Company shall provide, and the User shall be entitled to receive, Use of Distribution System only insofar as it relates to:

5.2.1 supplies of electricity to premises permitted pursuant to the Electricity Supply Licence ~~or by virtue of an exemption from the requirement to hold such licence pursuant to Section 5 of the Act~~; or

5.2.2 the distribution of electricity exported onto the Distribution System at Entry Points.

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## 6. CHARGES

6.1 The User shall pay to the Company in respect of ~~services provided under this Agreement the charges set out in the Relevant Charging Statement~~. The Company may vary such charges at any time by giving at least 40 days' written notice to the User. Such charges and any variations are and will be calculated in accordance with the ~~provisions of the Relevant Charging Statement~~. The charges to which this Clause 6.1 refers shall be deemed to include:

6.1.1 charges for the Use of Distribution System (~~Use of System Charges~~) provided by the Company to the User under this Agreement ~~pursuant to Condition 4A and, where applicable, Condition 48 of the Electricity Distribution Licence~~;

6.1.2 charges for certain ~~ancillary~~ services provided by the Company to the User pursuant to:

(A) the BSC and the CUSC;

(B) the Master Registration Agreement; and

(C) ~~Conditions 14, 36 and 36A of the Electricity Distribution Licence; and~~



6.1.3	charges <del>for other services provided under this Agreement</del>	<b>Deleted:</b> that the Company is required to make pursuant to Condition 48.
6.2	On any occasion upon which the charges payable by the User under this Agreement have not been calculated strictly in accordance with the <del>provisions of the Relevant</del> Charging Statement, an appropriate adjustment shall be made by the Company and submitted to the User.	<b>Deleted:</b> Condition 4A
	Where:	<b>Deleted:</b> the Condition 14A Charging Statement and/or Condition 36C Charging Statement, and/or the Condition 48 Charging Statement of the Electricity Distribution Licence,
	(A) the adjustment discloses an overcharge, the Company shall repay to the User the amount by which the User has been overcharged together with interest thereon from the due date of the invoice containing the overcharge until the date of repayment. Such interest shall accrue from day to day at the base lending rate during such period of Barclays Bank plc, compounded annually; or	
	(B) the adjustment discloses an undercharge, the User shall pay to the Company the amount by which the User has been undercharged together with interest thereon from the due date of the invoice which should have included the amount of the undercharge until the date of payment. Such interest shall accrue from day to day at the base lending rate during such period of Barclays Bank plc, compounded annually.	
	Where the User disputes the adjustment, the parties shall attempt to resolve the dispute in good faith. Where the dispute remains unresolved after 20 Working Days, either party may refer the dispute to arbitration in accordance with Clause 22 and the parties agree to pay the amount payable or repayable (if any) as determined thereby.	
6.3	The Company shall invoice Use of System Charges (but excluding <del>any Transactional Charges</del> ) by reference to Settlement Class using aggregated data obtained from the Supercustomer DUoS Report except in relation to those Metering Points registered to the User under the Master Registration Agreement where:	<b>Deleted:</b> any charges calculated by reference to number or frequency of specific transactions)
6.3.1	the electricity imported via an Exit Point or exported via an Entry Point is measured by Half-Hourly Metering Equipment (as defined in Annex X-1 of the Balancing and Settlement Code) <del>or by an Equivalent Meter</del> for the purposes of Settlement; and/or	
6.3.2	the Use of System Charge is not comprised solely of one or more standing charge(s) and/or one or more Unit Rate(s); and/or	
6.3.3	the Use of System Charge is specified <del>the Relevant Charging Statement</del> as not being billed by Settlement Class; or	<b>Deleted:</b> in Schedule 3
6.3.4	<del>Use of System Charges</del> are to be determined as a result of an Extra-Settlement Determination.	<b>Deleted:</b> where
6.4	All <del>charges</del> payable by the User pursuant to this Clause 6 and Clauses <del>7, 8 and 8A</del> :	<b>Deleted:</b> Use of System Charges
6.4.1	are exclusive of Value Added Tax and the Company may add to such amounts and the User shall pay Value Added Tax (if any) at the rate applicable thereto from time to time and Value Added Tax shall be payable at the same time and in the same manner as the amounts to which it relates; and	
6.4.2	shall be without prejudice to any claims or rights which the User may have against the Company and except as expressly permitted by Schedule <del>4</del> below shall be made without any set-off or deduction in respect of any claims or disputes or otherwise.	<b>Deleted:</b> 6
6.5	The User shall provide <del>and maintain</del> Cover in accordance with the provisions of Schedule 1.	<b>Deleted:</b> c
6.6	The Company may charge the User Use of System Charges calculated by reference to electricity discovered or reasonably and properly assessed to have been supplied to a Customer or exported via the Distribution System by a Generator while a <del>Customer of the User but not recorded at the time of supply or import (as the case may be)</del> (for whatever reason) by the metering equipment installed pursuant to Clause 12.1. At any time when the Company charges the User Use of System Charges under this Clause <del>6.6</del> , it shall explain to the User the calculation of those charges and the basis of that calculation.	<b>Deleted:</b> ,
6.7	Without prejudice to Clause 6.1, where the Company is intending to revise <del>any of its Use of System Charges or Transactional Charges</del> , it shall serve a copy of any notice it sends to the Authority pursuant to paragraph 5 of	<b>Deleted:</b> 6.7 The User shall pay to the Company in respect of any services provided under this Agreement the charges set out in the relevant Schedule or (if no such charge is specified in this Agreement or agreed between the parties) in the Condition 4A Charging Statement, the Condition 14A Charging Statement, and/or the Condition 36C Charging Statement (as the case may be).
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		<b>Deleted:</b> the charges set out in Schedule 3 and Schedule 4,

Condition 4A of the Electricity Distribution Licence on the User as soon as is reasonably practicable after such notice is sent to the Authority.

- 6.8** The Company may charge the User Use of System Charges calculated by reference to electricity assessed to have been supplied to a Demand Customer while a customer of the User during a period in which the User was supplying electricity to that Demand Customer in accordance with a last resort supply direction issued by the Authority in accordance with Condition 29 of the User's Electricity Supply Licence from the time that that direction takes effect. This right subsists from the date on which the last resort supply direction takes effect, and continues regardless of whether the Metering Point applying to the Demand Customer is registered to the User in accordance with the Master Registration Agreement, until such time as the relevant Metering Point is registered to another supplier in accordance with the terms of the Master Registration Agreement.

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- 6.9** For the avoidance of doubt, nothing in this Clause 6:

- a** 6.9.1 prevents the Company from varying Use of System Charges without prior notice to the User pursuant to shortfall direction issued by the Secretary of State under Condition [00] of the Electricity Distribution Licence; or

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6.9.2 precludes the parties, at the request of either party, from negotiating Use of System Charges arising from or pursuant to an Extra-Settlement Determination.

- 6.10** Where any dispute arises under Clause 6.9.2, either party shall be entitled to refer the matter to the Authority as if it were a dispute falling within Condition 4E of the Electricity Distribution Licence.

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## 7. BILLING AND PAYMENT BY SETTLEMENT CLASS

- 7.1** This Clause 7 applies to Use of System Charges which are invoiced by reference to Settlement Class in accordance with Clause 6.3.

- 7.2** Following its receipt of each Supercustomer DUoS Report in accordance with the timetable for Settlement after each Settlement Run relating to each Settlement Day, the Company shall deliver Daily Statements to the User as soon as is reasonably practicable.

- 7.3** The Company shall submit to the User as soon as is reasonably practicable after the end of each charging period an account **(Initial Account)** specifying Use of System Charges payable in respect of each Initial Settlement Run in respect of which a Daily Statement has been produced and which has not previously been included in an Initial Account. Such Initial Accounts shall be based upon the Daily Statements provided pursuant to Clause 7.2.

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- 7.4** Where a subsequent Daily Statement for any Settlement Day indicates that, as a result of a subsequent Reconciliation Run, Post-Final Settlement Run, or Extra-Settlement Determination, the Use of System Charges in respect of that Settlement Day are different from those previously billed, the Company shall calculate such difference and the interest thereon and shall submit an account **(Reconciliation Account)** in respect of such difference to the User as soon as is reasonably practicable after the end of each charging period. Such interest shall be calculated in accordance with the provisions of Schedule 3.

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- 7.5** Within 14 days of the date of an Initial Account or Reconciliation Account submitted in accordance with Clause 7.3 or 7.4, the User shall pay to the Company all sums due in respect of such Initial Account or Reconciliation Account in pounds sterling by electronic transfer of funds to such bank account (located in the United Kingdom) as is specified in the Initial Account or Reconciliation Account, quoting the Initial Account or Reconciliation Account number against which payment is made and/or such other details as the Company may reasonably require.

- 7.6** Where any sum included in an Initial Account or Reconciliation Account submitted in accordance with Clause 7.3 or 7.4 is disputed by the User, the provisions of Schedule 4 shall apply.

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## 8. SITE SPECIFIC BILLING AND PAYMENT

- 8.1 This Clause 8 applies to Use of System Charges in relation to Metering Points that fall within Clauses 6.3.1 to 6.3.3 (inclusive).
- 8.2 As soon as is reasonably practicable after the end of each charging period, the Company shall submit to the User an account specifying the Use of System Charges payable for the whole or any part of that charging period. Such account shall be based on:
- 8.2.1 data from metering equipment or any Equivalent Meter provided by the User in accordance with Clause 12.2 or, where actual data are not available, estimated data prepared in accordance with methods of estimation established under the Balancing and Settlement Code by the relevant Data Collector; and
- 8.2.2 other data as specified in the Relevant Charging Statement and/or the relevant Connection Agreement,
- provided that the Company may use estimated data prepared by the Company where the User fails to provide the data under Clause 8.2.1 and 8.2.2.
- Where an account is based on estimated data, the account shall be subject to any adjustment which may be necessary following the receipt of actual data from the User.
- 8.3 Within 14 days of the date of an account submitted in accordance with Clause 8.2, the User shall pay to the Company all sums due in respect of such account by electronic transfer of cleared funds to such bank account (located in the United Kingdom) as is specified in the account, quoting the account number against which payment is made and/or such other details as the Company may reasonably require.
- 8.4 Where any sum included in an account submitted in accordance with Clause 8.2 is disputed by the User, the provisions of Schedule 4 shall apply.

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## 8A. TRANSACTIONAL CHARGES

- 8A.1 This Clause 8A applies in respect of services for which the charges to be levied are calculated by reference to the number or frequency of specific transactions (Transactional Charges), except where the billing and payment arrangements in respect of such services are otherwise provided for under the Master Registration Agreement, the BSC, or the CUSC.
- 8A.2 Within 21 days after the end of each calendar month, the Company shall submit to the User an account specifying (i) the payment due from the User in respect of services performed during that month for which Transactional Charges are payable, and (ii) any Value Added Tax payable thereon.
- 8A.3 Within 30 days of the date of an account submitted in accordance with Clause 8A.2, the User shall pay to the Company all sums due in respect of such account in pounds sterling by electronic transfer of cleared funds to such bank account (located in the United Kingdom) as is specified in the statement, quoting the invoice number against which payment is made.
- 8A.4 Where any sum included in an account submitted in accordance with Clause 8A.2 is disputed by the User, the provisions of Schedule 4 shall apply.

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## 8B. PAYMENT DEFAULT

- 8B.1 Subject to Clause 7.6, Clause 8.4 and Clause 8A.4, failure by the User to pay any sum due as cleared funds by the due date for payment in accordance with Clause 7.5, Clause 8.3, or Clause 8A.3 shall be construed as a payment default. Where the User so defaults, the Company shall send a notice (a Late Payment Notice) to the User:
- (i) setting out the amount owed by the User to the Company, and identifying the specific account to which the payment default relates;
- (ii) stating to whom payment should be made;
- (iii) specifying the method of payment; and

(iv) where the Company intends to exercise its rights under Clause 8B.2 and/or Clause 8B.3, advising the User of its intention.

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8B.2 The Company shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not duly made pursuant to the terms of Clause 7.5, Clause 8.3, or Clause 8A.2 calculated from day to day at a rate per annum equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment, together with an administration charge as notified by the Company to the User from time to time.

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8B.3 Failure to remedy a payment default within four Working Days of receipt of a Late Payment Notice shall be a material breach of this Agreement and the Company shall be entitled to take actions to suspend registration services in accordance with the provisions of the Master Registration Agreement. Where the Company takes such action, it shall send a copy of any notice that it is required to issue pursuant to those provisions to the User

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## 9. LIMITATION OF LIABILITY

9.1 Subject to Clause 9.5 and save as provided in this Clause 9.1 and Clause 9.2, and save where any provisions of this Agreement provide for an indemnity, neither party (the **party liable**) nor any of its officers, employees or agents shall be liable to the other party for loss arising from any breach of this Agreement other than for loss directly resulting from such breach and which at the date hereof was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:

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9.1.1 physical damage to the property of the other party, its officers, employees or agents; and/ or

9.1.2 the liability of such other party to any other person for loss in respect of physical damage to the property of any person,

provided that the liability of either party in respect of all claims for such loss shall in no circumstances exceed £1 million per incident or series of related incidents;

and provided further that either party shall be entitled:

(A) to deduct from any sums payable in respect of its liability for loss or damage in respect of any event under this Agreement any sums which it is liable to pay to a person who has a connection to the Distribution System or any other person in respect of the same loss or damage in respect of the same event; and

(B) where it has already made payment in respect of its liability for loss or damage in respect of an event under this Agreement at the time at which it becomes liable to pay to any other person in respect of the loss or damage in respect of the same event, to reclaim from the other party the amount of its liability to that other person but not exceeding the amount already paid to the other party in respect of loss or damage in respect of the same event:

provided that where either party becomes aware of any claim, difference, dispute or proceedings (actual or threatened) which it reasonably expects may lead to a liability to a person other than the other party in respect of an event which may give rise to a liability to the other party under this Agreement and which may fall within the provisos (A) and (B) to this Clause 9.1, then that party shall consult with the other party as to the conduct of that claim, difference, or dispute or those proceedings (actual or threatened).

9.2 Nothing in this Agreement shall exclude or limit 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 liability and any loss or liability which such other party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the party liable or any of its officers, employees or agents.

9.3 Subject to Clause 9.5, and save where any provision of this Agreement provides an indemnity, neither party, nor any of its officers, employees or agents, shall in any circumstances whatsoever be liable to the other party for:

- 9.3.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or
- 9.3.2 any indirect or consequential loss; or
- 9.3.3 loss resulting from the liability of such other party to any other person howsoever and whenever arising save as provided in Clauses 9.1 and 9.2.

9.4 The rights and remedies provided by this Agreement to the parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of this Agreement, including any rights either party may possess in tort which shall include actions brought in negligence and/or nuisance. Accordingly, each of the parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute, and releases the party liable, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein.

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9.5 Save as otherwise expressly provided in this Agreement, this Clause 9 insofar as it excludes or limits liability shall override any other provision in this Agreement, provided that nothing in this Clause 9 shall exclude or restrict or otherwise prejudice or affect any of:

- 9.5.1 the rights, powers, duties and obligations of either party which are conferred or created by the Act, any licence granted pursuant to the Act, or any subordinate legislation made under the Act; or
- 9.5.2 the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any such licence or otherwise howsoever.

9.6 Each of the sub-clauses of this Clause 9:

- 9.6.1 shall be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable, then the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the parties; and
- 9.6.2 shall survive termination of this Agreement.

9.7 Each party hereby acknowledges and agrees that the other party holds the benefit of Clauses 9.1 and 9.2 and 9.3 above for itself and as trustee and agent for its officers, employees and agents.

9.8 Each party hereby acknowledges and agrees that the provisions of this Clause 9 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof.

9.9 Nothing in this Clause 9 shall prevent or restrict either party from enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Agreement.

9.10 Where either party, in breach of its obligations under Clause 24.4.3, fails to deliver any notice, request or other communication to the recipient's Gateway and such failure occurs for reasons outside that party's direct control, the breaching party shall have no liability to the other under this Agreement and the parties shall rely instead upon the provisions of the Data Transfer Service Agreement.

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## 10. ENERGISATION, DE-ENERGISATION AND RE-ENERGISATION

10.1 Energisation Works, De-energisation Works and Re-energisation Works carried out by or on behalf of the User pursuant to this Clause 10 shall be carried out by a person who is either engaged by the Company to carry out such work or who:

- 10.1.1 is an Approved Contractor, in accordance with the procedure set out in Schedule 5;
- 10.1.2 is a Competent Person to whom a Permission has been issued, in accordance with the procedure set out in Schedule 5, to carry out the particular activities comprising the Energisation Works, De-energisation Works or Re-energisation Works; and

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10.1.3 acts in accordance with the requirements set out in Schedule 5.

10.2 Where:

10.2.1 neither the User nor any of its contractors is an Approved Contractor; or

10.2.2 no employee of the User or any of its contractors (if they are Approved Contractors) holds a Permission; or

10.2.3 the User does not have the rights of access required to undertake such Energisation Works, De-energisation Works or Re-energisation Works; or

10.2.4 the parties so agree,

the Company shall, to the extent that it may lawfully do so, at the request of the User, when the User is entitled to have carried out Energisation Works, De-energisation Works and Re-energisation Works, carry out such works at the cost of the User within a reasonable time or, in circumstances of urgency, as soon as is reasonably practicable. The Company shall on request by the User inform the User of its reasonable requirements for the details by reference to which Metering Points to be Energised, De-energised or Re-energised are to be identified.

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10.3 The Company and the User shall both act in accordance with Good Industry Practice when carrying out, or procuring the carrying out of, any Energisation Works, De-energisation Works or Re-energisation Works.

10.4 If circumstances exist which entitle the User or any Relevant Exempt Supplier to Energise, De-energise or Re-energise Metering Point(s) pursuant to the Contract with the relevant Customer, then, subject to Clause 10.12, the User may Energise, De-energise or Re-energise such Metering Point(s) provided that it acts, where relevant, in accordance with the code of practice on payment of bills and guidance for dealing with customers in difficulty, which the User must submit to and have approved by the Authority in accordance with Condition 35 of the Electricity Supply Licence.

10.5 If the User resolves to Energise or Re-energise a Metering Point pursuant to Clause 10.4:

10.5.1 the User shall decide on the extent and nature of the Energisation Works or Re-energisation Works and the User shall undertake such Energisation Works or Re-energisation Works at its own cost; and

10.5.2 when such Energisation Works or Re-energisation Works are complete the User shall, in accordance with the Master Registration Agreement, instruct the MPAS Provider to register the relevant Metering Point as energised (but only, in the case of an Unmetered Supply, if the Energisation Works or Re-energisation Works have allowed the flow of electricity through the relevant Exit Point).

10.6 If the User resolves to De-energise a Metering Point pursuant to Clause 10.4:

10.6.1 the User shall decide on the extent and nature of the De-energisation Works and the User shall undertake such De-energisation Works at its own cost;

10.6.2 when such De-energisation Works are complete, the User shall, in accordance with the Master Registration Agreement, instruct the MPAS Provider to register the relevant Metering Point as de-energised (but only, in the case of an Unmetered Supply, if the De-energisation Works have prevented the flow of electricity through the relevant Exit Point);

10.7 Where the Company carries out De-energisation Works on behalf of the User pursuant to Clause 10.2:

10.7.1 the Company shall indemnify the User against all actions, proceedings, costs, demands, claims, expenses, liability, loss or damage arising from, or incurred by the User as a consequence of, physical damage to the property of the User, its officers, employees or agents, and in respect of the liability of the User to any other person for loss in respect of physical damage to the property of any person, in each case as a consequence of acting contrary to an accurate and appropriate instruction to De-energise a Metering Point;

10.7.2 the User shall indemnify the Company against all actions, proceedings, costs, demands, claims, expenses, liability, loss or damage arising from, or incurred by the Company as a consequence of,

physical damage to the property of the Company, its officers, employees or agents, and in respect of the liability of the Company to any other person for loss in respect of physical damage to the property of any person, in each case as a consequence of acting in reliance on any instructions given by the User to the Company which are materially inaccurate or misleading; and

10.7.3 the User shall also indemnify the Company against all actions, proceedings, costs, demands, claims, expenses, liability, loss or damage and any consequential loss made against or incurred or suffered by the User and whether wholly or in part resulting directly or indirectly from any claims by any third party in relation to such De-energisation Works howsoever arising.

10.8 The Company may, upon giving the User ~~two Working Days'~~ prior written notice, De-energise any Metering Point if:

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10.8.1 the Company is entitled to do so pursuant to the Connection Agreement relating to such Metering Point; or

10.8.2 any of the conditions set out in Clause 4.2 and 4.3 in relation to an Exit Point (or, in the case of an Unmetered Supply, any one or more of the relevant Exit Points) or in Clause 4.2 and Clause 4.4 in relation to an Entry Point cease to be fulfilled (or, in the case of Clause 4.2.2, remain unfulfilled 10 Working Days after the service of notice by the Company requiring the User to remedy the situation) .

10.9 Notwithstanding the provisions of Clause 10.8, the Company may, at any time with no prior notice to the User, De-energise any Metering Point if:

10.9.1 the Company is instructed, pursuant to the terms of the Connection and Use of System Code (as amended from time to time) or the Balancing and Settlement Code as appropriate (as amended from time to time), to do so;

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10.9.2 the Company reasonably considers it necessary to do so for safety or system security reasons;

10.9.3 the Company reasonably considers it necessary to do so to avoid interference with the regularity or efficiency of its Distribution System;

10.9.4 an accident or emergency occurs or threatens to occur which requires the Company to do so to avoid the risk of personal injury to any person or physical damage to the property of the Company, its officers, employees or agents, or the property of any other person;

10.9.5 it is entitled to do so under Schedule 8; or

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10.9.6 subject to the terms of a replacement agreement, this Agreement is terminated in accordance with the provisions of Clause 18.

In any of the ~~above~~ circumstances, the Company shall inform the User as soon as ~~is~~ reasonably practicable, and in any event by the end of the next Working Day when MPAS is available, of the fact that the Metering Point has been De-energised.

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10.10 If the Company resolves to De-energise a Metering Point pursuant to Clause 10.8 or 10.9:

10.10.1 the Company shall decide on the extent and nature of the De-energisation Works required to De-energise the relevant Metering Point; and

10.10.2 the Company shall Re-energise the Metering Point as soon as ~~is~~ reasonably practicable after the circumstance giving rise to such De-energisation has ended;

10.10.3 except where the Company resolves to De-energise a Metering Point pursuant to Clause 10.8.1, 10.9.1, 10.9.2, 10.9.3, 10.9.4 or 10.9.6 following termination of this Agreement by the User under Clause 18.4, the Company shall undertake both the De-energisation Works and the subsequent Re-energisation Works at the cost of the User and the User shall pay ~~to the Company, the relevant Transactional Charges,~~ associated with both the De-energisation Works and the subsequent Re-energisation Works.

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10.11 If the Company De-energises a Metering Point pursuant to Clause 10.8 or 10.9 and such Metering Point remains De-energised for a period of ~~three~~ Working Days:



- 10.11.1 the Company shall forthwith instruct the User to send a Registration Notice to the MPAS Provider instructing it to register the relevant Metering Point as de-energised (but only, in the case of an Unmetered Supply, if the De-energisation Works have stopped the flow of electricity through the relevant Exit Point); and
- 10.11.2 within two Working Days of receiving an instruction from the Company pursuant to Clause 10.11.1, the User shall send such a Registration Notice to the MPAS Provider and notify the relevant Meter Operator.
- 10.12 If the Company Re-energises a Metering Point pursuant to Clause 10.10:
- 10.12.1 if an instruction has been given by the Company under Clause 10.11.1, the Company shall forthwith instruct the User to send a Registration Notice to the MPAS Provider instructing it to register the relevant Metering Point as energised (but only, in the case of an Unmetered Supply, if the Re-energisation Works have allowed the flow of electricity through the relevant Exit Point); and
- 10.12.2 within two Working Days of receiving an instruction from the Company pursuant to Clause 10.12.1, the User shall send such a Registration Notice to the MPAS Provider.
- 10.13 The User shall not be entitled to Re-energise a Metering Point which has previously been De-energised by the Company on its own behalf (for the avoidance of doubt, not acting on the instructions or at the request of the User) or on behalf of the Company. For the avoidance of doubt, the User shall be entitled to Re-energise a Metering Point which has previously been De-energised by or on behalf of another supplier.
- 10.14 If there is no reasonably foreseeable future use for a Metering Point, the User shall be entitled to send to the Company a Disconnection Notice. In respect of any Disconnection Notice sent to the Company pursuant to this Clause, the User shall:
- 10.14.1 warrant that to the best of its knowledge and belief, having exercised Good Industry Practice, the Metering Point has been De-energised and that there is no reasonably foreseeable future use for the Metering Point, giving details of any De-energisation Works which it has undertaken and providing an explanation for why there is no reasonably foreseeable future use for the Metering Point; and
- 10.14.2 indemnify the Company against all costs, demands, claims, expenses, liability, loss, or damage which the Company incurs in consequence of acting in reliance on the warranty given in Clause 10.14.1 which proves to be in any way inaccurate or misleading.
- 10.15 If a third party contacts the Company to request directly or indirectly that the Company undertakes works in relation to a Metering Point because there is no reasonably foreseeable future use for that Metering Point and the Company is satisfied that the third party is entitled to make such request, then the Company shall contact the relevant User and request it to submit a Disconnection Notice. Upon receiving such a request, the User shall send the Company the requested Disconnection Notice unless in the User's reasonable opinion there is a reasonably foreseeable future use for the Metering Point.
- 10.16 If, in any case, in the reasonable opinion of the Company there is a reasonably foreseeable future use for the Metering Point, then the Company shall not be obliged to comply with a Disconnection Notice received under Clause 10.14 or 10.15 and where the Company decides not to comply it shall provide the User with the reasons for its decision.
- 10.17 If the Company is of the reasonable opinion that there is no reasonably foreseeable future use for a Metering Point then the Company shall contact the relevant User and request it to submit a Disconnection Notice. Upon receiving such a request, the User shall send the Company the requested Disconnection Notice unless in the User's reasonable opinion there is a reasonably foreseeable future use for the Metering Point.
- 10.18 For the avoidance of doubt, the warranty and indemnity contained in Clause 10.14 shall not apply to any Disconnection Notice requested by the Company pursuant to Clause 10.15 or 10.17.
- 10.19 Subject to Clause 10.16, within five Working Days of receipt of the Disconnection Notice, the Company shall send a Registration Notice to the MPAS Provider instructing it to register the Metering Point as de-registered.



- 10.20 If a Metering Point has been De-energised by or on behalf of a previous supplier and the Company receives a request from the User to Re-energise such Metering Point:
- 10.20.1 the Company shall Re-energise the Metering Point as soon as is reasonably practicable and notify the User of when it expects to carry out the Re-Energisation Works;
- 10.20.2 the Company shall carry out all necessary Re-energisation Works at its own cost and shall then reclaim such costs from the previous supplier; and
- 10.20.3 the Company shall notify the User as soon as the Re-energisation Works are complete and the User shall, within two Working Days of receiving such notification, send a Registration Notice to the MPAS Provider instructing it to register the relevant Metering Point as energised.
- 10.21 The Company shall notify Customers of and carry out System Outages in accordance with its statutory rights and obligations and Good Industry Practice.
- 10.22 The User shall be entitled to use the enquiry service established by the Company pursuant to Condition 6 of its Electricity Distribution Licence as if the User were a Customer.

## 11. COMPLIANCE WITH THE DISTRIBUTION CODE

- 11.1 The parties undertake to comply with the Distribution Code.
- 11.2 In the event of any conflict between this Agreement and the Distribution Code, the Distribution Code shall prevail.

### 11A. COMPLIANCE WITH THE METER OPERATOR CODE OF PRACTICE AGREEMENT

- 11A.1 The User shall procure that the Meter Operator appointed for each Metering Point supplied shall (where relevant) comply with the Meter Operator Code of Practice.

### 11B. COMPLIANCE WITH THE RADIO TELESWITCH AGREEMENT

- 11B.1 Where the Company is a party to the Radio Teleswitch Agreement, the User shall become a party to the Radio Teleswitch Agreement prior to commencing to supply electricity to a Metering Point which is connected to a radio teleswitch (as such term is defined in the Radio Teleswitch Agreement).
- 11B.2 In the event of any conflict between this Agreement and the Radio Teleswitch Agreement, this Agreement shall prevail.

## 12. METERING DATA AND METERING EQUIPMENT

- 12.1 Subject to Clause 12.9, the User shall at its own cost install and maintain or procure the installation and maintenance of metering equipment at or as close as is reasonably practicable to each Exit Point and Entry Point when the User is registered under the Master Registration Agreement in respect of the relevant Metering Point. Such metering equipment shall be capable of providing the relevant metering data required by the Company for the calculation of Use of System Charges and shall comply with the requirements detailed in the Relevant Charging Statement and with those specified in the relevant BSC Codes of Practice and Schedule 7 of the Act.

The Company shall not be obliged to supply electricity through a relevant Exit Point or distribute electricity imported onto the Distribution System through a relevant Entry Point unless and until the necessary metering

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equipment has been installed. The User shall procure that metering equipment installed and maintained pursuant to this Clause 12.1 shall be capable of operating within the accuracy limits specified in Part 1 of Schedule 6.

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- 12.2 The User shall provide to the Company without charge such data from metering equipment installed and maintained pursuant to Clause 12.1 and from any Equivalent Meter operated under the Unmetered Supplies Procedure as the Company may reasonably require for:

12.2.1 the calculation of Use of System Charges; and

12.2.2 the operation, design and planning of the Distribution System.

For the purposes of this Clause 12.2, the parties acknowledge that it shall be reasonable for the Company to require any data:

(A) of a type which prior to 1 August 1998 it received without charge from suppliers; or

(B) of a type which is provided by the SVAA in the Supercustomer DUoS Report,

and which in each case is required for the purpose of calculating charges for Use of Distribution System or the operation and planning of the Distribution System.

The User shall collect and provide data to the Company in accordance with this Clause 12.2 in compliance with the requirements detailed in the Relevant Charging Statement.

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- 12.3 The User shall not and shall procure that no Relevant Exempt Supplier will change or modify the type of metering equipment installed and maintained pursuant to Clause 12.1 except in accordance with Clause 12.1.

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- 12.4 The User shall procure that the Meter Operator, Data Collector and Data Aggregator appointed for each Metering Point supplied in relation to which the supply of electricity is measured by Non-Half-Hourly Metering Equipment (as defined in Annex X-1 of the Balancing and Settlement Code) for the purposes of Settlement shall provide the Company with any data required to be provided to the Distribution Business by the person appointed in that capacity in accordance with the timescales specified in the relevant provisions of the BSC.

- 12.5 The Company shall be entitled to inspect, test and if necessary require the User to correct any metering equipment installed and maintained pursuant to Clause 12.1. The User shall use its reasonable endeavours, including the inclusion of appropriate terms in its Supply Contract and Power Purchase Contract, to procure that the employees, agents, sub-contractors and invitees of the Company shall at all reasonable times have safe and unobstructed access to such metering equipment. Where the Company exercises its right under this Clause 12.5, the provisions set out in Part 2 of Schedule 6 shall apply.

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- 12.6 The Company shall be entitled to install Operational Metering Equipment at or as close as reasonably practicable to any Exit Point or Entry Point in addition to any metering equipment installed and maintained pursuant to Clause 12.1 to collect data for the operation, design and planning of the Distribution System, but if it exercises this right it shall make no additional charge to the User in respect of such Operational Metering Equipment and shall not except in the case of the failure of metering equipment installed and maintained pursuant to Clause 12.1 use data from the Operational Metering Equipment for the calculation of Use of System Charges. The Operational Metering Equipment need not be certified under paragraph 5 of Schedule 7 of the Act.

- 12.7 Where the Company installs Operational Metering Equipment in accordance with Clause 12.6:

12.7.1 the User shall and shall procure that any Relevant Exempt Supplier will ensure that the employees, agents and invitees of the User or Relevant Exempt Supplier (as the case may be) will not interfere with such equipment or the immediate connections to such equipment without the prior written consent of the Company, except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent serious damage to property proximate to the Operational Metering Equipment; and

12.7.2 the User shall and shall procure that any Relevant Exempt Supplier will use its reasonable endeavours, including the inclusion of appropriate terms in its Supply Contract and Power Purchase Contract, to procure that the employees, agents, sub-contractors and invitees of the Company shall at all reasonable times have safe and unobstructed access to the Operational Metering Equipment. The Company agrees to procure that any individuals to whom access is given pursuant to this Clause 12.7.2 shall comply with

all reasonable directions given by the User or the relevant Customer and its appropriately authorised employees and agents as to general safety and site security arrangements.

12.8 In relation to any Unmetered Supply under an Unmetered Supplies Certificate, the User and the Company shall comply with the Unmetered Supplies Procedure and in particular the Company shall from time to time calculate and forward to the User the estimated annual consumption of a Demand Customer's Installation which is not subject to Half-Hourly Trading as defined by the Unmetered Supplies Procedure. The User may supply electricity to the whole (but not a part only) of a Demand Customer's Installation in respect of which an Unmetered Supplies Certificate has been issued by the Company.

12.9 The provisions of Clauses 12.1, 12.3, 12.4 and 12.5 shall not apply in relation to an Unmetered Supply which the User is permitted to supply under this Agreement. When at any time the User ceases to be permitted to supply electricity on the basis that the supply of electricity is an Unmetered Supply, the User shall immediately become bound by all the provisions of this Clause 12 (other than those relating only to an Unmetered Supply).

### 13. PROVISION OF INFORMATION

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13.1 Except for the renewal of an existing Contract entered into after 31 August 1998, as soon as is reasonably practicable following either:

- (i) where a Notice of Objection (for the purposes of this Clause 13 as defined in the Master Registration Agreement) is not received in relation to the User's Application for Registration (for the purposes of this Clause 13 as defined in the Master Registration Agreement) in respect of the relevant Metering Point, the expiry of the Objection Raising Period (for the purposes of this Clause 13 as defined in the Master Registration Agreement); or
- (ii) where a Notice of Objection is received in relation to the User's Application for Registration, the withdrawal of the Notice of Objection in relation to the User's Application for Registration,

the User shall provide the following information to the Company in respect of any Exit Point through which the relevant supply is to be delivered or Entry Point through which electricity is to be exported onto the Distribution System:

13.1.1 the relevant Supply Number core data (as defined in the Master Registration Agreement);

13.1.2 the relevant Customer's name;

13.1.3 the Metering Point address relating to each Supply Number; and

13.1.4 the Customer's Maximum Import Capacity if:

- (A) the Customer is not a Domestic Customer (as defined in the Electricity Supply Licence);
- (B) the Customer has a Maximum Power Requirement of not less than 20 kVA; and,
- (C) the Customer is a new owner or occupier of the site; and

13.1.5 in respect of a Generator, the Generator's Maximum Export Capacity.

13.2 Except for the renewal of an existing Contract entered into after 31 August 1998, as soon as is reasonably practicable following either:

- (i) where a Notice of Objection is not received in relation to the User's Application for Registration in respect of the relevant Metering Point, the expiry of the Objection Raising Period; or
- (ii) where a Notice of Objection is received in relation to the User's Application for Registration, the withdrawal of the Notice of Objection in relation to the User's Application for Registration,

the User shall use reasonable endeavours to provide the following information to the Company in respect of any Exit Point through which the relevant supply is to be delivered or Entry Point through which electricity is to be exported via the Distribution System:

- 13.2.1 the contact name for the Customer if different from the Customer's name; and
- 13.2.2 the Customer's postal address if different from the Metering Point address.
- 13.3 The User shall use reasonable endeavours to notify the Company of any changes to the details set out in Clause 13.1 and Clause 13.2 as soon as reasonably practicable following that change by reference to the Supply Number.
- 13.4 Where the User or its agent or any Relevant Exempt Supplier receives a report or enquiry from any person about any matter or incident that does or is likely to:
- 13.4.1 cause danger or require urgent attention in relation to the supply or distribution of electricity in the Company's Distribution Services Area ~~through the Distribution System; or~~
- 13.4.2 affect the maintenance of the security, availability and quality of service of the Distribution System,
- the User shall notify the Company of such report or enquiry in a prompt and appropriate manner having regard to the nature of the incident to which the report relates. The User shall notify the Company by telephone or post using the telephone number and postal address identified in the Security and Safety of Supplies Statement or such other telephone number as may from time to time be notified in writing by the Company. If the User does not discharge its obligation under Condition 15 of the Electricity Supply Licence by providing to customers the address and telephone number of the Company's enquiry service established pursuant to Condition 6 of the Electricity Distribution Licence, the User shall notify the Company of reports received from customers in accordance with this Clause 13.4.
- 13.5 The User shall, with the consent of any Demand Customer who may be expected, by virtue of being of pensionable age or disabled or chronically sick, to require advance notice of interruptions to the supply of electricity, provide the Company with appropriate details concerning that Demand Customer and his requirement within three Working Days of receiving such requirements pursuant to its obligations under Condition 37 of the Electricity Supply Licence.
- 13.6 The User shall, with the consent of any Customer who has agreed a password with the User or any Relevant Exempt Supplier for access to the Customer's premises, provide the Company with appropriate details concerning that Customer and his password within two Working Days of notification of such password by the Customer.
- 13.7 The User shall use reasonable endeavours to ensure that all the facts, information and other details provided pursuant to Clause 13.5 and 13.6 shall throughout the duration of this Agreement remain true, accurate and complete in all respects.

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## 14. DEMAND CONTROL

- 14.1 The parties undertake to comply with Schedule ~~8~~.
- 14.2 The parties agree to review the operation of the provisions of Schedule ~~8~~ from time to time or when directed to do so by the Authority and on concluding such a review shall make proposals, if any, for variations to Schedule ~~8~~.

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 "standard services" (as described in the Revenue Protection Code of Practice) shall be calculated in accordance with the charges set out in Part 1 of Schedule 4 or, if no such charges are set out, in accordance with the Condition 4A Charging Statement; and¶  
 "Transactional Services" (as described in the Revenue Protection Code of Practice) shall be calculated in accordance with the charges set out in Part 1 of Schedule 4,¶  
 and all such charges shall be paid in accordance with Part 2 of Schedule 4.

## 15. REVENUE PROTECTION

- 15.1 Where the Company provides a revenue protection service, it shall do so in accordance with the provisions of the Revenue Protection Code of Practice. Charges for the services so provided shall be calculated in accordance with those specified as applicable to such services in the Relevant Charging Statement and shall be paid in accordance with the provisions of this Agreement. ▼
- 15.2 The User shall comply with its obligations under the Revenue Protection Code of Practice.

## 16. GUARANTEED PERFORMANCE STANDARDS

- 16.1 To the extent that, due to an act or omission on the part of the Company, compensation would be payable by the User pursuant to the ESPR to the Customer, the Company shall make an equivalent compensation payment to the User for the benefit of the Customer in accordance with the provisions of this Clause 16.
- 16.1A Where electricity flows from the Distribution System into another electricity distributor's distribution system and, due to an act or omission on the part of the Company, compensation would be payable by the User pursuant to the ESPR to a Customer connected to that distribution system, the Company undertakes either to make an equivalent compensation payment directly to the User for the benefit of the Customer, or to arrange for the other electricity distributor to make such payment. The Company's liability under this paragraph shall be subject to such apportionment of responsibilities as is agreed between the Company and the other electricity distributor pursuant to the provisions of paragraph 3 of ~~Condition 20 of the Electricity Distribution Licence.~~
- 16.2 To the extent that, due to circumstances other than those described in Clause 16.1 or 16.1A, compensation pursuant to the ESPR would be payable to the Customer by the Company, the Company shall not be liable to make any payment to the User for the benefit of the Customer.
- 16.3 In the circumstances described in Clause 16.1 or 16.1A, the Company will comply with the terms and procedures of the ESPR provided that:
- 16.3.1 the User shall be deemed to be a "person having apparent authority to represent the Customer" for the purposes of ESPR regulation 3(4)(d) if the Customer independently contacts the User in relation to a matter which forms the basis of the Customer's claim ~~under the ESPR; and~~
- 16.3.2 where the ESPR require the Company to "pay to the customer the Prescribed Sum", the Company shall pay the User the Prescribed Sum for the benefit of the Customer and the User shall pass the payment on to the Customer as soon as ~~is~~ reasonably practicable.
- 16.4 If the Customer contacts the User in relation to a matter which might form the basis of a claim under the ESPR, the User shall diligently record the details of the Customer's complaint and shall not agree or imply that the Customer's complaint is valid unless the matter is one which would be governed by Clause 16.2. If the matter is one which in the User's reasonable opinion will be governed by Clause 16.1 or 16.1A, the User shall pass on the details of the Customer's complaint to the Company as soon as ~~is~~ reasonably practicable together with details of the Customer's name and address. In such circumstances, the Prescribed Period will relate to the time at which the Customer or the User on behalf of the Customer contacts the Company, ~~and~~ the time at which the Customer contacts the User will not be relevant to the calculation of the Prescribed Period.
- 16.5 If the Customer contacts the Company in relation to a matter which might form the basis of a claim under the ESPR, the Company shall diligently record the details of the Customer's complaint and shall not agree or imply that the Customer's complaint is valid unless the matter is one which would be governed by Clause 16.1 or 16.1A. If the matter is one which in the Company's reasonable opinion will be governed by Clause 16.2, the Company shall tell the Customer to contact the User direct. In such circumstances, the Prescribed Period will relate to the time at which the Customer contacts the User and the time at which the Customer contacts the Company will not be relevant to the calculation of the Prescribed Period.
- 16.6 When the User has received a payment from the Company pursuant to Clause 16.3.2, the User shall pass such payment to the Customer as soon as reasonably practicable and if, due to the User's delay, an additional payment becomes due pursuant to ESPR regulation 19(5), then this additional payment shall be the liability of the User.
- 16.7 Neither party shall lead a Customer to believe that he has a valid claim for a guaranteed standard payment by reason of the action or default of the other party. Where, however, a Customer does have a valid claim, a breach of the provisions of this Clause 16.7 shall not excuse the party against whom the claim lies from making the relevant payment.
- 16.8 In the event of a dispute between the Company and the User as to which party is liable to pay compensation pursuant to Clause 16.1 or 16.2, in the first instance the Company shall make the compensation payment for the benefit of the Customer and then the dispute shall be referred to the Authority and shall be deemed to be a dispute

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which may be referred to the Authority by either party in accordance with Section 39B of the Act and ESPR regulation 18, and the provisions as to practice and procedure contained in ESPR Schedule 2 shall be deemed to apply to any such dispute.

- 16.9 The Company shall provide the User with a report on its performance against the ESPR on the standards of performance.

## 17. VARIATIONS

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- 17.1 The parties acknowledge and agree the desirability of achieving and maintaining consistency and the absence of conflict between the provisions of this Agreement and each of the Relevant Instruments. However, the parties recognise that, due principally to the different functions and objectives of this Agreement and of the Relevant Instruments, the fact that not every Relevant Instrument binds both the Company and the User, and the different procedures for the variation of this Agreement and of the Relevant Instruments, it will not in all circumstances be possible to avoid inconsistency or conflict.

- 17.2 The parties acknowledge that the Balancing and Settlement Code may be amended from time to time in a manner which is likely to change the User's requirements for the provision of Use of Distribution System. Whenever such a change occurs, the User may serve upon the Company a notice setting out the change to the Balancing and Settlement Code and the consequent amendments to the Agreement which it believes are required. Upon receipt of such notice by the Company, the parties shall negotiate in good faith the terms of any amendments. If amendments to the Agreement have not been agreed and put into place within 14 days after the User serves its notice proposing changes, either party shall be entitled to refer the matter to the Authority, pursuant to Condition 4E of the Electricity Distribution Licence.

- 17.3 The Company may propose amendments to this Agreement to the extent necessary to ensure that any change to, or the coming into force of, any Relevant Instrument does not materially affect the Company's ability to perform, or the cost to it of performing, any of its obligations under this Agreement. Any such proposal shall be in writing and shall specify:

17.3.1 the Relevant Instrument concerned;

17.3.2 where relevant, the nature of the change to that Relevant Instrument relied on by the Company;

17.3.3 the proposed amendments to the Agreement;

17.3.4 the reasons why the Company considers the proposed amendments to be within the scope of this Clause 17.3;

17.3.5 that similar amendments shall be proposed by the Company in respect of each subsisting agreement which it has entered into in its Distribution Services Area for the provision of Use of Distribution System services and which is similarly affected; and

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17.3.6 that, so far as the Company is reasonably able, taking account of all relevant factors, the amendments will result in the lowest practicable increase in the charges payable for the Use of Distribution System services, having regard to the other options available.

- 17.4 Unless the User serves a counter-notice within 28 days of receipt of such proposal, such proposed amendment to the Agreement shall take effect upon the expiry of that day period. Where the User serves a counter-notice, both parties shall negotiate in good faith the terms of any such variation, but if a variation to the Agreement has not been agreed and put into effect within 28 days after it has been proposed by the Company, either party shall be entitled to refer the matter to the Authority, pursuant to Condition 4E of the Electricity Distribution Licence.

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- 17.5 Nothing in this Agreement shall oblige either party to act at any time in a manner contrary to any existing, new or changed Relevant Instrument.

- 17.6 Without prejudice to Clause 17.2 and 17.3, either party shall at any time be entitled to propose amendments to this Agreement by notice in writing to the other party. The parties shall negotiate in good faith the terms of any such variation, but if a variation to this Agreement has not been agreed and put into effect within 28 days after it

has been proposed, either party shall be entitled to refer the matter to the Authority, pursuant to Condition 4E of the Electricity Distribution Licence.

- 17.7 The parties shall give effect to any determination made by the Authority pursuant to Condition 4E of the Electricity Distribution Licence in relation to this Agreement. If the Authority determines that amendments to the Agreement are required, the Company shall make such amendments as have been specified by it.
- 17.8 Except where this Agreement provides to the contrary, no amendment to this Agreement shall be effective unless in writing signed by both parties.
- 17.9 The parties agree to discuss the establishment of any forum, proposed by the Authority, for the purpose of discussing the setting of charges and the provision of services for Use of Distribution System.

## 18. TERMINATION

- 18.1 The User may terminate this Agreement by giving the Company three months' notice in writing (or such lesser period as may be agreed between the parties).

- 18.2 The Company may terminate this Agreement by giving the User three months' notice in writing (or such lesser period as may be agreed between the parties), save that the Company shall not be entitled to terminate pursuant to this Clause 18.2 for so long as it is required to offer terms for Use of Distribution System to the User pursuant to the Electricity Distribution Licence.

- 18.3 The Company may terminate this Agreement with immediate effect by notice to the User if the User fails to remedy a payment default within ~~four~~ Working Days of receipt of a Late Payment Notice.

- 18.4 A party (the ~~Initiating Party~~) may terminate this Agreement with immediate effect by notice to the other party (the ~~Breaching Party~~) on or at any time after the occurrence of any of the following events:

- 18.4.1 the Breaching Party being in material breach of any of the material terms or conditions of this Agreement and, if the breach is or was capable of remedy, having failed to remedy the breach within 30 days of receipt of a notice from the Initiating Party giving full details of the breach, requiring the Breaching Party to remedy the breach, and stating that a failure to remedy the breach may give rise to termination under this Clause 18.4.1;

- 18.4.2 the Breaching Party passing a resolution for its ~~own~~ winding-up (except for the purposes of a solvent reconstruction or reorganisation approved by the Initiating Party), or a court of competent jurisdiction making an order for the winding-up or dissolution of the Breaching Party;

- 18.4.3 the appointment of an administrator, the making of an administration order in relation to the Breaching Party, or the appointment of a receiver or an administrative receiver over, or an encumbrancer taking possession of or selling, the whole or any substantial part or parts of the Breaching Party's assets, rights, or revenues;

- 18.4.4 the Breaching Party making an arrangement, compromise or composition with its creditors generally or making an application to a court for protection from its creditors generally (except for the purposes of a solvent reconstruction or reorganisation approved by the Initiating Party);

- 18.4.5 the Breaching Party being unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, but as if in that ~~section~~ the sum of £10,000 was substituted for the sum of £750;

- 18.4.6 without prejudice to Clause 19, a circumstance of Force Majeure which affects the performance by the Breaching Party of substantially all of its obligations under this Agreement continuing for more than 180 days;

- 18.4.7 the Breaching Party ceasing to carry on its business comprising (in the case of the User) the supply of electricity or (in the case of the Company) the distribution of electricity, unless:

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- (A) such cessation is intended to be and is temporary and is caused by a circumstance of Force Majeure; or
- (B) such cessation involves solely the assignment of rights and/or the sub-contracting or delegation of obligations in accordance with the provisions of Clause 26; or

18.4.8 any of the conditions precedent set out in Clause 2.1 ceasing to be satisfied in relation to the Breaching Party and, if the situation is or was capable of remedy, the Breaching Party having failed to remedy the situation within 30 days of receipt of a notice from the Initiating Party giving full details of the condition(s) precedent that has ceased to be fulfilled, requiring the Breaching Party to remedy the situation, and stating that a failure to remedy the situation may give rise to termination of the Agreement under this Clause 18.4.8.

- 18.5 Except where expressly stated to the contrary, the rights and obligations of the parties under this Agreement shall cease immediately upon termination of this Agreement. However, termination shall not affect any rights and obligations which have accrued on or before the date of termination.
- 18.6 Clauses 1, 3.4, 6.6, 7 to 10 (inclusive), 15.1, 18, 20 to 22 (inclusive) and 24 to 26 (inclusive) shall survive the termination, for whatever reason, of this Agreement.
- 18.7 Where this Agreement is terminated by the Company under Clause 18.3 or 18.4, the User shall pay to the Company any reasonable costs incurred by the Company as a result of termination.

## 19. FORCE MAJEURE

19.1 If either party (the **Affected Party**) is unable to carry out any of its obligations under this Agreement due to any circumstance of Force Majeure, this Agreement shall remain in effect but save as otherwise provided in this Agreement both parties' obligations shall be suspended without liability for the period during which the circumstance of Force Majeure prevails, provided that:

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- 19.1.1 the Affected Party gives the other party prompt notice describing the circumstance of Force Majeure, including the nature of the occurrence and its expected duration, and, where reasonably practicable, continues to furnish regular reports with respect thereto during the period of Force Majeure;
- 19.1.2 the suspension of performance is of no greater scope and of no longer duration than is required by the circumstance of Force Majeure;
- 19.1.3 no obligations of either party that arose before the circumstance of Force Majeure causing the suspension of performance are excused as a result of the Force Majeure;
- 19.1.4 the Affected Party uses all reasonable efforts to mitigate the impact of the circumstances of Force Majeure and to remedy its inability to perform as quickly as possible; and
- 19.1.5 immediately after the end of the circumstances of Force Majeure, the Affected Party notifies the other party in writing of the same and each party resumes performance of its obligations under this Agreement.

## 20. CONFIDENTIALITY RESTRICTIONS ON THE COMPANY

20.1 In this Clause 20, **Confidential Information**, means any information which the Company or any Affiliate or Related Undertaking of the Company either:

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- 20.1.1 receives from the User properly under this Agreement; or
- 20.1.2 holds in respect of a Customer supplied by the User and is information which it has previously acquired in its capacity as the operator of the Distribution Business; or



20.1.3 receives from any Customer, which, if received from the User, would fall within Clause 20.1.1; or

20.1.4 receive~~s~~ from the User in error, but which would usually be considered to be confidential,

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and the provisions of this Clause 20 shall apply to such Confidential Information, save where the User notifies or otherwise gives prior written agreement to the Company that such Confidential Information need not be treated as confidential.

20.2 Where the Company or any Affiliate or Related Undertaking of the Company receives or acquires Confidential Information, the Company shall (and shall procure that such Affiliate or Related Undertaking shall):

20.2.1 not use the Confidential Information for any purpose other than as required or expressly permitted under this Agreement or any other agreement entered into between the Company and the User for the provision of services by the Distribution Business of the Company;

20.2.2 without prejudice to Clause 20.2.1, not use the Confidential Information in a manner which may obtain for the Company or any Affiliate or Related Undertaking of the Company (as the case may be) any commercial advantage in the operation of a Supply Business except, in relation to information falling within Clause 20.1.2, where the Company supplied electricity to the relevant Customer at the time the information was acquired by the Company;

20.2.3 not authorise access to nor disclose any Confidential Information other than:

(A) to such of the employees of the Company or any Affiliate or Related Undertaking of the Company as require to be informed thereof for the effective performance of the Company's obligations under this Agreement or any other agreement entered into between the Company and the User for the provision of services by the Distribution Business of the Company or for the effective operation of the Distribution Business;

(B) to such agents, consultants, professional or other advisors, and contractors as require to be informed thereof or are required to provide advice which is in connection with the operation of the Distribution Business;

(C) to the Authority;

(D) information which the Company or any Affiliate or Related Undertaking of the Company (as the case may be) is required or permitted to make disclosure of:

(1) in compliance with the duties of the Company or any Affiliate or Related Undertaking of the Company (as the case may be) under the Act or any other requirement of a Competent Authority;

(2) in compliance with the provisions of any Relevant Instruments;

(3) in compliance with any other requirement of law;

(4) in response to a requirement of any Stock Exchange or the Panel on Takeovers and Mergers or any other regulatory authority (whether or not similar to those bodies); or

(5) pursuant to the arbitration rules of the Electricity Arbitration Association or pursuant to any judicial or other arbitral process or tribunal of competent jurisdiction; or

(E) in the case of information falling within Clause 20.1.2, to the person who supplied electricity to the relevant Customer or purchased electricity from the relevant Generator at the time at which such information was acquired by the Company; and

20.2.4 take all reasonable steps to ensure that any such person as is referred to in sub-clauses 20.2.3(A), (B) and ~~(E)~~ above to whom the Company or any Affiliate or Related Undertaking of the Company (as the case may be) discloses Confidential Information does not use that Confidential Information for any purpose other than that for which it was provided and does not disclose that Confidential Information otherwise than in accordance with the provisions of this Clause 20.

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- 20.3 The Company warrants that it has effected, and undertakes that it will during the term of this Agreement effect and maintain, all such registrations as it is required to effect and maintain under the Data Protection Act to enable it lawfully to perform the obligations imposed on it by this Agreement. The Company undertakes to comply with the Data Protection Act in the performance of this Agreement.
- 20.4 The User agrees that where the Company uses or discloses Confidential Information in accordance with this Clause 20, such Confidential Information need not be treated as confidential for the purposes of Condition 39 of the Electricity Distribution Licence to the extent of such use or disclosure.
- 20.5 The Company undertakes that, in any case where information to be disclosed by it under this Agreement may lawfully be disclosed only with the prior consent of the person to whom the information relates, it will use its reasonable endeavours to obtain such prior consent so as to enable it, or the User as the case may be, promptly to perform its obligations under this Agreement, provided that where the consent of the Customer is required to be obtained for the purposes of this Agreement, the User (and not the Company) shall have the obligation to obtain such consent under Clause 21.6.

## 21. CONFIDENTIALITY RESTRICTIONS ON THE USER

- 21.1 In this Clause 21, **Confidential Information** means:

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21.1.1 any information (whether in writing, in disc or electronic form, or otherwise) which has been properly disclosed by the Company under this Agreement but which would usually be considered to be confidential (but shall not include any information relating to a Customer which has been collected by the Company and disclosed to the User pursuant to this Agreement); and

21.1.2 any information which is marked as confidential or which is provided together with a covering letter or fax indicating its confidential nature,

and, to the extent that any Affiliate or Related Undertaking of the User is in possession of Confidential Information, the User shall procure that such Affiliate or Related Undertaking observes the restrictions in sub-clauses 21.2 to 21.4 inclusive as if in each sub-clause there was substituted for the User the name of the Affiliate or Related Undertaking.

- 21.2 The User hereby undertakes to the Company that it will preserve the confidentiality of, and not directly or indirectly reveal, report, publish, disclose or transfer or use for its own purposes, Confidential Information except:

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21.2.1 in the circumstances set out in Clause 21.3;

21.2.2 to the extent otherwise required or expressly permitted by this Agreement or any other agreement entered into between the Company and the User for the provision of services by the Distribution Business of the Company; or

21.2.3 with the prior consent in writing of the Company.

- 21.3 The circumstances set out in this Clause 21.3 are:

21.3.1 where the Confidential Information, before it is furnished to the User, is in the public domain;

21.3.2 where the Confidential Information:

- (A) is acquired by the User in circumstances in which this Clause 21 does not apply;
- (B) is acquired by the User in circumstances in which this Clause 21 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 21; or
- (C) (after it is furnished to the User) enters the public domain,

otherwise (in any such case) than as a result of (i) a breach by the User of its obligations in this Clause 21 or (ii) a breach by the person who disclosed that Confidential Information of that person's confidentiality obligation, and the User is aware of such breach;

21.3.3 if the User is required or permitted to make disclosure of the Confidential Information to any person:

- (A) in compliance with the duties of the User under the Act or any other requirement of a Competent Authority;
- (B) in compliance with the provisions of any Relevant Instrument;
- (C) in compliance with any other law or regulation;
- (D) in response to a requirement of any Stock Exchange or the Panel on Takeovers and Mergers or any other regulatory authority (whether or not similar to those bodies); or
- (E) pursuant to the rules of the Electricity Arbitration Association or pursuant to any judicial or arbitral process or tribunal of competent jurisdiction;

21.3.4 to any Affiliate or Related Undertaking of the User, to the employees, directors, agents, consultants and professional advisers of the User or any Affiliate or Related Undertaking of the User, and to any Relevant Exempt Supplier, in each case on the basis set out in Clause 21.4; or

21.3.5 to the extent that the Confidential Information is required to be disclosed by the User for the purposes of providing billing information to Customers.

21.4 The User shall take all reasonable steps to ensure that any such person as is referred to in Clause 21.3.4 to whom the User discloses confidential information does not use that confidential information for any purpose other than that for which it is provided and does not disclose that confidential information otherwise than in accordance with this Clause 21.

21.5 The User warrants that it has effected, and undertakes that it will during the term of this Agreement effect and maintain, all such registrations as it is required to effect and maintain under the Data Protection Act to enable it lawfully to perform the obligations imposed on it by this Agreement. The User undertakes to comply with the Data Protection Act in the performance of this Agreement.

21.6 The User undertakes that, in any case where information to be disclosed under this Agreement may lawfully be disclosed only with the prior consent of the person to whom the information relates, it will use its reasonable endeavours to obtain (where appropriate, through its Supply Contracts and Power Purchase Contracts) such prior consent so as to enable it ~~or (as the case may be) the Company promptly to perform its obligations under this Agreement.~~

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## 22. DISPUTES

22.1 Save where expressly stated in this Agreement to the contrary, and subject:

- (i) to any contrary provisions of the Act, of any licence issued pursuant to the Act, or of the Regulations (or any other regulations made under Section 29 of the Act); and
- (ii) to the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, or under any such licence, or otherwise howsoever,

any dispute or difference of whatever nature howsoever arising under, out of, or in connection with this Agreement between the parties shall be and is hereby referred to arbitration, pursuant to the arbitration rules of the Electricity Arbitration Association, ~~from time to time in force.~~

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22.2 Whatever the nationality, residence, or domicile of either party and wherever the dispute or difference or any part thereof arose, the law of England shall be the proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the seat of any such arbitration shall be England or Wales and the provisions of the Arbitration Act 1996 shall apply to any such arbitration wherever the same or any part of it shall be conducted.

22.3 Subject always to Clause 22.5, if any consumer of electricity (the ~~consumer~~) brings any legal proceedings in any court against any party (the ~~defendant party~~) and the defendant party wishes to make a third party claim (as defined in Clause 22.4) against the other party which would but for this Clause 22.3 have been a dispute or difference referred to arbitration by virtue of Clause 22.1, then, notwithstanding the provisions of Clause 22.1 (which shall not apply) and in lieu of arbitration, the court in which the legal proceedings have been commenced shall hear and completely determine and adjudicate upon the legal proceedings and the third party claim not only between the consumer and the defendant party but also between either or both of them and the other party, whether by way of third party proceedings or otherwise as may be ordered by the court.

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22.4 For the purposes of this Clause 22, ~~third party claim~~ shall mean:

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22.4.1 any claim by a defendant party against the other party (whether or not already a party to the legal proceedings) for any contribution or indemnity; or

22.4.2 any claim by a defendant party against the other party for any relief or remedy relating to or connected with the subject matter of the legal proceedings and substantially the same as some relief or remedy claimed by the consumer; or

22.4.3 any requirement by a defendant party that any question or issue relating to or connected with the subject matter of the legal proceedings should be determined not only as between the consumer and the defendant party but also as between either or both of them and the other party (whether or not already a party to the legal proceedings).

22.5 Clause 22.3 shall apply only if, at the time at which the legal proceedings are commenced, no arbitration has been commenced between the defendant party and the other party that raises or involves the same or substantially the same issues as would be raised by or involved in the third party claim. The tribunal in any arbitration which has been commenced prior to the commencement of legal proceedings shall determine the question, in the event of dispute, whether the issues raised or involved are the same or substantially the same.

## 23. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

23.1 Except for the benefit that each party holds under Clause 9.7, the parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person ~~who is~~ not a party to ~~the Agreement~~.

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## 24. MISCELLANEOUS

### 24.1 ENTIRE AGREEMENT

24.1.1 This Agreement and any document referred to herein represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom.

24.1.2 Each party confirms that, except as provided in this Agreement and without prejudice to any liability for fraudulent misrepresentation, no party has relied on any representation, warranty or undertaking which is not contained in this Agreement or any document referred to herein.

### 24.2 SEVERABILITY

24.2.1 If any provision of this Agreement shall be held to be invalid or unenforceable by a judgement or decision of any court of competent jurisdiction or any authority (including the Authority) whose decisions shall be binding on the parties, the same shall be deemed severable and the remainder of this Agreement shall remain valid and enforceable to the fullest extent permitted by law. In any such case, the parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for

such invalid or unenforceable provision in order to give effect, so far as practicable, to the spirit of this Agreement.

## 24.3 WAIVERS

- 24.3.1 The failure by any party to exercise, or the delay by any party in exercising, any right, power, privilege or remedy provided under this Agreement or the Distribution Code or by law shall not constitute a waiver thereof nor of any other right, power, privilege or remedy. No single or partial exercise of any such right, power, privilege or remedy shall preclude any future exercise thereof or the exercise of any other right, power, privilege or remedy.

## 24.4 DATA TRANSFER

- 24.4.1 Any notice, request or other communication shall be sent by the means (if any) indicated in Schedule 7, and shall have the content (if any) indicated in Schedule 7, and where Schedule 7 specifies a Data Transfer Catalogue reference number in relation to any notice, request or other communication, such notice, request or communication shall be sent in the format and with the content described under such reference in the Data Transfer Catalogue, as amended from time to time.

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- 24.4.2 Where this Agreement requires any notice, request or other communication to be sent via the Data Transfer Network, the relevant message shall be addressed to the appropriate Market Domain I.D. as follows:

(A) if to the Company, [ ];

(B) if to the User, [ ].

- 24.4.3 Where this Agreement requires any notice, request or other communication to be sent via the Data Transfer Network, the party sending the relevant message shall be responsible for ensuring that it reaches the relevant Gateway within any time period laid down in this Agreement for the provision of such notice, request or communication (and any such message shall be deemed to be received by the recipient at the point in time at which it is delivered to such Gateway):

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provided that the party sending a message shall have no obligation to ensure receipt where the intended recipient has failed, contrary to the Data Transfer Service Agreement, to remove or process all messages delivered to its Gateway and to ensure that such messages are made available to its internal systems as expeditiously as possible so that the Gateway is able to continue to process incoming and outgoing messages effectively.

- 24.4.4 If the Data Transfer Network or any relevant part of such network is at any time for any reason unavailable for the sending of messages between the parties, then during the period of unavailability:

(A) the parties shall use any means reasonable in the circumstances to send any notice, request or other communication that this Agreement would otherwise require to be sent via the Data Transfer Network;

(B) where other means are used in accordance with Clause 24.4.4(A), the parties shall be relieved from any service levels set out in this Agreement relating to any affected notice, request or other communication (except to the extent that this Agreement expressly provides for alternative service levels in such circumstances) but shall use their reasonable endeavours to send such notice, request or other communication as soon as is reasonably practicable; and

(C) to the extent that no such other means are practicable given the nature of the communication and the surrounding circumstances, such unavailability of the Data Transfer Network shall be deemed (to the extent not caused by a breach by either party of the Data Transfer Service Agreement) to constitute a circumstance of Force Majeure for the purposes of this Agreement.

- 24.4.5 Where either party, in breach of its obligations under Clause 24.4.3, fails to deliver any notice, request or other communication to the recipient's Gateway and such failure occurs for reasons outside that party's direct control, the breaching party shall have no liability to the other under this Agreement in respect of

that breach and the parties shall rely instead upon the provisions of the Data Transfer Service Agreement.

24.5 NOTICES

24.5.1 Save as provided in Clause 13.4, Clause 24.4 and Schedule 8, any notice, request or other communication to be made by one party to the other under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first class post, courier, fax or email to that other party as follows:

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(A) if to the Company, to: The Use of System Agreement Contract Manager

Address: [ ]  
[ ]  
[ ]  
[ ]  
[ ]

Fax: [ ]

email: [ ]

(B) if to the User, to: The Use of System Agreement Contract Manager

Address: [ ]  
[ ]  
[ ]  
[ ]  
[ ]

Fax: [ ]

email: [ ]

or to any such other persons, addresses (including email addresses), or fax numbers as may from time to time be notified by one party to the other.

24.5.2 Unless otherwise stated in this Agreement, a notice, request or other communication sent in accordance with Clauses 13.4, 24.5.1 and paragraph 11.1 of Schedule 8 shall be deemed to be received:

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- (A) if delivered personally, when left at the address referred to above;
- (B) if sent by post, three Working Days after the date of posting;
- (C) if sent by fax, upon production by the sender's equipment of a transmission report indicating that the fax was sent to the fax number of the recipient in full without error; and
- (D) if sent by email, one hour after being sent.

24.6 CONTRACT MANAGEMENT

24.6.1 Each party shall appoint an appropriate person (each a Contract Manager, and together the Contract Managers) to manage all matters arising under or in connection with this Agreement and to monitor the general operation of this Agreement.

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- 24.6.2 The Contract Managers shall hold meetings at such venues and at such intervals as may be agreed between the parties from time to time.
- 24.6.3 Each party shall notify the other in accordance with the provisions of Clause 24.5 of the name and contact details of the Contract Manager appointed by it for the purposes of this Agreement from time to time.
- 24.6.4 The parties agree that, in performing its obligations pursuant to this Agreement, the Company shall be required to comply with relevant statutes, statutory instruments and the general law and shall not be liable for any failure to perform its obligations in accordance with this Agreement where to do so would put it in breach of any such statute, statutory instrument or general provision of law.

## 25. GOVERNING LAW

- 25.1 This Agreement is governed by, and shall be construed in accordance with, English law.
- 25.2 Each party agrees that, without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of notices under Clause 24.5 and each party undertakes to maintain such an address at all times in the United Kingdom and to notify the other party in advance of any change from time to time of the details of such address in the manner prescribed in Clause 24.5.

## 26. ASSIGNMENT AND SUB-CONTRACTING

- 26.1 Neither party shall assign any of its rights under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld.
- 26.2 Either party may sub-contract or delegate the performance of all or any of its obligations under this Agreement (including activities envisaged by the Distribution Code) to any appropriately qualified and experienced third party, but shall at all times remain liable to the other party in relation to all sub-contracted or delegated obligations.

## 27. COUNTERPARTS

- 27.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all the counterparts together shall constitute the same document.

**IN WITNESS WHEREOF** this Agreement has been executed the day and year first above written:

signed by \_\_\_\_\_

for and on behalf  
of the Company

signed by \_\_\_\_\_

for and on behalf  
of the User





## SCHEDULE 1      Cover

### 1.      PROVISION OF COVER

- 1.1      The User shall not later than the date of this Agreement provide and maintain Cover in accordance with the provisions of this Schedule.

#### Forms of Collateral

- 1.2      The User shall not later than the date of this Agreement deliver to the Company one or more of the following forms of Collateral such that the aggregate value of such Collateral is equal to or greater than the sum notified to the User by the Company as the User's Value at Risk to the extent that it exceeds the User's Credit Allowance:

- (a)      a Letter of Credit or equivalent bank guarantee (available for an initial period of not less than six months);
- (b)      an Escrow Account Deposit;
- (c)      a Cash Deposit; or
- (d)      any other form of Collateral as agreed between the parties from time to time, including but not limited to performance bonds, bilateral insurance, and independent security. The Company may rate the effectiveness of such Collateral as being between 0% and 100%. Where the effectiveness of such Collateral is rated as less than 100%, its contribution to the aggregate level of Cover provided shall be reduced accordingly.

- 1.3      Any dispute raised by the User or the Company on the form of Collateral provided under paragraph 1.2(d) or on the rating of any Collateral shall be dealt with under Part 8 of this Schedule. Any requirement for payment to be made under such Collateral shall be dealt with in accordance with Part 4 of this Schedule.

#### Maintenance of Cover

- 1.4      The User may increase the value of Collateral provided or provide additional forms of Collateral at any time during the term of this Agreement.

- 1.5      Where:

- (a)      there is any reduction in the amount of Collateral provided by the User as Cover; or
  - (b)      the Company makes a demand against such Collateral following a Payment Default by the User,
- the User shall provide additional Collateral to ensure that the Indebtedness Ratio is equal to or greater than the Indebtedness Ratio Limit according to the provisions of this Schedule.

### 2.      CALCULATION OF COVER

- 2.1      For the duration of this Agreement, the Company shall calculate and maintain an up-to-date record of each of the following values with respect to the User in compliance with the requirements for such record keeping set out from time to time by the Authority for the purposes of this Schedule:

- (a)      the User's Value at Risk;
- (b)      the User's Credit Allowance; and
- (c)      the User's Indebtedness Ratio,

and, upon request by the User, the Company shall without delay provide a written statement of such values.

## The User's Value at Risk

2.2 The User's Value at Risk shall, at any time, be the aggregate of:

- (a) billed but unpaid Use of System Charges which are not currently subject to a Designated Dispute (as defined in Schedule 4) and which have been billed according to an established billing cycle operated by the Company in accordance with the provisions of Clause 7 and/or 8;

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plus

- (b) the Fifteen Days' Value, which shall be the estimated value of the Use of System Charges that would be incurred by the User for a further 15 days from that time, based on the average daily Use of System Charges actually billed to the User during the previous month;

less

- (c) any credit notes and any amounts paid to the Company by the User in the form of a Prepayment or an Advance Payment.

2.3 Where the User has not incurred Use of System Charges, the Value at Risk shall be set at £1,000 until such time as the Value at Risk can be calculated in accordance with the provisions of paragraph 2.2.

## The User's Credit Allowance

2.4 The User's Credit Allowance (CA, here below) shall be calculated according to the following formula:

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$$CA = RAV \times 2\% \times CAF$$

where:

RAV is the closing balance for the Regulatory Asset Value (having the meaning given to that term in the price control review reporting rules issued by the Authority pursuant to Condition 52 of the Electricity Distribution Licence) as published in the Company's latest audited regulatory accounts (or, where no Regulatory Asset Value is published, shall be a value to be determined by the Authority as a suitable replacement following consultation with the Company); and

CAF is the Credit Allowance Factor (which is to be expressed as a percentage determined under paragraph 2.5 or 2.6 or in accordance with paragraph 2.11).

2.5 Where the User has a Credit Rating from an Approved Credit Referencing Agency that is Ba3/BB- or above, CAF shall be determined according to the following table:

Credit Rating		CAF (%)
Moody's	Standard and Poor's	
Aaa to Aa2	AAA to AA	100
Aa3 to A3	AA- to A-	40
Baa1	BBB+	20
Baa2	BBB	19
Baa3	BBB-	18
Ba1	BB+	17
Ba2	BB	16
Ba3	BB-	15

2.6 Where the User does not have a Credit Rating from an Approved Credit Referencing Agency that is Ba3 / BB– or above, CAF shall be determined as follows:

- (a) where the User has requested that the Company use an Independent Credit Assessment, CAF shall be determined by reference to the Credit Assessment Score provided to the User pursuant to paragraph 2.8 and in accordance with the table set out at paragraph 2.9; or
- (b) where the User has not requested that the Company use an Independent Credit Assessment, CAF shall equal the Payment Record Factor (which shall be determined in accordance with the provisions of paragraphs 2.12 to 2.14).

### **Credit Assessment Score**

2.7 For the purposes of determining CAF pursuant to paragraph 2.6(a), the User may, once a year, request that the Company obtain an Independent Credit Assessment from a Recognised Credit Assessment Agency chosen by the User.

2.8 Within one month of such request, the Company must procure from that Recognised Credit Assessment Agency (and must provide to the User) an Independent Credit Assessment which shall include a Credit Assessment Score determined on a scale from zero to 10 in respect of the User.

2.9 The value of CAF corresponding in the following table to the Credit Assessment Score so determined shall be the Credit Allowance Factor which, pursuant to paragraph 2.6(a), is to be used for the purposes of calculating the User's Credit Allowance pursuant to paragraph 2.4.

<b>Credit Assessment Score</b>	<b>CAF (%)</b>
10	20
9	19
8	18
7	17
6	16
5	15
4	13
3	10
2	7
1	3
0	0

### **Additional Credit Assessment**

2.10 During the 12-month period following completion of an annual Independent Credit Assessment pursuant to paragraph 2.7, the User may at its own cost procure from a Recognised Credit Assessment Agency, and submit to the Company, an interim Independent Credit Assessment for the purpose of enabling the Company to review and where necessary recalculate the User's Credit Allowance.

### **Payment Record Factor**

2.11 The Company shall at any time be entitled to use (and, on request by the User, must use) the Payment Record Factor to determine the Credit Allowance Factor. For this purpose, and for that of paragraph 2.6(b), the Credit Allowance Factor shall equal the value of the Payment Record Factor determined in accordance with paragraphs 2.12 to 2.14.

- 2.12 The Payment Record Factor shall equal the number of months since the Good Payment Performance Start Date (as specified in paragraph 2.13) multiplied by 0.033% (that is to say, by 0.4% per annum) up to a maximum value of 2% after five years of good payment history.
- 2.13 For all Users, the Good Payment Performance Start Date shall initially be the date of the earliest of the first Initial Account, Reconciliation Account, or account issued pursuant to Clause 8 (as the case may be) (the **relevant account**). Where the User fails, or has failed, on any occasion to pay any relevant account relating to undisputed Use of System Charges in full on the Payment Date, the Good Payment Performance Start Date shall be the date on which the relevant account is submitted in the month subsequent to the month in which such payment failure occurs.
- 2.14 Where any unpaid disputed invoice is found to have been disputed without merit, a failure to have paid the relevant account in accordance with the terms of this Agreement shall be treated as a late payment.

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### The User's Indebtedness Ratio

- 2.15 The Credit Limit for the User shall equal the Credit Allowance plus the aggregate value of the Collateral provided on any day.
- 2.16 The Indebtedness Ratio for the User shall equal the Value at Risk as a percentage of the Credit Limit.
- 2.17 If, on any day, the User's Indebtedness Ratio equals or is greater than 85% of the User's Indebtedness Ratio Limit, the Company shall give notice of this to the User.

### Credit Allowance Where Credit Support is Provided by a Third Party

- 2.18 Where credit support is provided for the User through a Qualifying Guarantee by a third party (the **Credit Support Provider**), the maximum Credit Allowance assigned to the User shall be calculated in accordance with paragraph 2.4 above, but substituting the Credit Support Provider for the User in all such calculations. Where the value of the Qualifying Guarantee is lower than the Credit Allowance calculated pursuant to paragraph 2.4, the actual User's Credit Allowance shall be the maximum value of the Qualifying Guarantee.
- 2.19 Where a Credit Support Provider provides a Qualifying Guarantee for another user of the Distribution System, the Value at Risk for that user shall be calculated as the aggregate of:
- (a) the Value at Risk for that user; and
  - (b) the Value at Risk for all other users for which the Credit Support Provider has provided a Qualifying Guarantee.
- 2.20 Where the User disputes the Company's calculation of Value at Risk or the Credit Allowance, the provisions of Part 8 of this Schedule shall apply.

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## 3. INCREASE OR DECREASE OF COVER REQUIREMENT

- 3.1 The following provisions have effect in relation to cover requirements pursuant to the circumstances specified under the relevant headings in this Part 3.

### Increase in Cover Requirements Pursuant to a Change in the Value at Risk

- 3.2 If, on any Working Day, the User's Indebtedness Ratio equals or is greater than its Indebtedness Ratio Limit because of an increase in the user's Value at Risk, the Company shall give notice of this to the User on the following Working Day and the User shall take all appropriate action to ensure that its Indebtedness Ratio is equal to or below 80% within two Working Days of its receipt of such notice.

- 3.3 It shall be a Cover Default if the User fails to remedy a default under paragraph 3.2 within the prescribed timescale.
- 3.4 Following a Cover Default under paragraph 3.3, the User's Indebtedness Ratio Limit shall be decreased to 80% for one year following rectification of the default, after which time it shall be increased back to 100%.

### Actions in Relation to Cover Default

- 3.5 In addition to any other remedies available to it, the Company shall be entitled to take the following actions following a Cover Default (provided that, where the provision of MPAS to the User has been suspended at any time after Day 0 + 5, the Company must, as soon as the Cover Default has been remedied, immediately take such steps as are within its power to initiate the restoration of MPAS to the User):

Working Days After Cover Default	Action Within the Company's Rights Under this Schedule
Day 0	Date of default
Day 0 + 1	Interest and administration fee start to apply.
Day 0 + 1	Issue notice of default to Contract Manager containing a statement of the Indebtedness Ratio and send a copy of such notice to the Authority.
Day 0 + 3	Formal User response required.
Day 0 + 5	Initiate action to suspend provision of MPAS to User in accordance with the provisions of the Master Registration Agreement, and notify the Authority.

### Increase or Decrease in Cover Requirements Pursuant to a Change in the RAV

- 3.6 The Company shall give the User one month's written notice of its intention to use a new value of RAV to calculate the Credit Allowance according to paragraph 2.4. Such notice shall state the new value of RAV and the date on which the Company will begin to use that value in such calculation.

### Decrease in Cover Requirements

- 3.7 The User may by notice to the Company decrease the amount of Collateral at any time provided that such decrease would not cause the Indebtedness Ratio to exceed the Indebtedness Ratio Limit.
- 3.8 The Company shall, within two Working Days of its receipt of a notice from the User pursuant to paragraph 3.8, undertake actions to facilitate the reduction, or the return to the User, of such Collateral.

### Increase in Cover Requirements Because of the Expiry of a Letter of Credit

- 3.9 Not later than 10 Working Days before any outstanding Letter of Credit is due to expire, the User shall either procure to the satisfaction of the Company that it (or a suitable replacement Letter of Credit which meets the Company's reasonable requirements) will be available for a further period of not less than six months, or provide an alternative form of Collateral as set out in paragraph 12.2.

### Release from Cover Obligations

- 3.10 Upon the termination of this Agreement, and provided that all amounts owed by the User in respect of Use of System Charges and any other amount owed by the User to the Company under this Agreement have been duly and finally paid, including interest, the User shall be released from the obligation to maintain Cover and the Company shall consent to the revocation of any outstanding Qualifying Guarantee or Letter

**Deleted:** 3.7 The Company shall also recalculate as necessary from time to time the value of the Fifteen Days' Value, of the Value at Risk, and of the Indebtedness Ratio according to paragraph 2.2 or 2.16 (as the case may be) and pass such calculations (including supporting evidence for the derivation of figures used) to the User.

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of Credit and the User shall be entitled to withdraw the balance (if any) (including interest credited thereto) standing to the credit of the User in the Escrow Account at that date and to request the return or termination of any other form of Collateral provided.

#### 4. USE OF COVER FOLLOWING PAYMENT DEFAULT

4.1 This paragraph applies if, after 17:30 hours on any Payment Date, the Company has been notified by the User or otherwise has reason to believe that the User has not remitted to it by close of banking business on the Payment Date all or any part ~~(the amount in default)~~ of any amount which has been notified by the Company to the User as being payable by the User by way of the Use of System Charges on the relevant Payment Date, or any other amounts owing under this Agreement except for the disputed amount of a Designated Dispute (as defined in Schedule 4).

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4.2 Where paragraph 4.1 applies, a Payment Default exists and the Company shall (in addition to any other remedies available to it) be entitled to act in accordance with the following provisions (or whichever of them may apply) in the order in which they appear below until the Company is satisfied that the User has discharged its obligations in respect of Use of System Charges or such other amounts under this Agreement which are payable in respect of the relevant account:

- (a) the Company, to the extent that the User is entitled to receive payment from the Company pursuant to this Agreement (unless it reasonably believes that such set-off would be unlawful), shall be entitled to set off the amount of such entitlement against the amount in default;
- (b) the amount of funds then standing to the credit of the Escrow Account or the amount of any Cash Deposit (excluding any interest accrued thereon to the benefit of the User) shall be released to the Company and set off against the amounts unpaid by the User, and for that purpose the Company shall be entitled to place such funds in any account of the Company at its sole discretion and shall notify the User accordingly;
- (c) the Company may demand payment under any Letter of Credit for a sum not exceeding the amount of the Cover;
- (d) the Company may demand payment under any outstanding Qualifying Guarantee provided for the benefit of the User pursuant to paragraph 2.18; or
- (e) the Company may demand payment under any other form of Collateral provided under paragraph 1.2(d) in the manner which the parties have previously agreed as appropriate in relation to that particular form of Collateral or, in the absence of such agreement, in a manner which the Company (acting reasonably) considers appropriate in relation thereto.

#### 5. UTILISATION OF FUNDS

5.1 In addition to the provisions of Part 4 above, if the Company serves a notice of termination in accordance with Clause 18, it shall be entitled:

- (a) to demand payment of any of the Use of System Charges and any other amounts owed by the User under the Agreement which are outstanding, whether or not the Payment Date in respect of them has passed; and
- (b) to make demand under any outstanding Qualifying Guarantee or a call under any outstanding Letter of Credit supplied by the User,

and the funds in the Escrow Account to the extent that they represent Cover provided by the User shall be released to the Company and set off against the Use of System Charges and any other amount owed by the User under the Agreement that is unpaid by the User, and for that purpose the Company shall be entitled to place any such amount released to it from the Escrow Account to any account of the Company as in its sole discretion it thinks fit.

## 6. USER'S RIGHT TO WITHDRAW FUNDS

6.1 If the User is not in default in respect of any amount owed to the Company in respect of the Use of System Charges or any other amount owed by the User under the Agreement, the Company shall permit the release to the User, within two Working Days ~~of receiving the User's written request for it, of any amount of cash~~ provided by the User by way of Cover which exceeds the amount which the User is required to provide in accordance with this Schedule.

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6.2 Interest ~~on the amount deposited in an Escrow Account (at a rate to be agreed by the User with the bank at which such account is held) or on the amount of a Cash Deposit (at a rate to be agreed between the parties)~~ shall accrue for the benefit of the User.

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## 7. NO SECURITY

7.1 Nothing in this Schedule shall be effective to create a charge on or any other form of security interest in any asset comprising part of the User's business.

## 8. DISPUTES

8.1 The parties shall attempt to resolve in good faith any dispute that may arise under or in relation to the provisions of this Schedule.

8.2 Where any such dispute remains unresolved after 14 days, either party may refer the matter to the Authority for determination as if it were a dispute falling within Condition 4E of the Electricity Distribution Licence.

8.3 A determination by the Authority under this Part 8 shall be final and binding.

## 9. NOTICES

9.1 Contact details for notices issued under this Schedule, and the form of such notices, shall be agreed between the parties. Where no such agreement exists, the provisions of Clause 24.5 shall apply.

## 10. DEFINITIONS

10.1 In this Schedule, and without prejudice to the provisions of paragraph 10.2, the following words or expressions shall have the meanings set opposite them:

**Advance Payment** means a deposit of funds by or on behalf of the User as early payment relating to any invoice issued but not yet due into a bank account specified by the Company, in the name of the Company.

**Approved Credit Referencing Agency** means Moody's Investors Service or Standard and Poor's Ratings Group or such replacement agency as may be notified by the Authority from time to time for the purposes of this Schedule.

**Cash Deposit** means a deposit of funds by or on behalf of the User into a bank account in the name of the Company.

**Collateral** means the implements (excluding parent company

guarantees) through which the User can provide Cover, as set out in paragraph 1.2 and as may be amended or added to from time to time by the Company with the Authority's approval.

**Cover**

means the aggregate amount of Collateral which the User is required to provide and maintain in accordance with the provisions of this Schedule.

**Cover Default**

has the meaning given in paragraph 3.3.

**Credit Allowance (CA)**

has the meaning given in paragraph 2.4.

**Credit Allowance Factor (CAF)**

has the meaning given in paragraph 2.4.

**Credit Assessment Score**

has the meaning given in paragraph 2.8.

**Credit Limit**

has the meaning given in paragraph 2.15.

**Credit Rating**

means a long-term debt rating from an Approved Credit Referencing Agency.

**Credit Support Provider**

has the meaning given in paragraph 2.18.

**Escrow Account**

means a separately designated bank account in the name of the User at such branch of [REDACTED] or such branch of any other bank in the United Kingdom as the Company shall specify **(the Bank)** (on terms to be approved by the Company and which provide, amongst other things, that the funds held in the Escrow Account may be released by the Bank to the Company in the circumstances envisaged in Parts 3 and 4 of this Schedule with the right to direct payments from the Escrow Account in favour only of the Company until the events specified in paragraph 3.10 have occurred) to which all deposits required to be made by the User pursuant to this Schedule shall be placed, provided that such proceeds are not to be withdrawn by the User save in accordance with the provisions of this Schedule.

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**Escrow Account Deposit**

means a deposit of funds by or on behalf of the User into an Escrow Account.

**Fifteen Days' Value**

has the meaning given in paragraph 2.2(b).

**Good Payment**

**Performance Start Date**

has the meaning given in paragraph 2.13

**Indebtedness Ratio**

has the meaning given in paragraph 2.16.

**Indebtedness Ratio Limit**

shall be 100% unless otherwise notified by the Company under the provisions of this Agreement.

**Independent Credit Assessment**

means a credit assessment of the User procured by the Company at the User's request in accordance with paragraph 2.8 from a Recognised Credit Assessment Agency chosen by the User.

**Letter of Credit**

means an unconditional irrevocable standby letter of credit in such form as the Company may reasonably approve issued for the account of the User in sterling in favour of the Company, allowing for partial drawings and providing for the payment to the Company forthwith on demand by any



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United Kingdom clearing bank or any other bank which in each case has a long-term debt rating of not less than single A by Standard and Poor's Ratings Group or by Moody's Investors Service, or such other bank as the Company may approve and which shall be available for payment at a branch of the issuing bank.

**Payment Date** means the due date for payment of any Initial Account, Reconciliation Account, or other account submitted to the User pursuant to this Agreement.

**Payment Default** has the meaning given in paragraph 4.2.

**Payment Record Factor** has the meaning given in paragraph 2.12.

**Prepayment** means a deposit of funds by or on behalf of the User as early payment relating to future invoices not yet issued into a bank account specified by the Company, in the name of the Company.

**Qualifying Guarantee** means a guarantee in favour of the Company which is legally enforceable in the United Kingdom and in such form as may be agreed between the Company and the User and which may specify a maximum value.

**Recognised Credit Assessment Agency** means any credit assessment agency recognised by the Authority for the purpose of providing credit assessments pursuant to this Schedule.

**Regulatory Asset Value (RAV)** has the meaning given in paragraph 2.4.

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**Value at Risk** has the meaning given in paragraph 2.2.

- 10.2 Any other words or expressions used in this Schedule (excluding headings or any parts thereof) which bear initial capital letters and are defined in Clause 1.1 shall have the same respective meanings as are given to them in that clause.

## SCHEDULE 2 Mandatory Terms For Contracts

By virtue of Clause 3.1 of this Agreement, the terms set out below (or other terms having the same effect as such terms) ~~the mandatory terms~~ are required to be presented by the User within ~~any Supply Contract or Power Purchase Contract~~ in the same manner and with the same prominence as the other terms of ~~that~~ Contract.

(A) Part A below sets out the mandatory terms ~~for every Contract in respect of~~ premises at which the supply of electricity is taken wholly or mainly for domestic purposes.

(B) Part B below sets out the mandatory terms ~~for every Contract in respect of which the~~ supply of electricity ~~is taken wholly or mainly for business purposes, these being purposes other than domestic purposes~~.

### PART A: DOMESTIC PURPOSES

#### 0. Electricity Connection Provisions

0.1 This paragraph 0 applies in respect of each connection of your premises to the distribution system owned or operated by your local electricity network operator.

0.2 Your local electricity network operator will maintain, and may interrupt, and is entitled to cut off, each such connection in accordance with and subject to the provisions of the Electricity Act 1989 and any other legal requirements or rights (including those arising under any code or agreement with which your local electricity network operator is obliged by its distribution licence to comply) that may from time to time apply.

0.3 Subject to any contrary written agreement that you may have with it, your local electricity network operator is not liable to you under this ~~contract~~ or otherwise for any loss or damage which:

- (a) is beyond its reasonable control; or
- (b) is consequential or indirect, or arises from or amounts to economic loss,

and this paragraph applies regardless of the termination of this ~~contract~~.

0.4 Your local electricity network operator is entitled to enforce the provisions of this paragraph 0 by virtue of the Contracts (Rights of Third Parties) Act 1999 (or, in Scotland, by virtue of the common law of Scotland insofar as it recognises and confers rights equivalent to those codified by that Act for England and Wales) and such provisions may not be varied without its express consent.

0.5 In this paragraph 0:

~~economic loss~~ means loss of profits, revenues, interest, business, goodwill, or commercial, market, or economic opportunity, whether direct or indirect and whether or not foreseeable; and

~~local electricity network operator~~ means the distribution licence holder who owns or operates the electricity distribution system through which electricity is conveyed to your premises.

### PART B: BUSINESS PURPOSES

#### 0. Electricity Connection Provisions

0.1 This paragraph 0 applies in respect of each connection of your premises to the distribution system owned or operated by your local electricity network operator.

0.2 Your local electricity network operator will maintain, and may interrupt, and is entitled to cut off, each such connection in accordance with and subject to the provisions of the Electricity Act 1989 and any other legal requirements or rights (including those arising under any code or agreement with which your local electricity network operator is obliged by its distribution licence to comply) that may from time to time apply.

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- 0.3 Subject to any contrary written agreement that you may have with it, your local electricity network operator is not liable to you under this contract or otherwise for any loss or damage which:
- (a) is beyond its reasonable control; or
- (b) is consequential or indirect, or arises from or amounts to economic loss.
- 0.4 Your local electricity network operator is only liable to you for loss or damage in accordance with the limitations in paragraph 0.3 and up to a maximum of £100,000 in respect of all claims arising in any calendar year.
- 0.5 Paragraphs 0.3 and 0.4 apply regardless of the termination of this contract.
- 0.6 Your local electricity network operator is entitled to enforce the provisions of this paragraph 0 by virtue of the Contracts (Rights of Third Parties) Act 1999 (or, in Scotland, by virtue of the common law of Scotland insofar as it recognises and confers rights equivalent to those codified by that Act for England and Wales) and such provisions may not be varied without its express consent.
- 0.7 In this paragraph 0:
- economic loss** means loss of profits, revenues, interest, business, goodwill, or commercial, market, or economic opportunity, whether direct or indirect and whether or not foreseeable; and
- local electricity network operator** means the distribution licence holder who owns or operates the electricity distribution system through which electricity is conveyed to your premises.
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**Deleted:** [ SCHEDULE 3 Use of System Charges¶]

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**Statement of the basis of charges for Use of System¶]**

Use of System charges and any variations are and will be calculated in accordance with the Condition 4A Charging Statement and the Condition 36C Charging Statement. Current editions of these statements can be obtained by written request to the Company contacts detailed below:¶]

¶

*[Insert specific DNO contact details] ]*

	<p><b>Deleted:</b> [ SCHEDULE 4 Transactional Charges¶ ¶ <b>PART I - CHARGES¶</b> ¶ Transactional charges and any variations are and will be calculated in accordance with the Condition 4A Charging Statement and the Condition 36C Charging Statement. Current editions of these statements can be obtained by written request to the Company contacts detailed below:¶ ¶ [Insert specific DNO contact details] ]¶ ¶ ¶ <b>PART II - PAYMENT TERMS¶</b></p>
	<p><b>Deleted:</b> &lt;#&gt;Within 21 days after the end of each calendar month the Company shall submit to the User an account specifying the payment due from the User in respect of services referred to in Part I of this Schedule performed during that month and any Value Added Tax payable thereon.¶ &lt;#&gt;Within 30 days of the date of an account submitted in accordance with paragraph 1, the User shall pay to the Company all sums due in respect of such account in pounds sterling by electronic transfer of funds to such bank account (located in the United Kingdom) as is specified in the statement, quoting the invoice number against which payment is made.¶ &lt;#&gt;Any disputes shall be governed by the provisions of Schedule 6.¶</p>

## SCHEDULE 3 Calculation of Interest for Reconciliation Accounts

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Interest in respect of Reconciliation Accounts, as provided for in Clause 7.4, shall be calculated in accordance with the following provisions:1. For the first day after the Invoice Date of the Initial Account, the following calculation shall be used by the Company in preparing a Reconciliation Account:

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$$T_1 = (V_r - V_{r-1}) \times (I_1 \times \frac{1}{365}) + (V_r - V_{r-1})$$

2. For all subsequent days until the Invoice Date of the Reconciliation Account, the following calculation shall be used by the Company in preparing a Reconciliation Account:

$$T_{n+1} = T_n \times (I_n \times \frac{1}{365}) + T_n$$

where:

$T_n$  = amount due under a Reconciliation Account, including interest calculated on a daily compound basis

$r$  = run number. For an Initial Settlement Run  $r = 0$ , and for a Final Settlement Run,  $r = 4$

$I_n$  = the Barclays Bank plc daily declared base interest rate for the Working Day prior to day  $n$

$V_r$  = amount due from run calculation  $r$ , excluding interest due, and

$n$  = day number count

3. For the purpose of calculating the daily interest rates in the above calculations, the number of days in a leap year shall be deemed to be 365.

4. For the avoidance of doubt, the Invoice Date of the Initial Account shall be when  $n = 0$ .

## SCHEDULE 4 Billing and Payment Disputes

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1. ~~Subject to Clause 6.10, this~~ Schedule 4 applies to disputes in relation to charges payable by the User pursuant to ~~any of the provisions of this Agreement.~~

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- 1.1 Where the User disputes an account issued under ~~any of~~ Clauses 7, 8 or 8A, and the dispute is a Designated Dispute (as defined in paragraph 1.2 below):

- A. the User shall pay such amount of ~~the~~ charges due as are not in dispute and shall be entitled to withhold the balance pending resolution of the dispute;
- B. the parties shall use reasonable endeavours to resolve the dispute in good faith;
- C. where the dispute remains unresolved after 20 Working Days, either party may refer the dispute to arbitration in accordance with Clause 22; and
- D. following resolution of the dispute, any amount agreed or determined to be payable shall be paid within 20 Working Days after such agreement or determination and interest shall accrue on such amount plus Value Added Tax (if any) from the date on which such amount was originally due until the date of payment at the rate of 1% per annum above the base rate during such period of Barclays Bank plc, compounded annually.

- 1.2 A dispute shall be a "Designated Dispute" for the purposes of this paragraph 1 where within 14 days of receiving a request for payment the User in good faith (i) notifies the Company that one or more of the circumstances mentioned in paragraph 1.2 A and B below applies to the request and (ii) provides the Company with a statement and explanation of the amount in dispute.

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Those circumstances are:

- A. that ~~in the calculation by the Company of the charges in question there is: (i) an error in the information used for, or (ii) an arithmetical error in, that calculation which is apparent on the face of the relevant account; and/or~~
- B. that, for a Metering Point within Clause 6.3.1, the Company has chosen not to use the half-hourly data (whether actual or estimated) provided by the Data Collector for the purposes of Settlement in calculating Use of System Charges, and the User disputes the accuracy or validity of the data actually used.

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- 1.3 ~~Disputes about the matters listed at paragraph 1.3 A and B below are not Designated Disputes and paragraph 1.1 shall not apply where:~~

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- A. the Company has invoiced Use of System Charges in accordance with Clause 6.3; ~~or~~
- B. the Company has used estimated data in accordance with Clause 8.2.1.

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- 1.4 Where, other than in the case of a Designated Dispute, within 14 days of receiving a request for payment the User in good faith provides the Company with a statement and explanation of the amount of Use of System Charges in dispute:

- A. the User shall pay the total amount of such charges as they fall due in accordance with Clause 6.4;
- B. the parties shall use reasonable endeavours to resolve the dispute in good faith;
- C. where the dispute remains unresolved after 20 Working Days, either party may refer the dispute to arbitration in accordance with Clause 22; and

- D. following resolution of the dispute, any amount agreed or determined to be repayable (including where appropriate any interest paid pursuant to Clause 7.5 or Clause 8.3) by the Company shall be paid within 20 Working Days after such agreement or determination and interest shall accrue on such amount from the date on which such amount was originally paid by the User until the date of repayment at 1% per annum above the base rate during such period of Barclays Bank plc, compounded annually.

## | SCHEDULE 5. Approval and Permission Procedures

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## 1. DEFINITIONS

In this Schedule ~~5~~, except where the context otherwise requires, the following terms shall have the meanings set opposite them:

<del>Applicant</del>	means a person who applies for approval pursuant to paragraph 3;
<del>Approved Contractor</del>	means a contractor approved pursuant to paragraph 3;
<del>Competent Person</del>	means a person appointed by an Approved Contractor in accordance with paragraph 4.1;
<del>Certificate of Competence</del>	means a certificate issued by an Approved Contractor in accordance with paragraph 4.1;
<del>Permission</del>	means a permission issued in writing by the Company pursuant to paragraph 5;
<del>Quality Assurance Certification Body</del>	means a body assessed, validated and regulated by the UK Accreditation Service; and
<del>Works</del>	means any Energisation Works, Re-energisation Works or De-energisation Works.

## 2. PRINCIPLES

- 2.1 Subject to the provisions of Clause 10 and this Schedule ~~5~~, the User shall be entitled to procure the performance of Works on the Distribution System by a person who is not an employee of the Company. This Schedule ~~5~~ does not apply to work carried out by a Meter Operator pursuant to the Meter Operation Services Agreement.
- 2.2 A Competent Person shall be recognised to be a suitable person to carry out Works on the Distribution System in accordance with and to the extent specified in a Permission.
- 2.3 Where the User elects to have Works performed on the Distribution System by an Approved Contractor rather than the Company, the Approved Contractor shall undertake to perform all the categories of Works in accordance with and to the extent specified in the Permissions held by its Competent Persons, and the Company shall only be obliged to undertake such categories of Works as are not so specified. The User shall remunerate the Company for undertaking any such Works by reference to the relevant Transactional Charges set out in the Condition 4A Charging Statement, or by agreement where the charges for such Works are not set out therein.

## 3. PROCEDURE FOR APPROVING CONTRACTORS

- 3.1 Where an Applicant has applied for approval as an Approved Contractor for the purposes of this Schedule ~~5~~, the Company shall appoint a Quality Assurance Certification Body to carry out an assessment of the Applicant's qualifications for approved status. The Applicant shall be advised of any assessment fees payable to the Company. The Quality Assurance Certification Body shall advise the Company and the Applicant of the results of the assessment, and the Company shall decide whether the Applicant may be approved together with the reasons for that decision.
- 3.2 An approval pursuant to paragraph 3.1:
- 8.1.1 shall be valid for three years, during which period the Company may at any time carry out inspections of the Approved Contractor's work on site; and
- 8.1.2 may be withdrawn at any time by the Company, subject always to the Approved Contractor being given a reasoned explanation.
- 3.3 The Company may accept an approval of an Applicant given by another supplier in accordance with the procedure stated in this paragraph 3.

#### 4. PROCEDURE FOR RECOGNISING COMPETENT PERSONS

- 4.1 A person shall be recognised by the Company as being a suitable person to perform Works on the Distribution System if that person is employed by an Approved Contractor and has been appointed in writing by the Approved Contractor as a Competent Person, being someone who has successfully completed satisfactory training and examination in electrical safety awareness and appropriate technical knowledge, and who personally holds a Certificate of Competence issued by the Approved Contractor as evidence of a suitable qualification in all such respects.
- 4.2 A Certificate of Competence issued to an Approved Contractor's employee in accordance with this paragraph 4 shall certify that employee's suitability to perform Works on the Distribution System subject to a Permission. The Approved Contractor shall be responsible for giving the Company a copy of each Certificate of Competence issued by it, for reissuing or revoking each Certificate of Competence every three years, and for maintaining a record of all Certificates of Competence currently in force.
- 4.3 A Competent Person must have a valid Certificate of Competence available for inspection at all times when performing any Works on the Distribution System.

#### 5. PROCEDURE FOR GRANTING PERMISSION

- 5.1 The User shall be entitled to procure the performance of Works on the Distribution System by a Competent Person, provided that the Competent Person has a valid Permission. The grant of a Permission to a Competent Person shall not be unreasonably withheld, provided that the Company shall always have a prior right to undertake a trade test and safety awareness assessment of that person and that the reasonable costs of exercising this right shall be paid by the Approved Contractor if requested by the Company.
- 5.2 The nature, scope, and extent of the Works which a Competent Person may undertake shall be at the Company's sole discretion. A Permission shall specify in writing the categories of Works which the Competent Person is allowed to undertake on the Distribution System, and the Competent Person's authority to undertake Works shall be limited to those categories alone and shall in no circumstances whatsoever extend to any other category of Works howsoever described.
- 5.3 Notwithstanding anything in paragraph 5.2, the categories of Works specified in a Permission may (for example only and without limitation) include any of the following:
- the withdrawal or replacement of fuse links in the service terminations;
  - the connection or severing of wiring between service terminations, meters and distribution boards;
  - attendance at or the performance of work in a Distribution System substation without the need for personal supervision;
  - the supervision or control of a working party which undertakes any of the above; and
  - the operating of high or low voltage switchgear.

#### 6. DISPUTES

- 6.1 The parties shall attempt to resolve in good faith any dispute in relation to assessment fees payable to the Company pursuant to paragraph 3.1 of this Schedule ~~5~~. Where a dispute remains unresolved after 14 days, either party may refer the dispute to the Authority for determination. Any determination by the Authority ~~under this paragraph~~ shall be final and binding.

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8 Metering Functionality and  
Data Requirements¶  
¶  
The requirements for metering  
functionality and data requirements  
are detailed in the Company's  
Condition 4A Charging Statement.  
Current editions of this statement  
can be obtained by written request  
to the Company contacts detailed  
below:¶  
¶  
[Insert specific DNO contact  
details] ]

## SCHEDULE 6 Metering Accuracy

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### 1. METERING ACCURACY

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- 1.1 Metering equipment installed and maintained pursuant to Clause 12.1 shall be capable of operating within the accuracy limits specified pursuant to the Balancing and Settlement Code and, where no accuracy limits are specified in relation to an element of any metering equipment under the Balancing and Settlement Code, the accuracy of that element shall be no less than that specified in Tables 1 to 4 (inclusive) of Code of Practice Four approved pursuant to the Balancing and Settlement Code (“the agreed accuracy limits”).

### 2. DISPUTES IN RELATION TO METERING ACCURACY

- 2.1 Unless the accuracy of metering equipment installed and maintained pursuant to Clause 12.1 is disputed by notice in writing (a “dispute notice”) given by one party to the other, such metering equipment shall be deemed to be accurate.

- 2.2 If a dispute notice is given under paragraph 2.1, then, unless otherwise agreed, the metering equipment shall as soon as practicable be examined and tested by a meter examiner in accordance with Schedule 7 to the Act.

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- 2.3 If on such test:

- 2.3.1 it is found that the inaccuracy of the registration of the metering equipment at normal loads exceeds the agreed accuracy limits, suitable adjustment shall be made in the accounts rendered by the Company and the metering equipment or part thereof found to be inaccurate shall be recalibrated or replaced and the cost of such test and recalibration or replacement shall be paid by the User;
- 2.3.2 the metering equipment is found to be accurate within the said limits, the metering equipment shall be deemed to be accurate and the cost of moving, testing and replacing the metering equipment or any part thereof shall be paid by the party who gave the relevant dispute notice.

SCHEDULE 7 Event Log

1. In the following table:

- (A) **DTC ref** means the relevant reference number in the Data Transfer Catalogue;
- (B) **DTN** means the Data Transfer Network and **Phone** means telephone;
- (C) the descriptions of the data flows concerned under **Message** are for ease of reference only and shall not affect the obligations of either party under the relevant provisions of this Agreement; and
- (D) **CR** means that there is currently no DTC reference, but that a change request is required.

2. Where there is more than one means of transmission specified in Schedule 7 (one of them being via the Data Transfer Network), it is expected that the parties shall transmit any notice, request or other communication via the Data Transfer Network.

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# SCHEDULE 7

# EVENT LOG

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Agreement Clause Number	From	To	Message	Medium				DTC ref	
				DTN	Phone	Fax	Post or email		
3.1	Company	User	Request for evidence that <del>the</del> Contract contains the terms set out in Schedule 2.	n/a	NO	YES	YES		Deleted: Supply
3.1	User	Company	Provision of evidence that <del>the</del> Contract contains the terms set out in Schedule 2.	n/a	NO	YES	YES		Deleted: Supply
3.5 3.6	Company	User	Notification that non-standard terms apply to a connection.	n/a	NO	YES	YES		
4.2.2	User/agent	Company	Confirmation of <del>ap</del> pointment of Accredited Meter Operator, Data Collector and Data Aggregator.	YES	NO	NO	NO	D0205	Deleted: A
4.2.3	User/agent	Company	Confirmation <del>that</del> metering equipment <del>is</del> installed.	YES	NO	NO	NO	D0012	
4.3.4	User/agent	Company	Confirmation of customer's appointed Meter Administrator.	NO	NO	YES	YES		
4.3.4	User/agent	Company	Confirmation that the User is registered for import onto <del>the Distribution System</del> and <del>that the</del> User or other supplier <del>is</del> registered for supply.	[ ]	[ ]	[ ]			Deleted: DS
6.1	Company	User	Notification of variation of charges.	NO	NO	NO	YES		
7.2	User/agent	Company	Provision of non-half hourly Supercustomer DUoS Report.	YES	NO	NO	NO	D0030	
	Company	User	Provision of Daily Statements.	YES	NO	NO	NO	D0242	Deleted: R
7.3, 7.4	Company	User	Billing by Settlement Class.	NO	NO	NO	YES		Deleted: C
8.2	Company	User	Company <del>refund</del> /cheque.	NO	NO	NO	YES		Deleted: I
8.2	Company	User	Company <del>invoice for site specific billing</del> .	NO	NO	NO	YES		Deleted: S
10.2	User	Agent	Request Company to undertake Energisation, De-energisation, or <del>Re-energisation Works</del> .	YES	NO	YES	YES	D0134	Deleted: S
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Agreement Clause Number	From	To	Message	Medium				DTC ref
				DTN	Phone	Fax	Post or email	
10.2	User	Company	Request for details needed to identify Metering Points.	NO	YES	YES	YES	
10.2	Company	User	Provision of details needed to identify Metering Points.	NO	YES	YES	YES	
10.7	Company	User	Two Working Days' notice of De-energisation Works.	NO	NO	YES	YES	
10.7.2	Company	User	10 Working Days request for appointments to be made in compliance with Clause 4.2.2.	NO	NO	YES	YES	
10.8	Company	User	Notice that Metering Point has been De-energised by Company.	NO	NO	YES	YES	D0139
10.10	Company	User	Instruction to send Registration Notice (following De-energisation).	NO	NO	YES	YES	
10.11	Company	User	Instruction to send Registration Notice (following Re-energisation).	NO	NO	YES	YES	
10.13	User	Company	Disconnection Notice.	YES	NO	YES	YES	D0132
10.14								
10.16								
10.14	Company	User	Request for Disconnection Notice.	NO	YES	YES	YES	
10.16								
10.15	Company	User	Refusal to disconnect.	YES	NO	YES	YES	D0262
10.19	User	Company	Request to Re-energise.	YES	NO	YES	YES	D0134
10.19.1	Company	User/Agent	Notification of when Re-energisation Works are expected to be undertaken.	NO	NO	YES	YES	
10.19.3	Company	User	Instruct User to send Registration Notice.	NO	NO	YES	YES	
12.2	User/Agent	Company	Metering technical data (non-half-hourly).	YES	NO	YES	YES	D0150
12.2	User/agent	Company	Metering technical data (half-hourly).	YES	NO	YES	YES	D0268
12.2	User/agent	Company	Meter readings (half-hourly).	YES	NO	NO	NO	D0010
12.2	User/agent	Company	Meter advance reconciliation report (half-hourly meters).	YES	NO	NO	NO	D0008

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Agreement Clause Number	From	To	Message	Medium				DTC ref
				DTN	Phone	Fax	Post or email	
12.2	User/agent	Company	Estimated half-hourly data report.	YES	NO	NO	NO	D0022
12.2	User/agent	Company	Validated half-hourly advances for inclusion in aggregated supplier matrix, including unmetered <u>volumes</u> .	YES	NO	NO	NO	D0275
12.4	User/agent	Company	Notification of meter mapping details.	YES	NO	NO	NO	D0149
12.4	User/agent	Company	Non-half-hourly meter readings.	YES	NO	NO	NO	D0010
12.4	User/agent	Company	Meter technical details.	YES	NO	YES	YES	D0150
12.5	Company	User/agent	Test metering system.	YES	YES	YES	YES	D0001
12.8	Company	Agent (DC)	Estimated <u>annual consumption</u> for unmetered sites which are not subject to half-hourly trading.				YES	
13.1, 13.2	User	Company	Customer details.	YES	NO	YES	YES	D0131
13.3	User	Company	Change of customer details.	YES	NO	YES	YES	D0131
13.4	User/ agent	Company	Report <u>possible safety problem</u> .	YES	YES	NO	NO	DO135
13.4	Agent (MOP, DC)	Company	Report urgent possible safety problem to <u>Security and Safety</u> of Supplies Enquiry Service.	NO	YES	NO	NO	
13.5, 13.7	User	Company	Provision of details of special needs customers.	YES	NO	YES	YES	D0225
13.6, 13.7	User	Company	Provision of details of password.	YES	NO	YES	YES	D0131
16.4	User	Company	Details of customer complaint in respect of a guaranteed <u>service</u> standard claim.	NO	YES	YES	YES	
	Company	Agent	Confirmation of Energisation/ De-energisation of <u>prepayment meter</u> .	YES	NO	YES	YES	D0179
	Company	Agent	Instruction on <u>action</u> .	YES	NO	YES	YES	D0005
	Agent	Company	Notification of <u>change of supplier readings</u> .	YES	NO	NO	NO	D0086
	User/Agent	Company	Fault resolution report or request for decision on further action.	NO	YES	YES	NO	D0002

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				DTN	Phone	Fax	Post or email		
	Agent	Company	Confirmation of <del>pr</del> o <del>o</del> ving tests.	YES	NO	YES	YES	D0214	Deleted: P
	Company	User/Agent	Provision of <del>site</del> <del>technical</del> <del>details</del> .	YES	NO	YES	YES	D0215	Deleted: S
	User	SFIC	Distribution System <del>enquiry</del> .	NO	YES	YES	YES	D0166	Deleted: T
	SFIC	User	Action to make <del>Distribution System</del> safe.	NO	YES	NO	NO	D0126	Deleted: D
	SFIC	User	Response to Distribution System <del>enquiry</del> .	NO	YES	YES	YES	D0167	Deleted: E
	Agent	Company	Half- <del>hourly</del> <del>a</del> dvances.	NO	NO	YES	YES	D0003	Deleted: E
	Company	User	Confirmation of disconnection of <del>supply</del> .	NO	NO	YES	YES	D0125	Deleted: H
	Company	User	Report to <del>User</del> of possible irregularity.	NO	NO	YES	YES	D0136	Deleted: A
	Company	User	Allocation of new/additional MPAN <del>core(s)</del> .	YES	NO	YES	YES	D0169	Deleted: S
	Agent	Company	Request for Metering System details.	YES	NO	YES	YES	D0170	Deleted: Supplier
	User	Company	Request for additional/new MPAN <del>cores</del> .	YES	NO	YES	YES	D0168	Deleted: C
	Company	Agent	Meter <del>readings</del> .	YES	NO	YES	YES	D0010	Deleted: C
	Company Agent	Agent/ User Company	Confirmation or <del>rejection</del> of <del>E</del> nergisation status <del>change</del> .	YES	NO	YES	YES	D0139	Deleted: R
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The parties shall agree alternative means of transmission in each case where the Data Transfer Network is specific as indicated above. In each case, it is expected, unless otherwise indicated, that the parties shall transmit any notice, request or other communication via the Data Transfer Network.

## SCHEDULE 8 Demand Control

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### 1. INTRODUCTION

- 1.1 The capacity and other technical parameters of the constituent elements which make up the Distribution System provide operational constraints on Demand and the coincidence of Demand.

### 2. DEFINITIONS

- 2.1 In this Schedule 8, except where the context otherwise requires, the following expressions shall have the meanings set opposite them:

**Capacity Headroom** means a margin of 15 % below the maximum capacity of the Distribution System supplying a group of Customers;

**Compliance Notice** means a notice issued to a Supplier pursuant to paragraph 8.5;

**Demand** has the meaning given to that term in the Distribution Code;

**Effective Date** means the date on which a notice issued pursuant to this Schedule 8 is deemed to be received in accordance with Clause 24.5.2 and/or paragraph 11.3 (as appropriate);

**Emergency SRN** means a notice issued pursuant to paragraph 8.1;

**Firm SRN** means a notice issued pursuant to paragraph 7.1;

**Load Managed Area** means an area designated pursuant to paragraph 5.1;

**Load Managed Area Notice** means a notice issued pursuant to paragraph 5.1;

**Provisional SRN** means a notice issued pursuant to paragraph 6.1;

**Security of Supply** means the ability of the Company to provide supplies to Customers that comply with the Regulations and with Engineering Recommendation P2/5 (or such other planning standard as may be in force for the Company under Condition 5 of the Electricity Distribution Licence), as amended or re-enacted from time to time;

**SSC** means Standard Settlement Configuration;

**Supplier** means a person authorised to supply electricity pursuant to Section 6(1)(d) of the Act; and

**Total System** has the meaning given to that term in the Distribution Code;

### 3. GENERAL OBLIGATIONS

- 3.1 The User shall use reasonable endeavours to ensure that it does not make any changes to SSCs in force at particular Metering Points which have or may have a materially adverse effect on the discharge of the Company's statutory and/or regulatory obligations to develop and maintain an efficient, secure, safe, co-ordinated and economical system for the distribution of electricity by increasing the coincidence of Demand on the Distribution System in a way which is likely to infringe the Capacity Headroom so that it is insufficient to allow for normal variations in Demand.
- 3.2 The Company shall use reasonable endeavours (i) to issue notices in Load Managed Areas in the following order: Provisional SRN, Firm SRN, and Emergency SRN, and (ii) normally not to issue a notice for a relevant geographic area within 30 days of the Effective Date of the last notice for that area.

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#### 4. CONSULTATION

- 4.1 The User may at any time seek advice concerning operational constraints on the Distribution System from the Company on such reasonable terms as the parties may agree in writing.

#### 5. LOAD MANAGED AREAS

- 5.1 The Company may from time to time designate areas of the Distribution System as Load Managed Areas where the Company:

5.1.1 has identified a need to reinforce or extend the capacity of such areas and, prior to issuing a Load Managed Area Notice, has either:

- (A) avoided the need for such reinforcement or extension through a reduction in coincidence of Demand by adopting Customer Demand management to control the timing of load switching; or
- (B) reasonably believes that such reinforcement or extension would be avoided through a reduction in coincidence of Demand by Suppliers adopting Customer Demand management to control the timing of load switching.

- 5.2 A Load Managed Area Notice shall be sent to the User, all other Suppliers and the Authority.

- 5.3 A Load Managed Area Notice shall be effective when received or deemed to be received in accordance with Clause 24.5.2 and shall indicate:

- (i) the geographical area to which it applies by map, postcode or such other method as the Company considers reasonable;
- (ii) the time or times of day during which in the Company's opinion changes to SSCs in force at particular Metering Points induced by Suppliers have increased the coincidence of Demand to such an extent that Security of Supply may be threatened; and
- (iii) that it shall continue in force until withdrawn in writing by the Company by serving a notice on all Suppliers.

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- 5.4 The parties acknowledge and agree that the issue of a Load Managed Area Notice constitutes notice that:

- (i) significant modifications of Customer Demand in the area identified in such notice may threaten Security of Supply;
- (ii) Provisional SRNs, Firm SRNs and Emergency SRNs may be issued in respect of that area;
- (iii) any future changes to SSCs in force at particular Metering Points in that area may be subject at the request of the Company to change in accordance with paragraph 7.5 or 8.5; and
- (iv) any changes to SSCs referred to in paragraph 5.4(iii) will, if requested by the Company pursuant to paragraph 7.5 or 8.5 or if made voluntarily by a Supplier, be at the relevant Supplier's cost.

#### 6. PROVISIONAL SECURITY RESTRICTION NOTICES

- 6.1 The Company may from time to time issue a Provisional Security Restriction Notice where in the Company's opinion the changes to SSCs in force at particular Metering Points since the Effective Date of a Load Managed Area Notice have increased the coincidence of Demand in the whole or part of the area identified in that notice so as to materially infringe the Capacity Headroom of such area since the issue of that notice.

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- 6.2 A Provisional SRN shall be sent to the User, all other Suppliers and the Authority.

- 6.3 A Provisional SRN shall be effective when received or deemed ~~to be~~ received in accordance with Clause 24.5.2 and shall indicate:
- (i) the geographical area to which it applies by map, postcode or such other method as the Company considers reasonable;
  - (ii) the time or times of day during which Capacity Headroom has been infringed from the Effective Date of the Load Managed Area Notice; and
  - (iii) that it shall continue in force until withdrawn in writing by the Company by serving a notice on all Suppliers.
- 6.4 The parties acknowledge and agree that the issue of a Provisional SRN constitutes notice that:
- (i) any modifications of Customer Demand induced by changes to SSCs in the area identified in such notice may threaten Security of Supply;
  - (ii) Firm SRNs and Emergency SRNs may be issued in respect of that area and that such notices will normally not be issued within 30 days of the Effective Date of the relevant Provisional SRN;
  - (iii) any future changes to SSCs in force at particular Metering Points in that area may be subject at the request of the Company to change in accordance with paragraph 7.5 or 8.5 ; and
  - (iv) any changes to switching times in order to effect changes to SSCs referred to in paragraph 6.4(iii) will, if requested by the Company pursuant to paragraph 7.5 or 8.5 or if made voluntarily by a Supplier, be at the relevant Supplier's cost.

## 7. FIRM SECURITY RESTRICTION NOTICES

- 7.1 The Company ~~may from time to time issue a Firm Security Restriction Notice where in the Company's opinion the changes to SSCs in force at particular Metering Points since the Effective Date of a Load Managed Area Notice have increased the coincidence of Demand in the whole or part of the area identified in that notice and as a result there is a material risk to Security of Supply.~~
- 7.2 A Firm SRN shall be sent to the User, all other Suppliers and the Authority.
- 7.3 A Firm SRN shall be effective when received or deemed received in accordance with Clause 24.5.2 and shall indicate:
- (i) the geographical area to which it applies by map, postcode or such other method as the Company considers reasonable;
  - (ii) the time or times of day during which Capacity Headroom is infringed and into which Demand cannot be moved as a result of changes to switching times by Suppliers;
  - (iii) the time or times of day during which there is sufficient capacity at the Effective Date of the Firm SRN into which Demand can be moved; and
  - (iv) that it shall continue in force until withdrawn in writing by the Company by serving a notice on all Suppliers.
- 7.4 The parties acknowledge and agree that the issue of a Firm SRN constitutes notice that:
- (i) any modifications of Customer Demand induced by changes to SSCs in the area identified in such notice may threaten Security of Supply;
  - (ii) Emergency SRNs may be issued in respect of that area and that such notices will normally not be issued within 30 days of the Effective Date of the relevant Firm SRN;

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- (iii) any future changes to SSCs in force at particular Metering Points in that area may be subject at the request of the Company to change in accordance with paragraph 7.5 or 8.5; and
- (iv) any changes to switching times in order to effect changes to SSCs referred to in paragraph 7.4(iii) will, if requested by the Company pursuant to paragraph 7.5 or 8.5 or if made voluntarily by a Supplier, be at the relevant Supplier's cost.

7.5 This paragraph applies where the Company, having issued a Firm SRN, reasonably believes that SSCs allocated in respect of the Customers of a Supplier since the Effective Date of the relevant Load Managed Area Notice or Provisional SRN have materially contributed to the risk to Security of Supply in respect of which the Firm SRN has been issued.

7.6 Where paragraph 7.5 applies, the Company may also send a separate notice to the relevant Supplier, and a copy to the Authority, requiring the Supplier:

- (i) to change at its own cost and within such period of time as the Company considers reasonable the SSCs in force at particular Metering Points in the area designated in the Firm SRN to the SSCs for the relevant Metering Points at the Effective Date of the relevant Provisional SRN (or, where the Company reasonably believes that it is necessary, to such other SSCs as shall not have a materially adverse effect on Security of Supply); or
- (ii) to take such other action as the Company considers reasonable.

## 8. EMERGENCY SECURITY RESTRICTION NOTICES

8.1 The Company may at any time issue an Emergency Security Restriction Notice where in the Company's opinion there is an immediate risk to Security of Supply. (For the avoidance of doubt, the issue of an Emergency SRN need not be restricted to Load Managed Areas.)

8.2 An Emergency SRN shall be sent to the User, all other Suppliers and the Authority.

8.3 An Emergency SRN shall be effective when received or deemed to be received in accordance with paragraph 11.3 below and shall indicate:

- (i) the geographical area to which it applies by map, postcode or such other method as the Company considers reasonable;
- (ii) the time or times of day into which Demand cannot be moved as a result of changes to switching times by Suppliers;
- (iii) the time or times of day during which there is sufficient capacity at the Effective Date of the Emergency SRN into which Demand can be moved; and
- (iv) that it shall continue in force until withdrawn in writing by the Company by serving a notice on all Suppliers.

8.4 The parties acknowledge and agree that the issue of an Emergency SRN constitutes notice that:

- (i) any modifications of Customer Demand induced by changes to SSCs in the area identified in that notice may threaten Security of Supply;
- (ii) any future changes to SSCs in force at particular Metering Points in that area may be subject to reversion to the SSCs for the relevant Metering Points at the Effective Date of the Emergency SRN, or to such other SSCs as shall not have a materially adverse effect on Security of Supply; and
- (iii) any changes to switching times in order to effect changes to SSCs referred to in paragraph 8.4(ii) will, if requested by the Company, be at the relevant Supplier's cost.

8.5 This paragraph applies where the Company, having issued an Emergency SRN, reasonably believes that SSCs allocated in respect of the Customers of a Supplier have materially contributed to the risk to Security of Supply in respect of which the Emergency SRN has been issued.

8.6 Where paragraph 8.5 applies, the Company may also send a Compliance Notice to that Supplier, and a copy to the Authority, which notice shall require the Supplier:

- (i) to change at its own cost and within such period of time as the Company considers reasonable the SSCs in force at particular Metering Points in the area designated in the Emergency SRN to the SSCs for the relevant Metering Points at the Effective Date of the relevant Firm SRN (or, where the Company reasonably believes that it is necessary, to such other SSCs as shall not have a materially adverse effect on Security of Supply); or
- (ii) to take such other action as the Company considers reasonable:

provided that where the Company requires changes to SSCs in an area which is not a Load Managed Area or to SSCs which have not been modified by the Supplier since the Effective Date of the current Load Managed Area Notice, then the cost of Meter Operator visits required to affect such changes shall be at the Company's cost.

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8.6 Failure to Comply with an Emergency SRN or a Compliance Notice shall constitute a breach of this Agreement and the Company may, with no prior notice to the User where the User is in such breach, De-energise any Metering Point affected by the Emergency SRN or Compliance Notice for which the User is registered in MPAS as the Supplier.

## 9. CONFIDENTIALITY

9.1 Any notice issued by either party pursuant to this Schedule 8 shall be confidential and neither party shall pass on any information contained in such notice to any other person but shall only be able to say that there has been an incident on the Total System and (if known and if power supplies have been affected) an estimated time of return to service.

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## 10. APPEALS PROCEDURE

10.1 The parties shall attempt to resolve in good faith any dispute in relation to this Schedule 8. Where the dispute remains unresolved after 14 days, either party may refer the dispute to the Authority for determination. Any determination by the Authority under this paragraph shall be final and binding.

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## 11. NOTICES

11.1 Save as provided in paragraph 11.2, a notice, approval, consent or other communication to be made by one party under or in connection with this Schedule 8 shall be in writing and shall be delivered personally or sent by first class post, courier, fax or email to the other party at the address specified in this paragraph and be marked for the attention of the person so specified:

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if to the Company, to: [ ]

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[ ]

Fax: [ ]

Attention: [ ]

email: [ ]

if to the User, to: [ ]

Address: [ ]  
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Fax: [ ]

Attention: [ ]

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from or to such other persons, addresses (including email addresses), or fax numbers as the relevant party may time to time specify by notice in writing to the other party.

11.2 An Emergency SRN shall be dictated by the Company to the User to the person(s) specified in this paragraph on the telephone number so specified who shall record it and on completion shall repeat the notification in full to the Company and check that it has been accurately recorded:

- Attention: [ ]
- Telephone number: [ ]

or to such other persons or telephone numbers as the User may from time to time specify by notice in writing to the Company, provided that the User shall ensure that such person(s) shall be contactable at the specified telephone number at all times.

11.3 An Emergency Security Restriction Notice shall be deemed received when the Company has dictated it to the User.

11.4 The Company shall also send an Emergency SRN in writing as soon as is reasonably practicable to the User in accordance with paragraph 11.1 above. ~~(For the avoidance of doubt, such notice shall be for the record and shall not replace the notice given in accordance with paragraph 11.2 but shall be deemed to be received in accordance with Clause 24.5.2 of this Agreement.)~~

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## 12. REVIEW PROCEDURE

12.1 The Company shall, no later than the later of six months after its Effective Date or six months after its last review, review every Load Managed Area Notice, Provisional SRN, Firm SRN and Emergency SRN issued by it pursuant to this Schedule ~~8~~, which is still in force.

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12.2 Where the Company reasonably believes that the relevant notice should continue in force, it shall notify all Suppliers and the Authority accordingly, together with its reasons.

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12.3 Where the Company reasonably believes that the relevant notice should not continue in force, it shall withdraw the relevant notice and notify all Suppliers and the Authority.

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“Condition 14A Charging Statement”		
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means the statement in relation to charges for use of system for the time being in force pursuant to Condition 14A of the Electricity Distribution Licence		
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“Condition 4A Charging Statement”		
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means the statement in relation to charges for use of system for the time being in force pursuant to Condition 4A of the Electricity Distribution Licence;		
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“Condition 36C Charging Statement”		
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means the statement in relation to charges for distributor metering and data services (as defined in the Electricity Distribution Licence) for the time being in force pursuant to Condition 36C of the Electricity Distribution Licence;		
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“Condition 48 Charging Statement”		
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means the statement in relation to charges in respect of losses incurred in a supplier complying with a last resort supply direction (as described in the Electricity Distribution Licence) for the time being in force pursuant to Condition 48 of the Electricity Distribution Licence;		
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means the Electricity (Standards of Performance) Regulations 2005 (SI 2005/1019) as amended or re-enacted from time to time;

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Page 12: [110] Deleted	barna1r	07/11/2005 16:43:00
“NGET’s Transmission Licence”		
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means the Licence granted under Section 6(1)(b) of the Act to NGET as amended from time to time;		

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means the charges payable for the services listed in Part 1 of Schedule 4;

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