

**SECTION 2B – DISTRIBUTOR TO DISTRIBUTOR/OTSO
RELATIONSHIPS**

SCOPE OF SECTION 2B

This Section 2B and the Schedules referred to in it, together with the relevant Bilateral Connection Agreement, set out the terms and conditions pursuant to which a DNO/IDNO Party shall allow the System of a DNO/IDNO/OTSO Party to Connect to the DNO/IDNO Party's Distribution System, and pursuant to which the DNO/IDNO Party shall provide Use of Distribution System to the DNO/IDNO/OTSO Party.

36. INTERPRETATION OF SECTION 2B

Party Obligations

- 36.1 In this Section 2B, in the Schedules when applied pursuant to this Section 2B, and in the terms defined in Clause 1 when used in this Section 2B or those Schedules, a reference to a Company is a reference to each Party, separately and individually, that is a DNO/IDNO Party acting in the capacity of a Party who provides Connection and Use of Distribution System to a DNO/IDNO/OTSO Party and, where an obligation is imposed on, or a right granted to, a Company, that obligation is imposed on, and that right is granted to, each such DNO/IDNO Party separately and independently.
- 36.2 In this Section 2B, in the Schedules when applied pursuant to this Section 2B, and in the terms defined in Clause 1 when used in this Section 2B or those Schedules, a reference to a User is:
- 36.2.1 a reference to each DNO/IDNO/OTSO Party, separately and individually, acting in the capacity of a Party who receives Connection and Use of Distribution System from a DNO/IDNO Party, and where an obligation is imposed on, or a right granted to, a User, that obligation is imposed on, and that right is granted to, each such DNO/IDNO/OTSO Party separately and independently; and
- 36.2.2 when made in relation to a Company and any period of time, a reference to each User (separately, individually and to the relevant extent) who is (or was), during that period, Connected to that Company's Distribution System (provided that, in the case of Clauses 36, 37, 38, 39 and 47, it shall include those Users who are taking steps to be so Connected, and that, in the case of Clauses 36, 38, 47, 50 and 51, it shall include those Users who were once so Connected).
- 36.3 This Section 2B, and the Schedules when applied pursuant to it, shall, together with the relevant Bilateral Connection Agreement:

- 36.3.1 only create rights and obligations between DNO Parties/IDNO Parties and other DNO Parties/IDNO Parties, and shall not apply to Supplier/CVA Registrants;
- 36.3.2 only create obligations between a Company and a User to the extent that, and in relation to those periods for which, the User is (or was) or is seeking to be Connected via a Connection Point to the Company's Distribution System; and
- 36.3.3 not impose any obligations between a Company and a User in relation to periods for which that User is (or was) not, and is not seeking to be, Connected via a Connection Point to the Company's Distribution System.

References in Relation to Companies and Users

- 36.4 In this Section 2B, in the Schedules when applied pursuant to this Section 2B, and in the relevant Bilateral Connection Agreement, references to:
 - 36.4.1 a Connection Point are references to a Connection Point between the Company's Distribution System and the User's System;
 - 36.4.2 a Connectee are, when made in relation to the Company or the Company's Distribution System, references to a Connectee to the Company's Distribution System, and, when made in relation to the User or the User's System, references to a Connectee to the User's System; and
 - 36.4.3 Charges are references to the Charges payable by the User to the Company in relation to Connection Points on the Company's Distribution System.

Additional Interpretation

- 36.5 In this Section 2B, in the Schedules when applied pursuant to it, and in the relevant Bilateral Connection Agreement, any reference to a "charging period" is, subject to any contrary indication, a reference to the period specified in the Relevant Charging Statement (or, if no period is specified therein, a calendar month).

Disputes

36.6 Notwithstanding Clause 58, any dispute between the Company and the User arising under, out of, or in connection with this Section 2B or a relevant Bilateral Connection Agreement will not be referred to arbitration unless:

36.6.1 the relevant provision of this Section 2B expressly provides for arbitration; or

36.6.2 the Company and the User agree to refer the dispute to arbitration.

37. CONDITIONS PRECEDENT

37.1 The rights and obligations of each Company as against each User (and of each User as against each Company) under the remaining Clauses of this Section 2B (save for Clauses 50 and 51) are conditional upon each of the following conditions precedent being fulfilled:

37.1.1 that the User holds a Distribution Licence or is the OTSO Party;

37.1.2 that the Company holds a Distribution Licence;

37.1.3 that both the User and the Company are party to the Connection and Use of System Code and any necessary supplemental agreement pursuant to it;

37.1.4 that both the User (unless it is the OTSO Party) and the Company are party to the Master Registration Agreement and the Data Transfer Service Agreement;

37.1.5 that both the User and the Company are party to the BSC; and

37.1.6 that both the User (unless it is the OTSO Party) and the Company are party to the Smart Energy Code.

37.2 If the conditions precedent set out in Clause 37.1.1 to 37.1.5 (inclusive) are not fulfilled in respect of a Company or a User at the date this Agreement becomes effective in respect of that Party, that Party shall take all appropriate steps within its power to procure the fulfilment of those conditions relating to it which have not already been fulfilled.

37.3 Once each of the conditions precedent in Clause 37.1 has been fulfilled in respect of a Company or a User, that Party shall take all appropriate steps within its power to keep such conditions precedent relating to it fulfilled.

38. BILATERAL CONNECTION AGREEMENTS

New Bilateral Connection Agreements

38.1 Where requested by the User or its agent, the Company shall offer to enter into a Bilateral Connection Agreement with the User in respect of each relevant Connection Point or group of Connection Points. Such offer shall be made as soon as is practicable and within any period required by the Company's Distribution Licence or the Act.

38.2 Where either the Company or the User disputes the terms of the Bilateral Connection Agreement either of them shall be entitled to refer the dispute to the Authority in accordance with the provisions of Condition 7 of the Company's Distribution Licence.

38.3 In the event that:

38.3.1 the System of one DNO/IDNO/OTSO Party is connected to the Distribution System of a DNO/IDNO Party (so that, subject to energisation, electricity may flow between the two); but

38.3.2 there is no written agreement between them regarding such connection, either of them may, on notice to the other, require such other to (as applicable) enter into, or offer to enter into, a Bilateral Connection Agreement in respect of the point of such connection. Where no such Bilateral Connection Agreement can be agreed within a reasonable period of time, either of them may (save where pending determination of a dispute referred to the Authority in respect of such point of connection) de-energise or disconnect such point of connection.

Deemed Bilateral Connection Agreements

38.4 In the event that:

38.4.1 the System of one DNO/IDNO/OTSO Party is connected to the Distribution System of a DNO/IDNO Party (so that, subject to energisation, electricity may flow between the two); but

38.4.2 there is no written agreement between them regarding such connection,

those two Parties agree that the limitations on liability set out in Clause 53 shall apply in relation to such connection.

- 38.5 Where a party to a Bilateral Connection Agreement (a “**disposing party**”) disposes of the Distribution System (or relevant part thereof) relating to one or more of the Connection Points that are subject to that Bilateral Connection Agreement, the disposing party shall notify the other party to that Bilateral Connection Agreement (the “**continuing party**”).
- 38.6 Where the person (the “**acquiring party**”) who acquires such Distribution System (or part thereof) is a Party to this Agreement:
- 38.6.1 it shall notify the continuing party of such acquisition; and
- 38.6.2 it is agreed that (subject to any contrary agreement between the continuing party and the acquiring party) the continuing party and the acquiring party shall (with effect from the time of acquisition) have the benefit of, and be subject to, a Bilateral Connection Agreement on identical terms to that referred to in Clause 38.5 (insofar as applicable to the Connection Points referred to in Clause 38.5).

Breach of Bilateral Connection Agreements

- 38.7 Without prejudice to Clauses 39.1.1 and 40.1.2, a breach of a Bilateral Connection Agreement is not, of itself, a breach of this Agreement.

39. THE USER'S RIGHT TO BE CONNECTED AND ENERGISED

- 39.1 The obligation of the Company to Connect the relevant Connection Point or Connection Points to its Distribution System, and to Energise the relevant Connection Point or Connection Points, is subject to:
- 39.1.1 the User entering into a Bilateral Connection Agreement with the Company in respect of such Connection Points and such agreement being in full force and effect (and any conditions precedent therein being satisfied);
 - 39.1.2 the User and the Company having exchanged such contact, invoicing and other similar information as the other reasonably requests and agreeing arrangements for the provision of Use of Distribution System information to the Company; and
 - 39.1.3 where the Connection Point is a Systems Connection Point, such Connection Point being registered in accordance with the provisions of the BSC.
- 39.2 Subject to the provisions of this Section 2B and the relevant Bilateral Connection Agreement, the Company shall Connect the User's System at each of the relevant Connection Points, and Energise each such Connection Point.
- 39.3 Subject to the provisions of this Section 2B and the relevant Bilateral Connection Agreement, the Company shall use its reasonable endeavours to:
- 39.3.1 ensure the Maximum Import Capacity and the Maximum Export Capacity is available to the User at all times; and
 - 39.3.2 maintain the connection characteristics at the Connection Point in accordance with the provisions of the relevant Bilateral Connection Agreement.

Land Rights

- 39.4 In respect of each Connection Point, where either the Company has Connection Assets installed on property under the control of the User, or the User has Connection Equipment installed on the property of the Company then the Company and the User shall agree appropriate arrangements in respect of the rights to place such Connection Equipment or Connection Assets on the property of the other and to operate such

Connection Assets or Connection Equipment. Such agreement will be part of the relevant Bilateral Connection Agreement or in an agreement pursuant to the relevant Bilateral Connection Agreement.

Access Rights

39.5 In respect of each Connection Point and subject to the other provisions of this Section 2B and the relevant Bilateral Connection Agreement, where the Company has Connection Assets installed on property under the control of the User, the User shall provide the Company, its invitees and any relevant employee, agent or contractor acting on behalf of the Company, with safe and unobstructed access at all times to such Connection Assets together with such facilities as the Company may reasonably request and the User may reasonably be expected to provide. The Company shall procure that any individuals to whom access is given pursuant to this Clause 39.5 shall comply with all reasonable directions given by the User as to general safety and site security arrangements.

39.6 In respect of each Connection Point and subject to the other provisions of this Section 2B and the relevant Bilateral Connection Agreement where the User has Connection Equipment installed on property under the control of the Company, the Company shall provide the User, its invitees and any relevant employee, agent or contractor acting on behalf of the User, with safe and unobstructed access at all times to such Connection Equipment together with such facilities as the User may reasonably request and the Company may reasonably be expected to provide. The User shall procure that any individuals to whom access is given pursuant to this Clause 39.6 shall comply with all reasonable directions given by the Company as to general safety and site security arrangements.

Maintenance of Assets

39.7 Subject to the terms of this Agreement and the relevant Bilateral Connection Agreement (and without prejudice to Company's rights to make Modifications) the Company and the User shall use all reasonable endeavours to maintain their respective Connection Equipment relating to the Connection Point in the condition necessary to render the Connection Point fit for the purpose of conveying electricity in accordance with this Agreement and the relevant Bilateral Connection Agreement.

39.8 Subject to the relevant Bilateral Connection Agreement, the Company and the User each acknowledges that the other may use, in relation to its System, whatever equipment of whatever nature it considers appropriate, provided the same complies with all Relevant Instruments, legislative requirements and Directives.

Maximum Import Capacity and Maximum Export Capacity

39.9 The Maximum Import Capacity and Maximum Export Capacity shall be specified in the relevant Bilateral Connection Agreement and the User shall use its reasonable endeavours to ensure that the electricity imported and exported does not exceed the Maximum Import Capacity and the Maximum Export Capacity (respectively).

39.10 The Company shall only be obliged to export or import electricity up to the Maximum Import Capacity and Maximum Export Capacity as specified in the relevant Bilateral Connection Agreement. Where the User exceeds the Maximum Import Capacity or the Maximum Export Capacity, it shall be a breach of the relevant Bilateral Connection Agreement, but not of this Agreement.

39.11 Where the User's import of electricity exceeds the Maximum Import Capacity or the User's export of electricity exceeds the Maximum Export Capacity (each an "**Event**"), the User shall:

39.11.1 upon being notified by the Company, take reasonable actions to reduce the import or export of electricity to within the limits specified in the relevant Bilateral Connection Agreement; and

39.11.2 if appropriate propose a variation to the relevant Bilateral Connection Agreement; and/or

39.11.3 if appropriate, submit a Modification Application to the Company in accordance with the provisions of Clause 52.

39.12 Following the occurrence of an Event (as defined in Clause 39.11), the Company shall be entitled to:

- 39.12.1 charge the User any additional Use of System Charges for Use of Distribution System that is in excess of the Maximum Import Capacity or Maximum Export Capacity in accordance with the Company's Relevant Charging Statement;
- 39.12.2 exercise any rights it may have under Clause 41; and/or
- 39.12.3 exercise any rights it may have under the relevant Bilateral Connection Agreement.

Variation to the Maximum Import Capacity and Maximum Export Capacity

- 39.12A Except where a variation requires a Modification, either Party may propose a variation to the Maximum Import Capacity and/or Maximum Export Capacity contained within the Bilateral Connection Agreement by notice in writing to the other Party. The Company and the User shall negotiate in good faith the terms of any such variation.
- 39.12B Where the Bilateral Connection Agreement includes a phased 'Required Capacity' for the 'Development Phase' (as each such expression is defined in Schedule 22), any proposal to vary the Bilateral Connection Agreement made pursuant to Clause 39.12A shall take into account the capacity required for the remainder of such Development Phase, as set out in the Bilateral Connection Agreement.

Phase Balance

- 39.13 The User shall ensure, as far as is reasonably practicable, that the flow of electricity at each Connection Point is balanced between the phases.

Power Factor

- 39.14 The User shall at all times and at its own expense take reasonable steps to maintain the power factor of any supply of electricity through each Connection Point is between unity and 0.95 lagging unless otherwise agreed with the Company in the relevant Bilateral Connection Agreement. Any capacitors or other devices provided by the User for power factor improvement purposes shall be controlled so as to ensure that (unless otherwise agreed between the Company and the User) the total capacitance connected to the User's System at any time is not greater than that required to produce a power factor of unity at that time.

39.15 Nothing in Clause 39.14 shall require the User to treat any Customer taking a supply of electricity from its System less favourably than equivalent Customers taking supplies of electricity from the Company's Distribution System are treated by the Company in equivalent circumstances.

Interference

39.16 Unless otherwise agreed, the Company and the User shall each ensure that it and its respective employees, contractors, agents and invitees do not alter or interfere in any way with the Connection Equipment of the other.

40. USE OF DISTRIBUTION SYSTEM

Provision of Use of Distribution System

- 40.1 Subject to the other provisions of this Agreement, the Company shall convey electricity through its Distribution System, for the User, to and from each Connection Point subject to:
- 40.1.1 the Company and the User being party to this Agreement and it being in full force and effect;
 - 40.1.2 there being a Bilateral Connection Agreement in full force and effect between the Company and the User in respect of such Connection Point (and any conditions precedent therein being and remaining satisfied);
 - 40.1.3 the Maximum Import Capacity (if any) or the Maximum Export Capacity (if any) set out in the relevant Bilateral Connection Agreement;
 - 40.1.4 where the Connection Point is a Systems Connection Point, a Meter Operator Agent being (and remaining) appointed; and
 - 40.1.5 such variations (if any) as may be permitted by the Regulations or as otherwise agreed in the relevant Bilateral Connection Agreement.

Provision of Loss Adjustment Factors

- 40.2 The Company shall provide loss adjustment factors to the User:
- 40.2.1 in respect of each Connection Point to the Company's Distribution System that is not a Systems Connection Point, 20 Working Days before the User has to provide loss adjustment factors to the BSCCo in accordance with provisions of the BSC; and
 - 40.2.2 in respect of each Connection Point to the Company's Distribution System that is a Systems Connection Point and where the User is the party responsible under the BSC for submitting the loss adjustment factors to BSCCo, 20 Working Days before the User has to provide loss adjustment factors to the BSCCo in accordance with provisions of the BSC.

41. ENERGISATION, DE-ENERGISATION AND RE-ENERGISATION

Company's Right to De-energise

41.1 The Company may De-energise a Connection Point:

- 41.1.1 if the Company is required to do so in an emergency and in accordance with Clause 41.4;
- 41.1.2 if the User is in material breach of the Bilateral Connection Agreement relating to such Connection Point and such breach results, or is likely to result, in the Company being in breach of the Regulations, the Company's Distribution Code, or any other relevant statutory requirement;
- 41.1.3 if the User is in breach of the Regulations, or is likely to be in material breach of the Regulations, or is likely to compromise the security of the Company's Distribution System or of any Distribution System or Offshore Transmission System connected to the Company's Distribution System or of the supply of electricity to any Connectee of the Company's;
- 41.1.4 if the Company is required to do so to comply with its obligations under the Company's Distribution Code or any Relevant Instruments;
- 41.1.5 subject to the terms of a replacement agreement, if this Agreement or the relevant Bilateral Connection Agreement is terminated, or the User ceases to be a Party in accordance with the provisions of Clause 54;
- 41.1.6 if the rights of the User are suspended in accordance with Clause 54.2;
- 41.1.7 if requested to do so by the User; or
- 41.1.8 if the Company is required to do so as part of a System Outage on its Distribution System carried out in accordance with its statutory rights and obligations and Good Industry Practice.

Notice Periods for De-energisation

41.2 Prior to De-energising a Connection Point pursuant to Clauses 41.1.2 to 41.1.4, the Company shall first give the User notice in writing, specifying:

- 41.2.1 the nature of the circumstances that have given rise to the right to De-energise;
- 41.2.2 the remedial works required to be carried out (as the Company reasonably determines) by the User or by the Company to remedy such circumstance; and
- 41.2.3 (where the User is to carry out such works) such reasonable period within which the User must carry out such works,

and the Company may only De-energise the Connection Point where the User fails to carry out the remedial works specified in such notice within the period specified in such notice.

- 41.3 In the case of Clause 41.1.2, the remedial works referred to in Clause 41.2.2 shall be undertaken at the cost of the User (who shall reimburse the Company where such works are undertaken by the Company). In the case of Clauses 41.1.3 and 41.1.4 and where the circumstance giving rise to the right to De-energise was caused by an act or omission of the User (or its employees, contractors or agents), the remedial works referred to in Clause 41.2.2 shall be undertaken at the cost of the User (who shall reimburse the Company where such works are undertaken by the Company). In the case of Clauses 41.1.3 and 41.1.4 and where the circumstance giving rise to the right to De-energise was caused otherwise than by an act or omission of the User (or its employees, contractors or agents), the remedial works referred to in Clause 41.2.2 shall be undertaken at the cost of the Company (who shall reimburse the User where such works are undertaken by the User).

Emergency De-energisation

- 41.4 If, in the reasonable opinion of the Company, the condition or manner of operation of the Company's Distribution System or of the User's System poses an immediate threat of injury to any person or material damage to the Company's Distribution System or to the User's System, the Company shall have the right to:

- 41.4.1 without prior notice, De-energise the relevant Connection Point by undertaking De-Energisation Works on the Company's Distribution System;
- or

- 41.4.2 request the User to immediately De-energise the Connection Point, or that part of the User's System connected to the Connection Point that has given rise to the Company's request under Clause 41.4 (in which case the User shall promptly comply with such request); or
- 41.4.3 where the Company has the appropriate authorisations from the User in writing or under the relevant Bilateral Connection Agreement, without prior notice, De-energise that part of the User's System.
- 41.5 De-energisation Works undertaken under Clause 41.4 shall be undertaken in accordance with the relevant provisions of the Regulations.
- 41.6 Where the Company undertakes De-energisation Works pursuant to Clause 41.4.1 or 41.4.3, the Company shall give notice to the User, as soon as is reasonably practicable, of the fact that the Connection Point has been De-energised.
- 41.7 Where the User undertakes De-energisation Works pursuant to Clause 41.4.2, the User shall give notice to the Company, as soon as is reasonably practicable, of the fact that the Connection Point has been De-energised.

Post Emergency Re-energisation

- 41.8 Where a Connection Point has been De-energised pursuant to Clause 41.4:
- 41.8.1 in the case where the Company has De-energised the Connection Point by undertaking De-energisation Works on its Distribution System, the Company shall Re-energise the Connection Point as soon as is reasonably practicable after the circumstances leading to any De-energisation of the Connection Point under Clause 41.4 have ceased to exist and give notice to the User that such Re-energisation Works have been completed;
- 41.8.2 in the case where the User has De-energised the Connection Point by undertaking De-energisation Works on its System, the Company shall advise the User as soon as is reasonably practicable after the circumstances leading to any De-energisation of the Connection Point under Clause 41.4 have ceased to exist and the User shall then be entitled to undertake Re-energisation Works on its System to Re-energise the Connection Point and shall, where applicable,

give notice, as soon as reasonably practicable, to the Company that such Re-energisation Works have been completed; or

41.8.3 in the case where the Company has De-energised the Connection Point by undertaking De-energisation Works on the User's System, the Company shall, as soon as is reasonably practicable after the circumstances leading to any De-energisation of the Connection Point under Clause 41.4 have ceased to exist:

- (A) advise the User; and
- (B) with the consent of the User, undertake Re-energisation Works on the User's System to Re-energise such Connection Point and advise the User when such Re-energisation Works have been completed; or
- (C) authorise the User to undertake such Re-energisation Works (in which case the User shall, as soon as reasonably practicable, notify the Company once such Re-Energisation Works have been completed).

Disputes on remedial works

41.9 Where the User disputes the nature of the remedial works specified, or the period for undertaking such remedial works specified, in any notice issued by the Company pursuant to Clause 41.2, then the Company and the User shall negotiate in good faith to resolve such dispute. If such dispute remains unresolved after 20 Working Days either the Company or the User shall be entitled to refer such dispute for arbitration in accordance with the provisions of Clause 58.

41.10 Where the Company requires remedial works to be undertaken prior to determination of the dispute, the User shall undertake any specified remedial works in accordance with the notice issued pursuant to Clause 41.2. Where arbitration determines that remedial works were not required, or that a lower cost remedial solution would have remedied the circumstance giving rise to the right to De-Energise, the Company shall reimburse the User for those costs that are in excess of the determined solution (together with any applicable VAT).

De-energisation and Re-energisation Works

41.11 If the Company resolves to De-energise a Connection Point pursuant to Clause 41.1:

41.11.1 the Company shall decide on the extent and nature of the De-energisation Works reasonably required to De-energise the relevant Connection Point;

41.11.2 the Company shall Re-energise the Connection Point as soon as is reasonably practicable after the circumstance giving rise to such De-energisation has ended; and

41.11.3 except where the Company resolves to De-energise a Connection Point pursuant to:

(A) Clause 41.1.1 (where the emergency is caused by one or more of (i) the Company, (ii) the Company's Connectees, and (iii) persons other than the User acting in relation to the Company's Distribution System);

(B) Clause 41.1.4; or

(C) Clause 41.1.8,

the Company shall be entitled to undertake both the De-energisation Works and the subsequent Re-energisation Works at the cost of the User, and where required, the User shall pay to the Company the relevant Transactional Charges associated with both the De-energisation Works and the subsequent Re-energisation Works.

41.12 Subject to Clauses 41.8.3(c) and 41.13.2, the User shall not be entitled to Re-energise a Connection Point which has previously been De-energised by the Company.

User's Right to Energise, De-energise or Re-energise a Connection Point

41.13 The User may Energise, De-energise or Re-energise a Connection Point by undertaking Energisation Works, De-energisation Works or Re-energisation Works:

41.13.1 (subject to Clause 41.12) on the User's System at the Connection Point; or

41.13.2 on the Company's Distribution System at the Connection Point where the User has agreed with the Company that the User may do so in that specific instance.

41.14 Subject to Clause 41.13, where the User undertakes Energisation Works, De-energisation Works or Re-energisation Works and such works involve works on the Company's Connection Equipment the User shall undertake such works in accordance with the provisions of this Agreement and the relevant Bilateral Connection Agreement.

Works Undertaken by the User

41.15 Energisation Works, De-energisation Works and Re-energisation Works on the Company's Connection Equipment carried out by or on behalf of the User pursuant to this Clause 41 shall be carried out at the User's cost by a suitably competent person who is either engaged by the User and authorised in writing to carry out such work or who:

41.15.1 is an Approved Contractor, in accordance with the procedure set out in Schedule 5;

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

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

Works Undertaken by the Company

41.16 Where:

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

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

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

41.16.4 where the Company and the User so agree,

the Company shall, subject to the provisions of this Agreement and the relevant Bilateral Connection Agreement, to the extent that it may lawfully do so, carry out

Energisation Works, De-energisation Works and Re-energisation Works at the relevant Connection Point on behalf of the User. Such works will be at the cost of the User and carried out within a reasonable time or, in circumstances of urgency, as soon as is reasonably practicable. The Company shall on request by the User inform the User of its reasonable requirements for the details by reference to which Connection Points to be Energised, De-energised or Re-energised are to be identified.

Good Industry Practice

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

Duty to Indemnify

41.18 Where the Company carries out works on behalf of the User pursuant to Clause 41.16:

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

41.18.2 the User shall indemnify the Company against all actions, proceedings, costs, demands, claims, expenses, liability, loss or damage arising from, or incurred by the Company as a consequence of, physical damage to the property of the Company, its officers, employees or agents, and in respect of the liability of the Company to any other person for loss in respect of physical damage to the property of any person, in each case as a consequence of the Company (or its employees, contractors or agents) acting in reliance on any instructions given by the User to the Company which are materially inaccurate or misleading,

provided that (notwithstanding that an indemnity is given) neither the Company's nor the User's liability, pursuant to this Clause 41.18 and in respect of a particular incident or series of related incidents, shall exceed the figure referred to in Clause 53.1.

41.19 Where the User carries out works on the Company's Distribution System pursuant to Clause 41.13 or Clause 41.15:

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

41.19.2 the Company shall indemnify the User against all actions, proceedings, costs, demands, claims, expenses, liability, loss or damage arising from, or incurred by the User as a consequence of, physical damage to the property of the User, its officers, employees or agents, and in respect of the liability of the User to any other person for loss in respect of physical damage to the property of any person, in each case as a consequence of the User (or its employees, contractors or agents) acting in reliance on any instructions given by the Company to the User which are materially inaccurate or misleading,

provided that (notwithstanding that an indemnity is given) neither the User's nor the Company's liability, pursuant to this Clause 41.19 and in respect of a particular incident or series of related incidents, shall exceed the figure referred to in Clause 53.1.

Disconnection Procedure

41.20 In respect of a Connection Point, the User shall be entitled to send to the Company a notice requesting the Company to Disconnect a Connection Point. In respect of any notice sent to the Company pursuant to this Clause 41.20, the User shall specify the

Connection Point, the location of the Connection Point and the date on which the Disconnection is required.

- 41.21 Unless agreed otherwise and in respect of the relevant Connection Point, following the receipt of a notice under Clause 41.20 the User shall remove its Connection Equipment from the Company's premises and the Company shall remove its Connection Equipment from the User's premises (in each case at the User's cost).

42. METERING EQUIPMENT AND DATA

- 42.1 The Company shall be entitled to obtain such data (from the metering equipment installed in accordance with this Clause 42, as the Company may reasonably require for:
- 42.1.1 (in the case of Systems Connections Points, and Connection Points connected at voltages for which the relevant Charging Methodology specifies that portfolio tariffs should not be used) the calculation of Use of System Charges;
 - 42.1.2 the operation, design and planning of its Distribution System; and
 - 42.1.3 validation that the electricity that is imported or exported across a Connection Point is no greater than the Maximum Import Capacity or the Maximum Export Capacity described in the relevant Bilateral Connection Agreement.
- 42.2 Where the Connection Point is a Systems Connection Point, the User shall (at its own cost) procure that:
- 42.2.1 metering equipment is installed, operated and maintained;
 - 42.2.2 meter technical details are registered; and
 - 42.2.3 meter aggregation rules are registered,
- in each case in accordance with the provisions of the BSC.
- 42.3 Where the Connection Point is a Systems Connection Point, the User shall (at its own cost) procure that such data (from the metering equipment installed in accordance with Clause 42.2) as the Company may reasonably require pursuant to Clause 42.1 is provided in accordance with the timescale specified in the Company's Relevant Charging Statement or, where no timescale is specified, as soon as reasonably practical after the charging period.
- 42.4 Where metering equipment is required in accordance with Clause 42.2, the Company shall not be obliged to convey electricity across its Distribution System to or from the relevant Connection Point unless the necessary metering equipment is installed.

- 42.5 The Company shall (at its own cost) be entitled to install metering equipment in order to obtain data pursuant to Clause 42.1 whether or not the User has installed metering equipment.
- 42.6 Any metering equipment installed at the Connection Point pursuant to Clause 42.5, shall be installed, operated and maintained with an accuracy equivalent or better than that specified in Schedule 6.

Interconnection

- 42.7 Without prejudice to Clause 52, the User shall (unless expressly agreed in the relevant Bilateral Connection Agreement) use all reasonable endeavours to ensure that no Interconnection occurs. The User shall immediately notify the Company where it becomes aware of any Interconnection not expressly provided for in the relevant Bilateral Connection Agreement.

Nested Networks

- 42.8 The User shall immediately notify the Company where it becomes aware that the User's System (or any Electric Lines connected thereto) has been connected to:
- 42.8.1 a Distribution System of any person other than the Company; or
- 42.8.2 an Offshore Transmission System,
- so that (subject to energisation) electricity may flow to or from the User's System.

Generation

- 42.9 The User shall (to the extent the User is aware of the same):
- 42.9.1 notify the Company of any changes in the number of Small Scale Generators connected in parallel with the User's System, such notification to be made within 20 Working Days of the User becoming aware of such change; and
- 42.9.2 in respect of generation to be connected in parallel with the User's System that does not fall under the definition of a Small Scale Generator:

- (A) notify the Company of such generation prior to connection of that generation (providing such information as the Company may reasonably request in order to allow compliance with a Relevant Instrument);
- (B) obtain the Company's consent to connection of that generation (such consent not to be unreasonably withheld); and
- (C) notify the Company if any such generation ceases to be so connected or if its generation characteristics change.

Rights of Access

42.10 The Company shall be entitled to collect data from, inspect, test and (if necessary) correct any metering equipment installed and maintained pursuant to Clause 42.5 (or, where the Connection Point is a Systems Connection Point, require the User to do so). The User shall use its reasonable endeavours to procure that the employees, agents, sub-contractors and invitees of the Company shall at all reasonable times have safe and unobstructed access to such metering equipment (whether installed under Clause 42.2 or 42.5). The Company shall procure that any individuals to whom access is given pursuant to this Clause 42.10 shall comply with all reasonable directions given by the User as to general safety and site security arrangements. Where either Party disputes the accuracy of the metering equipment referred to in this Clause 42, the provisions of Schedule 6 shall apply.

42.11 Where the Company installs metering equipment in accordance with Clause 42.5, the User shall: ensure that the employees, agents and invitees of the User will not interfere with such equipment or the immediate connections to such equipment without the prior written consent of the Company, except to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent serious damage to property proximate to the metering equipment.

Data for Calculating Use of System Charges

42.12 The User shall (if it is an IDNO Party) provide to the Nominated Calculation Agent such data concerning each of the User's Systems as may reasonably be requested in

order that the Nominated Calculation Agent can calculate the “HV split” and/or the "LV mains split" (as each such expression is defined in Schedule 29). The User shall provide such data during October each year, and shall provide such data in such reasonable format as the Nominated Calculation Agent may request.

42.13 The Company shall (if it is a DNO Party):

42.13.1 procure that the Nominated Calculation Agent is appointed on terms that require the Nominated Calculation Agent to keep the information disclosed to it pursuant to Clause 42.12 and this Clause 42.13 confidential, and to not use such information for any purpose other than calculation of the “HV split” and/or the "LV mains split" (as each such expression is defined in Schedule 29); and

42.13.2 provide to the Nominated Calculation Agent such data concerning each of the Company’s Systems as may reasonably be requested in order that the Nominated Calculation Agent can calculate the “HV split” and/or the "LV mains split" (as each such expression is defined in Schedule 29). The Company shall provide such data during October each year, and shall provide such data in such reasonable format as the Nominated Calculation Agent may request.

Unmetered Supplies Operator

42.14 This Clause 42.14 shall only apply where the Company is a DNO Party and the User is an EDNO. Where a Customer provides to the Company inventory data regarding unmetered equipment connected to the User’s System within the Company’s Distribution Services Area, then:

42.14.1 the User shall be deemed (for the purposes of this Agreement and the BSC, including the Unmetered Supplies Procedure) to have requested that the Company acts as the UMSO in respect of that inventory data (and the Company shall act as the UMSO in respect of such inventory data, and perform the functions of UMSO under the BSC in respect of such inventory data);

42.14.2 the Company and the User agree that such inventory data may be shared between each other and with other EDNOs (where such inventory data

includes data relating to unmetered equipment connected to the Systems of such other EDNOs);

42.14.3 the User shall ensure that the Customer's Connection Agreement in respect of such unmetered equipment shall oblige that Customer to:

- (A) submit inventory data to the Company as a combined inventory that includes all relevant individual items;
- (B) identify the User within that inventory as the DNO/IDNO Party for the System to which each relevant individual item is connected (to be identified by the use of the relevant Market Domain I.D., which the User shall communicate to the Customer); and
- (C) permit the sharing of that data as described in Clause 42.14.2.

42.15 The User hereby indemnifies the Company against any and all losses or liabilities incurred by the Company as a result of its acts or omissions when acting as the UMSO on the User's behalf.

43. CHARGES

Charges

43.1 The User shall pay to the Company in respect of services provided under this Agreement (and under the agreements referred to in Clause 43.2) the charges set out in the Company's Relevant Charging Statement and, where appropriate, the provisions of the relevant Bilateral Connection Agreement. The Company may vary such charges at any time by giving the requisite period of written notice to the User, where the requisite period of notice is:

43.1.1 the period specified in the Company's Relevant Charging Statement;

43.1.2 where no such period is specified, 40 days; or

43.1.3 whether or not any such period is specified, the period agreed between the Company and the User.

Notwithstanding that the Company may vary such charges at any time, the Company shall use reasonable endeavours to: (1) vary such charges no more than two times per year; and (2) vary such charges with effect from 1st April or 1st October. Such charges and any variations are and will be calculated in accordance with the provisions of the Relevant Charging Statement.

43.2 The charges referred to in Clause 43.1 (the **Charges**) shall be:

43.2.1 the charges contained or referred to in the Company's Relevant Charging Statement for the time being in force pursuant to Condition 14 of its Distribution Licence (**Use of System Charges**); and

43.2.2 the charges for any other services provided by the Company to the User pursuant to:

(A) a provision of this Section 2B; or

(B) any other agreement between the Company and the User for the provision of such services which provides for payment pursuant to this Agreement.

Adjustment of Charges

- 43.3 On any occasion upon which the Charges payable by the User under Clause 43.1 have not been calculated strictly in accordance with the provisions of the Relevant Charging Statement, an appropriate adjustment shall be made by the Company and submitted to the User.
- 43.4 Where an adjustment in accordance with Clause 43.3:
- 43.4.1 discloses an overcharge, the Company shall repay to the User the amount by which the User has been overcharged together with interest thereon from the due date of the invoice containing the overcharge until the date of repayment. Such interest shall accrue from day to day at the base lending rate during such period of Barclays Bank plc, compounded annually; or
- 43.4.2 discloses an undercharge, the User shall pay to the Company the amount by which the User has been undercharged together with interest thereon from the due date of the invoice which should have included the amount of the undercharge until the date of payment. Such interest shall accrue from day to day at the base lending rate during such period of Barclays Bank plc, compounded annually.
- 43.5 Where the User disputes the adjustment, the User and the Company shall attempt to resolve the dispute in good faith. Where the dispute remains unresolved after 20 Working Days, either the Company or the User may refer the dispute to arbitration in accordance with Clause 58 and the User or the Company (as applicable) shall pay the amount payable or repayable (if any) as so determined.

Invoicing of Charges

- 43.6 The Company shall invoice Use of System Charges (but excluding any Transactional Charges):
- 43.6.1 in respect of the period up to and including 31 March 2010, to the User by reference to:

- (A) data provided from metering equipment where it is fitted by the User in respect of a Connection Point pursuant to Clause 42 (as such Clause existed at that date);
- (B) where the Company and the User agree in respect of that period that metering equipment was not required to record Use of Distribution System at the Connection Point, data provided in accordance with the provisions of the agreement regarding the alternative basis of charging; or
- (C) data obtained from Operational Metering Equipment fitted by the Company in the circumstances provided by Clause 42.11 (as such Clause existed at that date); or

43.6.2 in respect of the period after 31 March 2010:

- (A) (in the case of Systems Connection Points) to the User by reference to data provided from the metering equipment fitted pursuant to Clause 42.2 (or, where the User has failed to fit such metering equipment or provide such data or where such metering equipment has failed, data obtained from metering equipment fitted pursuant to Clause 42.5);
- (B) (in the case of Connection Points connected at voltages for which the relevant Charging Methodology specifies that portfolio tariffs should not be used) to the User by reference to data obtained from the metering equipment fitted pursuant to Clause 42.5; or
- (C) (save in the case of Systems Connection Points and Connection Points connected at voltages for which the relevant Charging Methodology specifies that portfolio tariffs should not be used) to the EDNO (as defined in Schedule 19 Portfolio Billing)), by reference to the portfolio billing process set out in Schedule 19.

43.7 All charges payable by the User pursuant to this Clause 43, Clause 44 and Clause 45:

- 43.7.1 are exclusive of Value Added Tax and the Company may add to such amounts (and the User shall pay) Value Added Tax (if any) at the rate applicable thereto

from time to time and Value Added Tax shall be payable at the same time and in the same manner as the amounts to which it relates; and

43.7.2 shall be without prejudice to any claims or rights which the User may have against the Company and except as expressly permitted by Schedule 4 shall be made without any set-off or deduction in respect of any claims or disputes or otherwise.

43.8 The Company may charge the User Use of System Charges calculated by reference to electricity discovered or reasonably and properly assessed to have been exported to, or imported from, the Company's Distribution System at a Connection Point but not recorded at the time of such export or import (for whatever reason). At any time when the Company charges the User Use of System Charges under this Clause 43.8, it shall explain to the User the calculation of those charges and the basis of that calculation.

Revision of Charges

43.9 Without prejudice to Clause 43.1, where the Company is intending to revise any of its Use of System Charges, it shall serve a copy of any notice it sends to the Authority pursuant to paragraph 20 of Condition 14 of its Distribution Licence on the User as soon as is reasonably practicable after such notice is sent to the Authority.

44. BILLING AND PAYMENT

44.1 This Clause 44 applies in respect of Use of System Charges that are not Transactional Charges.

Submission of Account

44.2 As soon as is reasonably practicable after the end of each charging period, the Company shall submit to the User an account specifying the Use of System Charges payable for the whole or any part of that charging period. Such account shall be based on data provided in accordance with Clause 43.6 (including so as to take into account any amended data provided in accordance with Clause 43.6).

44.3 Where the data referred to in Clause 43.6 is not available, the Company may use estimated data prepared by the Company to determine an account. Where an account is based on estimated data, the account shall be subject to any adjustment which may be necessary following receipt of actual data.

44.3A Where the data provided in accordance with Clause 43.6 is amended or was previously estimated and subsequently becomes available, the Company shall ensure that an account containing the relevant adjustment is submitted to the User within 60 days following receipt of the amended or actual data.

Obligation to Pay

44.4 Within 14 days of the date of an account submitted in accordance with Clause 44.2 or Clause 44.3, the User shall pay to the Company all sums due in respect of such account in pounds sterling by electronic transfer of cleared funds to such bank account (located in the United Kingdom) as is specified in the account, quoting the account number against which payment is made and/or such other details as the Company may reasonably require.

Disputes

44.5 Where any sum included in an account submitted in accordance with Clause 44.2 or Clause 44.3 is disputed by the User, the provisions of Schedule 4 shall apply.

45. TRANSACTIONAL CHARGES

45.1 This Clause 45 applies in respect of those services falling within the scope of Clause 43.1 for which the charges to be levied are not billed in accordance with Clause 44 and, instead, are calculated by reference to the number or frequency of specific transactions (Transactional Charges).

Submission of Account

45.2 Within 30 days after the end of each calendar month, the Company shall submit to the User an account specifying:

45.2.1 the payment due from the User in respect of services performed during that month for which Transactional Charges are payable, and

45.2.2 any Value Added Tax payable thereon.

Obligation to Pay

45.3 Within 30 days of the date of an account submitted in accordance with Clause 45.2, the User shall pay to the Company all sums due in respect of such account in pounds sterling by electronic transfer of cleared funds to such bank account (located in the United Kingdom) as is specified in the account, quoting the account number against which payment is made, or by other methods as the Company and the User may agree.

Disputes

45.4 Where any sum included in an account submitted in accordance with Clause 45.2 is disputed by the User, the provisions of Schedule 4 shall apply.

46. PAYMENT DEFAULT

- 46.1 Subject to Clause 44.5 and Clause 45.4, failure by the User to pay any sum due as cleared funds by the due date for payment in accordance with Clause 44.4, or Clause 45.3 shall be a **Payment Default**.
- 46.2 Where the User so defaults, the Company shall send a notice (a **Late Payment Notice**) to the User:
- 46.2.1 setting out the amount owed by the User to the Company, and identifying the specific account to which the Payment Default relates;
 - 46.2.2 stating to whom payment should be made;
 - 46.2.3 specifying the method of payment; and
 - 46.2.4 where the Company intends to exercise its rights under Clause 46.3 and/or Clause 46.4, advising the User of its intention.

Interest

- 46.3 The Company shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not duly made pursuant to the terms of Clause 44.4, or Clause 45.3 calculated from day to day at a rate per annum equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment, together with an administration charge as notified by the Company to the User from time to time.

Material Breach

- 46.4 Failure to remedy a Payment Default within four Working Days of receipt of a Late Payment Notice shall be a material breach of this Agreement for the purposes of Clause 54.1.1 and the Company shall be entitled to suspend the right to make any further Connections to the Company's Distribution System. Where the Company takes such action it shall send a notice to the User.

46A. EDNO UMS CHARGES

46A.1 This Clause 46A applies where the Company acts (or acted) as the User's UMSO pursuant to Clause 42.14.

46A.2 The User shall, in respect of each period and each inventory for which the Company acted as the User's UMSO, be entitled to invoice the Company for the difference between the following (such difference being the "**EDNO UMS Charges**"):

46A.2.1 the Use of System Charges for that period and the Metering Points on the User's System covered by that inventory, calculated on the basis of the Company's relevant all-the-way tariff(s) (as determined in accordance with the CDCM); and

46A.2.2 the Use of System Charges for that period and the Metering Points on the User's System covered by that inventory, calculated on the basis of the Company's relevant equivalent LDNO tariff(s) (as determined in accordance with the CDCM).

Submission of Account and Obligation to Pay

46A.3 As soon as is reasonably practicable after the end of each charging period, the User may submit to the Company an account specifying the EDNO UMS Charges payable in accordance with this Clause 46A for the whole or any part of that charging period. EDNO UMS Charges that are not invoiced within 14 months of the end of the relevant charging period shall not be invoiced and shall not be payable.

Obligation to Pay

46A.4 Subject to Clauses 46A.5 and 46A.6, within 30 days of the date of an account submitted in accordance with Clause 46A.2, the Company shall pay to the User all sums due in respect of such account in pounds sterling by electronic transfer of cleared funds to such bank account (located in the United Kingdom) as is specified in the account, quoting the account number against which payment is made (or by other methods as the Company and the User may agree).

Disputes with Supplier Parties

- 46A.5 The Company and the User acknowledge that the calculation under Clause 46A.2 is based on the fact that the Company will invoice the amount referred to in Clause 46A.2.2 to the relevant Supplier Party under Section 2A. To the extent that the relevant Supplier Party is late in paying (or fails to pay) the corresponding amount under Section 2A, then the User shall have no entitlement to receive (and the Company shall have no liability to pay) the EDNO UMS Charges (unless and until the Company is paid the corresponding amount under Section 2A).
- 46A.6 In the event of a late payment by the relevant Supplier Party under Section 2A (as referred to in Clause 46A.5), the Company shall pay the EDNO UMS Charges within 30 days after it receives the corresponding payment from the Supplier Party.

47. SECURITY COVER

47.1 The User shall provide Cover to the Company in accordance with the provisions of Schedule 1.

48. COMPLIANCE WITH CODES

General Compliance with Codes

- 48.1 The Company and the User each undertake to comply with the Company's Distribution Code, the User's Distribution Code, the CUSC, the Grid Code and the Electricity Supply Emergency Code (in each case) as appropriate and as applicable to them in respect of each Connection Point. Where the User is the OTSO Party, the User undertakes to comply with the STC as applicable to it in respect of each Connection Point.
- 48.2 Each of the Company and the User shall cooperate with the other to facilitate compliance by them both with their obligations under Clause 48.1.

CUSC and Grid Code

- 48.3 Each of the Company and the User ("**Operator A**") undertakes not to do anything (or allow anything to occur) in relation to its System that causes, or is likely to cause, the other ("**Operator B**") to breach the CUSC or the Grid Code.
- 48.4 Where Operator B could not, in compliance with the Grid Code and the CUSC, do something (or allow something to occur) in relation to its System if its System was a Distribution System directly connected to the National Electricity Transmission System at the Connection Point (rather than to Operator A's System) without undertaking an Action or obtaining a NETSO Action, then Operator B shall not do that thing (or allow that thing to occur) without undertaking or obtaining the Equivalent Action.

Conflict

- 48.5 In the event of any conflict between this Section 2B or the relevant Bilateral Connection Agreement (on the one hand) and a code specified in Clause 48.1 (on the other), then the provisions of the relevant code shall prevail.

Definitions

48.6 In this Clause:

Action means any request, submission, notification or other action by (or to be procured by) a person other than the National Electricity Transmission System Operator under or pursuant to the CUSC or the Grid Code.

**Electricity Supply
Emergency Code** means the code of that name designated as such by the Secretary of State from time to time.

Equivalent Action means:

- (a) in respect of an Action, the equivalent request, submission, notification or other action by (or to be procured by) Operator B; and
- (b) in respect of a NETSO Action, the equivalent confirmation, consent, approval or other action of Operator A (or a confirmation by Operator A that the National Electricity Transmission System Operator has undertaken that NETSO Action).

**National
Electricity
Transmission
System** has the meaning given to that expression in the CUSC.

NETSO Action means any confirmation, consent, approval or other action of the National Electricity Transmission System Operator (including entry by the National Electricity Transmission System Operator into a contract).

Operator A has the meaning given to that expression in Clause 48.3.

Operator B has the meaning given to that expression in Clause 48.3.

49. GUARANTEED PERFORMANCE STANDARDS

- 49.1 Where the Company or the User (the “**Proximate Operator**”) is liable to make a payment, pursuant to any provision of regulations 5, 6, 7, 8, 10 or 12 of the ESPR, to a Customer, and that liability arises wholly or partly from a failure, act or omission on the part of the other of them (the “**Remote Operator**”), the Remote Operator shall make (as appropriate) all or part of an equivalent compensation payment directly to the Proximate Operator for the benefit of the Customer.
- 49.2 For the purpose of this Clause “**equivalent compensation payment**” means:
- 49.2.1 the prescribed sum (as such term is defined in the ESPR); plus
 - 49.2.2 the Proximate Operator’s reasonable costs incurred in facilitating such payment.
- 49.3 Where the Proximate Operator is of the opinion that the Remote Operator is liable for making an equivalent compensation payment to the Proximate Operator under Clause 49.1, the Proximate Operator shall prepare a report specifying the equivalent compensation payments required and submit such report to the Remote Operator. Such report shall be of sufficient detail to enable the Remote Operator to reasonably validate such claim for the equivalent compensation payment.
- 49.4 On receipt of a report provided by the Proximate Operator under Clause 49.3, the Remote Operator shall advise the Proximate Operator whether the Remote Operator considers itself wholly or partly liable for the failure. The Proximate Operator and the Remote Operator shall endeavour to agree the extent of responsibility of each part (where relevant) in relation to the failure to meet the prescribed level of performance pursuant to the ESPR, and the proportion of compensation payable by the Remote Operator in each case.
- 49.5 For the purpose of this Clause 49 an act or omission by the Remote Operator shall include, but shall not be restricted to:
- 49.5.1 such act or omission by the Remote Operator in respect of its System that compromises the ability of the Proximate Operator to meet performance

standards defined in the ESPR in respect of Customers connected to the Proximate Operator's System; or

- 49.5.2 failure of the Remote Operator to provide timely information to the Proximate Operator in respect of the operation of the Remote Operator's System to enable the Proximate Operator to prevent failure of the standards prescribed in the ESPR.
- 49.6 If a Customer connected to the Proximate Operator's System contacts the Remote Operator in relation to a matter which might form the basis of a claim under the ESPR, then the Remote Operator shall diligently record the details of the Customer's complaint and shall pass on the details of the Customer's complaint to the Proximate Operator as soon as reasonably practicable together with details of the Customer's name and address. If any compensation payment becomes payable by the Proximate Operator as a consequence of the Remote Operator's failure to pass on details of the Customer's complaint, the Remote Operator shall be liable to the Proximate Operator for such payment.
- 49.7 When the Proximate Operator has received a payment from the Remote Operator pursuant to Clause 49.1, then the Proximate Operator shall pass such payment to the Customer or to the Customer's supplier for the benefit of the Customer as soon as reasonably practicable and if, due to the Proximate Operator's delay, an additional payment becomes due pursuant to ESPR regulation 19 then this additional payment shall be the liability of the Proximate Operator.
- 49.8 Neither the Remote Operator nor the Proximate Operator shall lead a Customer to believe that he has a valid claim for a guaranteed standard payment by reason of the action or default of the other. Where, however, a Customer does have a valid claim, a breach of the provisions of this Clause 49.8 shall not excuse the person against whom the claim lies from making the relevant payment.
- 49.9 In the event of a dispute between the Remote Operator and the Proximate Operator as to which of them is liable to pay compensation, or as to the extent of responsibility in relation to any failure to meet a prescribed level of performance pursuant to any provision of the ESPR, in each case in respect of a Customer connected to the Proximate Operator's System, then in the first instance the Proximate Operator shall make the

compensation payment for the benefit of the Customer and then the dispute shall be deemed to be a dispute which may be referred to the Authority by either the Company or the User in accordance with Section 39B of the Act and ESPR regulation 18 and the provisions as to practice and procedure contained in ESPR schedule 3 shall be deemed to apply to any such dispute. If the Authority determines that the Remote Operator is liable to pay the Proximate Operator the compensation payments (or a proportion of the compensation payments) then the Remote Operator shall pay to the Proximate Operator the equivalent compensation payments as soon as is reasonably practicable.

- 49.10 If a Customer connected to the Proximate Operator's System refers to the Authority, under Section 39B of the Act, a dispute between the Customer and the Remote Operator as to whether the Customer is entitled to compensation under the ESPR (rather than as to which of the Proximate Operator and the Remote Operator is liable, which shall be subject to Clause 49.9), the Proximate Operator shall (unless otherwise agreed with the Remote Operator) have conduct and management of such dispute (in which case, provided the Proximate Operator agrees to reimburse the Remote Operator's costs, the Remote Operator shall use its best endeavours to comply with the Proximate Operator's directions in relation to such dispute).
- 49.11 The Company and the User shall each cooperate with the other, and exchange information with the other, regarding System Outages on its System that may give rise to claims under this Clause 49.

50. CONFIDENTIALITY RESTRICTIONS ON THE COMPANY

Confidential Information

50.1 In this Clause 50, **Confidential Information** means any information which the Company or any Affiliate or Related Undertaking of the Company:

50.1.1 receives from the User under this Agreement; or

50.1.2 holds in respect of a Connectee and is information which it has acquired in its capacity as the operator of the Distribution Business of the Company; or

50.1.3 receives from any Connectee, which, if received from the User, would fall within Clause 50.1.1; or

50.1.4 receives from the User in error, but which would usually be considered to be confidential,

and the provisions of this Clause 50 shall apply to such Confidential Information, save where the User notifies or otherwise gives prior written agreement to the Company that such Confidential Information need not be treated as confidential.

Restrictions on Use and Disclosure

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

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

50.2.2 without prejudice to Clause 50.2.1, not use the Confidential Information in a manner which may obtain for the Company or any Affiliate or Related Undertaking of the Company (as the case may be) any commercial advantage in the operation of an Affiliate;

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

- (A) to such of the employees of the Company or any Affiliate or Related Undertaking of the Company as require to be informed thereof for the effective performance of the Company's obligations under this Section 2B, the relevant Bilateral Connection Agreement and any other agreement entered into between the Company and the User for the provision of services by the Distribution Business of the Company or for the effective operation of such Distribution Business;
- (B) to such agents, consultants, professional or other advisors, and contractors as require to be informed thereof or to provide advice which is in connection with the operation of the Distribution Business of the Company;
- (C) to the Authority;
- (D) information which the Company or any Affiliate or Related Undertaking of the Company (as the case may be) is required or permitted to make disclosure of:
 - (i) in compliance with the duties of the Company or any Affiliate or Related Undertaking of the Company (as the case may be) under the Act or any other requirement of a Competent Authority;
 - (ii) in compliance with the provisions of any Relevant Instruments;

- (iii) in compliance with any other requirement of law;
 - (iv) in response to a requirement of any Stock Exchange or the Panel on Takeovers and Mergers or any other regulatory authority (whether or not similar to those bodies); or
 - (v) pursuant to the arbitration rules of the Electricity Arbitration Association or pursuant to any judicial or other arbitral process or tribunal of competent jurisdiction; and
- 50.2.4 take all reasonable steps to ensure that any such person as is referred to in sub-clauses 50.2.3(A) and (B) to whom the Company or any Affiliate or Related Undertaking of the Company (as the case may be) discloses Confidential Information does not use that Confidential Information for any purpose other than that for which it was provided and does not disclose that Confidential Information otherwise than in accordance with the provisions of this Clause 50.

Other Matters

50.3 Not Used.

50.4 The User agrees that where the Company uses or discloses Confidential Information in accordance with this Clause 50, such Confidential Information need not be treated as confidential for the purposes of Condition 42 of the Company's Distribution Licence to the extent of such use or disclosure.

50.5 The Company undertakes that, in any case where information to be disclosed by it under this Agreement may lawfully be disclosed only with the prior consent of the person to whom the information relates, it will use its reasonable endeavours to obtain such prior consent so as to enable it, or the User as the case may be, promptly to perform its obligations under this Section 2B and the relevant Bilateral Connection Agreement, provided that where the consent of the User's Connectee is required to be obtained for the purposes of this Section 2B and the relevant Bilateral Connection Agreement, the User (and not the Company) shall have the obligation to obtain such consent under Clause 51.6.

51. CONFIDENTIALITY RESTRICTIONS ON THE USER

Confidential Information

51.1 In this Clause 51, **Confidential Information** means:

51.1.1 any information (whether in writing, in disc or electronic form, or otherwise) which has been properly disclosed by the Company under this Agreement but which would usually be considered to be confidential; and

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

and, to the extent that any Affiliate or Related Undertaking of the User is in possession of Confidential Information, the User shall procure that such Affiliate or Related Undertaking observes the restrictions in Clauses 51.2 to 51.4 (inclusive) as if in each such Clause there was substituted for the User the name of the Affiliate or Related Undertaking.

Restrictions on Use and Disclosure

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

51.2.1 in the circumstances set out in Clause 51.3;

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

51.2.3 with the prior consent in writing of the Company.

51.3 The circumstances set out in this Clause 51.3 are:

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

51.3.2 where the Confidential Information:

- (A) is acquired by the User in circumstances in which this Clause 51 does not apply;
- (B) is acquired by the User in circumstances in which this Clause 51 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 51; or
- (C) (after it is furnished to the User) enters the public domain,

otherwise (in any such case) than as a result of (i) a breach by the User of its obligations in this Clause 51; or (ii) a breach by the person who disclosed that Confidential Information of that person's confidentiality obligation, and the User is aware of such breach;

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

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

51.3.4 the disclosure of Confidential Information to any Affiliate or Related Undertaking of the User, to the employees, directors, agents, consultants and professional advisers of the User or any Affiliate or Related Undertaking of the User, in each case on the basis set out in Clause 51.4; or

51.3.5 the disclosure of Confidential Information to the extent that the Confidential Information is required to be disclosed by the User for the purposes of providing billing information to suppliers and Connectees.

51.4 The User shall take all reasonable steps to ensure that any such person as is referred to in Clause 51.3.4 to whom the User discloses confidential information does not use that confidential information for any purpose other than that for which it is provided and does not disclose that confidential information otherwise than in accordance with this Clause 51.

Other Matters

51.5 Not Used.

51.6 The User undertakes that, in any case where information to be disclosed under this Agreement may lawfully be disclosed only with the prior consent of the person to whom the information relates, it will use its reasonable endeavours to obtain such prior consent so as to enable it or (as the case may be) the Company promptly to perform its obligations under this Section 2B.

52. MODIFICATIONS

52.1 Unless agreed otherwise by the Company and the User in the relevant Bilateral Connection Agreement, no Modification may be made by or on behalf of the Company or the User otherwise than in accordance with the provisions of this Clause 52.

Modifications Proposed by Users

52.2 If the User wishes to make a Modification it shall complete and submit to the Company in advance of the Modification a Modification Application in the form shown in the relevant Bilateral Connection Agreement and comply with the terms thereof.

52.3 As soon as reasonably practicable (but not later than the date required by the Company's Distribution Licence) after receipt by the Company of the Modification Application, (save where the Authority consents to a longer period) the Company shall make a Modification Offer to the User. The Modification Offer shall include the form of any variations the Company requires to the relevant Bilateral Connection Agreement and its schedules. During such period the Company and the User shall discuss in good faith the implications of the proposed Modification(s).

52.4 The Modification Offer will be open for acceptance in accordance with its terms for up to 3 calendar months from the date upon which the Modification Offer is sent to the User (unless either the Company or the User makes an application to the Authority under Condition 7 of the Company's Distribution Licence, in which case the Modification Offer shall remain open for acceptance until the date 14 days after any determination by the Authority pursuant to such application). If the Modification Offer is accepted by the User, the Modification shall proceed according to the terms of this Agreement, and the relevant Bilateral Connection Agreement shall be varied to reflect the terms of the Modification.

Modifications proposed by the Company

52.5 If the Company wishes to make a Modification to the Company's Distribution System, whether at or remote from the Connection Point, the Company shall complete and submit to the User a notification of the Modification and shall advise the User of any

works which the Company reasonably believes that the User may have to carry out as a result.

- 52.6 The User may, as soon as practicable after any notice by the Company under Clause 52.5, consult with it over the proposed Modification. The User may, (save where the Authority consents to a longer period) within the period stated therein (which shall be sufficient to enable the User reasonably to assess the implications of the proposed Modification), make an application to the Authority under Condition 7 of the Company's Distribution Licence.
- 52.7 As soon as practicable after the receipt of notification of the Modification pursuant to Clause 52.5 or, if an application to the Authority has been made by the User, the determination by the Authority, and in any event within 2 calendar months thereof, the User shall submit to the Company a Modification Application and shall comply with the terms thereof.
- 52.8 Subject to the payment of its reasonable charges, if any, as provided in this Clause 52.8 the Company will provide advice and assistance reasonably requested by the User to enable the User to assess the implications, including the feasibility, of making a Modification to the User's System. If the Modification under consideration by the User is or may be required as a result of a Modification required by the Company, then the Company shall provide such reasonable advice and assistance free of charge. If the proposed Modification is or may be proposed by the User, the Company may charge the User such amount as is reasonable in all the circumstances for such advice and assistance. The provision of such advice and assistance shall be subject to the terms of the relevant Bilateral Connection Agreement.
- 52.9 Where a Modification by the Company alters the technical characteristics of the Connection Point (as set out in the relevant Bilateral Connection Agreement), but not otherwise, the Company shall compensate the User for the reasonable cost and expense of any modification required to be made by the User as a result of such Modification; provided that the Company shall not be obliged to compensate the User where such Modification is required as a consequence of any Relevant Instrument, legislative requirement or Directive. Any dispute as to whether the Company is obliged to

compensate the User or as to the amount of any such compensation may be referred to arbitration in accordance with the provisions of Clause 58.