

## G E N E R A L   C O N D I T I O N S

### 1. Definitions

"Act" means the Electricity Act 1989 or any amendment or re-enactment of it.

"Agreed Accuracy Limits" means the accuracy limits specified pursuant to the BSC and, where no accuracy limits are specified in relation to any element of any Metering Equipment under the BSC, the accuracy of that element shall be no less than that specified in Tables 1 – 4 (inclusive) of Code of Practice Four ('Calibration Testing and Commissioning') approved pursuant to the BSC.

"Authority" means the Gas and Electricity Markets Authority.

"Balancing and Settlement Code" or "BSC" means the document setting out the electricity balancing and settlement arrangements established by the Transmission System Operator pursuant to NGC's Transmission Licence.

"Billing Period" means the period covered by an invoice.

"BSC Agent" has the meaning specified in the BSC.

"Certified" has the meaning specified in the Meter Operator Agreement.

"Communication Charges" means charges made for the communication links for metering purposes for the Supply to each Connection Point hereunder.

"Confidential Information" means any information relating to the affairs of either party obtained by the other party pursuant to or in the course of negotiation or performance of the Agreement, which shall include, for the purpose of the Customer's duty of confidentiality, any Supply Number or Meter Point Reference number assigned by TOTAL to the Meter, and information relating to the affairs of the Distributor that TOTAL may, from time to time, disclose to the Customer on terms that such information is to be kept confidential.

"Connection Agreement" means an agreement for the provision and maintenance of the connection(s) through which the Supply is to be delivered to the Connection Point.

"Connection and Use of System Code" means the Connection and Use of System Code which will replace the Master Connection and Use of System Agreement and related supplemental agreements with effect from such time as the Connection and Use of System Code is required to be put in place pursuant to NGC's Transmission Licence.

"Connection Point" means, in respect of each Premises, the connection point(s) at which the Supply flows between a System and the Customer's installation, equipment or lines at the Customer's Premises and any other connection point at that Customer's Premises agreed upon from time to time by the parties.

"Consumption Reconciliation" means a reconciliation and adjustment in relation to electricity consumed by the Customer in respect of differences between:

- i) the quantities of electricity assumed to be consumed by the Customer during the relevant period; and
- ii) the quantities subsequently determined to have

been consumed pursuant to a Meter Reading.

"Contract Price" means the price of electricity shown or referred to on the first page of this Agreement, subject to any amending paragraphs.

"Customer" means the person or company named as such on the first page of the Agreement.

"Data Aggregator" means the person appointed to carry out the aggregation of metering data received from Data Collectors in relation to the Metering Point and to forward such data to the SVAA, and "Data Aggregation Agreement" shall be the agreement by which such Data Aggregator is appointed.

"Data Collector" means the person appointed to retrieve, validate and process metering data in relation to the Metering Point and "Data Collection Agreement" shall be the agreement by which such Data Collector is appointed.

"Data Transfer Network" has the meaning specified in the Master Registration Agreement.

"Day" means a period of twenty four hours beginning at 00:00 hours on any day and ending at 00:00 hours on the next day.

"De-energise" means, in relation to any Metering Point, deliberately to prevent the flow of electricity from the Distribution System through the relevant Connection Point (or, in the case of an Unmetered Supply, any one or more of the relevant Connection Points) to the relevant Meter Installation for any purpose other than a System Outage, and 'De-energisation Works' means the movement of any switch or the removal of any fuse or meter, or the taking of any other step to De-energise a Metering Point.

"Disconnection Notice" means such a notice sent by TOTAL to the Distributor pursuant to the Use of the System Agreement.

"Distribution Code" means in relation to any Distributor the Distribution Code required to be drawn up by such Distributor and approved by the Authority as from time to time revised with the approval of the Authority.

"Distribution Licence" means the licence to be granted or deemed to be granted to the Distributor under Section 6(1)(c) of the Act (on the coming into force of that Section pursuant to Section 30 of the Utilities Act 2000) authorising it to distribute electricity for the purpose of giving a supply of electricity to premises or enabling a supply to be so given.

"Distribution System" means the network or system which consists (wholly or mainly) of low voltage lines and electrical plant owned and operated by the Distributor.

"Distributor" means, in respect of each of the Customers' Premises, any company licensed and authorised to distribute electricity and which owns or operates the Distribution System through which the electricity is delivered to the Premises.

"Early Termination Charge" means the charge calculated according to the provisions of Clause 2(b).

"Economic Loss" means loss of profits, revenues, interest, business, goodwill or commercial, market or economic opportunity, whether direct or indirect and whether or not foreseeable.

"Electricity Code" means the code set out at Schedule 6 to the Act.

"Energise" means, in relation to any Metering Point, deliberately to allow the flow of electricity from the Distribution System through the relevant Connection Point (or, in the case of an Unmetered Supply, any one or more of the relevant Connection Points) to the relevant Meter Installation where such a flow of electricity has never previously existed, and "Energisation Works" means the movement of any switch or the addition of any fuse or meter to Energise a Metering Point.

"Equivalent Meter" means an equivalent Half Hourly Meter as defined by the Unmetered Supply procedure contained in Section S of the BSC (or in any procedure thereunder).

"Estimated Consumption" means such estimate of consumption of electricity used by TOTAL to provide a quotation for electricity supply to the Customer for the Supply Period under this Agreement.

"Functionality" has the meaning specified in the Meter Operator Agreement.

"Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking.

"Grid Code" means the Code so entitled issued by the Transmission System Operator or any substitute Code which the Transmission System Operator may issue for the development, maintenance and operation of the NGC Transmission System.

"Half Hourly Meter" means a Meter which is configured to record the quantity of electricity (calculated in kWh) supplied to Premises during each half-hour period of supply.

"Industry Agreements" means agreed procedure and codes of practice and any and all agreements regulating the generation, transmission, distribution and supply of electricity in England and Wales and includes, but is not limited to, the BSC, the Distribution Code, the Grid Code, any revenue protection code of practice, the Connection and Use of the System Code and the Master Connection and Use of System Agreement (until such time as it is replaced by the Connection and Use of the System Code) in each case, as amended, varied, supplemented or replaced from time to time.

"kVA" means kilovoltamperes.

"kW" means kilowatt.

"kWh" means kilowatt-hour.

"Master Registration Agreement" or "MRA" means the agreement of that title referred to and comprising such matters as are set out in standard condition 37 (The Metering Point Administration Service and the Master Registration Agreement) of a Distribution Licence.

"Maximum Capacity" means the maximum amount of electricity permitted to flow at the Premises in accordance with the Connection Agreement or any other relevant Connection Agreement.

"Maximum Power Requirement" means the maximum power at which electricity may be

conveyed through the Connection Point at the Customer's Premises from the Distribution System.

"MCUSA" means the Master Connection and Use of System Agreement dated 30 March 1990 and entered into by the Transmission System Operator and users of the Transmission System governing the connection to and use of the NGC Transmission System and the accession, interface and supplemental agreements made thereunder.

"Meter" means the equipment for measuring the amount of electricity consumed installed at or near each Connection Point.

"Meter Administrator" has the meaning specified in the BSC.

"Meter Examiner" means a meter examiner appointed by the Authority under Section 31 of the Act.

"Meter Installation" means the Meter and structures, lines, appliances, devices and associated equipment and installations installed or to be installed at the Customer's Premises and connected or to be connected directly or indirectly to the Distribution System including any electrical cables, wires and plant, electrical lines, seals, housings, mountings and earthing equipment and data processing and communications equipment.

"Meter Operator" means the person, accredited and certified by the Performance Assurance Board (as defined in the BSC) and appointed by TOTAL to install, commission, test and repair the Meter Installation, and "Meter Operator Agreement" shall be the agreement by which such Meter Operator is appointed.

"Meter Operator Charges" means charges made for the provision of meter operation services to permit the Supply to each Connection Point hereunder.

"Meter Reading" means a reading of the index of the Meter.

"Metering Equipment" means appropriate metering and related equipment for energy measuring and the transmission and collection of data.

"Metering Point" has the meaning given to that term in the Master Registration Agreement.

"Month" means a period beginning at 00:00 hours on the first day of any calendar month and ending at 00:00 hours on the first day of the next calendar month.

"NGC" means the National Grid Company plc, or any successor thereof.

"NGC Transmission System" has the meaning specified in the Grid Code.

"Non Certified" has the meaning specified in the Meter Operator Agreement.

"Non-Half Hourly Meter" means any electricity meter other than one which is configured to record the quantity of electricity (calculated in kWh) supplied to Premises during each half-hour period of supply.

"Operational Metering Equipment" means metering equipment suitable to provide the Distributor with such data as it requires for use of the Distribution System or operational purposes.

"Premises" means a location at which the Customer carries on its business and which is identified in the Schedule of Rates and Premises. The Premise(s) identified in the Schedule of Premises may be amended from time to time by

agreement in writing between the parties.

"Reconciliation Quantity" means the amount by which the quantity determined pursuant to a Meter Reading to have been consumed by the Customer in the relevant period differs from the quantity previously assumed or determined to have been consumed since the preceding Meter Reading.

"Re-energise" means, in relation to any Metering Point, deliberately to allow the flow of electricity from the Distribution System through the relevant Connection Point (or, in the case of an Unmetered Supply, any one or more of the relevant Connection Points) to the relevant Meter Installation where such a flow of electricity was previously prevented by De-energisation Works, and "Re-energisation Works" means the movement of any switch, the replacement of any fuse or meter or the taking of any other step to Re-energise a Metering Point.

"Regulations" means the Electricity Supply Regulations 1988 and includes any amendment or re-enactment of such Regulations.

"Remaining Volume" means that volume of gas calculated according to the provisions of Clause 2(b).

"Residual Cashflow Reallocation Cashflow" has the meaning given in the BSC.

"Security" means prepayment, a deposit, bond or bank guarantee.

"Settlement" means the determination and settlement of amounts payable in respect of Trading Charges (including Residual Cashflow Reallocation Cashflow) in accordance with the Trading and Residual Cashflow Reallocation Cashflow as defined in the BSC.

"Settlement Charges" means all and any charges connected with the registration and metering of electricity flowing to the Customer's Premises and the settlement, collection and aggregation of energy consumption data at Customer's Premises, including charges for communication and data transfer and the costs of provision of the same in any electronic registration system pursuant to any Industry Agreement and/or Settlement system applicable to Customer's Premises from time to time.

"Stranded Power Charge" means the charge calculated according to the provisions of Clause 2(c).

"Supply" means the supply of electricity by TOTAL to the Connection Point, pursuant to the Agreement.

"Supply Date" means the date shown on the first page of the Agreement.

"Supply Licence" means the licence to be granted or deemed to be granted to TOTAL pursuant to Section 6(1)(d) of the Act on the coming into force of that Section under Section 30 of the Utilities Act 2000.

"Supply Number" has the meaning given to that term in the Master Registration Agreement.

"Supply Period" means the period shown on the first page of the Agreement (as such period may be extended by agreement).

"SVAA" means the Supplier Volume Allocation Agent or BSC Agent in accordance with Section E of the BSC.

"System" means a system of electrical

transmission and distribution lines through which the Customer receives the Supply directly or indirectly.

"System Outage" means in relation to the Distribution System a planned or unplanned interruption to the flow of electricity through the whole or part of the Distribution System implemented by or on behalf of the Distributor for safety or system security reasons or to enable the Distributor to inspect or effect alterations, maintenance, repairs or additions to any part of the Distribution System.

"Take or Pay Charge" means the charge calculated according to the provisions of Clause 4(e).

"TOTAL" means Total Gas & Power Ltd.

"Trading Charges" has the meaning given in the BSC.

"Transmission Licence" means the licence granted to NGC under Section 6(1)(b) of the Act authorising it to transmit electricity.

"Transmission System Operator" means National Grid Company plc or any successor or other party who carries out the system operation role of National Grid Company plc.

"Unmetered Supplies Procedure" means the Unmetered Supplies procedure contained in Section S of the BSC.

"Unmetered Supply" means a supply of electricity the quantity of which the Distributor has under the Unmetered Supplies procedure contained in Section S of the BSC (or in any procedure thereunder) authorised not to be measured by physical metering equipment.

"Unmetered Supply Certificate" has the meaning given to it in the BSC.

"Use of System Agreement" means the agreement entered into between TOTAL and the Distributor for the purposes of providing use of the Distribution System, offered by the Distributor in accordance with the requirements of its Distribution Licence, any Industry Agreements and any agreement made thereunder, and any other such agreements as are necessary for TOTAL to enter into with the Transmission System Operator, the Distributor and any other owner or operator of any Distribution System or Transmission System through which the Supply is delivered to the Connection Point.

"Use of System Charges" means charges made in respect of use of a relevant System to transport and/or distribute the Supply.

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

## 2. Duration

- (a) The Agreement shall, subject to Clause 14, remain in force for the Supply Period commencing on the Supply Date (both shown on the first page of the Agreement).
- (b) If the Customer terminates this Agreement otherwise than in accordance with Clause 14(a), the Customer shall pay TOTAL an Early Termination Charge calculated as the Estimated Consumption for the remainder of the Supply Period from and including the Day on which the notice of termination was given (the "Remaining Volume") x 50% at the Contract Price. It is agreed that such amount (plus any Take or Pay Charge that is payable under clause 4(e)) represents a genuine pre-

estimate of the loss suffered by TOTAL in the event of such early termination (and any under-consumption, if applicable) by the Customer.

- (c) If TOTAL terminates this Agreement otherwise than in accordance with Clause 14(a), the Customer shall pay TOTAL a Stranded Power Charge calculated as the difference between the Contract Price and the market price for the Remaining Volume, provided that the market price is less than the Contract Price. Such market price shall be the price that would be obtained if TOTAL were to sell the Remaining Volume into the wholesale traded market for electricity on the Day on which the notice of termination was given.

### 3. Provision of the Supply

- (a) Subject to Clauses 3(b) and 3(c) and the terms of any applicable Connection Agreement, TOTAL shall supply electricity to the Connection Point up to the Maximum Capacity at each Premises set out in the Schedule of Rates and Premises commencing on the Supply Date and subject to the terms of the Agreement.
- (b) The obligation of TOTAL to supply electricity at a particular Connection Point is in each case subject to:
- (i) TOTAL being authorised by its Supply Licence to supply electricity to each of the Premises to be supplied with electricity at such Connection Point;
  - (ii) there being a Connection Agreement in full force and effect relating to the connection of the relevant Customer's Installation;
  - (iii) TOTAL being validly registered under the Master Registration Agreement in respect of each Supply Number relating to the Customer to be supplied by TOTAL at such Connection Point;
  - (iv) a Meter Operator, Data Collector and Data Aggregator being appointed for each Metering Point relating to the Customer to be supplied through the relevant Connection Point (for the avoidance of doubt, no Meter Operator is required to be appointed in relation to an Unmetered Supply);
  - (v) Metering Equipment having been installed in accordance with the Use of System Agreement and the Act;
  - (vi) where TOTAL intends to supply any Unmetered Supply, there being in full force and effect in relation to each relevant Connection Point an Unmetered Supply Certificate and a relevant Connection Agreement;
  - (vii) the Customer having met any credit vetting procedure of TOTAL or produced evidence that it has arranged any Security or prepayment required by TOTAL;
  - (viii) the Customer having terminated any contract with any other supplier for the supply of electricity at the Premises;
  - (ix) where TOTAL intends to supply any Supply which is to be submitted to Settlement on the basis of half-hourly data generated by an Equivalent Meter,

the Customer entering into an Unmetered Supply Connection Agreement, and all requirements of the BSC and any other Industry Agreement having been met; and

- (x) the Distributor not being entitled under Schedule 6 of the Act to refuse to furnish a supply of electricity, or to cut-off a supply of electricity that is already furnished, through its Distribution System to the relevant Connection Point,
- and the provisions of Clause 3(c) shall apply in relation to these conditions.
- (c) If at any time the conditions in Clause 3(b) are not met:
- (i) TOTAL shall have no liability to the Customer under the Agreement;
  - (ii) the Customer shall indemnify TOTAL in respect of any liabilities to the Distributor (including, but not limited to, any charges imposed by the Distributor in respect of disconnecting, De-Energising or Re-energising the relevant Meter Point and in respect of the electricity consumed) arising from the Customer's taking electricity from the Distribution System; and
  - (iii) the Customer shall indemnify TOTAL in respect of any liabilities to the Transmission System Operator arising from the Supply to the Customer.
- (d) TOTAL does not guarantee and shall not be liable for the delivery of electricity at all times or that electricity will be free of brief variations in voltage or frequency attributable to the operation or failure of each relevant Distributor's System, any other relevant system or the NGC Transmission System.
- (e) Subject to any generation of electricity carried out by the Customer for the Premises concerned ("own generation" or "on site generation"), the Customer shall purchase its entire requirements for electricity at the Connection Point from TOTAL whilst the Agreement is in force.

### 4. Quantity

- (a) The Customer shall ensure that its consumption of electricity at any Premises shall not exceed the Maximum Capacity applicable to those Premises under the relevant Connection Agreement, and shall comply with any design features of the connection and any other network constraints. If the Customer fails to comply with this Clause, TOTAL shall not be liable to the Customer for the consequences of the Distributor taking any steps available to it to secure reduction or discontinuance of the flow of electricity from the Distribution System at the Connection Point.
- (b) If under the terms of the BSC the Customer's average monthly Supply demand exceeds or is implied to exceed 100kW requiring under the BSC, the installation of Half Hourly Metering Equipment, the Customer accepts responsibility for entering into a Half Hourly Meter Operation Agreement and for installing appropriate Half Hourly Metering Equipment. The Customer shall indemnify TOTAL against any liabilities, charges or costs arising from the Customer's failure to comply with this Clause including, but not restricted to, the cost

of installation and maintenance of such Metering Equipment and for liquidated damages arising under the BSC and payable by TOTAL.

- (c) The Customer shall, at the request of TOTAL (made prior to or during the Supply Period), promptly provide TOTAL with such good faith estimates of its demand of electricity in respect of specified periods, and with such other information relating to the Customer's consumption of electricity as TOTAL considers necessary or reasonable, including any information requested by the Distributor in relation to the nature or use by the Customer of electrical equipment at the Premises, and any information needed by TOTAL or the Distributor for the purposes of demand forecasting and control, for customer demand management or for any other purposes under the Grid Code or any other Industry Agreement.
- (d) The Customer shall comply with the terms of the Connection Agreement in relation to the connection of the relevant Connection Point through which electricity will leave the Distribution System and shall indemnify TOTAL in full against all actions, proceedings, costs, demands, claims, expenses, liability, loss or damage arising from, or incurred by TOTAL as a consequence of, the Customer failing to comply with the same.
- (e) In the event that the Customer's consumption of electricity during the Supply Period is less than 60% of the Estimated Consumption the Customer shall pay a Take or Pay Charge calculated as the Estimated Consumption x 60% x the Contract Price, less any Early Termination Charge payable under clause 2(b), provided that this Clause 4(e) shall not apply where TOTAL has terminated this Agreement otherwise than in accordance with Clause 14(a). It is agreed that such Take or Pay Charge represents a genuine pre-estimate of the loss suffered by TOTAL in the event of such under-consumption by the Customer.
- (f) The Customer shall not act or fail to act so as to place or seriously threaten to place the Transmission System Operator, any Distributor or TOTAL in breach of any licence granted to such under the Act.

### 5. Price of Electricity

- (a) The price for electricity supplied under the Agreement shall be the Contract Price or, where the Agreement continues after the expiry of the Supply Period pursuant to Clause 14(d), any rate specified pursuant to that Clause.
- (b) In addition, the Customer shall pay to TOTAL, on production of the appropriate tax invoice or other certificate, the amount of any United Kingdom tax, duty or impost on electricity including Value Added Tax, Climate Change Levy ("CCL") and Fossil Fuel Levy, or on the processing, sale or supply of electricity which is either payable by and/or to be collected by TOTAL in respect of the electricity, or payable by and/or to be collected by any previous supplier thereof and reimbursable by TOTAL. It is agreed that the Supply or part thereof may, at TOTAL's discretion, be of a type that is exempt from CCL in which event an amount equivalent to CCL shall be payable by the

Customer instead of CCL.

- (c) Where the Customer breaches any of the provisions of Clause 4, TOTAL reserves the right to recover from the Customer any additional charges imposed on TOTAL by the Distributor resulting from such breach by issuing an invoice or by varying the Contract Price, whichever TOTAL deems appropriate.
- (d) Where TOTAL incurs any charges as a result of steps taken by the Distributor, the Transmission System Operator, or TOTAL under an Industry Agreement, TOTAL reserves the right to recover from the Customer any such additional charges incurred.
- (e) The Contract Price will include amounts in respect of the charges imposed on TOTAL for the supply, distribution and metering of electricity to the Customer including but not limited to Capacity Charges, BsUOS Charge, BSC Charges, Settlement Charges, Standing Charge, Transmission Losses, Supply Distribution Charges, Supply Distribution Losses, Supply Transmission Charges, Renewable Obligation, Hydro Benefit, Reactive Power Charges, and Metering charges (such charges referred to herein as "Industry Charges"). TOTAL may vary the Contract Price at any time to reflect changes in published Industry Charges and also reserves the right to reconcile the amounts collected by TOTAL from the Customer in respect of Industry Charges for part or all of the Supply Period against the Industry Charges actually incurred by TOTAL for such period, and to invoice or credit (as appropriate) the Customer the difference.
- (f) Where Clause 12(b)(xi) applies the Contract Price for each Day shall be the arithmetic average of the System Buy Price for each half hour on that Day as published by Elexon plus Industry Charges plus 0.1 pence per kWh.
- (g) If the Customer ceases consumption of electricity (or the consumption is de minimis) at any Metering Point, or if the Customer does not require a supply of electricity at any Metering Point, then the Customer shall pay, in respect of such Metering Point and in addition to any other charges under this agreement, an amount in respect of standing and capacity charges, that will vary according to PES area, until the Meter is removed.

## 6. Payment

For each Premises, the following provisions shall apply:

- (a) TOTAL shall, for each Billing Period, issue an invoice to the Customer in respect of:
  - (i) the quantity of electricity actually consumed by the Customer in that Billing Period (as determined by the Data Collector), provided that, if no Meter Reading has been obtained for the entire Billing Period, TOTAL may substitute for the quantity actually consumed its best estimate of such quantity; and
  - (ii) if any Consumption Reconciliation has been carried out in the Billing Period the Reconciliation Quantity charged at the Contract Price.
- (b) If on the first day of the Supply Period no Meter Reading is obtained, TOTAL shall be entitled, upon the next Consumption

Reconciliation, to invoice the Customer for the entire Reconciliation Quantity, notwithstanding that a part thereof relates to a period before the Supply Period.

- (c) In addition to charges made under Clause 6(a) above, the Customer shall, in respect of any Premises, pay:
  - (i) any charges by reference to electricity discovered or reasonably and properly assessed under the Use of System Agreement to have been consumed by the Customer but not recorded at the time of consumption (for whatever reason) by the Metering Equipment installed in accordance with the Use of System Agreement, such charges to be calculated at the Contract Price rate or under Clause 14(d) as applicable;
  - (ii) for any Energisation, De-Energisation and Re-energisation Works requested or carried out (or to be requested or to be carried out) by TOTAL or the Distributor (or its or their agents or subcontractors), for any relevant transaction charges ancillary to the Use of the System Agreement, for any steps taken by the Distributor under its revenue protection code of practice from time to time, and for the provision of metering point administration services under the MRA, at such rate as TOTAL may determine from time to time, taking into account the charges payable by TOTAL for such works under the Use of System Agreement or the applicable revenue protection code of practice or otherwise, plus a reasonable amount for TOTAL's management and profit;
  - (iii) for all Use of System Charges, data, metering and connection charges (if any) imposed on TOTAL by the Distributor pursuant to its statement in relation to such charges for the time being in force under its Distribution Licence; and
  - (iv) any Meter Operator Charges, Data Collector charges, Communication Charges, Use of System Charges, Settlement Charges and any other charges or amounts which are required or incurred in respect of the Supply.
- (d) The Customer shall be charged for any sum payable pursuant to Clauses 2, 4, 5 and 6.
- (e) The Customer shall pay the amount due in respect of each invoice within 10 days of the date of the invoice.
- (f) Unless otherwise agreed in writing, the method of payment under this Agreement is direct debit. An administration charge (details of which are available from TOTAL upon request) will apply every time payment is collected or received by any other means.
- (g) If payment is not received by TOTAL by the due date then, without prejudice to any other rights or remedies that TOTAL may have, TOTAL shall be entitled to charge interest on overdue amounts from the due date until payment at the rate of four per cent per annum above HSBC Bank Plc base rate from time to time in force.
- (h) Sums claimed in invoices are preliminary sums and are subject to reconciliation and correction.

- (i) Failure to pay more than one invoice by the due date shall amount to a material breach of the Agreement for the purposes of Clause 14(a)(ii).

## 6A. Change in Financial Circumstances

- (a) If, before commencement of the Supply Period or at any time during the term of this Agreement, TOTAL has reasonable grounds for believing:
  - (i) that the Customer may be unable to meet its obligations under this Agreement, or
  - (ii) that the financial circumstances of the Customer have deteriorated to a level unacceptable to TOTAL, or
  - (iii) that any credit insurance policy applied for or obtained by TOTAL in respect of payments due from the Customer under this Agreement is denied, expires, is cancelled or withdrawn and TOTAL is unable to renew or replace the same on terms which in the sole opinion of TOTAL are economically viable in the context of the Agreement then

TOTAL may give notice to the Customer stating its reasonable grounds (in the case of (i) or (ii) above or the existence of the circumstances in the case of (iii) above) and requesting adequate financial assurances of due performance.

- (b) In the event the Customer is unable to or unwilling to provide the adequate financial assurance requested by TOTAL within 7 (seven) days of receipt of TOTAL's notice pursuant to Clause 6A(a), TOTAL may:
  - (i) terminate the Agreement forthwith by written notice to the Customer;
  - (ii) refuse any instruction of the Customer to procure electricity for any period that follows the giving of the notice under clause 6A(a) (notwithstanding any other provision of this Agreement that would otherwise require TOTAL to carry out such instruction).
- (c) In the event that TOTAL gives notice pursuant to Clause 6A(a), TOTAL shall have the right (in addition to the right provided for in Clause 6A(b)) to render invoices to the Customer as frequently as TOTAL requires from time to time and the due date for payment of such invoices shall be five days from receipt of invoice. Clause 6 shall apply to such invoices mutatis mutandis, for the purposes of this Clause 6A(c).

## 7. Measurement

For each Premises, the following provisions shall apply:

- (a) In the case of Half Hourly Meters, the Customer shall ensure that there is installed, operated and maintained in proper working order a Meter Installation containing such equipment as may be required which installation shall comply in every respect with the requirements of the BSC, any statute as amended from time to time, and any other relevant Industry Agreement.
- (b) In respect of Half Hourly Meters only, the Customer shall notify TOTAL of any change of Meter Operator at any Premises covered by this Agreement by giving TOTAL written

notice thereof within 14 days of such change.

- (c) The Customer may at any time by giving reasonable notice in writing request TOTAL to arrange that the Meter be verified for accuracy.
- (d) In respect of Non-Half Hourly Meters, where there is a dispute as to the accuracy of the Meter, the Metering Equipment shall be examined and tested by a Meter Examiner in accordance with Schedule 7 to the Act. If on such a test:
- (i) it shall be found that the inaccuracy of the registration of the Metering Equipment at normal loads exceeds the Agreed Accuracy Limits, suitable adjustment shall be made to the Customer's subsequent invoices rendered by TOTAL and the Metering Equipment or any part thereof found to be inaccurate shall be recalibrated or replaced and the cost of such test and recalibration or replacement shall be paid by TOTAL;
- (ii) the Metering Equipment shall be found to be accurate within the said limits, the Metering Equipment shall be deemed to be accurate and the cost of removing, testing and replacing the Metering Equipment or any part thereof shall be paid by the Customer.
- (e) In the case of Half Hourly Meters, the Customer shall ensure that the accuracy of the Meter is maintained at all times, and where there is a dispute as to the accuracy of the Meter, the Metering Equipment shall be examined and tested by a Meter Examiner in accordance with Schedule 7 to the Act. If on such a test:
- (i) it shall be found that the inaccuracy of the registration of the Metering Equipment at normal loads exceeds the Agreed Accuracy Limits, suitable adjustment shall be made to the Customer's subsequent invoices rendered by TOTAL and the Customer shall ensure that the Metering Equipment or any part thereof found to be inaccurate shall be recalibrated and TOTAL shall have no liability for the cost of such test and recalibration or replacement;
- (ii) the Metering Equipment shall be found to be accurate within the said limits, the Metering Equipment shall be deemed to be accurate and the Customer shall indemnify TOTAL against any cost of removing, testing and replacing the Metering Equipment or any part thereof.
- (f) In the case of Half Hourly Meters at the Premises, where the Customer has entered into a Meter Operation Agreement directly with a Meter Operator and/or Data Collection Agreement directly with the Data Collector, the Customer shall inform TOTAL of the identity of such Meter Operator or Data Collector before or immediately after such agreement comes into force. The Customer agrees to enforce the terms of such agreements (including terms as to the levels of service to be provided by the Meter Operator or Data Collector) and to indemnify TOTAL against all expenses, loss or damage suffered by TOTAL as a result of any act or omission of that Meter Operator or Data Collector or as a result of that Meter Operator

or Data Collector's breach of that agreement or the BSC, including any Supplier Liquidated Damages or liquidated damages incurred by TOTAL under the terms of the BSC and procedures made thereunder.

- (g) Any costs, charges or other liability incurred by TOTAL as a result of the actions or omissions of any Meter Operator or Data Collector contracted by the Customer (including but not limited to costs arising from the delay in receipt of valid data from such persons or failure by such persons to fulfil any obligations under the BSC) will be payable to TOTAL by the Customer and the Customer shall indemnify TOTAL in respect thereof.
- (h) The Customer agrees not to enter into a Meter Operation Agreement directly with a Meter Operator which is in force at the same time as any other Meter Operation Agreement to which TOTAL is a party, and shall ensure that no more than one Meter Operator is appointed at any one time.
- (i) The Customer shall procure that the Meter Operator complies with the relevant Performance Assurance Reporting Monitoring System requirements as defined in procedures made under the BSC.
- (j) The Customer shall procure that the Meter Operator complies with requirements under the Master Registration Agreement as to communication of data including any contractual obligation to use the Data Transfer Network and standard data flows, unless otherwise agreed with the Data Collector and TOTAL.

## 8. "Premises" etc., Equipment and Safe Use of Electricity

- (a) The Customer shall:
- (i) at all times use the electricity in a safe manner and so as not to interfere with the efficient distribution of electricity by the Distributor;
- (ii) comply with any request reasonably made by TOTAL or the Distributor in the interests of the security of the System to discontinue or reduce flow of electricity from the System;
- (iii) be responsible for all structures, equipment, cables, wires, appliances and devices on the Customer's side of the Connection Point;
- (iv) not change or modify (or procure any change or modification to) the type of Metering Equipment installed so that it does not comply with the requirements as to metering functionality set out in the Use of System Agreement;
- (v) permit the Distributor to install Operational Metering Equipment at or as close as reasonably practicable to any Connection Point in addition to any other Metering Equipment for the purpose of collecting data for the operation and planning of the Distribution System in respect of such Operational Metering Equipment; the Customer shall not interfere with such equipment or connections and shall allow the Distributor, its employees, agents, subcontractors and invitees at all reasonable times safe and unobstructed access to any Operational Metering

Equipment and shall not interfere with the same; the Customer shall

- (vi) allow the Distributor, its employees, agents, subcontractors and invitees at all reasonable times safe and unobstructed access to any Operational Metering Equipment;
- (vii) permit the provision, without charge to TOTAL, the Meter Operator, the Data Collector or the Data Aggregator as appropriate, of such data from Metering Equipment and from any equivalent Meter operated under the Unmetered Supplies Procedure as is required for the purpose of and in accordance with the Use of System Agreement, the Meter Operation Agreement, the Data Collection Agreement, the Data Aggregation Agreement and the operation and planning of the Distribution System;
- (viii) allow TOTAL or any person authorised by TOTAL free of charge, safe and unobstructed access to each Supply Point covered by this Agreement provided that, in an emergency, access shall be afforded at anytime without notice; without prejudice to any other remedy available to TOTAL, the Customer agrees to pay abortive visit charges where the Meter Operator of TOTAL (or their respective officers, employees or agents) have visited the Premises and have not obtained access thereto;
- (ix) permit the Meter Operator for an agreed period (which may be extended with the Customer's agreement) to install, operate and maintain trial Meters and ancillary equipment measuring the flow of electricity in relation to a Metering Point at its Premises provided that the Customer will not be required to make any additional payment as a result thereof and that such installation, operation or maintenance shall not result in a reduction in the Functionality of the relevant Meter at those Premises. If, subsequent to such a trial, the trial Meter becomes part of the Meter Installation, then it will form part of the services provided by the Meter Operator under the Meter Operator Agreement and the Customer shall pay TOTAL's charges in relation thereto;
- (b) Such rights of access provided for in Clause 8(a) in this Agreement shall include, but not be limited to, the right to bring on to the relevant Premises such vehicles, plant, machinery and maintenance or other materials and such persons as shall be reasonably necessary for such purposes.
- (c) The Customer shall indemnify TOTAL against any loss of or damage to the property of a third party comprised in the Meter Installation except to the extent that such loss or damage is caused by the negligence of TOTAL or that third party.
- (d) If the Customer makes an arrangement directly with the Distributor or other third party for the carrying out of works to the electrical lines or apparatus (whether before or after the Connection Point) to augment, decrease, or Energise, De-energise or Re-energise the

Connection Point, or for some other purpose, TOTAL shall have no liability to the Customer for any loss or damage howsoever caused by the Distributor or other third party as a result of the carrying out of such works.

- (e) The Customer shall, upon entering into the Agreement and thereafter as required, provide to TOTAL the following details in respect of any Connection Point through which the relevant supply is to be delivered:
- (i) the relevant Supply Number core data (as defined in the Master Registration Agreement);
  - (ii) the relevant Customer name;
  - (iii) the Metering Point address relating to each Supply Number;
  - (iv) the Customer's Maximum Power Requirement if:
    - (aa) the Customer is not a Domestic Customer (as defined in the Supply Licence);
    - (bb) the Customer has a Maximum Power Requirement not less than 20 kVA; and
    - (cc) the Customer is a new owner or occupier of the Premises;
  - (v) the contact name for the Customer if different from the Customer's name;
  - (vi) the Customer's postal address if different from the Metering Point address;
- and the Customer shall notify to TOTAL in writing, by reference to the Supply Number, any change in such details as soon as reasonably practical and where possible in advance of such change. Provided that any such notice shall be given by facsimile in accordance with Clause 19 at such facsimile number as shall be notified to the Customer by TOTAL upon entering into this Agreement.
- (f) Where the Connection Point is isolated by the Distributor by reason of the Customer's failure to comply with a request by the Distributor, in dealing with an emergency, that the Customer reduce or discontinue its flow of electricity, TOTAL shall have no liability in respect of the Supply.
- (g) No step taken or other thing done or not done (which may include a reduction in the Supply), by the Distributor or TOTAL:
- (i) in dealing with emergencies; or
  - (ii) maintaining the security and operational safety of the System,
- shall be a breach of the Agreement by TOTAL; in particular TOTAL will not be in breach of its obligations in respect of the Supply.
- (h) To the extent that at any time it is not feasible for the Distributor or the Transmission System Operator or the Distributor or the Transmission System Operator have refused to make electricity available for any reason whatsoever or their ability to do so is restricted by reason of:
- (i) the carrying out of works in connection with the System (whether maintenance repair, replacement, or other works); or

(ii) the exercise of a right or discharge of a duty by them under the Act (including the Electricity Code and the Regulations) or their respective licences and other Industry Agreements,

TOTAL shall be relieved of its obligations in respect of the Supply.

- (i) In cases of Half Hourly Meters, where the Customer is in direct contract with the Meter Operator, TOTAL shall not be liable for the failure of the Supply resulting from any failure or defect or requirement for maintenance of any Meter Installation at the Premises which it does not own.
- (j) If the Customer fails to comply with the terms of any relevant Connection Agreement, TOTAL shall be relieved of its obligations in respect of the Supply.
- (k) The Customer acknowledges and agrees that the Distributor may De-Energise any Metering Point if the Distributor is entitled to do so pursuant to the Connection Agreement relating to such Metering Point.
- (l) TOTAL shall have no liability for any acts, omissions or neglects of the Distributor, the Data Aggregator, the Data Collector, the Meter Examiner, the Meter Operator or the Transmission System Operator.
- (m) The Customer acknowledges and agrees that the Distributor may, at any time with no prior notice, De-Energise any Metering Point if:
  - (i) the Distributor is instructed, pursuant to the terms of any of the Industry Agreements (as amended from time to time), to do so;
  - (ii) the Distributor considers it necessary to do so for safety of security reasons;
  - (iii) the Distributor considers it necessary to do so to avoid interference with the regularity or efficiency of its Distribution System;
  - (iv) an accident or emergency occurs or threatens to occur which requires the Distributor to do so to avoid the risk of personal injury to any person or physical damage to the property of the Distributor, its officers, employees or agents or the property of any other person;
  - (v) it is entitled to do so for reasons of demand control under the Use of System Agreement; or
  - (vi) subject to the terms of a replacement agreement, the Use of System Agreement is terminated in accordance with its terms.
- (n) In respect of any De-Energisation carried out by the Distributor in any of the circumstances set out in Clause 8(k) of this Agreement, the Customer agrees:
  - (i) no such De-Energisation shall be a breach of this Agreement by TOTAL, in particular TOTAL will not be in breach of its obligations in respect of the Supply of electricity; and
  - (ii) TOTAL shall be relieved of its obligations in respect of the Supply of electricity under this Agreement;

save in circumstances where the Use of

System Agreement was terminated as a result of a breach thereof by TOTAL.

- (o) If any Metering Point is De-Energised by the Distributor or TOTAL, whether at the request of the Customer or the insistence of the Distributor or TOTAL, the Customer shall indemnify TOTAL in respect of any charges in respect of such De-Energisation imposed on TOTAL by the Distributor together with any other charges incurred by TOTAL in effecting such De-Energisation and shall be liable for the costs of any subsequent Re-energisation carried out at the Customer's request.
- (p) The Customer shall take all reasonable steps to enable the Meter Operator and TOTAL to comply with their obligations under any relevant Meter Operator Agreement. The Customer agrees not to have Certified metering installed at the Premises where there is installed or used at those Premises a Meter specified as 'Non-Certified'.
- (q) If there is no reasonably foreseeable future use for a Metering Point and TOTAL sends or is to send to the Distributor a Disconnection Notice in respect thereof, the Customer will give to TOTAL a true and accurate explanation for why there is no reasonably foreseeable future use for the Metering Point, and shall indemnify TOTAL against all costs, demands, claims, expenses, liability, loss or damage which TOTAL incurs (including as a result of any indemnity given to the Distributor) in consequence of acting in reliance on such details which in any way prove to be inaccurate or misleading.

## 9. Ownership

The following provisions shall apply:

- (a) Title to and risk in the electricity supplied to the Customer under this Agreement shall pass to the Customer at the Connection Point.
- (b) The Meter Installation and any other equipment, electrical lines or apparatus of TOTAL, the Meter Operator, any AMR provider, the Distributor or the Transmission System Operator are not and shall not become the property of the Customer.

## 10. Care of Meter and Metering

The Customer shall ensure that:

- (a) no part of the Meter Installation is damaged or otherwise mistreated;
- (b) no person improperly breaks any seal affixed to any part of the Meter Installation;
- (c) no notice relating to ownership affixed to the Meter by the Distributor or TOTAL is removed or defaced;
- (d) no electricity is taken from the System on the Customer's Premises at a point before the Connection Point; and
- (e) in the case of a Meter for which a by-pass has been lawfully installed by the Distributor or Meter operator, the flow of electricity is not diverted from passing through the Meter otherwise than through such by-pass;

and shall indemnify TOTAL against any liabilities, charges or costs arising from the Customer's failure to comply with this Clause. If it appears that any interference of the kind envisaged in this Clause has occurred, TOTAL may invoice the Customer for the monetary value (assessed at the

Contract Price) of any electricity which it reasonably calculates to have been consumed since the interference together with the costs of rectifying the damage and any associated legal and administrative costs.

## 11. Liability

- (a) TOTAL shall indemnify the Customer against personal injury to or the death of any person or loss of or damage to any property real or personal to the extent that such injury, death, loss or damage arises in the course of or by reason of the Supply and provided always and only to the extent that the same is due to negligence on the part of TOTAL, subject to Clauses 11(b) and 11(d).
- (b) The obligation of TOTAL to indemnify the Customer under Clause 11(a) shall be subject to an aggregate limit of £1,000,000 in any period of one year save in the case of death or personal injury where this limit shall not apply.
- (c) Notwithstanding anything expressed or implied in the Agreement, neither TOTAL or any of its associates, affiliates, servants, agents or contractors (of any tier) or its or their directors, officers or employees shall be liable (whether through contract, negligence or otherwise) to the Customer or the Customer's associates, affiliates, servants, agents or contractors (other than TOTAL) or its or their directors, officers or employees for any damages (other than to the extent arising pursuant to Clause 11(a)), expenses (including legal expenses), loss of use, profits, contracts, goodwill, production, data, revenue, or for increased costs of working or business interruption, any Economic Loss or any indirect or consequential loss whatsoever and howsoever caused whether foreseeable or not.
- (d) Provided always that none of the foregoing provisions of this Clause shall operate to exclude or restrict TOTAL's liability for death or personal injury resulting from negligence.

## 12. Force Majeure

- (a) If in or as a consequence of Force Majeure (as defined in Clause 12(b)) it is not reasonably practicable for the party affected by Force Majeure (the 'Affected Party') to perform any of its obligations in accordance with the Agreement such obligations (other than any obligations to make payments under the Agreement) shall be suspended to the extent that and for so long as it is so impracticable. Whenever possible each party shall give to the other prior written notice of such suspension.
- (b) "Force Majeure" means any event or circumstance which is beyond the reasonable control of, and could not have been avoided by steps which might reasonably be expected to have been taken by, either party, including (but without limitation):
  - (i) act of public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage or act of vandalism;
  - (ii) act of God;
  - (iii) strikes, lock-outs or other industrial disturbance;

- (iv) explosion, fault or failure of plant or machinery, other than the Customer's plant or machinery, which could not have been prevented by Good Industry Practice;
- (v) the failure of any generator or the Transmission System Operator to deliver or transmit electricity to the Distributor or any deficiency in such delivery or transmission;
- (vi) any System Outage;
- (vii) governmental restraint, Act of Parliament, other legislation, bye-law or Directive, or the coming into force of any other legal requirement;
- (viii) breaking or severing of, accidental or criminal damage to, or interference with any electrical cables, wires and plant, electrical lines, seals, housings, mountings and earthing equipment and data processing and communications equipment, machinery or other equipment;
- (ix) lightning, storm, accumulation of snow or ice, earthquake, fire or flood or extreme weather conditions by reason of which the Distributor is unable to make available at the Connection Point sufficient flow of electricity to meet the Customer's demand;
- (x) any event which constitutes an event of Supplier Force Majeure under Section 3.3 of Section S of the BSC;
- (xi) any conditions by reason of which TOTAL is unable to make available economically at the Metering Point sufficient amounts of electricity to meet the Customer's demand.

Provided that, inability to pay (however caused) shall not amount to Force Majeure.

- (c) If either party is unable to perform any obligation under the Agreement for reasons of Force Majeure for a continuous period of 180 Days the other party shall have the right:
  - (i) to terminate the Agreement forthwith upon notice to the other party (provided that Clauses 14(c) and (d) shall apply); or
  - (ii) to withdraw any affected Premises from the Agreement.

## 13. Suspension

- (a) If the Customer shall fail to comply with any of its obligations in respect of any Premises and such failure shall remain unremedied for seven days after TOTAL shall have given written notice to the Customer requiring the same to be remedied, TOTAL shall be entitled to suspend or reduce the Supply to such Premises forthwith until such time as the failure is remedied, without prejudice to any other rights or remedies that TOTAL may have and provided always that any such suspension shall not be treated as being outside the control of the Customer.
- (b) TOTAL is given a direction under Section 34(4) or 96 of the Act or Section 2(1)(b) of the Energy Act 1976 prohibiting or restricting the supply of electricity to specified persons, then, for so long as and to the extent required by the direction:

- (i) the Customer shall refrain from using, or restrict its use, of electricity on being required by TOTAL to do so; and
- (ii) TOTAL shall be entitled to discontinue or restrict the supply of electricity to the Customer,

and TOTAL shall have no liability to the Customer in respect of the discontinuance or restriction of the Supply.

## 14. Termination

- (a) Subject to Clauses 14(c), (d) and (f), either party may terminate the Agreement in respect of one or more Premises forthwith by written notice to the other at any time if:
  - (i) any condition referred to in Clause 3(b) fails to be satisfied (but not where such failure is due to an act or omission of the party seeking to terminate); or
  - (ii) the other is in material breach of its obligations hereunder and the breaching party fails to remedy the same within 14 (fourteen) Days after receiving written notice of the failure from the terminating party requiring it to be remedied and notifying its intention to exercise the right of termination under this Clause 14(a); or
  - (iii) the other party ceases to trade or enters into liquidation whether voluntarily or compulsorily (other than for the purposes of amalgamation or reconstruction) or compounds with its creditors or has a receiver, administrative receiver, administrator, nominee, supervisor or similar officer appointed over all or any of its assets or its undertaking or any part thereof (or, in Scotland, becomes notour bankrupt) or if any action, petition, application or proceeding is initiated or resolution passed relating to any of the afore-mentioned matters.
- (b) Subject to Clauses 14(c), (d) and (f), TOTAL will be under no obligation to continue the Supply to a particular Connection Point, and may terminate the Agreement in respect of one or more Premises forthwith by written notice to the Customer, if at any time:
  - (i) the Customer ceases to be a party to, or fails to comply with its obligations under, the Connection Agreement with the Distributor;
  - (ii) the Customer ceases to be a party to, or fails to comply with its obligations under the Meter Operator Agreement with the Meter Operator;
  - (iii) the Connection Agreement terminates;
  - (iv) the Meter Operator ceases to be a party to, or fails to comply with its obligations under the Meter Operator Agreement entered into with TOTAL,

and the circumstances described in Clause 14(b)(i) to (iii) shall constitute (but not exclusively) a material breach of the Agreement by the Customer.
- (c) Any termination of the Agreement shall be without prejudice to any rights or remedies of either party which arise prior to or as a result of termination.
- (d) The Agreement shall remain in full force and effect, and the Customer shall remain liable to

pay TOTAL for electricity consumed at the rate determined by TOTAL from time to time (which shall include an amount to take account of the Use of System Charges and other charges), after the expiry of the Supply Period for such further period of time as TOTAL continues to be treated by the Distributor as the supplier in respect of the Connection Point.

- (e) Any resumption of Supply following termination pursuant to this Clause 14 or suspension under Clause 13 will be at the discretion of TOTAL and TOTAL may require a reconnection charge and security or other form of debit payment.
- (f) Notwithstanding Clauses 14 (a), (b), (c) and (d), this Agreement shall terminate upon a last resort direction given to an electricity supplier other than TOTAL, in pursuance of standard condition 8 (Supplier of Last Resort) of that supplier's licence coming into effect in relation to the Premises.

(g) **VACATION OF SITE BY CUSTOMER**

TOTAL's agreement to supply electricity to the Site(s) is based upon, amongst other things, TOTAL's assessment of the creditworthiness of the Customer and TOTAL's commitment under this contract to supply electricity to a Site ceases where the Customer has ceased to occupy that Site. For the avoidance of doubt, the Customer's obligations under this contract are not terminated or discharged as a consequence of the Customer ceasing to occupy any Site.

The Customer agrees to give TOTAL 28 days' prior written notice if it ceases to occupy a Site. The Customer acknowledges that in the absence of such notice TOTAL is at risk of supplying electricity to a third party at the Site in the mistaken belief that the Customer remains in occupation of the Site.

If the Customer does not give 28 days' written notice as required then the Customer agrees to indemnify TOTAL against all losses, costs and damage it may suffer as a result of supplying electricity to the Site after the Customer has ceased to occupy the Site, including (without limitation) losses resulting from the failure of the third party occupying the Site to pay TOTAL the deemed contract price of the electricity consumed by the third party.

**14A. Supplier Transfer Objections**

TOTAL may prevent any proposed transfer of electricity supply, in respect of any Site, to another electricity supplier for so long as:

- (a) the Customer fails to pay charges for the supply of electricity to those premises or any premises of the Customer which are due to TOTAL and have been demanded in writing; or
- (b) this Agreement will not expire nor, to the knowledge of TOTAL, be terminated in accordance with its terms on or before the date of the proposed transfer; or
- (c) TOTAL and that other electricity supplier agree that the transfer was made or initiated in error; or
- (d) the Customer has informed TOTAL that the Customer has not entered into a contract for electricity supply with that other electricity

supplier, or the Customer otherwise requests TOTAL to prevent the transfer; or

- (e) in cases where a metering point is related to another (for example, where there are two meters on the same premises that supply the same customer and where the charges are mutually conditional), the other electricity supplier has not submitted a registration under the MRA for all related metering points for the same supply start date

and TOTAL shall have no liability to the Customer for any loss or damage resulting from any prevention of (or failure to prevent) any transfer.

**15. Assignment**

The Customer may not assign the Agreement or part of the Agreement without the prior written consent of TOTAL.

**16. Confidentiality and Copyright**

- (a) Neither party shall without the prior written consent of the other:

- (i) disclose Confidential Information to any person other than its officers or employees, professional advisers, consultants, affiliates or shareholders; or
- (ii) make use of any Confidential Information otherwise than in the performance of the Agreement;

provided that this restriction shall not apply to information which has come properly into the public domain through no fault of either party.

- (b) Where Confidential Information is disclosed as permitted under Clause 16(a) the party disclosing such Confidential Information shall take all reasonable steps to ensure that the person to whom the information is disclosed is aware of the obligations under Clause 16(a) and does not use or disclose the information otherwise than as permitted.
- (c) Notwithstanding Clause 16(a), TOTAL shall own the copyright in the Agreement and own any data TOTAL records relating to the Customer's consumption of and price paid for electricity under the Agreement and may use such data in the compilation of statistics or for any use which TOTAL thinks fit or any use permitted under the BSC. The Customer shall be entitled to access, obtain and use metering data relating to the Metering Installation without charge.
- (d) The obligations contained in this Clause shall continue notwithstanding any termination of the Agreement.

**17. Warranty**

The Customer warrants that in entering into the Agreement it is not in breach of any contract it has with a third party for the supply of electricity.

**18. Waiver**

No indulgence shown by either party to the other shall prevent that party subsequently insisting upon its rights and remedies under the Agreement.

**19. Notices**

Any notice given pursuant to the Agreement shall be in writing and may be served by ordinary prepaid first class post, by personal delivery, by prepaid recorded delivery or by registered post to the addresses at its registered office for the time being, or by facsimile to the recipient's facsimile

number or such other address or facsimile number as may be notified in accordance with this Clause and shall be deemed to have been received:

- (a) in the case of personal delivery, at the time of delivery;
- (b) in the case of first class post, the second day after it was posted;
- (c) in the case of prepaid recorded or registered delivery, as recorded or registered by the delivery service effecting delivery;
- (d) in the case of facsimile, on transmission.

**20. Variations**

TOTAL may without affecting its binding nature and without further formality (save for notice to the Customer) vary the Agreement (including making variations in the Contract Price), and without limiting the circumstances in which they may be made, variations may be made:

- (a) to reflect any obligations and liabilities imposed on TOTAL under the BSC or any other Industry Agreement including any agreement between TOTAL and the Distributor or the Transmission System Operator;
- (b) to reflect any change in the terms of the Connection Agreement;
- (c) if any direction is given to TOTAL pursuant to Section 34(4) or 96 of the Act or Section 2(1)(b) of the Energy Act 1976;
- (d) to reflect any variation in charges for metering;
- (e) to correct any errors in the Connection Point details given to TOTAL;
- (f) to reflect any variation in any charges imposed on TOTAL as a result of a change in any Industry Agreement or as a result of any action or direction of the Secretary of State or the Authority which determines a change to any charges imposed on TOTAL;
- (g) if any generation of electricity is carried out by the Customer for the Premises concerned ("own generation" or "on site generation") after the commencement of Supply under this Agreement; and
- (h) as a result of the Customer having supplied any incorrect information to TOTAL.

**21. Balancing and Settlement Code and Industry Agreements**

Where:

- (a) the BSC or any other Industry Agreement provides for the Distributor and/or TOTAL to do anything at or affecting any Premises or the supply of electricity; and
- (b) in doing that thing the Distributor and/or TOTAL comply with the requirements of the BSC any other Industry Agreement in relation thereto, do not act unlawfully and are not negligent; and
- (c) by reason of the Distributor and/or TOTAL doing that thing the Customer suffers loss or damage,

neither TOTAL nor the Distributor shall have any liability in respect of such loss or damage and the Customer warrants that it will bring no action or

proceeding against the Distributor or TOTAL.

## 22. Distribution Code

The Customer must comply at all times with the provisions of the Distribution Code in so far as they are applicable to the Customer.

## 23. Severability of provisions

If any provision of the Agreement should be held to be illegal, invalid or unenforceable in whole or in part, the Agreement shall continue to be valid as to its remaining provisions and the remainder of the affected provision.

## 24. Interpretation

- (a) References in this Agreement to "TOTAL" shall include where applicable its agents appointed for the purposes of carrying out functions or performing obligations which under the BSC or any other relevant agreement are required to be or may only be carried out or performed by such an agent.
- (b) The Agreement constitutes the entire agreement between the parties with respect to the subject matter of the Agreement and supersedes and extinguishes any representations and understandings previously given or made other than those contained herein, without prejudice to any liability for fraudulent misrepresentation.
- (c) The headings in the Agreement are inserted for convenience only and shall not affect the interpretation of any of its provisions.
- (d) The Agreement shall be construed and governed in all respects in accordance with the laws of England and any disputes or differences shall be subject to the exclusive jurisdiction of the English Courts.

## 25. Disconnections or Cessation of Supply

The Customer acknowledges that the Supply hereunder may be disconnected or may cease and, if the Customer requires emergency or stand-by capability, such requirements shall not be supplied by TOTAL and must be contracted for separately.

## 26. Electricity Supply Regulations 1988

The Customer must ensure compliance at all times with the Regulations and any statutes, statutory instruments, regulations or orders which are binding on the Customer and/or TOTAL.

## 27. Connection Provisions

- (a) The Customer by its agreement to take the Supply from TOTAL on the terms and conditions of this Agreement, also agrees that it is obliged to enter into a Connection Agreement with each relevant Distributor in respect of the relevant System to permit the Supply to the Connection Point.
- (b) The Distributor's obligations under this Supply Contract are subject to the Maximum Capacity and any other design feature of the Customer's connection. In accordance with existing legal rules, the Customer must contact the Distributor in advance if the Customer proposes to make any significant change to the Customer's connection, electric lines or electrical equipment, install or operate generating equipment or do anything else that could affect the Distribution system or require alterations to the Customer's connection.

- (c) The Distributor will maintain, and may interrupt, and shall be entitled to cut-off any Connection Point in accordance with and subject to the provisions of the Act and any other legal requirements or rights (including those arising under any code or agreement with which the Distributor is obliged by its Distribution Licence to comply) that apply from time to time. The Distributor does not guarantee that the Distributor will deliver electricity to the connection at all times nor that the electricity delivered will be free of brief variations in voltage or frequency.
- (d) Subject to any contrary existing agreement between the Customer and the Distributor (and/or TOTAL) the Distributor shall not be liable to the Customer under the Agreement or otherwise for any loss of damage which:
  - (i) is beyond the reasonable control of the Distributor; or
  - (ii) is consequential or indirect or arises from or amounts to Economic Loss.
- (e) If the Supply to the Premises is wholly or mainly used for business purposes the Distributor will only be liable to the Customer in accordance with the limitations in Clause 27(d) and up to a maximum of £100,000 per calendar year (or such other maximum as may be agreed between the Distributor and the Customer).
- (f) Clauses 27(d) and (e) will continue to apply regardless of the termination of the Agreement. The ending of the Agreement will not affect any rights, remedies or obligations which may have come into being under the Agreement prior to that time.
- (g) The terms of this Clause 27 will be changed automatically to incorporate any changes that are approved by the Authority. Any change which is approved will be announced in at least three daily newspapers and will take effect from the date stated in those announcements.
- (h) The Distributor may cut off the Supply to the Customer's Connection Point where the Distributor is entitled to do so under the general law, the Agreement or the electricity industry arrangement under which the Distributor operates.
- (i) The Distributor shall be entitled and have the ability to enforce the provisions of this Clause 27 and by virtue of the Contracts (Rights of Third Parties) Act 1999 and this Clause may not be varied without the prior written consent of the Distributor.