

Conditions of Supply

**Industrial & Commercial
premises with metered
electricity supplies**

1. THE SUPPLY

1.1 Conditions Precedent

The obligation of the Supplier to provide the Supply to the Exit Points is conditional upon satisfaction of the following Conditions in relation to each Exit Point:

- 1.1.1** the Supply and the relevant Customer's Premises complying with the Supplier's Licence, the Act, the Regulations, the Settlement Agreement and the MRA and any other relevant agreements or authorisations necessary to permit or continue the Supply; and
- 1.1.2** the following agreements ("Industry Agreements") relevant to the Exit Point being in full force and effect and all notifications and conditions pursuant to those agreements having been validly and effectively completed and/or satisfied;
- (a) Connection Agreement;
- (b) Use of System Agreement;
- (c) Settlement Agreement;
- (d) MRA; and
- (e) CUSC;
- 1.1.3** the appointment of a Meter Operator being in full force and effect and in respect of each Exit Point registered under the MRA or in CMRS or SMRS, and the appointment of a Data Aggregator and Data Collector being in full force and effect;
- 1.1.4** the Supplier having become validly Registered in respect of each Exit Point; and
- 1.1.5** Metering Equipment being Certified (except to the extent that the Metering Equipment is not required to be Certified), installed and complying with Schedule 7 of the Act, the Settlement Agreement and the Use of System Agreement; and
- 1.1.6** the Supplier and each relevant Licence Holder being a party to the Data Transfer Service Agreement; and
- 1.1.7** Metering Equipment at each Exit Point not comprising a pre-payment meter
- For the avoidance of doubt, commencement or continuation of the Supply to any Exit Point shall not constitute a waiver of any one or more of the above Conditions in the event such Conditions are not satisfied and shall be without prejudice to any rights and/or remedies the Supplier may have in respect of or arising as a result of non-satisfaction of the above Conditions (other than to the extent non-satisfaction arises as a result of any act or omission of the Supplier). In such circumstances such Conditions shall remain to be satisfied. Any waiver of the above Conditions shall only be valid if given by the Supplier in writing (except as follows). If the Supplier waives Sub-Condition 1.1, it is hereby agreed that Metering Equipment need not be certified under paragraph 5 of Schedule 7 to the Act and the Supplier will be deemed to have waived such Condition where it agrees in writing with any Meter Operator that Metering Equipment need not be so certified.

- 1.2** Each Party shall provide the other with all assistance and information reasonably required by the other to enable compliance with its respective obligations under any relevant agreement, licence, code, authorisation or consent necessary to permit the Supply. Without prejudice to the generality of the foregoing, the Customer shall provide promptly at the Supplier's request in a format or medium specified by the Supplier all information required pursuant to any relevant agreement, licence or authorisation necessary to commence or continue the Supply or to enable the Supplier to comply with its obligations under such agreement, licence or authorisation and shall update such information as necessary. The Customer acknowledges and accepts that the Supplier may be required pursuant to the terms of any such agreement, licence or authorisation to pass such information to a third party. The Customer shall indemnify the Supplier against all liabilities and costs of any nature the Supplier may incur in the event any information so provided is incorrect, incomplete, insufficient or is not supplied promptly.

1.3 Novation

The Customer agrees:

- 1.3.1** to procure the performance of this Agreement by any Affiliate for whom the Customer takes the Supply or which is or becomes the owner or occupier of any of the Customer's Premises; and
- 1.3.2** without prejudice to the generality of Sub-Condition 10.5, to transfer to a third party all the rights and liabilities of the Customer under this Agreement insofar as they apply to any Exit Point at any of the Customer's Premises which are or become owned or occupied by such third party; and to indemnify the Supplier for any loss, damage, liability or cost suffered or incurred by the Supplier as a result of any failure by the Customer to comply with the provisions of this Sub-Condition 1.3, including, for the avoidance of doubt, any failure of such Affiliate or third party to procure Standard Connection Agreements with the relevant Licence Holder in respect of the Exit Point(s).

1.4 Nature of Supply

1.4.1 The Customer represents and warrants to the Supplier that as at the Agreement Date:

- 1.4.1.1** none of the Customer's Premises constitute Domestic Premises;
- 1.4.1.2** there are no restrictions or contractual obligations with any third party which exist which would prevent (or have the effect of preventing) the Customer from taking Supply at the Customer's Premises from the Supplier at the Effective Date or the anticipated date of commencement of supply of electricity to the Customer's Premises by the Supplier pursuant to this Agreement, as applicable; and
- 1.4.1.3** it shall not enter (or attempt to enter) into a contract or renew or extend any existing contract (whether in writing or verbally) with any third party including but not limited to its incumbent supplier as at the Agreement Date; for the supply of electricity to the Customer's Premises for the period of the Initial Term of the Agreement (whether in whole or in part).
- The Customer shall indemnify and keep the Supplier fully indemnified against any and all costs losses and expenses incurred or suffered by the Supplier arising from any breach by the Customer of the warranties set out in this Condition 1.4.1 which cause a delay to or prevent the Supplier from becoming Registered.

1.4.2 The Customer agrees not to take at any time electricity at any Exit Point exceeding the Maximum Capacity and the Customer further agrees that the Supplier shall be appointed as the Customer's agent for the purpose of obtaining such information as the Supplier may require to commence, maintain or continue the Supply.

1.4.3 Subject to any own generation on the Customer's Premises, the Customer agrees to take only from the Supplier its total requirements of electricity at each of the Customer's Premises during the Term. The Supplier may, at its discretion, source some or all of the electricity for the Supply from any Renewable Source and or Good Quality CHP ("Green Sources"). For the avoidance of doubt, in these circumstances the Customer will not be charged Climate Change Levy on the electricity supplied from these Green Sources, however a charge equivalent to Climate Change Levy (the "Equivalent Charge") will be applied.

Where the Supplier exercises its discretion to source some or all of the Supply in accordance with this Sub-Condition 1.4.3 from any Good Quality CHP source, then for the purposes of the Finance Act 2000 Schedule 6 paragraph 20A(3) and all associated and subordinate legislation the Supplier shall be deemed to have made the following declaration:

"In each averaging period (as defined in the Finance Act 2000) the amount of electricity supplied by exempt CHP supplies (as defined in the Finance Act 2000) made by the Supplier in the relevant averaging period will not exceed the difference between (a) the total amount of CHP electricity that during that averaging period is either acquired or generated by the Supplier, and (b) so much of that total amount as is allocated by the Supplier otherwise than to exempt CHP supplies made by him in that averaging period;"

Where the Supplier exercises its discretion to source some or all of the Supply in accordance with this Sub-Condition 1.4.3 from any Renewable Source, then for the purposes of the Finance Act 2000 Schedule 6 paragraph 19(2) and all associated and subordinate legislation the Supplier shall be deemed to have made the following declaration:

"In each averaging period (as defined in the Finance Act 2000) the amount of electricity supplied by exempt renewable supplies (as defined in the Finance Act 2000) made by the Supplier in the relevant averaging period will not exceed the difference between (a) the total amount of Renewable Source electricity that during that averaging period is either acquired or generated by the Supplier, and (b) so much of that total amount as is

allocated by the Supplier otherwise than to exempt renewable supplies made by him in that averaging period;"

1.4.4 The Supplier shall have the electrical characteristics at which the Supply is distributed to the Customer by the relevant Licence Holder from time to time. The Customer shall, by giving as much notice as possible, notify the Supplier before it changes its consumption, usage of the Supply or carries out a Service Upgrade (for the avoidance of doubt the Customer need not notify the Supplier in relation to seasonal variations in consumption but shall for example in situations including but not limited to where there are outages (whether planned or unplanned) at the Customer's Premises). Without Prejudice to Sub-Condition 1.4.7, the Customer shall indemnify the Supplier against any losses, costs and expenses incurred by the Supplier where in the Supplier's reasonable opinion the Customer's Actual Consumption is materially different from the Annual Volume and/or any consumption data provided by the Customer directly arising from any changes to the Customer's consumption, usage of the Supply or a Service Upgrade.

1.4.5 The Customer represents and warrants to the Supplier that it has declared to the Supplier all on-site generation including any Combined Heat and Power generation on the Customer's Premises existing at the Effective Date and shall immediately notify the Supplier of any changes to, or the installation of any new, on-site generation at the Customer's Premises during the Term of this Agreement. On such notification to the Supplier or otherwise the Supplier becomes aware of any such changes or new on-site generation at the Customer's Premises the Customer shall indemnify the Supplier against any costs, losses or expenses incurred by the Supplier directly arising from such changes and or the new on-site generation.

1.4.6 On written notification by the Supplier to the Customer that the Customer's Premises or any part of the Customer's Premises is taking or intended to take a supply of 100 kW or more at any time after the Effective Date the Customer shall;

- (a) enter into a Meter Operator's Agreement for the installation and maintenance of Half Hourly Metering Equipment with either the Supplier's nominated Meter Operator or the Customer's nominated Meter Operator within twenty eight days from receipt of the written notification from the Supplier; and
- (b) as soon as reasonably possible arrange for the installation (at the Customer's cost) of the Communications Links appropriate for the Half Hourly Metering Equipment; Provided that (i) if the Customer fails to comply with the provisions of this Sub-Condition 1.4.6 the Customer shall indemnify the Supplier for any charges including any fine or penalty imposed on the Supplier under the BSC relating to the Supplier's obligation under the BSC to ensure that Half Hourly Metering Equipment is installed and used for any supply of electricity of 100 kW or more and any other costs and expenses incurred by the Supplier relating thereto; and (ii) if the Customer has nominated the Meter Operator Sub-Conditions 1.5.3 (c), 1.5.4 and 1.5.5 shall apply.

1.4.7 If on the Effective Date the Customer's Premises has a New Connection and the Actual Consumption falls above or below by 20% of the Annual Volume in any Period, or 20% of the pro rata Annual Volume where the Period is less than 12 months, the Customer hereby agrees to pay the Supplier at the end of the relevant Period the charges calculated as follows (the "Excess Charge"):

EC = AF + E(EV); where

EC is the Excess Charge which will be expressed in pounds sterling;

AF is the administration fee of £250 per Exit Point

E is the excess rate of £0.10 per kWh

EV is the Excess Volume

The Customer agrees that the Excess Charge calculated in accordance with this Condition 1.4.7 represents a genuine and reasonable pre-estimate of the losses, costs and expenses that the Supplier would otherwise suffer and is payable in addition to the Charges.

1.5 Registration and Registration Transfer

1.5.1 The Customer agrees that at any point during the Term one or more of the Customer's Premises or Exit Points may be subject to Registration Transfer. The Customer accepts Registration Transfer and shall provide all assistance reasonably required by the Supplier to effect Registration Transfer or Registration. The Supplier shall not be liable in respect of any loss howsoever arising which the Customer may suffer during the course of or as a result of or in respect of any delay in Registration of any of the Customer's Premises or Exit Points, except to the extent such loss was caused by any act or omission on the part of the Supplier. In the event of any such loss arising solely from any act or omission on the part of the Supplier, the Supplier's liability shall in no event exceed the lower of (i) the difference between the charges incurred by the Customer as a result of such late registration and the Charges the Customer would have paid under this Agreement had there not been such a delay or (ii) £200,000 (two hundred thousand pounds).

1.5.2 Except as set out in Condition 3.1.3 at no time during the Term of this Agreement shall the Customer nominate or appoint a Data Aggregator other than the Data Aggregator nominated from time to time by the Supplier

1.5.3 (a) Subject to Sub-Conditions 1.4.6 and 1.5.3 (c) the Supplier shall nominate and appoint the Meter Operator and Data Collector for all meter operation and data collection that is required from the point at which Registration occurs and for the remainder of the Term of this Agreement in relation to each of the Customer's Premises;

(b) The Customer agrees to enter into a Meter Operator's Agreement with the Meter Operator appointed by the Supplier in accordance with Sub-Condition 1.5.3 (a). If the Customer fails to enter such Meter Operator's Agreement the Supplier shall pass through to the Customer all charges relating to such Meter Operator's Agreement plus charges to cover the Supplier's administrative costs;

(c) In the event the Customer wishes to use its own nominated Meter Operator and/or Data Collector in place of those nominated by the Supplier then Conditions 1.5.4 to 1.5.7 inclusive shall apply and the Customer shall prior to the point of Registration or as soon as possible after receipt of any written notice given under Sub-Condition 1.4.6 inform the Supplier thereof in writing and shall procure that prior to the point at which Registration takes place, or within twenty eight days after the date such written notice was served, that such an agreement has been entered into between the Customer and its nominated Meter Operator or Data Collector.

1.5.4 Where the Customer owns the Metering Equipment or has appointed a Meter Operator or a Data Collector the Customer shall itself, and shall procure that its Meter Operator and or Data Collector appointed by it shall:

1.5.4.1 in respect of the Metering Equipment provide the Supplier (or any agent acting on the Supplier's behalf) with the Data by the method, to the standard, in the format, in the timescales and within the frequency required by the Supplier; and

1.5.4.2 in respect of the Metering Equipment install and maintain the Metering Equipment to the standard required by the Act, the BSC, the MRA, any Directive and any other relevant requirement of any Competent Authority; and

1.5.4.3 Comply with the Act, the BSC, Industry Agreements, any Directive and any other relevant requirement of any Competent Authority in relation to any activities carried out by such third parties.

1.5.5 If the Data is not provided or is not provided in the manner required by the Supplier or, if the Metering Equipment is not maintained in accordance with Sub-Condition 1.5.4.2, the Supplier, or any Authorised Personnel of the Supplier, shall have the right of safe and unobstructed access to the Customer's Premises to remedy such default and the Customer shall indemnify the Supplier in respect of any loss (including but not limited to any loss incurred as a result of any errors in the accuracy or otherwise of the Data), damage, cost, expense or liability incurred by the Supplier as a result of such failure to comply with Sub-Condition 1.5.4 except to the extent that such loss, damage, cost, expense or liability is caused solely by the Supplier's negligence, or failure to comply with its contractual obligations;

1.5.6 If the Customer fails to maintain a Meter Operator's Agreement and or a Data Collection Agreement in respect of the Metering Equipment, or the appointed Meter Operator and or Data Collector fails to perform in accordance with Sub-Condition 1.5.4 the Supplier may appoint an alternative Meter Operator and or Data Collector and the Customer

shall indemnify the Supplier in respect of any loss, damage, costs, expense or liability incurred by the Supplier arising therefrom, except to the extent that such loss, cost, expense or liability is caused solely by the Supplier's negligence, or failure to comply with its contractual obligations;

- 1.5.7** The Customer will forthwith notify the Supplier in the event there is a breach by either party of any of the provisions of its appointed Meter Operator's Agreement and/or Data Collection Agreement and in the event that such contract is terminated by whatever means. If such contract is terminated or the Meter Operator or Data Collector or Customer is in material breach of such contract the Supplier will appoint a Meter Operator and/or Data Collector and the Customer will indemnify the Supplier in respect of any cost, loss or expense incurred by the Supplier from doing so;
- 1.5.8** To the extent that it is permissible under the terms of the Industry Agreements, the Supplier's Licence or pursuant to the Act or Regulations or any direction of a Competent Authority, and without prejudice to the generality of Sub-Conditions 10.4 and 10.8, the Supplier reserves the right to object to the Customer taking a supply of electricity at the Exit Point being supplied under this Agreement from another supplier when the Supplier receives notice of the new supplier's intention to register such Exit Point (a "Transfer Request") if:
- 1.5.8.1** such transfer would put the Customer in breach of any terms of this Agreement; or
- 1.5.8.2** the Customer has failed to pay all Charges due in accordance with this Agreement, even if this Agreement has expired or terminated;
- 1.5.8.3** if requested by the Customer or
- 1.5.8.4** the supplier that has proposed the Transfer Request agrees with the Supplier that it was initiated in error; or
- 1.5.8.5** the Transfer Request does not include the simultaneous transfer of all and/or any Exit Point(s) that are related in their Registration to the Exit Point subject to the Transfer Request.

2. LIMITATION OF LIABILITY

- 2.1** The Customer acknowledges that the voltage or frequency of the Supply is outside the Supplier's control and the Supplier does not guarantee that the Supply will be free from temporary variations in voltage or frequency attributable to the operation or failure of a System or part of a System and if the Customer requires a guaranteed or continuous supply of electricity which is uninterrupted, unreduced or unimpaired on a continuous basis, emergency or stand-by capability will be required.
- 2.2** Each Party shall be liable to the other for loss suffered in respect of physical damage to the other's property which results directly from a breach of this Agreement by that Party and was at the Effective Date reasonably foreseeable as likely to result in the ordinary course of events from such breach, provided that the liability of a Party to the other in respect of claims for such loss shall not exceed the Liability Limit.
- 2.3** If the Supplier recovers any sum from a Licence Holder, Supplier Agent or other industry party in respect of loss suffered by the Customer or in respect of any payments made by a Licence Holder, Supplier Agent or other industry party which the Supplier is required by the terms of any relevant agreement to pass on to the Customer, the Supplier shall upon receipt of any such sum from the Licence Holder, Supplier Agent or other industry party pay the same to the Customer less the Supplier's reasonable costs and expenses (if any and where such costs are permitted to be deducted) in effecting such recovery.
- 2.4** The Supplier has no obligation to provide the Supply if the Supply is shut-down, interrupted, reduced or impaired as a result of the de-energisation or disconnection of any Exit Point or the exercise of load management or demand control by a Licence Holder or the occurrence or existence of an event of Force Majeure. The Supplier shall not be liable if the Supply is delayed or prevented by reason of failure or delay on the part of a Licence Holder in the Registration of any Exit Point except to the extent such failure or delay is caused by any act or omission of the Supplier.
- 2.5** Subject to Sub-Condition 2.7 or as otherwise expressly provided in this Agreement and save where any provisions of this Agreement provide for an indemnity, neither Party shall be liable to the other or to any Affiliate (save as provided in Sub-Condition 2.2) for any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill, for increased cost of working or business interruptions or for any indirect or consequential loss or for any loss resulting from loss or corruption of or damage to any data stored electronically and/or computer software or for any loss resulting from the liability of the other Party to any other person howsoever arising.
- 2.6** The rights and remedies provided by this Agreement are exclusive of all substantive 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 or actions in tort such as but without limitation negligence and/or nuisance. Accordingly each Party hereby waives all such rights and remedies and releases the other from all duties, liabilities, responsibilities or obligations provided by common law or statute and undertakes not to enforce them except as expressly provided in this Agreement.
- 2.7** Nothing in this Condition 2 shall exclude or restrict or otherwise prejudice:
- 2.7.1** any of the rights, powers or duties of the Authority, the Secretary of State or either Party which are conferred by the Supplier's Licence, the Act or the Regulations; or
- 2.7.2** any liability of a Party in respect of death or personal injury resulting from that Party's negligence.
- 2.8** For the avoidance of doubt nothing in this Condition 2 shall prevent or restrict either Party enforcing an obligation (including suing for a debt or other payment) owed to it pursuant to this Agreement.
- 2.9** Each of the Sub-Conditions of this Condition 2 shall be construed as a separate and severable term and shall survive and continue after termination or expiry of this Agreement and insofar as they exclude or limit liability shall override any other provision save as expressly provided.

3. CONNECTION, METERING, DATA COLLECTION AND AGGREGATION

3.1 Third Party Agreements and Codes

- 3.1.1** The Customer represents and warrants to the Supplier that it will at all times during the Term be a party to and duly comply with its obligations under each Connection Agreement and, to the extent applicable to it, the Regulations, the Grid Code and each Distribution Code. The Customer shall indemnify the Supplier in respect of any liability or loss of any nature suffered or incurred by the Supplier in the event that the Customer is not at any point during the Term a party to or breaches any provision of any Connection Agreement (notwithstanding that the Supply may have commenced or is still being provided).
- 3.1.2** The Supplier shall incur no liability to the Customer in respect of breach of any of its obligations in this Agreement to the extent such breach was caused by any act or omission of a Meter Operator, Data Collector or Data Aggregator who may have been appointed by the Customer.
- 3.1.3** In the event that the Customer wishes to nominate for appointment a third party to act as its Meter Operator, Data Collector and Data Aggregator at the point of Registration in respect of AMR Metering Equipment such nomination shall be subject to additional Conditions which are set out in a separate agreement. The Customer shall indemnify the Supplier in respect of any costs losses or expenses of any nature suffered or incurred by the Supplier due to any breach by the Customer of its obligations set out in such agreement.

3.2 Risk

Any electrical losses incurred at or beyond any Exit Point shall be at the risk of and borne by the Customer.

3.3 Metering Equipment

- 3.3.1** The Customer agrees at all times not to interfere with, change or modify in any way the Metering Equipment and to permit or procure for the Supplier, the Meter Operator, the Data Collector, the Data Aggregator, or Licence Holder (and any employees, agents, sub-contractors and invitees of the same) ("Authorised Personnel") safe and unobstructed access to the Customer's Premises to read, install, repair, maintain, test, correct and renew Metering Equipment, Communication Links and any equipment required for Use of System or operational purposes or to perform their obligations under any relevant agreement or at law ("Authorised Purposes") and to reimburse the Supplier's reasonable costs in respect of the same or any additional or non-standard equipment or

facilities which may be required. The Customer shall inform the Supplier of any damage, theft or loss to the Metering Equipment as soon as it is aware of such damage, theft or loss.

- 3.3.2** The Customer shall indemnify the Supplier in respect of any loss of any nature, including any loss incurred as a result of any errors in the accuracy or otherwise of recordings, measurements or readings the Supplier may suffer or incur as a consequence of any Metering Equipment not being Certified (except in circumstances where the Metering Equipment is not required to be Certified) or not complying with Schedule 7 of the Act, the Settlement Agreement and/or the Use of System Agreement (notwithstanding that the Supply may have commenced or is still being provided).
- 3.3.3** If either Party reasonably believes that the Metering Equipment is registering inaccurately it may, by giving at least fourteen days notice to the other Party, require it to be tested. The Parties shall procure that tests are performed in accordance with Good Industry Practice by the Meter Operator as soon as may be practicable and in accordance with Schedule 7 of the Act. If the accuracy of measurement of Metering Equipment is found to exceed the limits of error specified in the Settlement Agreement (or any Code of Practice approved pursuant to the Settlement Agreement as the case may be) the Metering Equipment or any defective part shall be replaced or recalibrated at the Customer's expense as soon as reasonably practicable. If the Metering Equipment is found to be within such limits no replacement or recalibration shall be required and the costs of the test shall be paid by the Party requiring the test.
- 3.3.4** If Metering Equipment is found to have exceeded such limits of error such inaccuracy shall (unless reasonably established to the contrary) be deemed to have arisen after the date of the meter reading immediately prior to that relating to the Billing Period in which notice under Sub-Condition 3.3.3 was given (and if notice was not given then after the date of the last meter reading) and the Customer shall pay to the Supplier or the Supplier shall refund to the Customer (as the case may be) in respect of electricity supplied and not registered or incorrectly registered an amount based so far as can be reasonably ascertained on what the amount of the Charges would have been had the Metering Equipment not been defective plus an amount equal to any costs and/or interest payments payable by or to the Supplier (as the case may be) as a result of such inaccuracy.
- 3.3.5** If and to the extent that the Customer owns or is in control of the Metering Equipment the Communications Links or any part or parts of it, the Customer warrants to the Supplier that it shall at all times during the Term of this Agreement maintain such equipment in good and substantial repair and in good working order and the Customer shall indemnify the Supplier in respect of any loss of any nature, including any loss incurred as a result of any errors in the accuracy or otherwise of recordings, measurements or readings suffered or incurred by the Supplier as a consequence of a breach of this warranty.
- 3.3.6** If and to the extent that the Metering Equipment, the Communications Links or any part or parts of it is owned by the Meter Operator or a third party ("the Owner") the Customer shall procure:
- 3.3.6.1** that the Owner shall at all times during the Term of this Agreement maintain such equipment in good and substantial repair and in good working order notwithstanding the termination of any Meter Operator's Agreement or the de-appointment of any Meter Operator however occasioned; and
- 3.3.6.2** that the Owner shall permit Authorised Personnel safe and unobstructed access to such equipment for any of the Authorised Purposes.
- 3.3.7** If at the date of this Agreement or at any time during the Term, the Customer's Metering Equipment at any Exit Point comprises AMR Metering Equipment then the Supplier reserves the right to obtain information concerning the quantity of supply taken at such Exit Point otherwise than via the Metering Equipment and the Customer shall indemnify the Supplier against any costs losses or expenses incurred by the Supplier in obtaining such information.
- 3.3.8** If at the date of this Agreement or at any time during the Term, the Customer's Metering Equipment at any Exit Point comprises a pre-payment meter then the Supplier reserves the right to change the Metering Equipment to a standard rather than pre-payment meter and the Customer shall indemnify the Supplier against any costs, losses or charges incurred as a result of such change of meter.

3.4 Loss of Data

In respect of any Exit Point registered under the MRA, if data in respect of such Exit Point fails to be settled or registered or in the event that the Meter Operator, the Data Collector or the Data Aggregator do not carry out their obligations such that data is not available at all or within the necessary time periods, or the Data Transfer Service does not operate or does not operate within the necessary time periods, (a "Data Failure") then in respect of such period during the Term during which such failure occurs, the quantity of the Supply (and the amount of such other inclusive components comprising the Charges, if any) for the purposes of Condition 4 shall be deemed to be such quantity (and such amount) that can reasonably be ascertained by the Supplier based on historical consumption data and all other relevant information. For the avoidance of doubt each element of the Charges which is passed through to the Customer shall continue to be so passed through. The Supplier shall not be liable in any way for any such Data Failure, and if such Data Failure is due to any act or omission of the Customer or any third party acting on behalf of the Customer, the Customer shall be liable to the Supplier for any costs, losses and expenses incurred by the Supplier in relation to such Data Failure. When actual data is received by the Supplier in respect of the said period, any invoices delivered under this Agreement in respect of such period shall be adjusted and any amounts underpaid or overpaid as a consequence shall be paid or refunded between the Parties as the case may be. For the purpose of this Sub-Condition 3.4 "data" shall mean electricity consumption measurements, information or data relevant to the Supply.

4. CHARGES AND TERMS OF PAYMENT

4.1

- The Customer will pay the Charges in respect of the quantity of supply taken at each of the Customer's Premises, as registered by the Metering Equipment at the Customer's Premises, or as may be ascertained pursuant to Sub-Conditions 3.3 and 3.4. If at any time, the Customer takes electricity at any Exit Point in excess of the Maximum Capacity, the Customer shall in addition pay and indemnify the Supplier against any costs, losses or charges incurred as a result. In such case, the Supplier may request the relevant Licence Holder to de-energise the Supply at that Exit Point and the Customer shall pay and indemnify the Supplier against any costs, losses or charges incurred by the Supplier in connection with such de-energisation and any subsequent re-energisation.
- 4.2** The Customer shall also pay the Charges (and any interest thereon) calculated by reference to electricity discovered or reasonably and properly assessed (by the Supplier or a third party) to have been consumed by the Customer but not recorded at the time of consumption (for whatever reason) by the Metering Equipment or which have been undercharged. The Customer hereby authorises the Supplier to agree all or any part of such Charges with any relevant Licence Holder, as appropriate, provided that the Supplier shall in so doing act reasonably at all times and in compliance with any prescribed procedure therefore set out in any relevant agreement.
- 4.3** Some or all of the Charges set out in this Agreement may from time to time be provisionally assessed or estimated by the Supplier, a Licence Holder or any relevant third party and such provisional amounts may be used for the purposes of submitting invoices in accordance with this Condition 4. Upon any reconciliation by the Supplier, a Licence Holder or any relevant third party of such Charges against amounts actually incurred during the Term, the Customer shall pay to the Supplier the amount of such Charges (plus any interest charged thereon) actually incurred in excess of amounts already paid by the Customer in respect of such Charges and/or the Supplier shall pay together with any interest charged thereon (upon receipt of such amount from the Licence Holder or relevant third party in respect of amounts due from such Licence Holder or third party) to the Customer any amounts of such Charges already paid by the Customer which have not actually been incurred. This Condition shall survive and continue after expiry or termination of this Agreement.
- 4.4** The Supplier may, following the end of each Billing Period, submit to the Customer an invoice in respect of amounts due to the Supplier under this Agreement including details of the Charges calculated in respect of that Billing Period. The Customer shall pay each such invoice within the Payment Period.
- 4.5** Subject to Condition 4.5(a) below, all payments under this Agreement are made 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.
- 4.5** (a) The Supplier shall be allowed to set-off monies owed under this Agreement by the Customer to the Supplier as against any monies the Supplier owes the Customer under this or any other agreement entered into between the Parties.
- 4.6** Any amount properly due from one Party to the other pursuant to this Agreement and remaining unpaid at the expiry of the Payment Period shall bear interest thereafter, such interest to accrue from day to day and be compounded monthly rests at two percent (2%) above LIBOR until the amount due is actually received by the other Party.
- 4.7** If any item of an account submitted by the Supplier is disputed or questioned the Customer shall not withhold payment of such account.
- 4.8** All Charges and amounts expressed to be payable by the Customer to the Supplier under this Agreement are exclusive of VAT which the Customer shall also pay to the Supplier at the rate properly chargeable in respect of the supply of goods and services (including the Supply) by the Supplier under this Agreement.
- 4.9** The Customer shall pay to the Supplier, and keep the Supplier fully and effectually indemnified against any tax, levy, Green Costs, duty, cost or impost of any nature whatsoever (other than corporation tax or other tax of a similar nature replacing corporation tax on the profits and gains of the Supplier) which may be charged, levied or imposed on the Supplier or on the provision of the supply of goods or services (including the Supply) by the Supplier to the Customer under this Agreement.
- 4.10** The Supplier may change or add to the charges payable by the Customer and/or introduce any new charge if after the date of this Agreement:
- 4.10.1** there is any change to any existing charge, cost, expense and/or obligation to the Supplier in respect of or associated with the Supply (including for the avoidance of doubt a change in the methodology used to calculate any such amount) howsoever arising; or
- 4.10.2** any new charge, cost, expense and/or obligation is introduced to the Supplier in respect of or associated with the Supply howsoever arising; to the extent that such increase or additional charges 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.
- 4.11** The Customer shall also pay any charges or costs incurred or payable by the Supplier in connection with the Supply or its termination and not specified in this Agreement, including (without limitation) in respect of reactive power or which are deemed to be allowable security costs under directions given pursuant to the Fuel Security Code or any emergency code issued by any Competent Authority. The provisions of this Condition shall survive and continue after termination or expiry of this Agreement.
- 4.12** If and for so long as the Supplier remains Registered in respect of any Exit Point at any of the Customer's Premises after expiry or termination of the Supply or obligation to supply to such Exit Point, the Charges may be changed to the Default Rate with effect from the Expiry Date. The Customer shall indemnify the Supplier in respect of the Charges and any other charges, costs or penalties of any nature suffered and incurred by the Supplier in respect of such Exit Point after expiry or termination as aforesaid. For the avoidance of doubt, after such expiry or termination, the Supplier shall not be obliged to provide the Supply to the Customer's Premises or the relevant Exit Point as the case may be but all obligations and warranties of the Customer hereunder shall continue to apply until the Supplier is no longer Registered at such Exit Point. The provisions of this Condition shall survive and continue after termination or expiry of this Agreement.
- 4.13 Commencement and Duration**
- 4.13.1** This Agreement will commence on the Effective Date and shall continue until the Expiry Date (the "Initial Period") and shall continue thereafter for each subsequent 12 calendar month period ("12 Month Period") on the same Conditions except as set out in Sub-Condition 4.13.3 below unless and until terminated by either the Supplier or the Customer in accordance with this Agreement.
- 4.13.2** Either the Customer or the Supplier may terminate this Agreement by giving sixty (60) days prior written notice to the other. Such notice to expire on the Expiry Date or, in the event that this Agreement has not been terminated after the Initial Period, on each subsequent anniversary of the Expiry Date.
- 4.13.3** The Charges that shall apply from the Expiry Date for any relevant 12 Month Period (the Revised Charges) shall be such charges as the Supplier shall notify to the Customer in writing at least ninety (90) days prior to the Expiry Date or the relevant subsequent anniversary of the Expiry Date. If the Supplier does not notify the Customer of the Revised Charges for the relevant 12 Month Period the Charges for that 12 Month Period may be increased by the Indexation Amount if applicable otherwise the Charges shall remain the same as those charged in the immediately preceding 12 Month Period or the period from the Effective Date to the Expiry Date where it is the immediately preceding period.
- 4.14** The Supplier may change or add to the Charges payable by the Customer as a result of any Exit Point being located outside of the PDSO's distribution services area as defined in the PDSO's licence.
- 4.15 Security Deposit**
- The Customer shall provide, increase or replace any Security Cover that is reasonably acceptable to the Supplier within ten (10) days of such request from the Supplier:
- 4.15.1** if in the reasonable opinion of the Supplier, the Customer suffers one or more events which cause a material change in the creditworthiness and/or financial standing of the Customer which affects the Customer's ability to meet its financial or other obligations under this Agreement; and/or
- 4.15.2** if in the reasonable opinion of the Supplier, the Customer's Security Cover Provider suffers one or more events which cause a material change in the creditworthiness and/or financial standing of the Customer's Security Cover Provider and which affects the Customer's Security Cover Provider's ability to meet its obligations under any Security Cover; and/or
- 4.15.3** any Security Cover already provided has ninety (90) days or less until it expires; and/or
- 4.15.4** if the Customer is an entity within the NHS in England, the NHS Northern Ireland, the NHS Scotland, the NHS Wales, or is a Local Authority as defined by the Local Government Act 2003 (Part Three, Chapter 1, Section 33), or is a state-funded school, college or university, if in the reasonable and good faith opinion of the Supplier there is a change in any law, legislation or rules that revokes or replaces the Customer's right to receive financial support from the UK government.
- 5. TERMINATION**
- 5.1** A Party (the "Terminating Party") may by notice to the other terminate this Agreement forthwith if:
- 5.1.1** the other Party is in material breach of any provision of this Agreement and (if it is capable of remedy) the breach is not remedied to the reasonable satisfaction of the Terminating Party within fourteen days of the date of serving notice on the other Party requiring the same to be remedied; or
- 5.1.2** (a) any arrangement or composition with or for the benefit of creditors (including any voluntary arrangement as defined in the Insolvency Act 1986 and the Insolvency Act 2000) is entered into or proposed by or in relation to the other Party; or
- (b) a supervisor, receiver, administrator, administrative receiver or any other encumbrancer takes possession of or is appointed over, or any distress, execution or other process is levied or enforced upon, the whole or any part of the assets of the other Party; or
- (c) the other Party ceases to carry on business or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (d) an order is made or a petition is presented or a resolution is passed for the making of an administration order or the winding-up, bankruptcy or dissolution of the other Party (other than for the purpose of reorganisation or as part of a scheme of reconstruction or amalgamation which has been approved by the Terminating Party).
- 5.2** The Supplier may by notice to the Customer terminate this Agreement forthwith if:
- 5.2.1** the Customer fails to pay any amount properly due or owing from it pursuant to this Agreement and such default is not remedied seven days after receipt by the Customer of written notice from the Supplier of such non-payment (in which case the Supplier may instead of or in addition to the right of termination arrange for any Exit Point to be de-energised or disconnected (and exercise the access rights contained in Sub-Condition 5.6) until such default is remedied and the Customer shall indemnify the Supplier against all costs and charges arising in connection with the same and any subsequent re-energisation or reconnection); or
- 5.2.2** any Condition referred to in Sub-Condition 1.1 fails to be satisfied or if the Customer or the Supplier is in material breach of any agreement, licence, code, authorisation or consent necessary to permit the Supply or any of the same are revoked or withdrawn.
- 5.2.3** (a) the Customer fails to provide, increase or replace Security Cover reasonably acceptable to the Supplier within ten (10) days of the Supplier requesting the Customer to provide such Security Cover in accordance with Sub-Condition 4.15; and/or
- (b) in the reasonable opinion of the Supplier the Customer suffers one or more events (which may for the avoidance of doubt be an event set out in Sub-Condition 5.2.3(f) below) which in the Supplier's reasonable opinion causes a material change in the creditworthiness and/or financial standing of the Customer and which affects the Customer's ability to meet its financial or other obligations under this Agreement; and/or
- (c) a third party providing the Customer with any Security Cover (the "Security Cover Provider") fails to comply with or perform any of its obligations under the Security Cover; and/or
- (d) any Security Cover provided by the Customer expires, terminates, fails or ceases to be in full force and effect prior to the Expiry Date unless otherwise agreed in advance with the Supplier; and/or
- (e) the Customer or any Security Cover Provider disaffirms, disclaims, repudiates or rejects in whole or in part or challenges the validity of any Security Cover; or
- (f) the credit rating or scoring given to the Customer by Experian Limited or such other credit reference agency used by the Supplier from time to time to assess the credit worthiness of the Customer is either withdrawn or falls below the rating or scoring held by the Customer on the date of this Agreement; and/or
- (g) in the reasonable and good faith opinion of the Supplier, the ability of the Customer or its Security Cover Provider to perform its obligations under this Agreement or any Security Cover is materially impaired.
- 5.2.4** there is a Change of Control of the Customer with another company. For the purposes of this Agreement "Change of Control" shall mean the Control (as defined in section 840 of the Income and Corporation Taxes Act 1988 - "ICTA") of the Customer is acquired by any person or group of connected persons (as defined in section 839 of ICTA) who did not Control the Customer at the date of this Agreement.
- 5.2.5** the Customer consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity, and at the time that such consolidation, amalgamation, merger or transfer the resulting, surviving or transferee entity fails to assume all the obligations of such Party to which its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the Supplier.
- 5.2.6** if the Customer consolidates or amalgamates with or merges with or into or transfers all or substantially all of its assets to another entity and such action does not constitute an event as described in Clause 5.2.5 but the credit worthiness of the resulting, surviving or transferee entity is materially weaker than that of the Customer immediately prior to such action.
- 5.2.7** the Customer is an entity within the NHS in England, the NHS Northern Ireland, the NHS Scotland, the NHS Wales, or is a Local Authority as defined by the Local Government Act 2003 (Part Three, Chapter 1, Section 33), or is a state-funded school, college or university, and if in the reasonable and good faith opinion of the Supplier there is a change in any law, legislation or rules that revokes or replaces the Customer's right to receive financial support from the UK government.
- 5.3** The Supplier may by notice to the Customer terminate this Agreement in so far as it relates to any Exit Point in respect of which the Customer has applied (or should have but has not applied) under Sub-Condition 10.5 for consent to transfer its rights and/or obligations under this Agreement at any time following such application, or the time such application should have been made and in any case where this Agreement is so terminated. References elsewhere in this Agreement to survival of certain Conditions following termination shall include such termination.
- 5.4** The Customer may by notice to the Supplier forthwith terminate this Agreement if the Supplier, for any reason other than any reason specified in Sub-Condition 2.4 or Condition 6, fails for a continuous period of seven days or for periods aggregating fourteen days in any period of three months, to provide the Supply.
- 5.5** The Customer shall indemnify the Supplier in respect of:
- 5.5.1** any fees, costs, losses or expenses incurred by the Supplier due to the early termination of this Agreement included but not limited to any fees or costs incurred or committed to in respect of the Supply under the Meter Operator's Agreement, Use of System Agreement, Data Collection Agreement or Data Aggregation Agreement, the MRA and the Settlement Agreement and (unless termination is due to an act or omission of the Supplier) any other costs in discontinuing (including disconnection or de-energisation of) the Supply until such time as the Supplier shall no longer be Registered or the Registrant in respect of the relevant Exit Point(s), whether incurred before, as a result of or after such termination.
- 5.5.2** any fees, costs, losses or expenses incurred by the Supplier in selling back into the UK wholesale electricity market any electricity purchased by the Supplier to meet its obligations under this Agreement that will not be consumed by the Customer due to the early termination of this Agreement
- 5.6** The Supplier and any Authorised Personnel shall have the right of safe and unobstructed access to the Customer's Premises in order to de-energise or disconnect the Supply to any of the Customer's Premises in the event of (i) any breach of Sub-Condition 3.1; (ii) any of the circumstances in Sub-Conditions 5.1 or 5.2 arising; (iii) an event of Force Majeure subsisting for a period exceeding thirty days; (iv) the Supplier's Licence or any of the Industry Agreements terminates or is withdrawn.
- 5.7** If a Last Resort Supply Direction is given to another supplier in respect of the Customer's Premises, this Agreement will end on the date that direction takes effect.
- 6. FORCE MAJEURE**
- If either Party is unable to perform its obligations by reason of Force Majeure this Agreement shall remain in effect but (save as otherwise provided) both Parties' affected obligations shall be suspended without liability for the period of the Force Majeure provided that such suspension is of no greater scope or duration than is reasonably avoidable, that the non-performing Party uses all reasonable efforts to remedy its inability to perform and that no obligations accruing before the Force Majeure are excused.
- 7. CONFIDENTIALITY**
- Each Party undertakes to keep the terms of this Agreement and any information relating thereto confidential and not to disclose the same to any third party during the Term or for a period of five (5) years thereafter except with the prior written consent of the other Party (not to be unreasonably withheld) or:
- 7.1** 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; or
- 7.2** to the extent such information is required to be furnished to any employee, officer, agent, consultant or professional adviser of a Party for their proper consideration, such persons having first been made fully aware of the obligations of confidence in relation to such information; or
- 7.3** to the extent it is in or lawfully comes into the public domain other than by breach of this Condition 7; or
- 7.4** in the event such information is passed to any Affiliate or assignee of either Party.
- 7.5** The provisions of this Condition 7 shall survive and continue after termination or expiry of this Agreement.
- 8. DISPUTES RESOLUTION AND JURISDICTION**
- 8.1** Subject to any contrary provisions of the Act or the Regulations or any licence issued pursuant thereto or the rights, powers, duties and obligations of the Authority or the Secretary of State, any dispute or difference between the Parties arising under or in connection with this

Agreement shall be and is hereby referred to arbitration pursuant to the arbitration rules of the Electricity Arbitration Association in force from time to time. The provisions of the Arbitration Act 1996 shall apply to any such arbitration subject to any permitted exceptions thereto agreed by the Parties. The seat for arbitration shall be England and Wales and the law of England shall be the proper law of reference to arbitration hereunder.

8.2 This Agreement shall be governed by and construed in accordance with the law of England and Wales and, subject and without prejudice to Sub-Condition 8.1, the Parties irrevocably submit to the non-exclusive jurisdiction of the English courts.

9. NOTICES

Any notice, account or other communication to be given by a Party to the other shall be in writing and addressed and sent to the recipient by hand or first class prepaid post (airmail if overseas) or facsimile number to the address set out in this Agreement (or to such other address (including electronic address) or facsimile number as may be specified in the same manner). Where any notice is sent by electronic mail, the Party sending the notice shall on the same day of sending also send a copy of such notice by first class prepaid post. Such notice shall be deemed to have been received in the case of delivery by hand, when delivered, in the case of first class prepaid post, on the second day following the day of posting or (if sent airmail from overseas) on the fifth day following the day of posting and, in the case of facsimile or any notice sent electronically, on acknowledgement by the addressee's facsimile or electronic mail receiving equipment unless such acknowledgement occurs after 1700 hours on any day, in which case at 0900 hours on the next Business Day following the day of acknowledgement. If no such acknowledgement is received by the Party, the notice shall be deemed to have been received on the second day following the day of posting the copy notice or (if sent airmail from overseas) on the fifth day following the day of posting the copy notice.

10. MISCELLANEOUS PROVISIONS

10.1 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 of the same.

10.2 This Agreement except where otherwise expressly specified contains the entire agreement between the Parties in respect of the Supply and supersedes all previous agreements and understandings between them. All warranties, conditions or undertakings implied at law or by custom are excluded to the fullest extent permitted by law. Each Party acknowledges and confirms that it does not enter into this Agreement in reliance upon any representation or warranty or other undertaking not fully reflected in the terms of this Agreement. Neither Party shall have any liability in respect of warranties, representations or other undertakings made prior to the date of this Agreement unless such warranty, representation or undertaking was made fraudulently or unless there has been any fraudulent concealment.

10.3 If any provision of this Agreement is declared invalid, unenforceable or illegal by any court of competent jurisdiction or any Competent Authority such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.

10.4 Unless stated to the contrary in this Agreement, no amendments to this Agreement shall be effective unless made in writing and signed by or on behalf of both Parties. Both Parties shall effect any amendment required to this Agreement as a result of any change in the Supplier's Licence, any order made pursuant to the Act or Regulations, any direction of a Competent Authority or any variation of any agreement, licence, code, authorisation or consent necessary to permit the Supply.

10.5 Assignment and Novation

10.5.1 The Customer shall not assign, novate or otherwise transfer any of its rights and/or obligations under this Agreement to any third party (the "Transferee") without the prior written consent of the Supplier and subject to the Customer procuring for the benefit of the Supplier from the Transferee a written guarantee to comply with the terms of this Agreement in a form and executed by a party satisfactory to the Supplier.

10.5.2 The Customer hereby irrevocably gives its consent for the Supplier to assign or novate either or both of the Supplier's rights and obligations under this Agreement to any third party subject only to the Supplier giving to the Customer written notice of completion of any assignment or novation.

10.5.3 The Customer hereby irrevocably appoints the Supplier as its attorney and agent to the fullest extent necessary to enter into, on the Customer's behalf, any deed or novation as the Supplier may deem necessary to effect any novation pursuant to Sub-Condition 10.5.2 above.

10.6 The Customer may sub-contract or delegate the performance of its obligations or duties under this Agreement provided that it shall not be relieved from liability for performance of such obligation or duty.

10.7 Expiry or termination (howsoever caused) of this Agreement shall not affect any rights or obligations which may have accrued prior to such expiry or termination or which result from the event giving rise to such termination and shall not affect the coming into force or continuation in force of any provision which is expressly or by implication intended to come into or continue in force on or after such expiry or termination.

10.8 Notwithstanding the provisions of Sub-Condition 10.4, the Supplier shall be entitled at any time to alter, vary, add to or detract from or replace all or any part of this Agreement as may be deemed necessary by the Supplier as a result of any relevant agreement and/or authorisation affecting the Supply or any of the Supplier's duties or obligations hereunder or in effecting the provision of the Supply to ensure compliance with such relevant agreement and/or authorisation. The Supplier shall not be obliged to obtain the Customer's consent prior to such alteration. Such alteration shall come into effect on the date notified by the Supplier to the Customer.

10.9 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term or Condition of this Agreement, but this does not affect any right or remedy of a third party which is available apart from pursuant to such Act nor any right of enforcement which is expressly granted in this Agreement. The Standard Connection Agreement shall at all times be deemed to be a separate agreement between the Customer and the PSDO as defined in the Standard Connection Agreement and shall not form part of the Conditions.

10.10 Any Personal Data (as defined in the Data Protection Act 1998) obtained by the Supplier as a result of performing this Agreement will be held in accordance with the Data Protection Act 1998 and owned by the Supplier. The Personal Data will be used for the purpose of administering this Agreement and may be used by the Supplier or passed on to other Affiliate companies of the Supplier for the purpose of marketing other products and services which may be of interest to the Customer.

10.11 These Conditions of Supply shall apply to any Deemed Customer.

10.12 The Customer shall pay the Additional Charges in relation to the Additional Services (if any).

10.13 Freedom of Information Act 2000 and Environmental Information Regulations 2004.

10.13.1 If the Customer receives a request under the Freedom of Information Act 2000 (FoIA) or the Environmental Information Regulations 2004 (EIR) that relates to documents or information held by the Supplier on the Customer's behalf, the Customer shall inform the Supplier as soon as practicable after receipt and in any event within five Business Days of receiving such a request. The Supplier may charge and the Customer shall pay for the Supplier's time and any disbursements incurred in relation to providing information for the purposes of FoIA or EIR in accordance with the rate that the Customer obtains from the Supplier from time to time.

10.13.2 Certain information that the Supplier provides to the Customer under this Agreement will not be appropriate for disclosure either under a publication scheme or in response to an information request under FoIA or EIR due to its confidential or commercially sensitive nature. Such information is together referred to in this Condition as Restricted Information. Sub Condition 10.13.6 contains a list of Restricted Information as at the date of this Agreement. Sub Condition 10.13.6 shall be amended throughout the term of this Agreement by adding further Restricted Information or removing certain Restricted Information (if that information has lost its confidential or commercially sensitive nature) by agreement of the Parties. The Customer shall inform the Supplier of any information request received by the Customer under FoIA or EIR which relates to Restricted Information as soon as practicable after receipt of the request and in any event within two Business Days of receiving such a request, or of forming the intention to consider disclosing any part of the Restricted Information under a publication scheme, in each case clearly identifying the Restricted Information in question.

10.13.3 The Customer shall allow the Supplier reasonable opportunity and time to make representations to the Customer about whether any Restricted Information or any information referred to in Sub-Condition 10.13.4 below should be disclosed in response to a request for information, or should be included in a publication scheme.

10.13.4 Notwithstanding Sub-Condition 10.13.2 above, this Agreement and the prices set in accordance with this Agreement and the Supplier's bills should not be disclosed under a publication scheme or in response to an information request. The Supplier believes that information to be exempt:

10.13.4.1 as having been given in confidence under s.41 FoIA or reg 12(5)(d) EIR; or

10.13.4.2 as being a trade secret or information that, if disclosed, would prejudice the Supplier's commercial interests under s.43 FoIA or reg 12(5)(f) EIR.

10.13.5 If the Supplier notifies the Customer that the Supplier intends to seek injunctive relief to prevent disclosure by the Customer of any part of the Restricted Information or any other information provided by the Supplier to the Customer, the Customer hereby agrees to provide the Supplier with such assistance and information as the Supplier may reasonably require in order to make application for such relief. The Customer further agrees not to disclose any information which is the subject of that application until such time (if applicable) as the court has ordered that no injunction should be granted.

10.13.6 Restricted Information shall include any information set out in Sub Conditions 1.4.7, 4, 5 and the Schedules and Appendices to this Agreement

11. DEFINITIONS AND INTERPRETATION

11.1 In this Agreement the following words and expressions have the following meanings:

"Act" the Electricity Act 1989 as amended from time to time;

"Accredited" means accredited under the BSC;

"Actual Consumption" means the volume of electricity consumed during the relevant Period;

"Additional Charges" means the charges for any Additional Services details available from email: TransactionalCharging@npower.com, Tel: 0121 541 2838;

"Additional Services" means those services set out in the Schedule to this Agreement;

"AMR" means non-half hourly automated meter readings;

"AMR Equipment" means equipment which enables the remote retrieval of data from Metering Equipment;

"AMR Metering Equipment" means AMR Equipment and Metering Equipment;

"Annual Volume" means as defined in the Schedule to this Agreement and as amended from time to time by the Supplier;

"Affiliate" any holding company or subsidiary, or any subsidiary of a holding company, of a Party (or other person) or any related undertaking in which a Party (or other person) has a participating interest, in each case within the meaning of the Companies Act 1985;

"Agreement" means this agreement between the Parties;

"Agreement Date" means the date of the Agreement;

"Authority" (i) until both section 1(1) and section 3(1) of the Utilities Act 2000 are brought into force, the Director; and (ii) thereafter the Gas and Electricity Markets Authority established by section 1(1) of that Act;

"Balancing Services Use of System Charge" the meaning ascribed to it in the CUSC;

"Balancing and Settlement Code" or **"BSC"** the code of that name brought into force pursuant to the Utilities Act 2000 as modified from time to time;

"Billing Period" means one month, one quarter or as determined by the Supplier from time to time;

"Business Day" bears the meaning given to the term **"working day"** in Section 64 of the Act; **"day"** means a period of 24 hours (or such other number of hours as may be relevant in the case of changes for daylight saving) ending at 12.00 midnight and **"month"** and **"year"** mean calendar month and calendar year respectively;

"Central Meter Registration Service" or **"CMRS"** the meaning ascribed to it in the BSC

"Central Registration Agent" or **"CRA"** the meaning ascribed to it in the BSC

"Certified" in respect of Metering Equipment means certification thereof in accordance with Schedule 7 of the Act;

"Charges" the charges specified in the Schedule to this Agreement or (if there is no Schedule) the charges specified as being those payable in respect of the Supply, as may (if so provided) be adjusted or reviewed from time to time. Where the Customer is a Deemed Customer the charges shall be as determined by the Supplier from time to time;

"Climate Change Levy" a charge levied at the rate from time to time imposed, pursuant to the Finance Act 2000 and any regulations made thereunder or in connection with such charge;

"Competent Authority" the Secretary of State, the Panel, 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;

"Communications Links" means communications equipment and services relating to Metering Equipment;

"Condition(s)" these conditions of Supply or the relevant condition dependent on the context in which it is being used;

"Connection Agreement" each or any connection agreement (which may be a Standard Connection Agreement and/or otherwise), as may be required by a Licence Holder from time to time, between the Customer and a Licence Holder pursuant to which the Customer's Premises are connected to a System at one or more Exit Points;

"Connection and Use of System Code" or **"CUSC"** the Connection and Use of System Code and any other equivalent code in addition thereto or substitution therefore, required to be in place pursuant to a Transmission Licence;

"Customer" shall mean the Party so specified and full details of which are set out in this Agreement;

"Customer's Premises" the premises set out in this Agreement;

"Data Aggregation Agreement" means each agreement for the provision of data aggregation services between the Customer and/or the Supplier (as the case may be) and a Data Aggregator;

"Data Aggregator" means a person Accredited and appointed pursuant to a Data Aggregation Agreement in respect of an Exit Point;

"Data Aggregator Charges" charges made under the Data Aggregation Agreement;

"Data Collection Agreement" means each agreement for the provision of data collection services between the Customer and/or the Supplier (as the case may be) and a Data Collector;

"Data Collection Charges" charges made under the Data Collection Agreement;

"Data Collector" means a person Accredited and appointed pursuant to a Data Collection Agreement in respect of an Exit Point;

"Data Transfer Service" means the services to be provided by the Data Transfer Service Controllers as defined and described in each relevant Licence;

"Data Transfer Service Agreement" means the agreement dated 30th July 1997 between Data Transfer Service Controller and Users of the Data Transfer Service;

"Deemed Customer" means where the Supplier supplies electricity to any premises of the Customer otherwise than in pursuance of a written agreement signed by the Customer and the Supplier in accordance with the Act;

"Default Rate" means the charges, determined from time to time by the Supplier in its absolute discretion, which shall apply in the circumstances set out in Sub-Condition 4.12 and which shall be published by the Supplier and made available to the Customer following its request in writing;

"Directive" includes any present or future directive, requirement, instruction, direction or rule of any Competent Authority (but only, if not having the force of law, if compliance with it is in accordance with the general practice of persons to whom it is addressed) and includes any modification, extension or replacement thereof then in force;

"Director" the Director General of Electricity Supply appointed for the time being pursuant to the Act;

"Distribution Code" the meaning ascribed to it in the Settlement Agreement;

"Distribution Losses" a charge reflecting the proportion of electricity in excess of that consumed by the Customer which needs to be purchased to take account of electrical losses in each PSDO System calculated by reference to PSDO loss factors;

"Distribution Use of System Charges" charges and fees made or charged by a PSDO for the use of its System to transport the Supply and other charges made under the Use of System Agreement, including meter equipment and operation services, data collection services, data

aggregation services and settlement and registration services provided pursuant to the Settlement Agreement, MRA or otherwise;

“**Domestic Premises**” bears the meaning set out in the Supplier’s Licence;

“**Effective Date**” the date of commencement of the Supply pursuant to this Agreement;

“**Equivalent Charge**” a charge equivalent in value to Climate Change Levy but not applied pursuant to the Finance Act 2000;

“**Excess Volume**” means the volume of electricity subject to the Excess Charge. The Excess Volume is calculated as follows:

$EV = (AV \times 0.8) - AC$ (where the Customer consumes less than 80% of the Annual Volume) or

$EV = AC - (AV \times 1.2)$ (where the Customer consumes more than 120% of the Annual Volume) where $EV =$ Excess Volume

$AC =$ Actual Consumption

$AV =$ Annual Volume

“**Executive Committee**” the meaning ascribed to it in the Settlement Agreement;

“**Exit Point**” a point of connection at which the Supply may flow between a System and the Customer’s installation, equipment or lines at the Customer’s Premises, which expression shall include, for the purposes of this Agreement, any and all Metering Points (as defined in the MRA) relevant to an Exit Point at which the Supply or is intended to be measured and in respect of which the Supplier is Registered;

“**Expiry Date**” means the date of expiry of the initial period of this Agreement as specified in this Agreement;

“**Force Majeure**” 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 public enemy, war declared or undeclared, threat or terrorist act, blockade, riot, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, explosion, fault or failure of plant, apparatus or equipment which could not have been prevented by Good Industry Practice on the part of the Supplier, governmental restraint, Act of Parliament, other legislation, bylaw or Directive (not being any order, regulation or direction under Section 32,33,34 or 35 of the Act), any outage or failure of, or suspension or reduction of transmission through or constraints affecting a System, or if, during any Settlement Period the price at which electricity is available for purchase by the Supplier under the terms of the Settlement Agreement is or becomes such that a civil emergency (or the rules governing a civil emergency) in respect of the market for electricity, or any other civil emergency, is or may be declared or initiated by the Executive Committee or Panel or any other Competent Authority, then such event shall be deemed to constitute an event of Force Majeure, provided that lack of funds shall not be interpreted as an event beyond a Party’s reasonable control;

“**Fossil Fuel Levy**” a charge levied at the rate from time to time imposed, in accordance with the Fossil Fuel Regulations 1990 or any order made pursuant to the Utilities Act 2000;

“**Fuel Security Code**” the meaning ascribed to it in the Settlement Agreement;

“**Good Industry Practice**” 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;

“**Good Quality CHP or GQCHP**” means electricity generated from a combined heat and power station which is exempt from Climate Change Levy;

“**Green Costs**” means the Fossil Fuel Levy and the Renewables Obligation imposed under the Renewables Obligation Order 2005 as either may be modified, extended or re-enacted from time to time and any other green or environmental charge, penalty, levy, tax, duty or fee imposed from time to time (or any payment obligation on the Supplier having an analogous effect to any of the above);

“**Grid Code**” the meaning ascribed to it in the Settlement Agreement;

“**Half Hourly Metering Equipment**” means Metering Equipment used to measure the consumption of electricity on a half hourly basis;

“**Indexation Amount**” means at the Supplier’s option, either:

i) the percentage rise in the Spectron Index over a the final 12 months of the Term or the relevant 12 Month Period as the case may be, however, the Supplier reserves the right to replace the Spectron Index with any other pricing index if at any time the Spectron Index ceases to be produced or published or if in the reasonable opinion of the Supplier the Spectron Index is no longer reflective of the market price or a more suitable reference becomes available; or

ii) the percentage rise in the Retail Price Index (all items) or any other index of a similar nature substituted by the Supplier if the Retail Price Index ceases to apply or ceases to be representative, over the Initial Period or the relevant 12 Month Period from the 60th day prior to the Expiry Date or the relevant anniversary of the Expiry Date where applicable;

“**kVA**” Kilovoltamperes;

“**kW**” Kilowatts;

“**kWh**” Kilowatt hours;

“**Last Resort Supply Direction**” means a direction given by the Competent Authority in accordance with Condition 8 of the Supplier’s Licence;

“**Liability Limit**” the sum specified in this Agreement as the limit of liability in any one calendar year;

“**LIBOR**” means the London Interbank Offered Rate as adjusted from time to time;

“**Licence**” means a licence granted under Section 6 of the Act for the supply, distribution or transmission of electricity;

“**Licence Holder**” means the holder of a Licence;

“**Master Registration Agreement**” (or “**MRA**”) a legally binding, multi-lateral agreement established on 1 June 1998 to govern the provision and use of metering point administration services by market participants for the development, maintenance and operation of an efficient system for the supply of electricity in England, Wales and Scotland;

“**Maximum Capacity**” in respect of each Exit Point the amount of electricity expressed in kW or kVA and used to calculate the charges for Use of System, as specified pursuant to this Agreement;

“**Maximum Demand**” a Charge being the product of twice the maximum number of kWh supplied in any half hour in the period(s) specified in Part 1 of the Schedule to this Agreement and the unit rate per kW specified in respect of such periods, charged in respect of the periods and time specified in this Agreement

“**Meter**” means a device for measuring active energy or reactive energy as defined in the BSC;

“**Meter Operator Charges**” charges made under the Meter Operator’s Agreement or under the Use of System Agreement in respect of meter operation services;

“**Meter Operator**” a person Accredited and appointed pursuant to a Meter Operator’s Agreement who acts as meter operator in respect of Metering Equipment;

“**Meter Operator’s Agreement**” each agreement between the Customer and/or the Supplier (as the case may be) and a Meter Operator;

“**Metering Equipment**” means the Meters, ancillary equipment (including any Communications Links and AMR Equipment) instrument transformers (both voltage and current), metering protection equipment including alarms, circuitry and their associated data collection and transmission outstations and wiring;

“**MW**” Megawatts (including, in circumstances where demand is measured only in Megavolt amperes, Megavolt amperes converted into megawatts using a power factor of 0.9 megawatts per Megavolt ampere or such other factor as may with the consent of the Authority be taken as being appropriate having regard to the electrical characteristics of the Supply);

“**National Terms of Connection**” means the National Terms of Connection the terms of which can be found by writing to Energy Networks Association, 6th Floor, Dean Bradley House, 52 Horseferry Road, London, SW1P 2AF; or on the following website at www.connectionterms.co.uk;

“**New Connection**” means the creation of a new Exit Point on the Customer’s Premises;

“**NGET**” the National Grid Electricity Transmission plc, or any Affiliate of NGET;

“**Panel**” the meaning ascribed to it in the BSC;

“**Party**” each person for the time being and from time to time party to this Agreement and any successor in title to or permitted assignee of such person;

“**Payment Period**” as defined in this Agreement;

“**Period**” means any 12 month period during the Term and any period less than 12 months where the Term cannot be divided into equal 12 month periods;

“**Public Distribution System Operator**” or “**PDSO**” means the operator of the local System; “**Registered**” where appropriate has the meaning ascribed to it in the MRA or the SAS, or the relevant Exit Point being validly registered under section K of the BSC (or its equivalent for Scotland) and “**Registration**” shall be construed accordingly;

“**Registration Transfer**” the meaning ascribed to it in the BSC;

“**Registrant**” has the meaning ascribed to it in the Settlement Agreement;

“**Regulations**” the Electricity Safety, Quality and Continuity Regulations 2002 as amended;

“**Renewable Source**” means any source of energy other than fossil fuel or nuclear, but including waste of which not more than a specified proportion is waste which is, or is derived from, fossil fuel;

“**Security Cover**” means the aggregate amount for the time being which the Customer shall be required by the Supplier to provide and maintain by way of security. Such security may be in the form of a Security Deposit, letter of credit, or a guarantee (such letters of credit or guarantees shall only be valid Security Cover if they do not contain provisions preventing the Supplier from drawing down such security cover in the event of a dispute) or as otherwise specified by the Supplier;

“**Security Cover Provider**” has the meaning ascribed to it in sub condition 5.2.3(c);

“**Security Deposit**” means a sum of money as determined by the Supplier to be paid by the Customer to the Supplier on demand which will be used by the Supplier to cover any outstanding payments due by the Customer in respect of this Agreement. The Supplier shall return any balance of the monies paid by the Customer after deducting any amounts due to the Supplier on termination or expiry of this Agreement.

“**Service Upgrade**” means any increase in Maximum Capacity or change in voltage at the Customer’s Premises;

“**Settlement Agreement**” the BSC or any other relevant agreement or code in replacement thereof or addition thereto;

“**Settlement Charges**” charges made under the relevant Settlement Agreement;

“**Settlement Period**” the meaning ascribed to it in the Settlement Agreement;

“**Spectron Index**” means the Spectron Group Limited’s internet broking platform;

“**Standard Connection Agreement**” means a Connection Agreement on the National Terms of Connection

“**Supplier**” shall mean Npower Limited full details of which are set out in this Agreement;

“**Supplier Agent**” the meaning ascribed to it in the Settlement Agreement and shall include

“**Party Agent**” as defined in the BSC;

“**Supplier’s Licence**” the electricity supply licence granted to the Supplier under Section 6(2)(a) of the Act;

“**Supplier Meter Registration Service**” or “**SMRS**” the meaning ascribed to it in the BSC;

“**Supply**” the supply of electricity by the Supplier to the Customer through each Exit Point up to the Maximum Capacity and having the electrical characteristics specified in this Agreement, as may be amended from time to time with the prior consent of any relevant Licence Holder to whose System the relevant Exit Point is connected but subject to any variations permitted by the Regulations;

“**System**” a system of electrical transmission lines from time to time and for the time being owned or operated by a Licence Holder and through which the Customer receives the Supply directly or indirectly;

“**Term**” the period from the Effective Date until terminated by either party in accordance with this Agreement;

“**Transmission Company**” NGET and/or any other holder of a Transmission Licence;

“**Transmission Licence**” a licence granted under section 6 of the Act for the transmission of electricity;

“**Transmission Losses**” a charge reflecting the proportion of electricity in excess of that consumed by the Customer which needs to be purchased to take account of electrical losses in each Transmission Company System calculated by reference to Transmission Company loss factors;

“**Transmission Use of System Charges**” charges made by the Transmission Company in respect of use of the Transmission Company System to transport the Supply excluding Balancing Services Use of System Charges;

“**Use of System**” the use of a System for the transport of electricity on such System directly or indirectly to, among other places, an Exit Point;

“**Use of System Agreement**” each agreement of that title between the Supplier and a Licence Holder in respect of Use of System as may be amended from time to time;

“**Value Added Tax**” or “**VAT**” 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;

11.2 In this Agreement, except where the context otherwise requires:

11.2.1 any reference to a statute, regulation or statutory instrument or any provision thereof shall be construed as a reference to the same as it may have been or may from time to time be amended, modified or re-enacted;

11.2.2 the masculine shall include the feminine and references in the singular shall include references in the plural and vice versa, and words denoting natural persons shall include companies, corporations and any other legal entity and vice versa;

11.2.3 the words “include” or “including” are to be construed without limitation;

11.2.4 any reference to this Agreement or any other agreement, deed, licence, code, authorisation, consent or instrument shall be construed as a reference to the same as it may have been, or may from time to time be, amended, varied, supplemented or novated.

11.2.5 writing includes all methods of reproducing words in a legible and non-transitory form.

11.3 If any of the source documents or indices referred to in this Agreement are unavailable or cease publication there shall be substituted therefore alternative source documents or indices which as nearly as practicable achieve the same result.

11.4 Where the Customer comprises more than one person the obligations and undertakings on the part of the Customer shall be joint and several.

National Terms of Connection

In the following paragraph the words:

- “**you**” and “**your**” shall be references to the Customer;
- “**your supplier**” shall be a reference to the Supplier; and
- “**network operator**” shall be references to the PDSO;

Your supplier is acting on behalf of your network operator to make an agreement with you. The agreement is that you and your network operator both accept the National Terms of Connection (NTC) and agree to keep to its conditions. This will happen from the time that you enter into this contract and it affects your legal rights. The NTC is a legal agreement. It sets out rights and duties in relation to the connection at which your network operator delivers electricity to, or accepts electricity from, your home or business. If you want a copy of the NTC or have any questions about it, please write to: Energy Networks Association, 6th Floor, Dean Bradley House, 52 Horseferry Road, London, SW1P 2AF; phone 0207 7065137, or see the website at www.connectionterms.co.uk.