

BRITISH ENERGY DIRECT LIMITED

TERMS FOR THE SUPPLY OF ELECTRICITY

2008 Version 2

1. Definitions

- 1.1 In these Conditions except where the context requires otherwise capitalised phrases and expressions shall have the meanings set out in Schedule 1.
- 1.2 The schedules hereto form part of the Agreement and will have the same effect as if in the body of the Agreement, and references to the Agreement shall include all schedules hereto.
- 1.3 References to any statute, statutory instrument, regulation or code shall be deemed to include reference to the same as amended or re-enacted from time to time.
- 1.4 Clause headings are for reference only.
- 1.5 References to persons will be construed so as to include bodies corporate, unincorporated associations and partnerships.
- 1.6 Words in the singular may be interpreted as using the plural, and vice versa.

2. BE's Undertakings

BE undertakes to the Customer that throughout the Term it shall:

- 2.1 have an appropriate licence to supply electricity to each Customer Supply Point; and
- 2.2 be a party to the DCUSA;

and BE shall notify the Customer forthwith should BE become aware that the undertakings set out above have ceased to be complied with.

3. The Customer's Warranties and Representations

- 3.1 The Customer represents and warrants and undertakes to BE, at the date hereof and throughout the Term, that:
 - 3.1.1 the Sites are only used for business purposes and that the Customer shall notify BE as soon as it becomes aware that the Sites or, where there is more than one, any one of the Sites, shall be used as Domestic Premises (as defined in the Supply Licence) and the Customer shall ensure that all necessary arrangements are made to register an alternative supplier in respect of such Sites in substitution for BE with effect from the date when such Sites shall become Domestic Premises;
 - 3.1.2 there is installed, satisfactorily commissioned, registered and operating such Metering Equipment and communications equipment as may be necessary for the purposes of the BSC and the determination of Charges at each Customer Supply Point;
 - 3.1.3 it will satisfy such other conditions as may, in the reasonable opinion of BE, be necessary to permit BE to provide the Supply at each Customer Supply Point in accordance with the Supply Licence, the Act, the BSC, the DCUSA, the Regulations and any other relevant standard electricity supply industry documents or agreements as a result of changes to such documents after the date of the Agreement;
 - 3.1.4 it will comply with the relevant Distribution Code and the Grid Code to the extent that such codes are applicable to it;
 - 3.1.5 it has the right power and authority and has taken all action necessary to execute and deliver, and to exercise its rights and perform its obligations under, the Agreement and the relevant Connection Agreements;
 - 3.1.6 it will at all times be a party to and duly comply with its obligations under the Connection Agreement and any other agreement required by the terms of the Agreement to be entered into by the Customer with an Agent in respect of the Supply;
 - 3.1.7 it has an Acceptable Credit Rating or has provided to BE a parent company guarantee, letter of credit or such other credit support in form and substance reasonably acceptable to BE or has agreed prepayment arrangements with BE; and
 - 3.1.8 it is not a party to an existing agreement with a third party for the supply of electricity to the Sites.
- 3.2 The Customer shall notify BE, as soon as reasonably practicable, if it becomes aware that any provision in this clause 3 has ceased or is likely, in the reasonable opinion of either party, to cease to be satisfied.
- 3.3 The Customer shall indemnify BE in respect of any loss, damage, costs and liability suffered or incurred by BE as a result of breach by the Customer of any representation, warranty or undertaking contained in clause 3.1.

4. Supply of Electricity and Connection

- 4.1 The parties agree that Supply will commence on the Commencement Date and will continue during the Term on the basis of and/or subject to:-
 - 4.1.1 the terms of the Agreement;
 - 4.1.2 BE having registered the Customer Supply Point(s) in accordance with the BSC and the MRA;
 - 4.1.3 the Grid Code, any relevant Distribution Code and the Regulations (to the extent applicable to either or both parties);
 - 4.1.4 there being appointed and remaining throughout the Term (if required by BE or the BSC) a Meter Operator or Meter Administrator and/or Unmetered Supplies Operator Agent, a Data Aggregator and a Data Collector in respect of the Customer Supply Point(s); and
 - 4.1.5 in respect of an Unmetered Supply, the issue by an Unmetered Supplies Operator Agent of an Unmetered Supplies Certificate,and the Customer shall accept electricity at each Customer Supply Point at the Sites up to but not exceeding the Maximum Capacity or where the Sites are directly connected to the GB Transmission System, the Connection Site Demand Capability.
- 4.2 All electricity discovered or reasonably and properly assessed to have been consumed (whether recorded or not recorded by the Metering Equipment for whatever reason) by the Customer at a Customer Supply Point at the Sites during the Term shall be deemed to be supplied under the terms of the Agreement. Where new Customer Supply Point(s) are to be registered in respect of any Site(s), such Customer Supply Point shall be registered by BE and the Customer shall notify BE of such new Customer Supply Point(s) as soon as practicable and, in any

event, not later than twenty (20) Business Days prior to the date of proposed registration of such new Customer Supply Point(s). Where a new unique reference number is allocated to a Customer Supply Point at any Site(s), the Customer shall notify BE thereof as soon as practicable thereafter and, in any event, no later than seven (7) days thereafter.

- 4.3 The Customer shall ensure that demand at any Customer Supply Point shall not at any time exceed the Maximum Capacity or where the Sites are directly connected to the GB Transmission System, the Connection Site Demand Capability of that Customer Supply Point. If demand does at any time exceed the Maximum Capacity or the Connection Site Demand Capability of that Customer Supply Point, then, without prejudice to any other rights of BE, the Customer shall indemnify BE for all costs, losses or liabilities incurred by BE as a consequence of the Customer's demand exceeding the Maximum Capacity or the Connection Site Demand Capability (as applicable) of that Customer Supply Point.
- 4.4 If at any time (i) the voltage of the Supply at any Customer Supply Point varies from that specified for the Customer Supply Point specified in the Applicable Term Sheet, or (ii) the Customer requests in writing to BE either a change in the voltage, measurement class or profile class of the Supply at any Customer Supply Point or an additional Customer Supply Point for the Site, then, without prejudice to any other rights of BE, the Customer shall indemnify BE for all costs, losses or liabilities incurred by BE as a consequence of the change in voltage measurement class or profile class of the Supply at the applicable Customer Supply Point or an additional Customer Supply Point for the Site.
- 4.5 The Customer will use all reasonable endeavours to notify BE at least seven (7) Business Days in advance of (a) any material change in the patterns of consumption of electricity at the Site(s) and/or (b) any arrangements relevant to levels of consumption which the Customer may have entered into, or is proposing to enter into from time to time (including but not limited to shutdowns, holidays or changes to working patterns) and at least one (1) Business Day in advance of any such change provide, where appropriate, an additional notice setting out any further changes since the notification provided at least seven (7) Business Days in advance of such changes. Without prejudice to clause 7.8, the Customer shall pay upon demand any reasonable costs or charges occasioned by BE as a result of any failure by the Customer to comply with this clause 4.5.
- 4.6 Additional sites may be added to the Agreement only with the prior written agreement of BE and the Customer.
- 4.7 The Customer agrees to notify BE immediately upon the de-energisation or disconnection of any Customer Supply Point.
- 4.8 BE does not give any warranty or guarantee whatsoever as to the adequacy or safety of the Customer's electrical system and this shall be, and shall remain, at all times at the sole risk of the Customer.
- 4.9 Save where the Sites are directly connected to the GB Transmission System or where the Supply is an Unmetered Supply, the Customer shall enter into a Connection Agreement with the relevant LDSO and shall, at all times during the Term, comply with and perform its obligations under such Connection Agreement.
- 4.10 Save where the Sites are directly connected to the GB Transmission System or where the Supply is an Unmetered Supply, BE shall act on behalf of the Customer's LDSO to make an agreement with the Customer. The agreement is that the Customer and its LDSO both accept the National Terms of Connection (NTC) and agree to keep to its conditions. This will happen from the time that the Customer enters into the Agreement and it affects the Customer's legal rights. The NTC is a legal agreement. It sets out rights and duties in relation to the connection at which the Customer's LDSO delivers electricity to, or accepts electricity from, the Customer's business and the Customer shall, at all times during the Term, comply with and perform its obligations under the NTC. If the Customer wants a copy of the NTC or has any questions about it, it may write to: Energy Networks Association, 18 Stanhope Place, London, W2 2HH, phone 0207 706 5137, or see the website at www.connectionterms.co.uk. The Customer agrees that, where this clause 4.10 applies, the LDSO has the benefit of, and is entitled to enforce, the provisions of the Connection Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 4.11 Where the Sites are directly connected to the GB Transmission System, the Customer shall be registered with CUSC and the Customer shall at all times during the Term, comply with and perform its obligations under the Connection Agreement set out in Schedule 2, Exhibit 1 of the CUSC.
- 4.12 Where the Supply is an Unmetered Supply, the Customer shall be a party to a UMS Connection Agreement and shall, at all times during the Term, comply with and perform its obligations under such UMS Connection Agreement. The Customer shall update the inventory to be provided under such UMS Connection Agreement at least once in any twelve (12) month period.
- 4.13 The Customer consents to any previous electricity supplier disclosing to BE any information relating to the Customer which it has in its possession in respect of Metering Equipment at the Sites to enable BE to take over the Supply.
- 4.14 Where the Applicable Term Sheet to the Agreement contains a declaration made by BE stating that BE will allocate to each unit forming a percentage of the Supply a unit of electricity generated from Climate Change Levy exempt sources being either Renewable Source Electricity or CHP Electricity or a combination of both, then for the purposes of, and in accordance with, paragraph 19 and/or 20A (as the case may be) of Schedule 6 to the Finance Act 2000, BE hereby declares that in each Averaging Period, (i) the amount of Renewable Source Electricity supplied by BE in such Averaging Period shall not exceed the total amount of Renewable Source Electricity that is either acquired or generated by BE in such Averaging Period and/or (ii) the amount of CHP Electricity supplied by BE in such Averaging Period shall not exceed the total amount of CHP Electricity that is either acquired or generated by BE in such Averaging Period.
- 4.15 If, at 00:00 hours on the date set out in the Applicable Term Sheet to the Agreement as the commencement date, the Customer is party to a supply agreement with another supplier which grants to the other supplier the right to enter an objection under the customer transfer processes contained or referred to in the MRA to the registration by BE of any Customer Supply Point, in the event the other supplier raises an objection to the Customer transferring supply to BE, the Customer shall indemnify BE for all costs, losses or liabilities reasonably incurred by BE as a result of the other supplier raising such objection.

5. Term Extension

- 5.1 Where the Customer does not wish to continue the Supply with respect to the relevant Customer Supply Point(s) at the Sites after the End Date then the Customer shall, by not less than twenty-eight (28) days prior written notice to BE, notify BE of discontinuation of the Supply to the Sites with effect from the End Date. The provisions of clause 11.7 shall apply during the Transfer Period.
- 5.2 A Term Sheet executed by the Customer and BE within the relevant Offer Period will, with effect from the Commencement Date specified therein, supersede and replace any previous Term Sheet, SAVE THAT nothing in this clause 5 shall operate so as to waive, release, diminish or discharge all or any of the payment obligations of a party accrued at the Commencement Date specified in any previous Term Sheet, which shall remain in place until discharged in full in accordance with the terms of the Agreement.
- 5.3 At any time prior to the End Date, BE may submit one or more new Term Sheets proposed to be executed by the parties for each Offer Period. If at the End Date a Term Sheet has not been executed by both the Customer and BE, the provisions of clause 11.7 shall apply during the Transfer Period.

6. Metering

- 6.1 The Customer shall not unreasonably hinder or prevent the installation of Metering Equipment at the Sites for the Customer Supply Point(s) and the Customer shall not interfere with or cause or permit any interference with all or any part of the Metering Equipment and shall allow the Meter Operator or Meter Administrator and/or Unmetered Supplies Operator Agent and any invitees, contractors and agents of BE safe and unrestricted access to the Sites for the purposes of the inspection, maintenance, testing and repair of any Metering Equipment and obtaining a meter reading or other consumption data from any Metering Equipment. The Customer shall indemnify BE for all costs, losses or liabilities reasonably or directly incurred by BE as a result of the Customer's failure to comply with this clause 6.1.
- 6.2 If and to the extent that the Metering Equipment is owned or controlled by the Customer, the Customer shall at all times during the Term of the Agreement maintain such Metering Equipment in good and substantial repair and in good working order and the Customer shall indemnify BE in respect of any loss of any nature incurred by BE as a result of a breach of this clause 6.2.
- 6.3 If and to the extent that the Metering Equipment is owned or controlled by a third party, the Customer shall procure that such third party, at all times during the Term of the Agreement, maintains such Metering Equipment in good and substantial repair and in good working order.
- 6.4 Save where the Supply to the Customer Supply Point is metered on a non-half-hourly basis or is an Unmetered Supply determined on a non-half hourly basis and subject to clauses 6.7 and 6.8, the Customer shall nominate and contract directly with a Meter Operator or where the Supply is an Unmetered Supply, a Meter Administrator and/or an Unmetered Supplies Operator Agent (such Meter Operator or Meter Administrator and/or Unmetered Supplies Operator Agent (as applicable) to be reasonably acceptable to BE) in respect of each Customer Supply Point and shall notify BE of such nomination in writing at least one (1) month before the appointment is due to take effect. Where the Customer fails to either nominate and contract with a Meter Operator or Meter Administrator and/or an Unmetered Supplies Operator Agent (as applicable) reasonably acceptable to BE or notify BE of the nominated Meter Operator or Meter Administrator and/or Unmetered Supplies Operator Agent (as applicable) at least one (1) month before the appointment is due to take effect, then:
- 6.4.1 BE may appoint a Meter Operator or Meter Administrator and/or Unmetered Supplies Operator Agent (as applicable) for and on behalf of the Customer;
- 6.4.2 the Customer shall indemnify BE upon demand for any costs or charges incurred by BE as a result of (i) the appointment of a Meter Operator or Meter Administrator and/or Unmetered Supplies Operator Agent (as applicable) pursuant to clause 6.4.1 above, (ii) the failure by the Customer to appoint a Meter Operator or Meter Administrator and/or Unmetered Supplies Operator Agent (as applicable) and/or (iii) any delay by the Customer in notifying BE of the appointment of such Meter Operator or Meter Administrator and/or Unmetered Supplies Operator Agent (as applicable); and
- 6.4.2 BE shall not be liable to the Customer in respect of any costs or charges incurred by the Customer as a result of any delay in the appointment of a Meter Operator or Meter Administrator and/or Unmetered Supplies Operator Agent (as applicable) in respect of a Customer Supply Point or the failure by the Customer to notify BE of the appointment of a Meter Operator or Meter Administrator and/or Unmetered Supplies Operator Agent (as applicable) at least one (1) month before the appointment is due to take effect.
- 6.5 Where the Supply to the Customer Supply Point is metered on a non-half-hourly basis:
- 6.5.1 BE shall appoint and register (in accordance with the BSC) the Agents unless otherwise agreed with the Customer.
- 6.5.2 In the event the Customer wishes to appoint and contract directly with the Agents (such Agents to be reasonably acceptable to BE), the Customer shall notify BE of such appointment in writing at least one (1) month before the appointment is due to take effect and procure that an agreement is executed by both the Customer and each of the Agents in respect of each Customer Supply Point. Where the Customer fails to either notify BE of the Agents at least one (1) month before the appointment is due to take effect, then clause 6.5.1 shall apply and the Customer shall indemnify BE for all costs and liabilities reasonably or directly incurred by BE as a result of such appointment. BE reserves the right to object to any Agent appointed by the Customer.
- 6.6 Subject to clauses 6.5, 6.7 and 6.8 BE shall appoint and register (in accordance with the BSC) a Data Aggregator and a Data Collector in respect of each Customer Supply Point.
- 6.7 Save where the Supply to the Customer Supply Point is metered on a non-half-hourly basis or is an Unmetered Supply determined on a non-half hourly basis, where the Customer wishes to instruct BE to appoint its preferred Agent (such Agent to be reasonably acceptable to BE), the Customer shall notify BE of the name and contact details for its preferred Agent at least one (1) month before the appointment is due to take effect. The Customer shall indemnify BE for all costs, losses and liabilities reasonably or directly incurred by BE as a result of such appointment and subsequent registration and the Customer undertakes not to appoint any additional Meter Operator, Meter Administrator, Unmetered Supplies Operator Agent, Data Aggregator or Data Collector (as applicable) to perform such Agent Services at the Customer Supply Point(s).
- 6.8 Save where the Supply to the Customer Supply Point is metered on a non-half-hourly basis, where the Customer has a contract with an Agent in respect of a Customer Supply Point prior to the date of the Agreement which continues throughout the Term and the Customer wishes such Agent to provide the applicable Agent Services in respect of the Customer Supply Point(s), the Customer shall notify BE of its preferred Agent at least one (1) month before the appointment is due to take effect and procure the compliance by the Agent with any standards, conditions and times required by BE in respect of the provision of the Agent Services as may be notified by BE to the Customer in writing. BE reserves the right to object to any Agent appointed by the Customer.
- 6.9 If at any time during the Term any of the Agents cease to be Qualified or do not provide the Agent Services required of such Agent by the BSC to the standard and at the times required by the BSC and/or (where applicable) to the standard and at the times required by BE, then BE shall appoint and register in accordance with the BSC a replacement Agent and the Customer shall indemnify BE in respect of any loss, damage, costs or liability suffered or incurred by BE as a result of BE appointing and registering such replacement Agent.
- 6.10 If either party reasonably believes that the Metering Equipment is registering inaccurately then that party may on notice to the other arrange for such Metering Equipment to be tested in accordance with Good Industry Practice by a person who, in BE's opinion, is an appropriate person to test the Metering Equipment in question.
- 6.11 If the accuracy of the Metering Equipment is found to exceed the margins of error specified under the BSC, the Metering Equipment or part thereof shall be replaced or recalibrated as soon as practicable and the cost of such testing, replacement or recalibration shall be borne by the Customer. For the purposes of the Agreement, the inaccuracy shall be deemed to have arisen after the date of the meter reading included in the invoice for the month immediately prior to the month in which notice under clause 6.10 was given.
- 6.12 If the Metering Equipment is found to be accurate within the margins specified under the BSC, the cost of testing the Metering Equipment or any part thereof shall be paid by the party which served the notice in accordance with clause 6.10.
- 6.13 Notwithstanding any right of BE to terminate the Agreement in accordance with clause 11.2, where, in respect of any Customer Supply Point,

the Customer is in breach of the warranty contained in clause 3.1.2, BE shall estimate the amount of the Supply to that Customer Supply Point in accordance with clause 6.14.

- 6.14 For the period during which either the Metering Equipment is out of service or operating outside the margins of error referred to in clause 6.11 or clause 6.13 applies, the amount of the Supply shall be estimated after taking all relevant information into account, including historical data relating to the Customer and any information available from any of the Metering Equipment, and such estimate may be revised by BE from time to time (and the account between the Customer and BE adjusted accordingly) to take into account the availability of additional or revised data which (in the reasonable opinion of BE) is more accurate than the data on which the estimate was originally based.
- 6.15 In accordance with paragraph 2(2) of Schedule 7 of the Act, the Customer and BE agree that the requirement for the Metering Equipment to be certified under paragraph 5 of that Schedule shall not apply.
- 6.16 Save as may otherwise be provided in this clause 6, the Customer shall be responsible for, and shall bear all costs associated with, the Metering Equipment and shall indemnify BE in respect of any loss of any nature which BE may suffer or incur as a result of any Metering Equipment not complying with Schedule 7 of the Act, BSC and/or CUSC.
- 6.17 Where BE appoints an Agent to provide the Agent Services where the Customer has contracted directly with that Agent, then the Customer shall provide or procure that the Agent shall provide to BE any information regarding the Supply which BE requires to discharge its obligations under the BSC, the DCUSA and/or the MRA within such timescales as BE may require.
- 6.18 If the Metering Equipment at the Sites is to be read remotely without the need for a visit to the Sites and such Metering Equipment is subject to a lease arrangement in which BE is the lessee, the Customer shall indemnify BE in respect of any fees, charges, expenses, costs, losses, damage or liabilities suffered by BE as a result of the lease arrangements.
- 6.19 The Customer shall indemnify BE against any and all losses, costs, charges, expenses or liability incurred by BE as a result of the failure or delay in any Agent or the LDSO performing the services required by the BSC, at any Customer Supply Point, to the standard reasonably required by BE.

7. Charges and Terms of Payment

- 7.1 BE shall, by the tenth (10th) Business Day of each calendar month (or as soon as practicable thereafter), submit an invoice setting out details of the Charges (together with any other sums payable under the Agreement) for the previous calendar month and all or any sums previously withheld in accordance with clause 7.3 (together with any interest accrued thereon or other amounts due pursuant to clause 7.2) but not already settled or paid (as appropriate) and, subject to clause 7.3 below, the Customer shall pay such account for value in cleared funds on the day and by the method detailed in the Payment Provisions.
- 7.2 If sums properly due under the Agreement remain unpaid, interest shall be due to BE on the unpaid sums at the annual rate of 4% above National Westminster Bank's (or such other bank as may be notified by BE in writing from time to time) base rate from time to time from the date such payment was due until the date on which sums are actually received by BE, such interest to accrue on a daily basis. BE reserve the right to recover any costs and expenses (including all reasonable legal costs) incurred by BE in pursuing any such unpaid sums, through the courts or otherwise. BE may charge the Customer an administration fee of £100 in respect of any late payment of sums due under the Agreement.
- 7.3 The Customer may dispute all or any part of an invoice within ninety (90) days of the date of the invoice. If any sums contained in the invoice are disputed, the Customer may withhold the disputed element of the invoice but shall not withhold payment of the undisputed element of the invoice. If it shall be subsequently agreed or determined that any disputed sums are properly payable then interest shall be due and payable on those sums in accordance with clause 7.2 from the date specified for payment thereof as set out in the relevant invoice.
- 7.4 Notwithstanding the foregoing provisions of this clause 7, Triad Charges (if payable separately to the Energy Rates) shall be submitted in the invoice of Charges (in accordance with clause 7.1) for the month in which BE is able to calculate the Triad Charges following the Triad Period and such Triad Charges shall be payable in accordance with clause 7.1.
- 7.5 In respect of a twelve (12) month period from the Commencement Date or any anniversary thereof, or where the Term is for a period of less than twelve (12) months, where a Triad Period falls within the Term, the Customer shall make such prepayments in respect of a Triad Period falling in such 12 month period or, where the Term is for a period of less than twelve (12) months in respect of a Triad Period falling in the Term, as may have been agreed between the Customer and BE in accordance with the Payment Provisions in respect of BE's estimate of the sum of the Customer's actual average half-hourly electricity demand during the relevant Triad Period (or, where the Customer is not metered on a half-hourly basis, BE's estimate of the Customer's average half-hourly electricity demand) multiplied by the Triad Demand Tariff in respect of the relevant Zone Area. BE's estimate shall be based on Estimated Triad Consumption and/or the sum of the Customer's actual average half-hourly electricity demand during any previous Triad Period.
- 7.6 Except where expressly provided to the contrary, all payments under the Agreement shall be made in accordance with the Payment Provisions and, subject to clause 15.9, free of any restriction or condition and without deduction or withholding (except to the extent required by law) on account of any other amount, whether by way of set-off or otherwise. All Charges and other amounts expressed to be payable by the Customer to BE under the Agreement are exclusive of VAT which the Customer shall pay to BE at the rate properly chargeable in respect of the supply of goods or services (including the Supply) by BE to the Customer under the Agreement.
- 7.7 The Customer shall provide to BE its estimate of the consumption of electricity at the Sites, which estimate shall be genuine and provided in good faith and (save where the Supply to the relevant Customer Supply Point is metered on a non-half-hourly basis) provided on a half-hourly basis.
- 7.8 Notwithstanding the foregoing provisions of this clause 7 and Schedule 2, if in respect of an Assessment Year, the actual consumption of the Customer in respect of any of the Sites falls above or below the Estimated Annual Consumption or Estimated Consumption, as applicable, for that Site by the Tolerance or more in such Assessment Year, the Customer shall pay to BE at the end of the Assessment Year the charges calculated as follows (the "**Tolerance Charge**"):
 - 7.8.1 Where the actual consumption of the Customer at any Site in an Assessment Year is less than or equal to the Estimated Annual Consumption or Estimated Consumption, as applicable, for the relevant Site minus the Tolerance, the Customer shall pay to BE, at the end of the Assessment Year, the Tolerance Charge in relation to such Site(s) calculated in accordance with this clause 7.8.1 as follows:
$$\text{Tolerance Charge} = ((\text{EC} - (\text{EC} \times \text{T})) - \text{AC}) \times (\text{ER} - \text{SSP})$$
 - 7.8.2 Where the actual consumption of the Customer at any Site in an Assessment Year is greater than or equal to the Estimated Annual Consumption or Estimated Consumption, as applicable, for the relevant Site plus the Tolerance, the Customer shall pay to BE, at the end of the Assessment Year, the Tolerance Charge in relation to such Site(s) calculated in accordance with this clause 7.8.2 as

follows:

$$\text{Tolerance Charge} = (\text{AC} - (\text{EC} + (\text{EC} \times \text{T}))) \times (\text{SBP} - \text{ER})$$

In each case where:

AC	= the volume of electricity consumed at the Site in an Assessment Year;
EC	= the Estimated Annual Consumption for the Site in an Assessment Year or where either sub-paragraph (b) or (c) of the definition of Assessment Year applies, the Estimated Consumption for such period;
T	= the Tolerance;
SBP	= the time weighted average of the System Buy Price for each half hourly period during the Assessment Year;
SSP	= the time weighted average of the System Sell Price for each half hourly period during the Assessment Year;
ER	= the time weighted average of the Energy Rates for the Site for each half hourly period during the Assessment Year.

The Customer and BE agree that the Tolerance Charge calculated in accordance with this clause 7.8 represents a genuine pre-estimate of the losses, costs and expenses that BE would otherwise suffer.

7.9 Notwithstanding Schedule 2, BE may change or add to the charges payable by the Customer in respect of any of the Sites and/or introduce any new charge in respect of or associated with the Supply to the Sites to cover any change in costs incurred by BE as a result of any obligation or cost imposed on BE arising out of any change in law, the Supply Licence, the Transmission Licence, the Act, the BSC, the Regulations, the DCUSA, the Statement of the Use of System Charging Methodology and/or any other relevant standard electricity supply industry documents or agreements after the Commencement Date or any change after the Commencement Date in the methodology used for calculating any charges or amounts which are incurred by BE in respect of and/or associated with the Supply or otherwise, howsoever incurred by or due from BE, to the extent such charges and amounts are required to be paid by or incurred by suppliers on an industry wide basis in respect of the supply of electricity in similar circumstances.

8. Liability

- 8.1 BE does not give any warranty or guarantees whatsoever as to the reliability or quality of the Supply.
- 8.2 BE has no obligation to provide the Supply if the Supply is shut down, interrupted, reduced or impaired as a result of de-energisation of or reduction in availability of or capability of any Customer Supply Point or the exercise of demand control by the LDSO or the operator of the GB Transmission System.
- 8.3 Subject to clauses 8.4, 8.5, 8.6 and 8.7, BE shall not be liable to the Customer for any loss or liability suffered in respect of physical damage to the property of the Customer, its officers, employees or agents, or the liability of the Customer to any other person for loss in respect of physical damage to the property of that person arising from a breach of the Agreement other than those losses which at the date of the Agreement were reasonably foreseeable.
- 8.4 Subject to clauses 8.6 and 8.7, BE's total liability to the Customer whether in contract, tort (including negligence and breach of statutory duty), statute, or otherwise in relation to an incident or series of related incidents in any one calendar year shall not exceed one million pounds (£1,000,000) in aggregate.
- 8.5 Subject to clauses 8.6 and 8.7, BE shall not be liable to the Customer in contract, tort (including negligence and breach of statutory duty), statute or otherwise for any indirect, consequential, economic or financial loss, loss of revenue, profit, use, business opportunity, contract or goodwill, or any loss resulting from the Customer's liability to any third party, or any loss resulting from loss, corruption or damage to any computer or electronically stored data or any operating systems, computer programs, interfaces or other software.
- 8.6 Notwithstanding any other provisions of the Agreement, nothing in the Agreement shall exclude or limit BE's liability to the Customer where such exclusion or limitation is not permitted by law.
- 8.7 Nothing in the Agreement shall exclude, restrict, prejudice or affect any of the rights, powers, duties and obligations of either party or the Authority or the Secretary of State conferred or created by the Act, or any subordinate legislation made from time to time under the Act, or any licence granted to BE under the Act.

9. Force Majeure

- 9.1 If a party is hindered or prevented from performing any of its obligations under the Agreement by Force Majeure it shall immediately give the other party written notice specifying the nature and extent of the Force Majeure and shall take all reasonable steps to alleviate the effects of the Force Majeure and resume performance as soon as practicable.
- 9.2 Provided that the affected party complies with clause 9.1 the affected party's obligations under the Agreement shall be suspended without liability to the extent that performance of them is hindered or prevented whilst the Force Majeure continues.
- 9.3 The Agreement shall continue in effect for the duration of the Force Majeure and no obligations accruing before the Force Majeure shall be excused.

10. Recovery of Other Sums

If and to the extent that BE is able to recover, and does so recover, in respect of matters forming the subject of the Agreement, from a LDSO, the owner or operator of the GB Transmission System or any third party, monies in respect of loss suffered by the Customer, BE shall account to the Customer for the amount so recovered, less any reasonable costs and expenses (including professional fees and expenses) incurred by BE in effecting the recovery.

11. Termination and Suspension

- 11.1 Either party shall have the right to terminate the Agreement immediately on notice if at any time prior to the End Date:
- 11.1.1 (i) the other party has a receiving order made against it or has a petition presented for its winding up or goes into liquidation or administration or a receiver (which shall include an administrative receiver) is appointed or steps are taken to appoint a receiver (including an administrative receiver) in respect of the whole or a material part of the assets; or (ii) the other party is unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986; or (iii) the other party enters into an arrangement or composition with or for the benefit of its creditors generally (including voluntary arrangement as defined in the Insolvency Act 1986 and the

Insolvency Act 2000) or such arrangement of composition if proposed by or in relation to the other party; or

11.1.2 an event of Force Majeure interrupts Supply for a continuous period of twenty eight (28) days.

11.2 BE shall have the right to terminate the Agreement immediately on notice if at any time prior to the End Date:

11.2.1 the Customer fails to pay any amount properly due or owing to BE under the Agreement and such default is not remedied seven (7) days after receipt by the Customer of written notice from BE of such non payment, in which case, BE may, instead of or in addition to termination, arrange for any Customer Supply Point to be de-energised or disconnected until such default is remedied and the Customer shall indemnify BE against all fees, expenses, costs or charges arising in connection with such de-energisation or disconnection and any subsequent re-energisation or reconnection; or

11.2.2 any of the representations, warranties and undertakings in clause 3 cease to be true or are breached at any time;

11.2.3 either (i) the Customer ceases to have an Acceptable Credit Rating and the Customer has failed to either provide a parent company guarantee, letter of credit or such other credit support in form and substance reasonably acceptable to BE or agree prepayment arrangements with BE within twenty (20) days of request by BE or (ii) the parent company guarantee, letter of credit or such other credit support or prepayment arrangement provided pursuant to clause 3.1.7 has terminated or been withdrawn, and the Customer has failed to either provide a replacement parent company guarantee, letter of credit or such other credit support in form and substance reasonably acceptable to BE or agree alternative prepayment arrangements with BE within fourteen (14) days of request by BE; or

11.2.4 the Customer is in material breach of the CUSC, the BSC, the MRA, the Grid Code or the Regulations or causes the Transmission Licence or Supply Licence to be revoked or withdrawn; or

11.2.5 the Customer is in material breach of any provision of the Agreement and (if it is capable of remedy) the breach is not remedied to the reasonable satisfaction of BE within twenty eight (28) days of serving notice to the Customer requiring the same to be remedied; or

11.2.6 the Customer persistently fails to comply with one or more of its obligations under the Agreement and such failure amounts to an intentional or reckless breach or disregard by that party of its obligations under the Agreement; or

11.2.7 the Customer ceases to be a party to, or is in material breach of, its obligations under the Connection Agreement for the Sites.

11.3. The Agreement shall terminate forthwith:

11.3.1 if the Supply Licence is revoked; or

11.3.2 when a last resort supply direction comes into effect in relation to the Sites, being a last resort supply direction given to a supplier other than BE in pursuance of standard condition 29 of the standard conditions of supply licence incorporated into the licence granted under section 6(1)(d) of the Act.

11.4 If at any time prior to the End Date the Customer is to cease to be the owner or occupier of any Site(s) and wishes to discontinue the Supply with respect to the relevant Customer Supply Point(s), then subject to clause 11.7, the Customer shall terminate the Agreement with respect to such Site(s) by not less than twenty eight (28) days prior notice in writing to BE, such notice to specify the date of termination (being not earlier than the date of cessation of ownership or occupation) and the name and address of the new owner or occupier (if any). BE may terminate the Agreement in respect of any Site(s) by immediate notice in writing to the Customer where the Customer's ownership or occupation of such Site(s) ceases without the Customer having served such notice.

11.5 In the event the Agreement terminates with respect to any Site(s) pursuant to Clause 11.4 above, the Customer shall, within seven (7) days of such termination, provide in writing to BE a revised Estimated Annual Consumption taking into account such termination, which estimate shall be genuine and provided in good faith and (save where the Supply to the relevant Customer Supply Point is metered on a non-half hourly basis) provided on a half-hourly basis, and agreed with BE.

11.6 In the event of the termination of the Agreement in accordance with this clause 11:

11.6.1 BE shall issue a final invoice to the Customer showing all outstanding monies (including the Charges due from the date of the previous invoice up to and including the End Date, any Tolerance Charge and any amounts under this clause 11 due and payable by the Customer) up to and including the date of termination and such final invoice shall be paid by the Customer in accordance with clause 7; and

11.6.2 unless a third party is registered as supplier at the Customer Supply Point, BE shall undertake all steps necessary to arrange for each Customer Supply Point to be de-energised or disconnected.

11.7 Subject to the terms of clauses 5.2 to 5.3 (inclusive) and 11.4 above, in the event of consumption by the Customer at the Customer Supply Points at the Site(s), continuing after the End Date or any date from which termination under this clause 11 takes effect, the Term Sheet in force between the Customer and BE prior to the End Date or prior to the date from which termination under this clause 11 takes effect shall be deemed to:

(i) be extended from the End Date until the expiry of the Transfer Period; and

(ii) form a legally binding agreement between the parties until the expiry of the Transfer Period,

and the parties hereby agree that such Term Sheet shall take effect as described in sub-paragraphs (i) and (ii), save that the Default Rate shall apply in place of the Energy Rate set out in the Applicable Term Sheet as if the Default Rate were specified in such Term Sheet as the Energy Rate and the Customer shall pay for such consumption at the Default Rate in respect of the Transfer Period. In addition, the Customer shall pay for the following charges which shall be passed through to the Customer at cost during the Transfer Period:

- (i) Transmission Charges;
- (ii) Distribution Losses;
- (iii) Distribution Charges;
- (iv) Reactive Power Charges;
- (v) Meter Operator, Data Services & Settlement Charges;
- (vi) Additional Charges;
- (vii) Climate Change Levy;
- (viii) Hydro Benefit Replacement Charge;
- (ix) Tax,

each such term as defined in the Applicable Term Sheet.

11.8 Notwithstanding the termination of the Agreement or the expiry of the Term:

11.8.1 the provisions of the Agreement, OTHER THAN clauses 11.1 to 11.6 inclusive and 13.2, shall continue to apply during the Transfer Period (if any); and

11.8.2 clauses 1, 7, 8.3 to 8.7 inclusive, 12, 14 and 15, and the payment obligations in clauses 11.6, 11.7, 11.12 and 11.13, shall SURVIVE termination of the Agreement and the expiry of the Term and the expiry of any Transfer Period.

11.9 Termination of the Agreement shall not affect the rights and liabilities of either party accrued at the date of termination or at the expiry of the Term.

11.10 Without prejudice to clause 11.12, BE may (but shall not be obliged to) enter an objection under the customer transfer processes contained or referred to in the MRA and the Supply Licence and prevent an alternative supplier from registering one or more Customer Supply Points at any of the Sites if:

11.10.1 the Customer arranges to transfer to an alternative supplier before the End Date, in breach of the Agreement; or

11.10.2 the Customer has any outstanding or overdue invoices which are not subject to any bona fide dispute; or

11.10.3 an alternative supplier attempts to register a Customer Supply Point in error;

11.10.4 where BE has reasonable grounds on which to object to such transfer; or

11.10.5 an alternative supplier attempts to register a single Customer Supply Point where BE is the registered supplier for one or more related Customer Supply Points.

11.11 Without prejudice to clause 11.1, where the Customer is in material breach, BE may suspend the Agreement in whole or in part by arranging for any or all of the Customer Supply Points at the Sites to be de-energised or disconnected immediately, and BE shall not be obliged to resume Supply at those Customer Supply Points until the Customer has paid to BE all re-energisation or reconnection charges (as the case may be) and other costs reasonably incurred by BE and, as required by BE, has also provided to BE a performance bond, bank guarantee or other security in form and substance reasonably acceptable to BE.

11.12 If, at any time during the Term, either (a) the Customer agrees to accept or accepts the supply of electricity at any of the Customer Supply Points from a third party in breach of the Agreement (and, with regard to Customers who receive Supply at the Customer Supply Points metered on a non-half-hourly basis and twenty-eight days prior written notice has not been provided to BE) or (b) the Customer is to cease to be the owner or occupier of any Site(s) and wishes to discontinue the Supply with respect to the relevant Customer Supply Point(s), the Customer shall indemnify BE in respect of any and all fees, expenses, costs, losses, liabilities or charges suffered or incurred in connection with or arising out of the early termination of the Agreement in respect of the relevant Customer Supply Point(s).

11.13 The Customer shall indemnify BE in respect of any fees, expenses, costs or charges incurred or committed to be incurred in respect of the Supply under any agreement entered into with an Agent, the DCUSA, the MRA or the BSC and (unless termination is due to an act or omission of BE) any other costs in discontinuing (including de-energisation or disconnection of) the Supply until such time as BE is no longer registered as supplier in respect of the relevant Customer Supply Point(s) whether incurred before, as a result of or after such termination.

12. Dispute Resolution and Governing Law

12.1 BE and the Customer shall use reasonable endeavours to resolve a dispute arising out of, under or in connection with the Agreement at a senior management level. In the event the dispute is not resolved at the senior management level within seven (7) days of a dispute being referred to the senior management, either party may refer the dispute to the courts of England and Wales or for disputes arising out of the BSC only, the parties may refer a dispute to arbitration pursuant to the arbitration rules of the Electricity Arbitration Association.

12.2 The Agreement shall be governed by and construed in all respects in accordance with English law and, subject to clause 12.1, the parties agree that the courts of England and Wales shall have exclusive jurisdiction. Where all of the Sites to which the Agreement relates are located entirely in Scotland the Agreement shall be governed by and construed in all respects in accordance with Scots law and subject to clause 12.1 and the foregoing provisions of this clause 12.2 the parties agree that the Scottish courts shall have exclusive jurisdiction.

13. Assignment

13.1 BE may assign its rights and obligations under the Agreement to any of its Affiliates which is authorised to give supply to sites.

13.2 The Customer shall not transfer its rights and obligations under the Agreement without:-

13.2.1 the prior written consent of BE, not to be unreasonably withheld or delayed; and

13.2.2 the Customer and transferee entering into a deed of novation with BE in the form prescribed by BE which contains an undertaking by the transferee to comply with the Conditions set out in the Agreement,

and it shall be reasonable for BE to withhold consent on the grounds of the financial standing of the proposed transferee.

14. Confidentiality

Each party undertakes to keep the existence of and the terms of the Agreement and any information relating thereto and any information relating to the affairs of the other party which is disclosed pursuant to the Agreement confidential and not disclose the same to any third party other than, in the case of BE, to its Affiliates at any time from the date hereof and for a period of five (5) years thereafter except with prior written consent of the other party or:

14.1 in compliance with and to the extent of any requirement of law, any Competent Authority or any agreement, licence, code, authorisation or consent necessary to permit the Supply or to enable either party to comply with its obligations under any agreement relevant to the Supply;

14.2 to the extent that such information is required to be furnished to any employee, officer, agent, consultant or professional adviser of a party for their proper consideration, or to any bank, other financial institution or ratings agency in respect of the financing or credit support of that party's business activities, such persons having first been made fully aware of and agreed to comply with these obligations of confidence in relation to such information;

14.3 to the extent required to be published or otherwise disclosed pursuant to or in respect of a regulatory requirement of a regulatory body (including the London Stock Exchange plc, the Authority and the Financial Services Authority) applicable to a party or an Affiliate of a party;

- 14.4 to the extent that it is in, or lawfully comes into, the public domain other than by breach of this clause 14, and the party seeking to rely on this sub-clause 14.4 can show that this is the case; or
- 14.5 to the extent that disclosure is required for the operation of or, is allowed pursuant to, clause 4.13 or an equivalent clause in any subsequent agreement which the Customer may enter into with another electricity supplier (and BE shall be entitled to rely on a written statement of the existence of a clause of the same type as clause 4.13 from any person claiming to be a subsequent electricity supplier without need for further investigation or verification of or by the Customer).

15. Miscellaneous

- 15.1 No delay or omission by either party in exercising any right, power or remedy shall impair or be construed as a waiver of such right, power or remedy, and any single or partial exercise thereof shall not preclude any future exercise thereof.
- 15.2 The Agreement shall constitute the entire agreement between the parties and shall supersede all previous agreements and understandings between the parties. Each party acknowledges and confirms that it does not enter into the Agreement in reliance on any representations, warranties or other undertakings not set out in the Agreement.
- 15.3 The parties acknowledge that they have each entered into the Agreement in reliance only on the representations, warranties promised and terms contained or expressly referred to in this Agreement and, save as expressly set out in the Agreement, the parties shall have no liability in respect of any other representation, warranty or promise made prior to the date of the Agreement unless it was made fraudulently.
- 15.4 Save as set out in clause 5 above, the Agreement may not be varied or waived other than by an agreement in writing signed by the parties, except where any variation is required:
- 15.4.1 to permit BE to provide the Supply in accordance with the Supply Licence, the Transmission Licence, the Act, the BSC, the CUSC, the Regulations, the DCUSA, the Statement of the Use of System Charging Methodology and/or any other relevant standard electricity supply industry documents or agreements as a result of changes to such documents;
- 15.4.2 to permit BE to pass through any additional cost, rate, fee, tax, levy, expense or charges of any kind, including but not limited to those more particularly described in clause 7.9;
- 15.4.3 to keep the terms in line with any other legal or regulatory addition, amendment or requirement; and/or
- 15.4.4 as a result of an order or directions made pursuant to the Act or a licence by the Authority or the Secretary of State;
- and in each such case the Customer hereby authorises BE to make such variations on its behalf and BE shall promptly send a copy of such variations to the Customer.
- 15.5 BE may subcontract or delegate the performance of its obligations or duties under the Agreement without the prior consent of the Customer provided that such subcontracting or delegation shall not relieve BE from liability for such obligations or duties.
- 15.6 Any notice under the Agreement shall be in writing and shall be served by delivery by hand, or by sending it by first class post or facsimile or email to, the address of the party specified in the Applicable Term Sheet or such other address notified from time to time in accordance with this clause 15.6. Notices sent by post shall be deemed to be received two (2) Business Days following the date posted. Notices sent by facsimile or email will be deemed to be received at the time of the transmission unless after 1800 hours on a Business Day in which case receipt will be deemed to be 1000 hours on the following Business Day. Notices delivered by hand will be deemed to be received on the day so delivered or, where this is not a Business Day, on the first (1st) Business Day following such delivery.
- 15.7 Nothing in the Agreement shall operate to prevent or restrict BE enforcing an obligation (including suing for a debt or other payment) owed to it pursuant to the Agreement.
- 15.8 BE shall not pay the Customer or any other person any fees relating to any agent's or consultant's arrangement, organisation fees, costs or expenses unless prior written agreement is given by BE.
- 15.9 BE shall be entitled to set off any monies payable by it to the Customer in respect of the Agreement against any monies not yet paid to BE by the Customer at that time.
- 15.10 The parties contract both for themselves and as trustees for their officers, employees and/or agents.
- 15.11 The rights and remedies provided by the Agreement are exclusive and exhaustive and are in substitution for the rights or remedies provided by common law or statute which shall be excluded to the fullest extent possible save that nothing in the Agreement shall affect the statutory rights and remedies conferred on BE under the Act. No failure to exercise, nor any delay in exercising, on the part of BE, any right or remedy under the Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy under the Agreement.
- 15.12 Each of the clauses and sub-clauses in the Agreement shall be construed as a separate and severable term. If one or more clause or sub-clauses is held to be invalid, unlawful or otherwise unenforceable, the other clauses and sub-clauses shall remain in full force and effect.
- 15.13 The parties do not intend that any term of the Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it, or their permitted assigns.
- 15.14 The Customer shall provide, or procure, for BE, its agents and contractors all safe and reasonable access to each of the Sites for all purposes connected with the exercise by BE of its rights and obligations under the Agreement.
- 15.15 A Term Sheet may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original but all the counterparts shall together constitute one and the same Term Sheet. For the purposes of this clause 15.15, the delivery of a facsimile copy of a signed counterpart of any Term Sheet shall be deemed to be valid signature thereof provided that the party so delivering a facsimile delivers an original copy of the Term Sheet forthwith following transmission by facsimile.

Schedule 1

Definitions

Acceptable Credit Rating

means a credit rating to be determined by BE from time to time.

Act

means the Electricity Act 1989 as amended from time to time.

Affiliates

means those companies which control, are controlled by or which are under common control with a party and "control" has the meaning given to the term in Section 840 of the Income and Corporation Taxes Act 1988.

Agent

means a Data Aggregator, Data Collector, Meter Operator, Meter Administrator and/or Unmetered Supplies Operator Agent (as applicable).

Agent Services

means the services provided by a Qualified Agent.

Agreement

means the Applicable Term Sheet executed by BE and the Customer which incorporates these Conditions and any other document referred to in the Applicable Term Sheet as forming part of the Agreement.

Applicable Term Sheet

means, at the relevant time, the Term Sheet which has been executed by the parties with the latest Commencement Date.

Assessment Year

means either:-

- each period of one calendar year during the Term commencing on the Commencement Date or an anniversary thereof; or
- where the Agreement is for a Term of less than a calendar year, the Term; or
- where the Term of the Agreement is not a multiple of twelve (12) months, the final Assessment Year shall be the period commencing on the final anniversary of the Commencement Date until the expiry of the Term.

Authority

means the Gas and Electricity Markets Authority established pursuant to section 1(1) of the Utilities Act 2000.

Averaging Period

has the meaning given to the term "averaging period" in paragraph 19 or 20A (as the context so admits) of Schedule 6 of the Finance Act 2000.

Balancing and Settlement Code or BSC

means the document of that name as modified from time to time, setting out electricity balancing and settlement arrangements and established by National Grid under its Transmission Licence.

BE or British Energy

means British Energy Direct Limited a company registered in England under number 4935015.

Business Day

means any day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.

Capacity Charge

means the amount, if any, specified as such in the Applicable Term Sheet to the Agreement.

Charges

means, subject to clause 7.9, those charges set out in Schedule 2.

CHP Electricity

has the meaning given to the term "CHP electricity" in paragraph 20A of Schedule 6 of the Finance Act 2000.

Climate Change Levy

means an amount equivalent to all climate change levy (introduced by the Finance Act 2000 and the relevant secondary legislation thereto) payable by BE in respect of the Supply.

Commencement Date

means the later of:-

- 00:00 hours on the date set out in a Term Sheet to the Agreement which has been executed by the parties; or
- the date with effect from which BE has registered the Customer Supply Point(s) in accordance with the MRA or Section K of the BSC;

provided always that in each case there has been appointed a Meter Operator or Meter Administrator and/or Unmetered Supplies Operator Agent, (if required by BE or the BSC) a Data Collector and a Data Aggregator, in respect of the Customer Supply Point.

Competent Authority

means the Secretary of State, the Authority and any local or national agency, authority, department, inspectorate, minister, ministry, official or public, judicial regulatory or statutory body or person (whether autonomous or not) of, or of the government of, the United Kingdom or the European Community.

Conditions

means these terms (titled "British Energy Direct Limited Terms for the Supply of Electricity") and any schedules, appendices and annexes hereto.

Connection Agreement

means either:

- the agreement between the Customer and the LDSO for the provision of the connection through which the Supply is to be delivered to each of the Customer Supply Points at the Sites which incorporates (*inter alia*) the NTC; or
- where the Customer Supply Point is directly connected to the Transmission System, the connection agreement between the Customer, National Grid and the CUSC; or
- the UMS Connection Agreement

Connection and Use of System Code or CUSC

means the document of that name as modified from time to time, setting out terms for the connection to and use of the GB Transmission System and established by National Grid under its Transmission Licence.

Connection Site Demand Capability

has, in respect of any Customer Supply Point at Sites which are directly connected to the GB Transmission System, the meaning given to that term in the CUSC.

Customer

means the person defined as Customer in the Applicable Term Sheet to the Agreement.

Customer Supply Point

means each Boundary Point Metering System (as defined in the BSC) for the Sites.

Data Aggregator

means a Qualified person appointed to carry out the aggregation of data from Metering Equipment for the purposes of the BSC.

Data Collector

means a Qualified person appointed to retrieve, validate and process data from Metering Equipment for the purposes of the BSC.

Default Rate

means such costs and charges from time to time in respect of the supply of electricity after the End Date or any date from which termination of the Agreement takes effect, and which are available to the Customer on request to BE.

Distribution Code

means the distribution code as defined in the Supply Licence.

Distribution Connection and Use of System Agreement or DCUSA

means the agreement of that name as modified from time to time which permits *inter alia* the use by BE of the system of a Licensed Distribution System Operator through which the Supply is delivered to a Customer Supply Point.

Electricity Arbitration Association

means the unincorporated members' club known as the Electricity Supply Industry Arbitration Association formed *inter alia* to promote the efficient and economic operation of the procedure for the resolution of disputes within the electricity supply industry by means of arbitration or otherwise in accordance with its arbitration rules.

End Date

means 23:59 hours on the date specified as such in the Applicable Term Sheet to the Agreement.

Energy Rates

means each rate specified as such in the Applicable Term Sheet to the Agreement.

Estimated Annual Consumption

means the amount for each Site specified as such in the Applicable Term Sheet to the Agreement or such other amount for each Site notified by the Customer to BE pursuant to clause 11.5 or such increased amount notified by the Customer to BE in respect of any Site(s) added to this Agreement pursuant to clause 4.6 following the date hereof, provided that, where a Site is added to or removed from this Agreement pursuant to clause 4.6 and/or 11.5 other than on the Commencement

Schedule 1

Date or an anniversary thereof, the Estimated Annual Consumption shall be adjusted for that Site only in the Assessment Year such Site is added to or removed from this Agreement by the pro rata amount of the Estimated Annual Consumption for that Site equivalent to the number of months of Supply remaining under this Agreement during the relevant Assessment Year.

Estimated Consumption

means the energy consumption level and pattern or information, data or figures relating to consumption levels from which the pattern of energy consumption is capable of being derived in respect of each Site, as agreed between BE and the Customer, signed by BE and the Customer and attached to the Agreement (or such revised pattern of energy consumption agreed between BE and the Customer pursuant to the operation of clause 4.6 and/or 11.5) or, if not so agreed, a rate equivalent to monthly consumption of one-twelfth of the Estimated Annual Consumption for each Site.

Estimated Triad Consumption

means the amount specified as such in the Applicable Term Sheet to the Agreement.

Financial Year

means the period of 12 months ending on 31 March in each calendar year

Force Majeure

means any event or circumstance which is beyond the reasonable control of a party and prevents that party from performing any of its obligations under the Agreement, including, without limitation, act of God, strike, lockout or other industrial disturbance, act of war, insurrection, rebellion, terrorism, civil commotion, vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, other inclement weather, failure of any plant or apparatus which could not have been prevented by Good Industry Practice, disconnection and/or de-energisation of the Customer Supply Point for any reason whatsoever, suspension, interruption or termination of transmission through any transmission or distribution network, any exercise of demand control pursuant to a Grid Code, any Act of Parliament or governmental restraint including a direction of the Secretary of State under sections 34(4) or 96 of the Act. Lack of funds shall not be treated as an event or circumstance beyond the reasonable control of that party.

Fossil Fuel Levy

means the fossil fuel levy described in section 33 of the Act.

GB Transmission System

means a system consisting (wholly or mainly) of high voltage electric lines owned and/or operated by Transmission Licensees (as defined in the Transmission Licence) within Great Britain and used wholly for the transmission of electricity.

Good Industry Practice

means, in relation to any operator engaged in an undertaking under particular circumstances, the exercise of that degree of skill diligence prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of

undertaking under the same or similar circumstances.

Grid Code

means the grid code as defined in the Supply Licence.

Licensed Distribution System Operator or LDSO

has the meaning given to that term in the BSC.

Management Charge

means the amount specified as such in the Applicable Term Sheet to the Agreement.

Master Registration Agreement (or MRA)

means the agreement of that name as modified from time to time which provides inter alia the procedure for the registration of BE as supplier in respect of any Customer Supply Point.

Maximum Capacity

means, in respect of each Customer Supply Point other than a Customer Supply Point at Sites which are directly connected to the GB Transmission System, the maximum capacity specified for that Customer Supply Point in the Applicable Term Sheet to the Agreement or such other capacity as may be specified from time to time in the relevant Connection Agreement (and notified to BE) in writing by the Customer.

Meter Administrator

has the meaning given to that term in the BSC.

Metering Equipment

means either meters transformers (both voltage and current) metering protection equipment including alarms circuitry and their associated data collection outstations and wiring which are part of the energy measuring equipment installed from time to time at each Customer Supply Point or where the Supply is an Unmetered Supply, Equivalent Meter (as such terms is defined in the BSC).

Meter Operator

means a Qualified person who has been appointed as a Meter Operator Agent for the purposes of the BSC.

National Grid

means National Grid Electricity Transmission plc, a company registered in England under number 2366977.

National Terms of Connection or NTC

has the meaning given to that term in the BSC.

Offer Period

means the period starting at deemed receipt (in accordance with clause 15.6 of this Agreement) of any new Term Sheet proposed to be executed by the parties and ending on the date and time specified in the said new Term Sheet proposed to be executed by the parties, or such later date as BE may agree with the Customer.

Payment Provisions

means the provisions specified as such in the Applicable Term Sheet to the Agreement.

Qualified

has, in relation to an Agent, the meaning

given to that term in the BSC.

Reactive Power Charge

means an amount equivalent to all sums (if any) payable by BE in respect of reactive power delivered to the Sites.

Regulations

means the Electricity Safety, Quality and Continuity Regulations 2002 or any amendment or re-enactment thereof or any other regulations under section 29 of the Act.

Renewable Source Electricity

means any source of electricity which fall within "eligible renewable sources" as defined in Article 5 of the Renewables Obligation Order 2006

Secretary of State

means one of Her Majesty's Principal Secretaries of State as defined in the Interpretation Act 1978.

Sites

means the sites referred to in the Applicable Term Sheet to the Agreement as varied from time to time by the operation of clauses 4.6 and 11.4, each such sites being owned or occupied by the Customer.

Sites and Charges Schedule

means the schedule headed "Sites and Charges Schedule" attached to the Term Sheet setting out the details of each of the Sites under the Agreement.

Statement of Use of System Charges

means the statement of charges issued by National Grid from time to time determined in accordance with the Statement of the Use of System Charging Methodology.

Statement of the Use of System Charging Methodology

means the charging methodology produced by National Grid from time to time in accordance with its Transmission Licence.

Supply

means the supply of electricity to be provided by BE to the Customer pursuant to the Agreement.

Supply Licence

means the licence granted to BE under section 6(1)(d) of the Act.

System Buy Price

has the meaning given to that term in the BSC.

System Sell Price

has the meaning given to that term in the BSC.

tax or taxation

includes, without limitation, all forms of taxation and statutory, governmental, supra-governmental, state, provincial, local governmental or municipal impositions, duties, contributions, levies (including withholdings and deductions), whether domestic or foreign, whenever imposed.

Term

means the period commencing on the Commencement Date and ending on the later of the End Date and the date being the last day of the Transfer Period (if any).

Schedule 1

Term Sheet

means the latest of the two or more pages headed 'Electricity Supply Agreement' with the "Sites and Charges Schedule" attached thereto, executed or proposed to be executed by the parties from time to time.

Tolerance

means the tolerance specified in the Applicable Term Sheet to the Agreement

Tolerance Charge

has the meaning given to that term in clause 7.8.

Transfer Period

means the period, if any, FROM the date of termination in accordance with clause 11 or the End Date TO either (i) the date on which BE receives evidence (in a form satisfactory to it) of either the registration of a supplier other than BE in respect of the relevant Customer Supply Points or the disconnection of the relevant Site(s) or (ii) the date on which BE enters into a new Agreement with the Customer.

Transmission Licence

means a licence granted under section 6(1)(b) of the Act.

Triad Charges

means a sum equal to the Customer's average half hourly electricity demand during the Triad Period in question (or, where the Customer is not metered on a half hourly basis, BE's estimate of the Customer's average half hourly electricity demand) multiplied by the Triad Demand Tariff in respect of the relevant Zone Area MINUS the amounts, if any, already paid to BE prior to the Triad Period in question as prepayment(s) as described in clause 7.5 of the Agreement;

Triad Demand Tariff

means each of the tariffs at the relevant time set out in the column headed "Demand Tariff" in the Statement of Use of System Charges and levied by National Grid for services which National Grid provides in respect of use of the GB Transmission System, as more fully described at standard conditions C4 and C5 to the Transmission Licence.

Triad Period

means the half hour settlement period of highest transmission system demand of a Financial Year and each of the two half hour settlement periods of next highest demand, separated by at least ten (10) days occurring annually between November and February (inclusive) as identified by National Grid and more fully described in the Statement of the Use of System Charging Methodology.

UMS Connection Agreement

Means the agreement of that title entered into between the Customer and the Unmetered Supplies Operator Agent as more particularly described in BSC Procedure BSCP520.

Unmetered Supplies Operator Agent

has the meaning given to that term in the BSC.

Unmetered Supply

has the meaning given to that term in the BSC.

Unmetered Supply Certificate

has the meaning given to that term in the BSC.

Zone Area

means each of the areas set out at the relevant time in the column headed "Zone Areas" in the Statement of Use of System Charges.

Schedule 2

The Charges

1. The Charges are the following amounts payable by the Customer to BE:
 - 1.1 the amounts given in paragraphs 2, 3 or 4 below, as appropriate; and
 - 1.2 the amounts given in paragraph 5 below; and
 - 1.3 value added tax or any equivalent (if applicable) in accordance with paragraph 6 below.

'Fully Delivered' Terms

2. The amounts applicable only to Agreements with an Applicable Term Sheet specifying 'Fully Delivered' are:
 - 2.1 a Fixed Charge for the Supply (including but not limited to the Energy Charge, Balancing Charges, Transmission Losses, Transmission Charges, Distribution Losses, Distribution Charges, Meter Operator Charges (where indicated as being part of the Fixed Charge in the Applicable Term Sheet), Data Services and Settlement Charges (where indicated as being part of the Fixed Charge in the Applicable Term Sheet), Commission (where applicable), Renewables Obligation Charge, Hydro Benefit Replacement Charge (where the Supply is metered on a non-half hourly basis) and a Management Charge (each such term as defined in the Applicable Term Sheet)) determined in accordance with the various Energy Rates set out in the Applicable Term Sheet;
 - 2.2 Reactive Power Charges to be passed through by BE to the Customer at cost;
 - 2.3 Meter Operator Charges (as defined in the Applicable Term Sheet) to be passed through by BE to the Customer at cost where indicated in the Applicable Term Sheet as being passed through by BE to the Customer at cost;
 - 2.4 Data Services and Settlement Charges (as defined in the Applicable Term Sheet) to be passed through by BE to the Customer at cost where indicated in the Applicable Term Sheet as being passed through by BE to the Customer at cost;
 - 2.5 Climate Change Levy to be passed through by BE to the Customer at cost;
 - 2.6 Hydro Benefit Replacement Charge (as defined in the Applicable Term Sheet) to be passed through by BE to the Customer at cost where the Supply is metered on a half hourly basis;
 - 2.7 a tax charge (to be passed through by BE to the Customer at cost) equivalent to the Fossil Fuel Levy and other taxes (other than Climate Change Levy, corporation tax and any other tax on the profits or gains of BE) imposed from time to time on the generation, transmission, distribution or supply of electricity to which BE may be liable in respect of the Supply to be passed through by BE to the Customer at cost; and
 - 2.8 save as expressed in this Agreement to be borne by BE, an amount (to be passed through by BE to the Customer at cost) equal to any other third party costs or charges from time to time in respect of the transmission, distribution or supply of electricity.

'Energy Only at Customer's Meter' Terms

3. The amounts applicable only to Agreements with an Applicable Term Sheet specifying 'Energy Only at Customer's Meter' are:
 - 3.1 a Fixed Charge for the Supply (including but not limited to the Energy Charge, Balancing Charges, Transmission Losses, Commission (where applicable), Renewables Obligation Charge, Distribution Losses and a Management Charge (each such term as defined in the Applicable Term Sheet)) determined in accordance with the various Energy Rates set out in the Applicable Term Sheet;
 - 3.2 Transmission Charges (as defined in the Applicable Term Sheet) to be passed through by BE to the Customer at cost;
 - 3.3 Distribution Charges (as defined in the Applicable Term Sheet) to be passed through by BE to the Customer at cost;
 - 3.4 Reactive Power Charges to be passed through by BE to the Customer at cost;
 - 3.5 Meter Operator Charges (as defined in the Applicable Term Sheet) to be passed through to the Customer at cost;
 - 3.6 Data Services and Settlement Charges (as defined in the Applicable Term Sheet) to be passed through to the Customer at cost;
 - 3.7 Climate Change Levy to be passed through by BE to the Customer at cost;
 - 3.8 Hydro Benefit Replacement Charge (as defined in the Applicable Term Sheet) to be passed through by BE to the Customer at cost;
 - 3.9 a tax charge (to be passed through by BE to the Customer at cost) equivalent to the Fossil Fuel Levy, value added tax and any other applicable taxes (other than Climate Change Levy, corporation tax and any other tax on the profits or gains of BE) imposed from time to time on the generation, transmission, distribution or supply of electricity to which BE may be liable in respect of the Supply to be passed through by BE to the Customer at cost; and
 - 3.10 save as expressed in this Agreement to be borne by BE, an amount (to be passed through by BE to the Customer at cost) equal to any other third party costs or charges from time to time in respect of the transmission, distribution or supply of electricity.

Any prepayment(s) made by a Customer as described in clause 7.5 of the Agreement shall be repaid to the Customer within forty five (45) Business Days of the later of:

- (i) this Agreement terminating in accordance with its terms; and
- (ii) any Transfer Period

("the long-stop date") insofar as the said long-stop date falls prior to the Triad Period to which the prepayment relates. BE shall be entitled to set off any such repayment against any monies in respect of the Agreement not yet paid by the Customer at that time.

'Energy Only at Grid Supply Point' Terms

4. The amounts applicable only to Agreements with an Applicable Term Sheet specifying 'Energy Only at Grid Supply Points' are:
 - 4.1 a Fixed Charge for the Supply (including but not limited to the Energy Charge, Balancing Charges, Transmission Losses, Commission (where applicable), Renewables Obligation Charge and a Management Charge (each such term as defined in the Applicable Term Sheet)) determined in accordance with the various Energy Rates set out in the Applicable Term Sheet;
 - 4.2 Transmission Charges (as defined in the Applicable Term Sheet) to be passed through by BE to the Customer at cost;
 - 4.3 Distribution Losses (as defined in the Applicable Term Sheet) to be passed through by BE to the Customer at cost;
 - 4.4 Distribution Charges (as defined in the Applicable Term Sheet) to be passed through by BE to the Customer at cost;
 - 4.5 Reactive Power Charges to be passed through by BE to the Customer at cost;
 - 4.6 Meter Operator Charges (as defined in the Applicable Term Sheet) (to be passed through to the Customer at cost);
 - 4.7 Data Services and Settlement Charges (as defined in the Applicable Term Sheet) (to be passed through to the Customer at cost);
 - 4.8 Climate Change Levy (to be passed through by BE to the Customer at cost);
 - 4.9 Hydro Benefit Replacement Charge (as defined in the Applicable Term Sheet) to be passed through by BE to the Customer at cost;
 - 4.10 a tax charge (to be passed through by BE to the Customer at cost) equivalent to the Fossil Fuel Levy, value added tax and any other applicable taxes (other than Climate Change Levy, corporation tax and any other tax on the profits or gains of BE) imposed from time to time on the generation, transmission, distribution or supply of electricity to which BE may be liable in respect of the Supply to be passed through by BE to the Customer at cost; and
 - 4.11 save as expressed in this Agreement to be borne by BE, an amount (to be passed through by BE to the Customer at cost) equal to any other third party costs or charges from time to time in respect of the transmission, distribution or supply of electricity.

Schedule 2

Any prepayment(s) made by a Customer as described in clause 7.5 of the Agreement shall be repaid to the Customer within forty five (45) Business Days of the later of:

- (i) this Agreement terminating in accordance with its terms; and
- (ii) any Transfer Period (“the long-stop date”) insofar as the said long-stop date falls prior to the Triad Period to which the prepayment relates. BE shall be entitled to set off any such repayment against any monies in respect of the Agreement not yet paid by the Customer at that time.

Charges Applying to all Versions of the Agreement

- 5. The amounts given by this paragraph are:
 - 5.1 an amount (to be passed through by BE to the Customer at cost) equal to all sums payable by BE under the terms of the BSC in consequence of the Meter Operator, the Meter Administrator, the Data Collector or the Data Aggregator appointed by the Customer in respect of any Customer Supply Point failing to meet the performance standards set out in the BSC in connection with any Customer Supply Point; and
 - 5.2 an amount equivalent to the costs, if any, in connection with the Supply arising from a direction of the Authority or the Secretary of State, including without prejudice to the generality of the foregoing any higher or additional costs which arise as a result of any direction by the Secretary of State under sections 34(4) or 96 of the Act, section 2 of the Energy Act 1972 or sections 1 to 4 of the Energy Act 1976.

Miscellaneous Terms Applying to all Versions of the Agreement

- 6. All sums payable under the Agreement, other than the sum payable under paragraph 1.3 above, are expressed exclusive of value added tax. To the extent that value added tax or any replacement tax of a similar nature is payable in respect of the charges or any of them, the Customer shall pay such tax. Any account rendered by BE in respect of the Supply which includes value added tax shall be a value added tax invoice.