

DATED 5th October 2006

THE PARTIES (1)

and

DCUSA LIMITED (2)

**DISTRIBUTION CONNECTION AND
USE OF SYSTEM AGREEMENT**

Wragge & Co

Wragge & Co LLP is a Limited Liability Partnership

Birmingham London Brussels

Tel +44 (0)870 903 1000 Fax +44 (0)870 904 1099 mail@wragge.com www.wragge.com

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NOTE

The Gas and Electricity Markets Authority is not a party to this Agreement. References in this Agreement to duties and functions of the Authority have been approved by it, but are merely declaratory as to its role and do not entail any contractual duties being owed by it to, or contractual rights being owed to it by, other Parties.

INTRODUCTION

- (A) The Parties comprise certain electricity distributors, suppliers and generators.
- (B) The DNO Parties and IDNO Parties are required, by their licences, to establish, accede to, maintain and comply with this Agreement.
- (C) The Supplier Parties are required, by their licences, to be party to, and comply with, this Agreement.
- (D) The DG Parties are under certain obligations, under other industry agreements, regarding distribution use of system arrangements, and have agreed to accede to this Agreement in order to meet those obligations.
- (E) DCUSA Ltd is a company established under this Agreement to facilitate the operation of this Agreement.
- (F) The Parties and DCUSA Ltd have agreed to give effect to, and to be bound by, this Agreement in accordance with an Accession Agreement.

SECTION 1
GOVERNANCE AND CHANGE CONTROL

SECTION 1A – PRELIMINARY

1. DEFINITIONS AND INTERPRETATION

Definitions

- 1.1 In this Agreement, except where the context otherwise requires, the expressions in the left hand column below shall have the meanings given to them in the right hand column below:

Accession Agreement means the agreement by which DCUSA Ltd and each Party agreed to be bound by this Agreement.

Accreditation means accreditation of any relevant person and certification of that person's business processes by the Accreditation Authority, and **Accredited** and **Accrediting** shall be construed accordingly.

Accreditation Authority means the Performance Assurance Board (as defined in the Balancing and Settlement Code, when Accrediting persons pursuant to Section J of the Balancing and Settlement Code).

Act means the Electricity Act 1989.

Affected Party has the meaning given to that term in Clause 38.1.

Affiliate means, in relation to any person, any holding company of that person, any subsidiary of that person or any subsidiary of a holding company of that person, in each case within the meaning of Sections 736, 736A and 736B of the Companies Act 1985.

Agreement means this Distribution Connection and Use of System Agreement (including its Schedules and Annexes), and is to be construed as including the Accession Agreements.

Alternate	has the meaning given to that term in Clause 6.11.
Applicant	has the meaning given to that term in Clause 4.1.
Application Form	has the meaning given to that term in Clause 4.3.
Approved Budget	has the meaning given to that term in Clause 8.5.
Approved Contractor	has the meaning given to that term in Schedule 5.
Assessment Process	has the meaning given to that term in Clause 11.1.
Authority	means the Gas and Electricity Markets Authority as established under Section 1 of the Utilities Act 2000.
Balancing and Settlement Code or BSC	means the Balancing and Settlement Code, including all Party Service Lines and BSC Procedures (as therein defined) made under it, established pursuant to the GB System Operator Licence.
Basic Metering Services	has the meaning given to that term in paragraph 2 of Condition 36 of the Distribution Licences.
Basic Vote	has the meaning given to that term in Clause 12.10.
Breaching Party	has the meaning given to that term in Clause 37.1.
BSCCo	has the meaning given to that term in the BSC.
Change Proposal	has the meaning given to that term in Clause 10.1.
Change Register	has the meaning given to that term in Clause 11.24.
Change Report	has the meaning given to that term in Clause 11.19.

Charges	means those charges referred to in Clause 19.2 (and, for the avoidance of doubt, includes both Use of System Charges and Transactional Charges).
CMRS	means the Central Meter Registration Service as defined in the Balancing and Settlement Code.
Company	has the meaning given to that term in Clause 15.1.
Competent Authority	means the Secretary of State, the Authority, and any local or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of the government of the United Kingdom or of the European Union insofar as it is acting within the limits of its proper authority.
Competent Person	has the meaning given to that term in Schedule 5.
Connection and Use of System Code or CUSC	means the Connection and Use of System Code (and the CUSC Framework Agreement) established pursuant to the GB System Operator Licence.
Connectee	means, in respect of: <ul style="list-style-type: none">(a) a Customer Installation, the relevant Customer;(b) a Generation Installation, the relevant Generator; and(c) a User Installation, the User.
Connected Installation	means a Customer Installation, a Generator Installation or a User Installation (as the case may be).

Connection Agreement	means an agreement between a Company and a Connectee which provides that that Connectee has the right for its Connected Installation to be and remain directly or indirectly connected to that Company's Distribution System.
Consumer Council	means the Gas and Electricity Consumer Council as established under Section 2 of the Utilities Act 2000.
Contract	means a Supply Contract or a Power Purchase Contract.
Contract Manager	has the meaning given to that term in Clause 43.5.
Cost Contribution	has the meaning given to that term in Clause 8.9.
Cover	has the meaning given to that term in Schedule 1.
CRA	means the Central Registration Agent as defined in the Balancing and Settlement Code.
CUSC Framework Agreement	means the agreement of that name, in the form approved by the Secretary of State, by which the CUSC is made contractually binding between the parties to it.
Customer	means a person to whom a User proposes to supply, or for the time being supplies, electricity through an Exit Point, or from whom a User, or any Relevant Exempt Supplier, is entitled to recover charges, compensation or an account of profits in respect of electricity supplied through an Exit Point.

Customer Installation	means any structures, equipment, lines, appliances or devices used or to be used by a Customer and connected or to be connected directly or indirectly to the Distribution System.
Daily Statement	means a statement based on the Supercustomer DUoS Report and providing the data items set out in Data Transfer Catalogue D0242 as amended from time to time in accordance with the provisions of the Master Registration Agreement.
Data Aggregator	has the meaning given to that term in the Balancing and Settlement Code.
Data Collector	means a person appointed to provide data retrieval and/or data processing services (the terms data retrieval and data processing being defined in paragraph 11 of Condition 36A of the Distribution Licence).
Data Protection Act	means the Data Protection Act 1998.
Data Transfer Catalogue	means the catalogue of data flows, data definitions and data formats established under the Master Registration Agreement.
Data Transfer Network	means the electronic network provided as part of the Data Transfer Service.
Data Transfer Service	means the service to be provided by the Data Transfer Service Controller (as defined in the Master Registration Agreement) and described in Condition 38 of the Distribution Licence.

Data Transfer Service Agreement	means the agreement for the provision of the Data Transfer Service dated 30 July 1997.
De-energise	<p>means, in relation to any Metering Point or Metering System, deliberately to prevent the flow of electricity:</p> <ul style="list-style-type: none">(a) in the case of an Exit Point, from the Distribution System through the relevant Exit Point (or, in the case of an Unmetered Supply, any one or more of the relevant Exit Points) to; and/or(b) in the case of an Entry Point, via the Distribution System through the relevant Entry Point (or, in the case of an Unmetered Supply, any one or more of the relevant Entry Points) from, <p>a Connected Installation, for any purpose other than a System Outage (and De-energised shall be construed accordingly).</p>
De-energisation Works	means the movement of any switch, the removal of any fuse or meter, or the taking of any other step to De-energise a Metering Point or Metering System.
Definition Procedure	has the meaning given to that term in Clause 11.14.
Default Interest Rate	means 8% above the base lending rate of Barclays Bank plc.

De-register

means:

- (a) in relation to a Metering Point, to change the status of the Supply Number relating to that Metering Point within MPAS so as to prevent any further registrations (as defined by the Master Registration Agreement) in respect of that Supply Number (and **De-registered** shall be construed accordingly, and **De-registration Notice** shall be construed as a notice issued by the Company to De-register); and
- (b) in relation to a Metering System, to De-register that Metering System in accordance with the provisions of the Balancing and Settlement Code.

Directive

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

Disconnection Notice	<p>means, in relation to a Metering Point, a notice sent by the User to the Company pursuant to Clause 25 and which:</p> <ul style="list-style-type: none">(a) identifies the Metering Point to which the notice relates by reference to the Supply Number for that Metering Point; and(b) requests the Company to send a De-registration Notice to the MPAS Provider instructing it to De-register the Metering Point, <p>and means, in relation to a Metering System, the equivalent notice sent by the User to the CRA in accordance with the BSC.</p>
Distribution Business	<p>has, in respect of each Company, the meaning given to that term in that Company’s Distribution Licence.</p>
Distribution Code	<p>means, in respect of each Company, the distribution code established pursuant to Condition 9 of that Company’s Distribution Licence.</p>
Distribution Licence	<p>means a licence granted, or treated as granted, pursuant to Section 6(1)(c) of the Act.</p>
Distribution Network	<p>means, collectively, the systems covered by the definition of the term “distribution system” in each of the Distribution Licences.</p>
Distribution Services Area	<p>has, in respect of each Company, the meaning given to that term in paragraph 5(b) of Condition 2 of that Company’s Distribution Licence.</p>

Distribution System	means, in respect of each Company, that Company's distribution system (such system having the same meaning as is given to that term in that Company's Distribution Licence).
Draft Budget	has the meaning given to that term in Clause 8.2.
DCUSA Objectives	has the meaning given to that term in Clause 3.1.
DCUSA Ltd	means DCUSA Limited, a company incorporated in England and Wales with registered number 5812381.
DG Party	<p>means a Party that:</p> <ul style="list-style-type: none">(a) holds a Generation Licence; or(b) is engaged in the generation of electricity and is exempt from the requirement to hold a Generation Licence pursuant to Section 5 of the Act, <p>and:</p> <ul style="list-style-type: none">(c) has one or more of its generating stations connected to the Distribution Network; and(d) does not hold a Distribution Licence, <p>and, for the avoidance of doubt, a Party may be both a DG Party and a Supplier Party.</p>
DNO Party	means a Party that holds a Distribution Licence in which Section C of the standard distribution licence conditions has effect, whether or not that Party is also engaged in the supply or generation of electricity.
Enabling Agreement	means an agreement for the provision of Exempt Supply Services.

Energise	<p>means, in relation to any Metering Point or Metering System, deliberately to allow the flow of electricity:</p> <ul style="list-style-type: none">(a) in the case of an Exit Point, from the Distribution System through the relevant Exit Point (or, in the case of an Unmetered Supply, any one or more of the relevant Exit Points) to; and/or(b) in the case of an Entry Point, via the Distribution System through the relevant Entry Point (or, in the case of an Unmetered Supply, one or more of the relevant Entry Points) from, <p>a Connected Installation, where such a flow of electricity has never previously existed (and Energised shall be construed accordingly).</p>
Energisation Works	<p>means the movement of any switch or the addition of any fuse or meter to Energise a Metering Point or Metering System.</p>
Entry Point	<p>means a Boundary Point at which electricity is exported onto a Distribution System from a Connected Installation or from another distribution system not forming part of the Total System (Boundary Point and Total System having the meaning given to those terms in the BSC).</p>
Equivalent Meter	<p>means an equivalent half-hourly meter as defined by the Unmetered Supplies Procedure.</p>
ESPR	<p>means the Electricity (Standards of Performance) Regulations 2005 (SI 2005/1019).</p>
Event of Default	<p>has the meaning given to that term in Clause 37.1.</p>

Exempt Supplier	means a person who is authorised to supply electricity by an exemption granted under Section 5 of the Act.
Exempt Supply Services	means exempt supply services as defined in Condition 53B of each Supply Licence.
Exit Point	means a Boundary Point at which electricity is imported from a Distribution System to a Connected Installation or to another distribution system not forming part of the Total System (Boundary Point and Total System having the meaning given to those terms in the BSC).
Extra-Settlement Determination	has the meaning given to that term in the Balancing and Settlement Code.
Financial Year	means the financial year adopted by DCUSA Ltd from time to time and established, at the date of this Agreement, as 1 April to 31 March.

Force Majeure

means, in respect of any person, any event or circumstance which is beyond the reasonable control of that person and which results in or causes the failure of that person to perform any of its obligations under this Agreement, including act of God, strike, lockout or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, explosion, fault or failure of plant or machinery which (in each case) could not have been prevented by Good Industry Practice; and any governmental restraint, Act of Parliament, other legislation, bylaw and Directive (not being any order, regulation or direction under Section 32, 34 or 35 of the Act), or (in the case of each Company) the failure of any generator or other person to deliver electricity to that Company or any deficiency in such delivery to the extent that such failure or deficiency or the consequences thereof could not have been prevented by Good Industry Practice by the Company: provided that lack of funds shall not be interpreted as a cause beyond a person's reasonable control.

Gateway

has the meaning given to that term in the Data Transfer Service Agreement.

GB System Operator

means the holder, from time to time, of the GB System Operator Licence.

GB System Operator Licence	means a transmission licence granted, or treated as granted, pursuant to Section 6(1)(b) of the Act and in which section C of the standard transmission licence conditions applies.
Generation Licence	means a licence granted, or treated as granted, pursuant to Section 6(1)(a) of the Act.
Generator	means a person from whom a User purchases, or proposes to purchase, electricity, at an Entry Point (who may from time to time be supplied with electricity as a Customer of that User (or another electricity supplier) through an Exit Point).
Generator Installation	means any structure, equipment, lines, appliances or devices used or to be used by a Generator and connected or to be connected directly or indirectly to a Distribution System.
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 under the same or similar circumstances.
Grid Code	has the meaning given to that term in the GB System Operator Licence.
Group	means, in respect of each Party Category and subject to Clause 12.3, each Party that is a member of that Party Category collectively with that Party's Affiliates (if any) who are also members of that Party Category.

IDNO Party	means a Party that holds a Distribution Licence in which Section C of the standard distribution licence conditions does not have effect, whether or not that Party is also engaged in the supply or generation of electricity.
Implementation	has the meaning given to that term in Clause 14.1.
Implementation Scheme	has the meaning given to that term in the Balancing and Settlement Code.
Initial Account	has the meaning given to that term in Clause 20.
Initial Settlement Run	has the meaning given to that term in the Balancing and Settlement Code.
Intellectual Property	means patents, registered design rights, unregistered design rights, domain names, copyrights, rights in trade marks whether registered or not, goodwill and rights in confidential information and know-how, and any associated or similar rights (including, in all cases, applications and rights to apply therefor).
Interim Information Settlement Run	has the meaning given to that term in the Balancing and Settlement Code.
Invoice Date	means, in respect of each account (including an Initial Account or Reconciliation Account), the date on which that account is produced by a Company pursuant to this Agreement.
kVA	means kilovoltamperes.
kVA_r	means kilovoltamperes reactive.

kVArh	means kilovoltampere hours reactive.
kW	means kilowatt.
kWh	means kilowatt hour.
Late Payment Notice	has the meaning given to that term in Clause 23.
Line Loss Factor	has the meaning given to that term in the Balancing and Settlement Code.
Line Loss Factor Class	has the meaning given to that term in the Balancing and Settlement Code.
Market Domain I.D.	has the meaning given to that term in the Data Transfer Service Agreement.
Master Registration Agreement or MRA	means the Master Registration Agreement established pursuant to the Distribution Licences of the DNO Parties.
Maximum Export Capacity	means, in respect of any Entry Point, the maximum amount of electricity, as agreed with the Company, expressed in kilowatts or kilovoltamperes, which may be exported onto the Distribution System via that Entry Point.
Maximum Import Capacity	means, in respect of any Exit Point, the maximum amount of electricity, as agreed with the Company, expressed in kilowatts or kilovoltamperes, which may be imported from the Distribution System via that Exit Point.

Meter Administrator	means a duly Accredited person appointed by the User to administer an Equivalent Meter pursuant to the Unmetered Supplies Procedure.
Meter Operation Services Agreement	means any agreement between the Meter Operator and the User (or, where applicable, the Connectee) for the provision of meter operation services to be provided by the Meter Operator.
Meter Operator	means a person appointed by the User (or, where applicable, the Connectee) to provide either or both of the services described in paragraph 3 of Condition 36 of the Distribution Licence in relation to the relevant Metering Point and Accredited by the Accreditation Authority or deemed to be Accredited pursuant to the terms of the Implementation Scheme.
Meter Operator Agent	has the meaning given to that term in the Balancing and Settlement Code.
Meter Operation Code of Practice	means Schedule 5 of the Meter Operation Code of Practice Agreement.
Meter Operation Code of Practice Agreement	means the agreement of that name dated 8 September 1998.

Metering Point	<p>means the point, determined according to the principles and guidance given at Schedule 9 of the Master Registration Agreement, at which a supply to (export) or from (import) a Distribution System:</p> <ul style="list-style-type: none">(a) is or is intended to be measured; or(b) where metering equipment has been removed, was or was intended to be measured; or(c) in the case of an Unmetered Supply under the Unmetered Supplies Procedure, is deemed to be measured, <p>where in each case such measurement is for the purposes of ascertaining the User's liabilities under the Balancing and Settlement Code.</p>
Metering System	<p>means a metering system registered in CMRS in accordance with the provisions of the BSC, and relating to an Entry Point or an Exit Point.</p>
MPAS	<p>has the meaning given to that term in the Master Registration Agreement.</p>
MPAS Provider	<p>means a DNO Party or IDNO Party in its capacity as the person who provides the services described in Condition 14 of the Distribution Licences.</p>
MPAS Registration System	<p>has the meaning given to that term in the Master Registration Agreement.</p>
MRASCo	<p>has the meaning given to that term in the Master Registration Agreement.</p>

National Terms of Connection	has the meaning given to that term in Clause 17.1.
Operational Metering Equipment	means metering equipment suitable to provide a Company with such data as it requires for use of system or operational purposes.
Panel	means the body established as such in accordance with Clause 5.
Panel Member	has the meaning given to that term in Clause 5.5.
Panel Objectives	has the meaning given to that term in Clause 5.2.
Panel Chairman	means the person appointed as such in accordance with Clause 7.1.
Panel Secretary	means the person appointed as such in accordance with Clause 7.5.
Part 1 Matter	has the meaning given to that term in Clause 9.4.
Part 2 Matter	has the meaning given to that term in Clause 9.6.
Party	means a party to this Agreement from time to time, but excluding (except in the case of Clauses 36, 37.1.1, 41 and 43) DCUSA Ltd.

Party Category	means, as the context requires, one of the following categories: (a) the DNO Parties collectively; (b) the IDNO Parties collectively; (c) the Supplier Parties collectively; and (d) the DG Parties collectively.
Party Details	means, in respect of each Party, the information relating to that Party and corresponding to the heads of information set out in Schedule 11.
Party Liable	has the meaning given to that term in Clause 36.1.
Payment Default	has the meaning given to that term in Clause 23.
Permission	has the meaning given to that term in Schedule 5.
Post-Final Settlement Run	has the meaning given to that term in the Balancing and Settlement Code.
Power Purchase Contract	means a contract between a User and a Generator for the purchase by the User of electricity generated by such Generator and (if agreed in such contract) the sale of electricity to the Generator by the User.
Prescribed Period	has the meaning given to that term in regulation 3 of the ESPR.
Prescribed Sum	has the meaning given to that term in regulation 3 of the ESPR.

Profile Class	has the meaning given to that term in the Balancing and Settlement Code.
Proposer	has the meaning given to that term in Clause 10.3.
Quarter	means the period of three months commencing on 1 January, 1 April, 1 July and 1 October respectively in each year.
Radio Teleswitch Agreement	means the agreement of that name dated 1 April 2001, which details the rights and obligations of its signatories in relation to the use of radio teleswitches.
Reconciliation Account	has the meaning given to that term in Clause 20.4.
Reconciliation Run	has the meaning given to the term “Reconciliation Settlement Run” in the Balancing and Settlement Code.
Recoverable Costs	has the meaning given to that term in Clause 8.1.

Re-energise

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

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

a Connected Installation, where such flow of electricity was previously prevented by De-energisation Works (and **Re-energised** shall be construed accordingly).

Re-energisation Works

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

Registered

means, in respect of a User and:

- (a) a Metering Point, that that User is registered in respect of that Metering Point under and in accordance with the Master Registration Agreement; and
- (b) a Metering System, that that User is registered in respect of that Metering System under and in accordance with the BSC.

Registration Notice

means, in respect of:

- (a) a Metering Point, a notice sent to the MPAS Provider by either the User or the Company, as the case may be, instructing the MPAS Provider to change the status of that Metering Point in the way set out in the notice; and
- (b) a Metering System, a notice sent to the CRA by the User instructing the CRA to change the status of that Metering System in the way set out in the notice.

Regulations

means the Electricity Safety, Quality and Continuity Regulations 2002 (S1 2002/2665).

Related Person

means, in relation to an individual, any member of that individual's immediate family; any partner with whom that individual is in partnership; that individual's employer; any Affiliate of such employer; any person by whom that individual was employed in the previous 12 months; and any company (or Affiliate of a company) in respect of which that individual (individually or collectively with any member of his immediate family) controls more than 20% of the voting rights in respect of the shares in that company.

Related Undertaking

means, in respect of any person, any undertaking in which that person has a participating interest as defined in Section 260 of the Companies Act 1985.

Relevant Charging Statement

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

- (a) the statement prepared by a Company in relation to charges for use of system for the time being in force pursuant to Condition 4A of its Distribution Licence;
- (b) the statement prepared by a Company in relation to charges for the provision of MPAS for the time being in force pursuant to Condition 14A of a Distribution Licence;
- (c) the statement prepared by a Company in relation to charges for Basic Metering Services and data services (as defined in the Distribution Licences) for the time being in force pursuant to Condition 36C of its Distribution Licence;
- (d) the statement prepared by a Company and for the time being in force pursuant to Condition 48 of its Distribution Licence in relation to charges in respect of losses incurred by a supplier in complying with a last resort supply direction (as described in the Distribution Licence); and
- (e) any statement prepared by a Company and for the time being in force in relation to charges for any other services offered by the Company.

Relevant Exempt Supplier

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

Relevant Instruments

means:

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

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

Report Phase

has the meaning given to that term in Clause 11.19.

Reserve

has the meaning given to that term in Clause 6.5.

Revenue Protection Code of Practice	means the code of practice of that name, detailing the rights and obligations of certain persons in relation to the prevention of meter interference and other forms of illegal abstraction of electricity.
Secretariat	has the meaning given to that term in Clause 7.36.
Secretary of State	has the meaning given to that term in the Interpretation Act 1978.
Security and Safety of Supplies Statement	means the statement prepared by a Company in relation to security and safety of supplies for the time being in force pursuant to Condition 6 of its Distribution Licence.
Settlement	has the meaning given to that term in the Balancing and Settlement Code.
Settlement Class	has the meaning given to that term in the Balancing and Settlement Code.
Settlement Day	has the meaning given to that term in the Balancing and Settlement Code.
Settlement Run	means, as appropriate, an Initial Settlement Run, Reconciliation Run, or Interim Information Settlement Run.
Settlement Administration Agent	has the meaning given to that term in the Balancing and Settlement Code.
Standard Settlement Configuration	has the meaning given to that term in the Balancing and Settlement Code.

Supercustomer DUoS Report	means a report of profiled data by Settlement Class providing the data items set out in Data Transfer Catalogue D0030 (as amended from time to time in accordance with the provisions of the Master Registration Agreement).
Supplier Party	means a Party that holds a Supply Licence and that does not hold a Distribution Licence, and, for the avoidance of doubt, a Party may be both a Supplier Party and a DG Party.
Supplier Volume Allocation Agent or SVAA	has the meaning given to “Supplier Volume Allocation Agent” in the Balancing and Settlement Code.
Supply Business	has, in respect of each Supplier Party that holds a Supply Licence, the meaning given to that term in its Supply Licence.
Supply Contract	means a contract (whether oral, in writing or deemed) between a User, or any Relevant Exempt Supplier, and a Customer for a supply of electricity to such Customer through an Exit Point.
Supply Licence	means a licence granted, or treated as granted, pursuant to Section 6(1)(d) of the Act.
Supply Number	has the meaning given to that term in the Master Registration Agreement.
Surplus Vote	has the meaning given to that term in Clause 12.13.
Surplus Vote Adjustment	has the meaning given to that term in Clause 12.10.

System Outage	means, in relation to a Distribution System, a planned or unplanned interruption to the flow of electricity through the whole or part of that Distribution System implemented by or on behalf of the relevant Company for safety or system security reasons or to enable that Company to inspect or effect alterations, maintenance, repairs or additions to any part of that Distribution System.
Transactional Charges	has the meaning given to that term in Clause 22.1.
Unit	means a kilowatt hour.
Unit Rate	means a charge in pence and/or pounds applied to a Unit.
Unmetered Connection Agreement	means a Connection Agreement relating to an Unmetered Supply which regulates (amongst other things) the preparation and keeping up-to-date of an inventory of the Connected Installation.
Unmetered Supplies Certificate	means a certificate issued by a Company (in its sole discretion) to a Customer in accordance with the Unmetered Supplies Procedure which states (amongst other things) the Supply Numbers of the Metering Points by reference to which the Company has authorised the Customer to receive Unmetered Supplies.
Unmetered Supplies Procedure	means Section S of the Balancing and Settlement Code and BSC Procedure BSCP 520 established under the Balancing and Settlement Code and any replacement or substitute BSC Procedure from time to time in force.

Unmetered Supply	means a supply of electricity the quantity of which the Company, through the issue of a relevant Unmetered Supplies Certificate, has authorised not to be measured by physical metering equipment.
Urgent Change Proposal	has the meaning given to that term in Clause 10.7.
Use of Distribution System	means, in respect of a Company or User, the use by that User of that Company's Distribution System for the passing of electricity into a Distribution System and for the conveyance of such electricity by that Company through its Distribution System to Exit Points or from Entry Points.
Use of System Charges	has the meaning given to that term in Clause 19.2 .1.
User	has the meaning given to that term in Clause 15.2.
User Installation	means any structures, equipment, lines, appliances or devices used or to be used by a User and connected or to be connected directly or indirectly to the Distribution System at any Exit Point or Entry Point in relation to which that User is Registered.
Value Added Tax	has the meaning given to that term in the Value Added Tax Act 1994 and any tax of a similar nature which may be substituted for or levied in addition to it.
Voting Procedure	has the meaning given to that term in Clause 12.1.
Website	means a dedicated website established at the direction of the Panel for the purposes of this Agreement.
Weighted Vote	has the meaning given to that term in Clause 12.8.

WG Chairman	has the meaning given to that term in Clause 7.28.
Working Day	has the meaning given to that term in Section 64 of the Act.
Working Group	means a sub-committee established by the Panel in accordance with Clause 7.24.
Works	has the meaning given to that term in Schedule 5.

Interpretation

- 1.2 In this Agreement, unless the context otherwise requires, any reference to:
- 1.2.1 a “person” includes a reference to an individual, a body corporate, an association or a partnership;
 - 1.2.2 the singular includes the plural, and vice versa;
 - 1.2.3 a gender includes every gender;
 - 1.2.4 a numbered Clause, Section or Schedule is a reference (respectively) to a clause, part or section of, or a schedule to, this Agreement which bears that number;
 - 1.2.5 a numbered Paragraph or Annex is a reference (respectively) to a paragraph of, or an annex to, the Schedule in which such reference occurs;
 - 1.2.6 a numbered Condition (with or without a letter) is a reference to the standard condition bearing that number (and, where relevant, letter) in the licence indicated;
 - 1.2.7 writing includes all methods of reproducing words in a legible and non-transitory form;
 - 1.2.8 “include”, “including” and “in particular” are to be construed without limitation to the generality of the preceding words;

- 1.2.9 any statute or statutory provision includes any subordinate legislation made under it, any provision which it has modified or re-enacted, and any provision which subsequently supersedes or re-enacts it (with or without modification);
 - 1.2.10 an agreement, code, licence or other document is to such agreement, code, licence or other document as amended, supplemented, novated or replaced from time to time; and
 - 1.2.11 a term that is stated to have the meaning given to it in the BSC is, where the BSC contains more than one definition of that term, a reference to that term as defined in annex 1 of section X of the BSC.
- 1.3 The headings in this Agreement are for ease of reference only and shall not affect its interpretation.

2. COMMENCEMENT AND DURATION

Commencement

- 2.1 This Agreement shall take effect from 00.00 on the day immediately following the “due date” as defined in condition 9B of the Distribution Licences.

Duration

- 2.2 Once it comes into effect, this Agreement shall remain in effect:
- 2.2.1 in respect of each Party, until (subject to Clauses 37.8 and 37.9) such Party ceases to be a Party in accordance with Clause 37.5; and
 - 2.2.2 generally, until (subject to Clauses 37.8 and 37.9) all of the DNO Parties and all of the IDNO Parties have ceased to be Parties in accordance with Clause 37.5.

3. DCUSA OBJECTIVES

- 3.1 The objectives of this Agreement (the **DCUSA Objectives**) shall be:
- 3.1.1 the development, maintenance and operation by the DNO Parties and IDNO Parties of efficient, co-ordinated, and economical Distribution Networks;
 - 3.1.2 the facilitation of effective competition in the generation and supply of electricity and (so far as is consistent therewith) the promotion of such competition in the sale, distribution and purchase of electricity;
 - 3.1.3 the efficient discharge by the DNO Parties and IDNO Parties of obligations imposed upon them in their Distribution Licences; and
 - 3.1.4 the promotion of efficiency in the implementation and administration of this Agreement.

4. ACCESSION OF ADDITIONAL PARTIES

Eligibility for Admission

- 4.1 Any person who applies to be admitted as a Party (an **Applicant**) shall be entitled to be admitted as a Party, subject to and in accordance with the provisions of this Clause 4.
- 4.2 An Applicant may not be admitted as a Party if:
- 4.2.1 it is already a Party; or
 - 4.2.2 the Panel believes that the Applicant has no reasonable prospect of satisfying the conditions precedent set out in Clause 16 in the six-month period following its application to be so admitted.

Accession Procedure

- 4.3 The Panel shall establish, in such format as it may prescribe, a form to be completed by Applicants (the **Application Form**) and shall publish a copy of the form on the Website together with a summary of the process set out in this Clause 4.
- 4.4 An Applicant shall submit a duly completed Application Form (and any other supporting documents required by that form) to the Panel.
- 4.5 As soon as reasonably practicable following receipt of an Application Form from an Applicant, the Panel shall:
- 4.5.1 notify the Applicant if it is ineligible to be admitted as a Party in accordance with Clause 4.2;
 - 4.5.2 where the Applicant is not ineligible, check that the Application Form has been duly completed and that any supporting documentation requested has been provided, and notify the Applicant of any omissions;
 - 4.5.3 where there are no such omissions, notify each Party and the Authority of the Applicant's identity and of the information that will, on that Applicant's admission as a Party, become its Party Details; and

- 4.5.4 prepare an Accession Agreement, in substantially the form set out in Schedule 9, for the Applicant and send it to the Applicant for execution.
- 4.6 Upon receipt by the Panel of an Accession Agreement, in substantially the form set out in Schedule 9, duly executed by an Applicant, DCUSA Ltd shall promptly:
- 4.6.1 execute and deliver a counterpart of such Accession Agreement on behalf of itself and all the Parties; and
- 4.6.2 send such executed counterpart of the Accession Agreement to the Applicant, and the Panel shall give notice of that Applicant's accession (and the effective date of such accession) to the Applicant, to each other Party and to the Authority.
- 4.7 Subject to, and in accordance with, this Clause 4, each Party hereby irrevocably and unconditionally authorises DCUSA Ltd to execute and deliver, on behalf of such Party, any Accession Agreement, in substantially the form set out in Schedule 9, duly executed by an Applicant.
- 4.8 The accession of an Applicant to this Agreement shall be effective from the effective date set out in the relevant Accession Agreement.

Disputes as to Admission

- 4.9 Where:
- 4.9.1 the Panel determines that an Applicant is ineligible to be admitted as a Party in accordance with Clause 4.2;
- 4.9.2 an Applicant believes that the content of the prescribed Application Form is not consistent with the DCUSA Objectives; or
- 4.9.3 an Applicant believes that there has been an unreasonable delay in obtaining a response to its application or that the process set out in this Clause 4 has not been followed,
- the Applicant may refer the matter to the Authority for its determination, which shall be final and binding.

SECTION 1B – GOVERNANCE

5. FUNCTIONS AND CONSTITUTION OF THE PANEL

Establishment of the Panel

- 5.1 The Panel is hereby established. The Panel shall:
- 5.1.1 pursue the objectives, undertake the duties, and have the powers, set out in Clauses 5.2 to 5.4, and be composed in accordance with Clauses 5.5 to 5.9;
 - 5.1.2 comprise Panel Members elected in accordance with Clause 6, who shall have the duties and protections set out in Clause 6; and
 - 5.1.3 conduct its activities in accordance with the procedures set out in Clause 7.

Panel Objectives

- 5.2 In conducting its operations in accordance with this Agreement, the Panel shall act in a manner designed to achieve the following objectives (the **Panel Objectives**):
- 5.2.1 that this Agreement is given full and prompt effect in accordance with its terms and conditions;
 - 5.2.2 that this Agreement is given effect in such a manner as will facilitate achievement of the DCUSA Objectives;
 - 5.2.3 that this Agreement is given effect in a fair and economical manner; and
 - 5.2.4 that this Agreement is given effect without undue discrimination between the Parties or any classes of Party.

Duties

- 5.3 Without prejudice to any other duties or obligations imposed on it under this Agreement, the Panel shall, subject to and in accordance with the other provisions of this Agreement:
- 5.3.1 manage and co-ordinate any applications from Applicants to become a Party in accordance with Clause 4;
 - 5.3.2 manage and co-ordinate the process by which Panel Members are appointed, in accordance with Clause 6;

- 5.3.3 develop budgets in accordance with Clause 8;
- 5.3.4 manage and co-ordinate the modification process set out in Section 1C, and give effect to any modifications resulting from such process in accordance with Section 1C;
- 5.3.5 manage the termination of a Party's accession to this Agreement in accordance with Clause 37;
- 5.3.6 oversee and, where appropriate, approve the actions and decisions of DCUSA Ltd as contemplated by Schedule 10;
- 5.3.7 periodically review this Agreement and operations under it, in order to:
 - (A) evaluate whether this Agreement meets the DCUSA Objectives;
 - (B) consider whether any Part 2 Matters are inconsistent with any Part 1 Matters; and
 - (C) consider whether it would be appropriate to develop this Agreement to include any of the issues set out for consideration in Schedule 12,and report to the Parties on the outcome of each such review;
- 5.3.8 at the written request of the Authority, undertake a review in accordance with Clause 5.3.7 in respect of such parts of this Agreement as the Authority may specify;
- 5.3.9 procure the creation, hosting and maintenance of the Website, which the Panel shall endeavour to ensure complies with best practice regarding accessibility and the use of widely used or open formats;
- 5.3.10 make an accurate and up-to-date copy of this Agreement available on the Website, and arrange (in return for a charge not exceeding the reasonable cost of so doing) for an accurate and up-to-date copy of this Agreement to be supplied to any person requesting a copy of the same;
- 5.3.11 at the written request of the Authority, collect and provide to the Authority (or publish in such manner as the Authority may direct) such information

regarding the operation of this Agreement as the Authority may reasonably request (and each Party shall provide to the Panel such information as the Panel reasonably requires in order to enable the Panel to comply with any such request of the Authority);

5.3.12 endeavour to establish joint working arrangements with other relevant industry committees and panels in order to facilitate robust interaction between this Agreement and the industry documents for which such industry committees and panels are responsible; and

5.3.13 consider whether it is appropriate to obtain insurance in respect of the costs, charges, expenses, damages and other liabilities referred to in Clause 6.20, and, where it is appropriate to do so, obtain such insurance.

Powers

5.4 Without prejudice to any other rights or powers granted to it under this Agreement, the Panel shall, subject to and in accordance with the other provisions of this Agreement, have the power to:

5.4.1 appoint and remove the Secretariat;

5.4.2 appoint and remove professional advisers;

5.4.3 consider, approve and authorise the licensing, sub-licensing, or any other manner of dealing with Intellectual Property belonging to DCUSA Ltd, for any use which does not hinder, delay or frustrate, in any way whatsoever, the DCUSA Objectives;

5.4.4 consider, approve and authorise the entering into by DCUSA Ltd of contracts under which DCUSA Ltd procures the performance by a third party of any activities which might otherwise be carried out by the Panel under this Agreement;

5.4.5 constitute Working Groups to which the Panel may delegate any of its duties and powers under this Agreement;

5.4.6 without prejudice to the generality of Clause 5.4.5 or the process for

considering Change Proposals, and only where it sees fit, constitute Working Groups to consider and report on issues and problems relating to the operation of this Agreement that have been brought to its attention by one or more Parties; and

5.4.7 do anything necessary for, or reasonably incidental to, the discharge of its duties under this Agreement.

Panel Composition

5.5 The Panel shall comprise the following persons (each a **Panel Member**):

5.5.1 two persons elected by the DNO Parties;

5.5.2 one person elected by the IDNO Parties;

5.5.3 two persons elected by the Supplier Parties;

5.5.4 one person elected by the DG Parties; and

5.5.5 any additional person appointed by the Authority in accordance with Clause 5.8.

5.6 No one person can hold more than one office as a Panel Member.

5.7 The following persons shall be entitled to attend and speak (but not vote) at any meeting of the Panel:

5.7.1 one person appointed from time to time, by notice to the Panel Secretary, by the Authority;

5.7.2 one person appointed from time to time, by notice to the Panel Secretary, by the GB System Operator;

5.7.3 one person appointed from time to time, by notice to the Panel Secretary, by the Consumer Council;

5.7.4 (at the invitation of the Panel from time to time) a representative of BSCCo; and

5.7.5 (at the invitation of the Panel from time to time) a representative of MRASCo.

Appointment of Additional Panel Member by the Authority

5.8 Where at any time:

5.8.1 no person is currently appointed as a Panel Member pursuant to this Clause 5.8; and

5.8.2 the Authority considers that there is a class or category of person having an interest in the distribution of electricity in Great Britain whose interests are not adequately represented in the composition of the Panel at that time, and whose interests would be better represented if a particular person were appointed as an additional Panel Member,

the Authority may (by notice to the Panel Secretary) appoint (subject to Clause 6.17) that particular person as a Panel Member. The Authority may, at any time thereafter by notice to the Panel Secretary, remove that person from the office of Panel Member.

Natural Persons

5.9 Each Panel Member, each Alternate, each person appointed in accordance with Clause 5.7 or 5.8, and each person serving on a Working Group from time to time must be an individual (and cannot be a body corporate, association or partnership).

6. PANEL MEMBERS

Election of Panel Members

- 6.1 The directors of DCUSA Ltd as at the date this Agreement becomes effective are hereby appointed as Panel Members with effect from that date. The Panel Members so appointed shall (without prejudice to their eligibility to stand for re-election) all retire (at which point their offices shall become vacant) on the first day of the second month commencing after this Agreement becomes effective (and references in this Clause to “1 December” shall, in relation to the first elections hereunder, be taken as references to such first day).
- 6.2 Subject to Clause 6.1, the Panel Members from time to time shall be elected in accordance with the following provisions:
- 6.2.1 no later than 40 Working Days (or 25 Working Days in the case of the first elections hereunder) before 1 December in each year, any individual shall be entitled, by notice in writing to the Panel Secretary specifying the Party Category in respect of which he wishes to stand and the company (if any) by which he is employed, to put himself forward for election as a Panel Member for that Party Category;
- 6.2.2 the Panel Secretary shall ignore notices received from candidates who would, if elected, be obliged to resign in accordance with Clause 6.8.3;
- 6.2.3 no later than 30 Working Days (or 20 Working Days in the case of the first elections hereunder) before 1 December in such year, the Panel Secretary shall notify each Party of the candidates who have put themselves forward for election as a Panel Member for each Party Category;
- 6.2.4 at the same time as it issues such notice, the Panel Secretary shall, in respect of those Party Categories (if any) for which the number of candidates exceeds the number of Panel Member offices attributable to that Party Category and currently vacant or due to become vacant on the following 1 December, invite the Groups comprising that Party Category to vote for their favoured candidate;

- 6.2.5 each such Group shall be entitled to cast one vote, and shall cast such vote by means of a system established by the Panel which ensures that each Party Category casts only one vote and which complies with the same requirements as are set out in Clauses 12.4.5 and 12.4.6;
 - 6.2.6 each such Group shall be given 10 Working Days from the date of notification under Clause 6.2.3 to cast such vote; and
 - 6.2.7 as soon as reasonably practicable following the expiry of such 10 Working Days, the Panel Secretary shall notify the Parties of the result of such vote, listing, in respect of each Party Category, the candidate who received the most votes first, the candidate who received the second most votes second, and so on. In the event that two or more candidates in respect of a Party Category received the same number of votes, the Panel Secretary shall invite the Groups comprising that Party Category to vote, within such time period as the Panel Secretary may reasonably specify, for their preferred candidate from those tied candidates, the result of such vote determining the order in which those candidates should be listed.
- 6.3 The Panel Members elected in respect of each Party Category shall be as follows:
- 6.3.1 where the number of candidates who put themselves forward for election as a Panel Member for a Party Category is less than or equal to the number of Panel Member offices attributable to that Party Category and currently vacant or due to become vacant on the following 1 December, the candidate or candidates who put themselves forward shall be deemed to have been elected as Panel Members for that Party Category; and
 - 6.3.2 where the number of candidates who put themselves forward for election as a Panel Member for a Party Category is more than the number of Panel Member offices attributable to that Party Category and currently vacant or due to become vacant on the following 1 December, the candidates elected as Panel Members for that Party Category shall be those set out in the list referred to in Clause 6.2.7, starting with the candidate at the top of that list and ending at candidate n (where n is the relevant number of offices that are currently vacant or due to become vacant on the following 1 December).

- 6.4 Where the number of candidates who put themselves forward for election as a Panel Member for a Party Category is less than the number of Panel Member offices attributable to that Party Category and currently vacant or due to become vacant on the following 1 December, the Panel Secretary shall request that the Authority make up that number by selecting further Panel Members on behalf of that Party Category. Any such person as the Authority may direct shall be deemed to have been elected as a Panel Member for the relevant Party Category from the date of such direction.

Reserves

- 6.5 Where Clause 6.3.2 applies, the candidate (or, where the number of offices for the relevant Party Category that are currently vacant or due to become vacant on the following 1 December is greater than one, the number of candidates equal to that number of offices) set out in the list referred to in Clause 6.2.7 immediately below those elected as a Panel Member for that Party Category shall be elected as a **Reserve** for that Party Category. Clauses 6.7 and 6.8 (but not Clause 6.8.2) shall apply to Reserves as if the references therein to a “Panel Member” were references to a “Reserve”.

Term of Office and Removal from Office of Panel Members

- 6.6 Each person elected as a Panel Member shall be appointed as such with effect from the last to occur of the following:
- 6.6.1 the date on which he complies with the requirements of Clause 6.17;
 - 6.6.2 the date on which he is elected; and
 - 6.6.3 the date on which the position for which he was elected becomes vacant.
- 6.7 Each Panel Member (other than one appointed under Clause 5.8, 6.1 or 6.9) shall retire (at which point his office shall become vacant) on 1 December in the second year following his appointment, save that the following Panel Members shall retire on 1 December 2007:
- 6.7.1 the Panel Member elected by the DNO Parties with effect from 1 December 2006 who received the least votes of the two Panel Members so elected;

- 6.7.2 the Panel Member elected by the Supplier Parties with effect from 1 December 2006 who received the least votes of the two Panel Members so elected; and
 - 6.7.3 the Panel Member elected by the IDNO Parties with effect from 1 December 2006.
- 6.8 A Panel Member shall immediately cease to be a Panel Member (and his office shall become vacant) if he:
- 6.8.1 resigns his office by notice in writing to the Panel Secretary;
 - 6.8.2 fails, in person or by his Alternate, to attend three consecutive meetings of the Panel that have been duly convened;
 - 6.8.3 ceases to be, or to be employed by, a person that is:
 - (A) a Party that forms part of the same Party Category as the Party Category in respect of which the Panel Member was elected;
 - (B) not a Party but that has an Affiliate that is a Party that forms part of the same Party Category as the Party Category in respect of which the Panel Member was elected; or
 - (C) not a Party and that has no Affiliate that is a Party but provides consultancy services to, or represents the interests of, the same Party Category as the Party Category in respect of which the Panel Member was elected;
 - 6.8.4 becomes bankrupt or makes any arrangement or composition with his creditors;
 - 6.8.5 becomes prohibited by law from being a director of a company under the Companies Act 1985;
 - 6.8.6 is convicted of an indictable offence;
 - 6.8.7 is admitted to hospital in pursuance of an application under the Mental Health Act 1983 or the Mental Health (Care and Treatment) (Scotland) Act 2003, or

an order is made by a court with competent jurisdiction in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person with respect to his property or affairs; or

6.8.8 dies.

Replacement of Panel Members

6.9 Where the office of a Panel Member (other than one appointed under Clause 5.8) becomes vacant for any reason other than his retirement in accordance with Clause 6.1, 6.7 or 6.10:

6.9.1 the Reserve:

(A) elected at the same time as that Panel Member was elected (and if there is more than one such Reserve, the Reserve appearing highest in the list created under Clause 6.2.7); or

(B) if there is no such Reserve, any other Reserve in respect of the Party Category relevant to that office,

shall be appointed to that office. The appointment shall be subject to Clause 6.17, but as if the reference to “his election” in the final line thereof were to “the date upon which the relevant office became vacant”; or

6.9.2 where there is no Reserve in respect of the relevant Party Category, the election process set out in Clauses 6.2 to 6.5 (inclusive) shall apply in respect of that office, save that the dates and timescales set out therein shall be as the Panel Secretary may reasonably direct.

6.10 A Panel Member appointed in accordance with Clause 6.9 shall retire (at which point his office shall become vacant) on the date that the person that Panel Member replaced would otherwise have retired in accordance with Clause 6.1 or 6.7.

Alternates

6.11 A Panel Member for a Party Category may, by notice in writing to the Panel Secretary, appoint a Reserve for that Party Category (or, if no such Reserve exists or is willing to act, any Reserve or any other Panel Member) as his alternate (an

Alternate). Each such Alternate must, before his appointment can become valid, have complied with the provisions of Clause 6.17.1.

- 6.12 Where a Panel Member is not present at a Panel meeting, his Alternate shall be entitled to attend (and count, in his capacity as Alternate, towards the quorum at) that meeting and to exercise and discharge all the functions, powers and duties of his appointor at that meeting.
- 6.13 Each Panel Member may, by notice in writing to the Panel Secretary, remove or replace the person appointed from time to time by that Panel Member as his Alternate. An Alternate shall immediately cease to be an Alternate on the occurrence of any of the events set out in Clause 6.8 in respect of the Alternate.
- 6.14 Where an Alternate's appointor ceases to be a Panel Member for any reason other than in accordance with Clause 6.1, 6.7 or 6.10, the Alternate shall (subject to Clause 6.8 as applied under Clause 6.13) continue to exercise and discharge all the functions, powers and duties previously exercised and discharged by his appointor until a replacement Panel Member is appointed in accordance with Clause 6.9.
- 6.15 Unless the context otherwise requires, any reference in this Agreement to a Panel Member shall be construed as including a reference to that Panel Member's Alternate.

Duties of Panel Members

- 6.16 A person appointed as Panel Member, when acting in that capacity, shall:
- 6.16.1 act independently, not as a delegate, and without undue regard to the interests, of any Related Person;
 - 6.16.2 exercise reasonable skill and care to the standard reasonably expected of a director of a company under the Companies Act 1985; and
 - 6.16.3 act in a manner designed to facilitate the performance by the Panel of its duties under this Agreement.
- 6.17 A person shall not be appointed as a Panel Member unless he has first:
- 6.17.1 confirmed in writing to DCUSA Ltd (for the benefit of itself and each Party)

that he agrees to act as a Panel Member in accordance with this Agreement and with particular regard to the requirements of Clause 6.16; and

6.17.2 confirmed in writing to DCUSA Ltd (for the benefit of itself and each Party) that he agrees to accept appointment as a director of DCUSA Ltd and to act in such capacity in accordance with this Agreement,

and his office shall be deemed to have become vacant if he does not do so within 20 Working Days of his election.

6.18 Each Panel Member shall, at the time of his appointment and upon any relevant change in circumstance, disclose, in writing to the Panel, the name of each Related Person who is a Party, or is otherwise likely to be affected by the operation of this Agreement and the matters to which it relates.

6.19 Where a Panel Member changes employer, the Panel Member shall, as soon as reasonably practicable after such change, notify the Panel Secretary of such change in writing. The Panel Secretary shall then notify the Parties of the change in question.

Protections for Panel Members and Others

6.20 Each Party shall, jointly and severally with each other Party, indemnify, and keep indemnified:

6.20.1 each Panel Member (whether as a Panel Member or as a director of DCUSA Ltd);

6.20.2 each Reserve (whether acting as an Alternate or otherwise);

6.20.3 the Panel Secretary (whether as Panel Secretary or as the company secretary of DCUSA Ltd);

6.20.4 each person who serves on a Working Group;

6.20.5 any employee of a Party, or of an Affiliate of a Party, who is seconded to (or otherwise providing services to) the Secretariat; and

6.20.6 each Party, or an Affiliate of a Party, as employer of any person referred to in Clauses 6.20.1 to 6.20.4 (inclusive),

from and against any and all costs (including legal costs), charges, expenses, damages or other liabilities properly incurred or suffered by that person or Party in relation to the exercise of the person's powers, duties or responsibilities under this Agreement, including where such powers duties or responsibilities are exercised negligently (and, for the avoidance of doubt, such indemnity shall extend to the persons who acted as directors of DCUSA Ltd in the period prior to the date on which this Agreement became effective).

- 6.21 The indemnity set out in Clause 6.20 shall not apply to any costs, charges, expenses, damages or other liabilities that are:
- 6.21.1 recovered in accordance with the procedures set out in Clause 8;
 - 6.21.2 in respect of any charge for the time of those persons referred to in Clause 6.20;
 - 6.21.3 recovered under any policy of insurance in favour of any or all of the persons and Parties referred to in Clause 6.20; or
 - 6.21.4 suffered or incurred or occasioned by the wilful default or bad faith of, or breach of contract by, the relevant person.
- 6.22 DCUSA Ltd shall hold the benefit of Clause 6.20 (subject to Clause 6.21) as trustee and agent for each person (other than a Party) referred to in Clause 6.20.
- 6.23 As between themselves, each of the Parties shall be liable, in respect of any amounts properly payable by any Party under Clause 6.20, in accordance with the same proportions as are used to calculate that Party's Cost Contribution under Clause 8 (calculated on the basis of Metering Point registrations in the month in which the cost, charge, expense, damage or other liability referred to in Clause 6.20 was incurred).

7. OPERATION OF THE PANEL

The Panel Chairman

- 7.1 The **Panel Chairman** shall be the Panel Member appointed as such, from time to time, by a simple majority of the Panel Members.
- 7.2 The Panel Chairman may at any time be removed from the office of Panel Chairman by a simple majority of the Panel Members or at the direction of the Authority. Where a Panel Member is removed from the office of Panel Chairman he may not be reappointed as such without the Authority's prior consent.
- 7.3 The Panel Chairman shall preside at every meeting of the Panel at which he is present. If the Panel Chairman is unable to be present at a meeting, he may nominate, by notice in writing to the Panel Secretary, another Panel Member (or his Alternate) to act as Panel Chairman for that meeting. If neither the Panel Chairman nor any person nominated by him in accordance with this Clause 7.3 is present at a Panel meeting, the Panel Members present may, by simple majority, appoint any one of their number to preside at that meeting.
- 7.4 The Panel Chairman shall be entitled to vote in his capacity as a Panel Member. The Panel Chairman shall in no circumstances be entitled to an extra or casting vote.

The Panel Secretary

- 7.5 The **Panel Secretary** shall be appointed, or removed from office, by the Panel. In no event shall the Panel Secretary be an employee of any Party or any of its Affiliates.
- 7.6 The Panel Secretary shall be entitled to attend and speak (but not to vote) at Panel meetings.
- 7.7 The Panel Secretary's duties shall be to facilitate the operations of the Panel and in particular to:
- 7.7.1 attend to the requisition of meetings and serve the necessary notices;
 - 7.7.2 maintain a register of names and addresses, from time to time, of the Panel Members, of any Alternate appointed by each Panel Member, and of the Reserves;

7.7.3 keep minutes of all meetings; and

7.7.4 circulate all relevant notices, papers and minutes.

7.8 The Panel shall be responsible for ensuring that the Panel Secretary undertakes these duties.

Meetings of the Panel

7.9 The Panel shall hold meetings at such times as it may decide but in any event shall meet at least once every three months. The venues for meetings shall be determined by the Panel Members.

7.10 No business shall be transacted at any meeting of the Panel unless a quorum is present at that meeting. The quorum for each Panel meeting shall be four Panel Members, at least one of whom must have been elected by the DNO Parties and at least one of whom must have been elected by the Supplier Parties.

7.11 The Panel may, subject to the other provisions of this Agreement, regulate the conduct of its meetings as it sees fit.

7.12 Any Panel Member may, by written notice to the Panel Secretary:

7.12.1 request the requisition of an additional Panel meeting. Any such notice given to the Panel Secretary must contain a list of matters to be included in the agenda for the meeting. Following receipt of such a notice, the Panel Secretary shall proceed to convene the meeting within five Working Days; and

7.12.2 request the consideration of additional matters at a meeting for which notice has already been given. Provided such notice is given at least three Working Days before the date of the relevant meeting, the Panel Secretary shall amend the agenda for that meeting to include the additional matters.

7.13 Nothing shall prevent a meeting from being held by telephone or other technological means, so long as all the criteria regarding notice and minutes are met.

Notice of Meetings

- 7.14 All meetings of the Panel shall be convened by the Panel Secretary on at least five Working Days' notice (subject to any requirements, under Section 1C, for meetings to be held within a shorter period). Such notice (which may be given by e-mail) must be given to:
- 7.14.1 the Panel Members (and any appointed Alternates);
 - 7.14.2 the appointed persons referred to in Clause 5.7;
 - 7.14.3 (where the Panel has resolved to invite representatives of one or both of them) either or both (as applicable) of BSCCo and MRASCo; and
 - 7.14.4 the Parties.
- 7.15 The notice of each Panel meeting shall contain the time, date and venue of, and an agenda and any supporting papers for, the relevant meeting. The Panel Secretary shall circulate amendments to the agenda where necessary.
- 7.16 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a Panel meeting by, a person entitled to receive notice shall not invalidate the proceedings of that meeting.

Representation and Voting

- 7.17 Each Panel Member shall be entitled to attend, and to speak and vote at, every meeting of the Panel.
- 7.18 Any Party shall be entitled to send a representative to attend a Panel meeting provided it gives the Panel Secretary two Working Days' notice in advance of such meeting. Such a representative shall be admitted as an observer, and shall (at the Panel Chairman's invitation) be entitled to speak (but in no circumstances vote) at the meeting. The Panel Chairman may, at his sole discretion, exclude a representative of a Party from a meeting (or any part thereof) where matters being discussed are confidential.
- 7.19 All decisions of the Panel shall be by resolution. In order for a resolution of the Panel to be passed at a meeting, a simple majority of those Panel Members present at that

meeting must vote in favour of that resolution.

- 7.20 A resolution in writing signed by or on behalf of all the Panel Members shall be as valid and effective as if it had been passed at a meeting of the Panel duly convened and held. Such a resolution may be signed in any number of counterparts.

Minutes of Panel Meetings

- 7.21 The Panel Secretary shall, as soon as practicable (and in any event within five Working Days) following each Panel meeting, circulate copies of the minutes of that meeting to each person who was entitled to receive a notice of that meeting.
- 7.22 If any Panel Member disagrees with any item of the minutes, he shall, within five Working Days of receipt of the minutes, notify the Panel Secretary of those items with which he disagrees, and the Panel Secretary shall incorporate those items upon which there is disagreement into the agenda for the next following meeting of the Panel, as the first item for resolution.
- 7.23 The Panel Secretary shall maintain a record of all resolutions voted on by the Panel, indicating how each Panel Member voted on each resolution, and shall make such record available on request to any Party.

Establishing Working Groups

- 7.24 The Panel may establish sub-committees (each a **Working Group**) for the purposes of doing, or assisting the Panel in doing, anything to be done by the Panel pursuant to this Agreement. The Panel may dissolve any Working Group it has previously established.
- 7.25 The Panel may delegate to each Working Group such of the Panel's duties, powers and functions under this Agreement as the Panel may specify.
- 7.26 Each Working Group shall be subject to such written terms of reference and such written procedures as the Panel may specify from time to time, and shall otherwise conduct its business as it sees fit. No Working Group may further delegate any of its duties, powers and functions unless expressly authorised to do so by such terms of reference.

7.27 Each Working Group shall publish, on the Website, details of that Working Group's:

7.27.1 membership;

7.27.2 terms of reference;

7.27.3 timetable for business and meetings;

7.27.4 minutes of meetings; and

7.27.5 governance procedures.

Membership of Working Groups

7.28 Each Working Group shall be composed of such persons with experience and expertise suitable to the Working Group's remit, and who are willing to serve, as the Panel may direct. Each Working Group shall be chaired by such person (the **WG Chairman**) as the Panel may direct.

7.29 Before establishing each Working Group, the Panel shall invite (by such means as it considers appropriate) applications from individuals who wish to serve on that Working Group.

7.30 Once a Working Group is established, the WG Chairman shall (unless the Panel otherwise directs) be entitled to admit such additional persons to serve on that Working Group as the WG Chairman considers appropriate. The Panel may, at its discretion, subsequently remove any such additional persons from service on that Working Group.

7.31 The Authority shall be entitled to send, to any Working Group meeting, a representative who shall be entitled to speak (but not to vote) at that meeting. Any Party shall be entitled to send a representative to attend and (at the WG Chairman's invitation) speak (but in no circumstances vote) at any Working Group meeting.

Duties of those Serving on Working Groups

7.32 Each Working Group shall act in a manner designed to achieve the Panel Objectives.

7.33 Those persons serving on a Working Group from time to time, when acting in that capacity, shall:

- 7.33.1 act independently, not as a delegate, and without undue regard to the interests, of any Related Person;
 - 7.33.2 exercise reasonable skill and care to the standard reasonably expected of a director of a company under the Companies Act 1985; and
 - 7.33.3 act in a manner designed to facilitate the performance by the Working Group of the duties delegated to it.
- 7.34 Unless the Panel otherwise directs, a person who is to serve on a Working Group shall not be appointed to that Working Group unless he has first confirmed in writing to DCUSA Ltd (for the benefit of itself and each Party) that he agrees to act in accordance with Clause 7.33.

Decisions of Working Groups

- 7.35 Resolutions of Working Groups shall not have binding effect unless the Panel has formally delegated the decision-making powers to the Working Group or has ratified the resolution in question.

Secretariat

- 7.36 The Panel may, from time to time, appoint and remove, or make arrangements for the appointment and removal of, any such person or persons (such person or persons to be known as the **Secretariat**) as the Panel requires to assist:

7.36.1 the Panel;

7.36.2 the Panel Secretary; and/or

7.36.3 any Working Group,

in the proper performance of its, his or their duties and responsibilities under this Agreement.

- 7.37 The Panel shall be responsible for ensuring that the Secretariat undertakes any responsibilities and duties that are either assigned to it under Clause 7.36 or ascribed to it in this Agreement. In particular, the Panel shall ensure that the arrangements under which the Secretariat is appointed shall oblige the Secretariat to undertake such

duties and responsibilities on the same applicable terms as are provided for under this Agreement.

7.38 Subject to Clause 7.37, any appointment by the Panel under Clause 7.36 shall be on such terms and conditions and in return for such remuneration as the Panel sees fit.

7.39 In no event shall the Secretariat be a Party, an Affiliate of a Party, an employee of a Party, or an employee of an Affiliate of a Party.

DCUSA Ltd

7.40 The provisions of Schedule 10 shall apply in respect of DCUSA Ltd.

7.41 The Panel is deemed to have approved all the acts of DCUSA Ltd undertaken before this Agreement became effective, and the Parties hereby confirm that such approval is properly given.

8. COSTS OF THE DCUSA

Recovery of Costs

8.1 The Panel shall be entitled to recover, in accordance with the procedures set out in this Clause 8, all the reasonable costs and expenses properly incurred by:

- 8.1.1 the Panel;
- 8.1.2 the Panel Secretary;
- 8.1.3 any Working Group;
- 8.1.4 the Secretariat; and
- 8.1.5 DCUSA Ltd,

in performing their respective duties, powers and functions under this Agreement (the **Recoverable Costs**), which may include their general administration costs and expenses, any costs and expenses they incur in holding, or travelling to, meetings, any costs and expenses of any professional advisers properly retained by them and any tax payable by DCUSA Ltd. Recoverable Costs shall not include any payment to Panel Members, to directors of DCUSA Ltd or to those who serve on Working Groups in respect of their time.

Preparation of Draft Budgets

8.2 In respect of:

8.2.1 the Financial Year ending on 31 March 2007, the Panel shall, as soon as reasonably practicable following the date on which this Agreement becomes effective; and

8.2.2 each subsequent Financial Year, the Panel shall (not earlier than 60, nor later than 30, Working Days before the commencement of that Financial Year),

prepare, circulate to all the Parties, and invite comments on, a draft budget for that Financial Year (a **Draft Budget**).

8.3 Each Draft Budget shall be accompanied by a detailed work plan showing the

activities and projects to which the relevant costs and expenses relate, and shall set out the Panel's good-faith estimate of the Recoverable Costs that it anticipates will either be:

- 8.3.1 incurred in the Financial Year to which the Draft Budget relates; or
- 8.3.2 committed to in the Financial Year to which the Draft Budget relates, even though the Recoverable Costs are not expected to be incurred until a subsequent Financial Year.

Approval of Budgets

- 8.4 The Draft Budget for the Financial Year ending on 31 March 2007 shall, on its preparation, automatically become the Approved Budget for that Financial Year. The Panel shall, nevertheless, consider any comments received from the Parties in the 20 Working Days following its circulation, and the Panel shall, where it considers it appropriate to do so, amend such Approved Budget in the light of those comments.
- 8.5 In respect of the Draft Budget for each subsequent Financial Year, the Panel shall:
 - 8.5.1 arrange for publication on the Website of all of the comments received from the Parties regarding the Draft Budget and/or the accompanying work plan in the 20 Working Days following their circulation;
 - 8.5.2 consider, and (where it considers it appropriate to do so) respond to, those comments;
 - 8.5.3 to the extent that it considers it appropriate to do so, amend the Draft Budget and/or the accompanying work plan in the light of those comments; and
 - 8.5.4 no less than 20 Working Days following such circulation, approve the Draft Budget (as so amended) as the **Approved Budget** for the relevant Financial Year.

Amendments to Budgets

- 8.6 The Approved Budget relating to each Financial Year may be amended by the Panel from time to time, provided that the Panel has first:

- 8.6.1 circulated and invited comments on the proposed amendments in accordance with Clause 8.2 as if it were a Draft Budget; and
- 8.6.2 published and considered any comments received on the proposed amendments within 20 Working Days of such circulation on the same basis as is referred to in Clause 8.5.

Payment of Costs Incurred

- 8.7 Where the Panel, the Panel Secretary, any Working Group, the Secretariat or DCUSA Ltd wishes to recover any cost or expense under this Clause 8, details of the cost or expense in question shall be submitted to the Panel (or a named person approved by the Panel) for approval. Such cost or expense shall only be approved to the extent that it is a Recoverable Cost provided for in an Approved Budget and only if it is submitted in a timely manner (and in any event on or before the 20th Working Day following the end of the relevant Financial Year). Once approved, details of the cost or expense shall be submitted to the Secretariat or DCUSA Ltd (as directed by the Panel or such named person) for payment.
- 8.8 Upon receipt of an invoice or other statement relating to costs or expenses that have been approved in accordance with Clause 8.9, the Secretariat or DCUSA Ltd (as applicable) shall pay the amount stated in such invoice or other statement (together with VAT thereon, if applicable) to the person named in such invoice or other statement.

Share of Costs

- 8.9 The amount (a **Cost Contribution**) that each Party shall be obliged to pay towards the Recoverable Costs provided for in an Approved Budget, in respect of each Quarter occurring during the Financial Year to which that Approved Budget relates, shall:
- 8.9.1 in the case of each DG Party, in its capacity as such, be zero; and
- 8.9.2 in the case of each other Party, be calculated as follows:

$$CC = 50\% \times \frac{N}{TN} \times AB$$

where:

CC is the relevant Party's Cost Contribution in respect of that Quarter;

N is, in respect of a DNO Party or an IDNO Party, the aggregate number of Metering Points which each such Party has on its MPAS Registration System; and, in respect of a Supplier Party, the aggregate number of Metering Points against which that Party is registered across all of the MPAS Registration Systems (based, in each case, on the average figure for the three months comprising that Quarter and provided under clause 27.6 of the MRA);

TN is, in respect of each Party and that Quarter, the aggregate number of Metering Points across all of the MPAS Registration Systems (based on the average aggregate figure for the three months comprising that Quarter and provided under clause 27.6 of the MRA); and

AB is the total amount of the Recoverable Costs provided for in an Approved Budget and incurred in that Quarter.

Recovery of Costs

8.10 The Panel shall, in respect of each Party and in advance of each Quarter:

8.10.1 calculate the Panel's best estimate of that Party's Cost Contribution (together with VAT thereon, if applicable) in respect of that Quarter; and

8.10.2 arrange for an invoice or other statement, on such terms as the Panel may from time to time prescribe, for an amount equal to such estimate to be sent to that Party.

8.11 Each Party shall, on receipt of an invoice or other statement submitted under Clause 8.10, pay the amount requested of it in accordance with (and within the time period prescribed by) the terms referred to in Clause 8.10.

8.12 Within 40 Working Days following the end of each Financial Year, the Panel shall calculate each Party's actual Cost Contribution in respect of each Quarter of that Financial Year, and shall reconcile the actual amounts against the amounts paid by that Party in accordance with Clause 8.11.

8.13 Where, in respect of a Financial Year and any Party, the aggregate amount paid in accordance with Clause 8.11:

8.13.1 is greater than the aggregate amount calculated in accordance with Clause 8.12, the Panel shall arrange for that Party to be reimbursed with the difference by means of a credit against the next invoice to be raised pursuant to Clause 8.10; or

8.13.2 is less than the aggregate amount calculated in accordance with Clause 8.12, the Panel shall arrange for the difference to be added to the next invoice raised pursuant to Clause 8.10.

Audit

8.14 The Panel shall arrange for the costs and expenses recovered under this Clause 8 to be audited by a firm of chartered accountants on an annual basis in order to verify that all such costs and expenses were Recoverable Costs provided for in an Approved Budget.

8.15 The Panel shall copy the auditor's report to all Parties within 15 Working Days of receipt.

SECTION 1C – CHANGE CONTROL

9. CHANGE CONTROL

- 9.1 The purpose of this Section 1C is to make provision for the terms and conditions of this Agreement to be varied.
- 9.2 No variation of this Agreement may be made or may have effect unless it is made in accordance with the provisions of this Section 1C.
- 9.3 For the purposes of this Section, all actual or potential provisions of this Agreement shall be deemed to have the status of either a Part 1 Matter or a Part 2 Matter.

Part 1 Matters

- 9.4 Any actual or potential provision of this Agreement shall be deemed to have the status of a **Part 1 Matter** to the extent that it satisfies one or more of the following criteria:
- 9.4.1 it is likely to have a significant impact on the interests of electricity consumers;
- 9.4.2 it is likely to have a significant impact on competition in one or more of:
- (A) the generation of electricity;
 - (B) the distribution of electricity;
 - (C) the supply of electricity; and
 - (D) any commercial activities connected with the generation, distribution or supply of electricity;
- 9.4.3 it is likely to discriminate in its effects between one Party (or class of Parties) and another Party (or class of Parties);
- 9.4.4 it is directly related to the safety or security of the Distribution Network; and
- 9.4.5 it concerns the governance or the change control arrangements applying to this Agreement.
- 9.5 The following current provisions of this Agreement shall conclusively be deemed to satisfy one or more of the criteria referred to at Clause 9.4 and each of them shall have

the status of a Part 1 Matter:

- 9.5.1 Sections 1B (Governance) and 1C (Change Control);
- 9.5.2 Clauses 17.3 (Obligation to Include National Terms of Connection Wording in Contracts), 18.1 (Provision of Use of System), 19.1 and 19.2(Charges), 24 (Security Cover), 25 (Energisation, De-Energisation and Re-Energisation), 26.1 (Compliance with the Distribution Code), 27.1 (Compliance with MOCOPA), 30.5 to 30.12 (inclusive) (Dangerous Incidents and Advance Notice of Interruptions and Damage or Interference), 31.1 (Demand Control), 33.1 to 33.2 (inclusive) (Compensation Under Guaranteed Performance Standards), 36 (Limitation of Liability), 37 (Termination) and 41 (Disputes);
- 9.5.3 Schedule 2A (Mandatory Terms for Contracts), Schedule 2B (National Terms of Connection) and Paragraph 6.1 of Schedule 5 (Disputes Under Approval and Permission Procedures); and
- 9.5.4 Clause 1 (Definitions and Interpretation), but only to the extent that it materially affects the interpretation of any of the provisions listed in Clauses 9.5.1 to 9.5.3.

Part 2 Matters

- 9.6 Any actual or potential provision of this Agreement which does not satisfy one or more of the criteria set out at Clause 9.4 shall be deemed to have the status of a **Part 2 Matter**.

Guidelines

- 9.7 The Panel shall produce such documents (if any) as it considers appropriate to provide guidance to the Parties in relation to the process set out in this Section 1C, and shall publish any such documents on the Website. Such documents shall be for guidance only and shall not affect the interpretation of this Agreement.

10. CHANGE PROPOSALS

10.1 Each variation of this Agreement must commence with a proposal made in accordance with the provisions of this Clause 10 (a **Change Proposal**).

Persons Entitled to Propose

10.2 A Change Proposal may be made by any of the following:

10.2.1 a Party;

10.2.2 the Consumer Council;

10.2.3 the GB System Operator;

10.2.4 any person or body that may from time to time be designated in writing by the Authority for the purpose of this Clause 10.2.

Form and Content of the Proposal

10.3 A Change Proposal must be submitted in writing by the person making the Proposal (the **Proposer**) to the Secretariat.

10.4 A Change Proposal must contain the following information:

10.4.1 the name of the Proposer;

10.4.2 the name and contact details of an employee or representative of the Proposer who will act as a principal point of contact in relation to the proposal;

10.4.3 the date on which the proposal is submitted;

10.4.4 a description in sufficient detail of the nature of the proposed variation to the Agreement and of its intended purpose and effect;

10.4.5 a statement of the reasons why the Proposer believes that this Agreement would, if the proposed variation were made, better facilitate the achievement of the DCUSA Objectives than if that variation were not made;

10.4.6 a statement as to which parts of the Agreement the Proposer considers would require to be changed in order to give effect to the proposed variation or as a

consequence of that variation;

10.4.7 where the proposed variation would entail the incorporation of wholly new provisions into this Agreement, a statement of whether, in the opinion of the Proposer, those provisions are Part 1 Matters;

10.4.8 a statement of whether the Proposer considers, in the light of the criteria set out in Clause 10.7, that the Change Proposal should be treated as urgent and, if so, its reasons for so considering; and

10.4.9 the date from which the Proposer recommends that the proposed variation should have effect.

10.5 The Panel may from time to time publish a standard form of Change Proposal to be used by a Proposer. Any such standard form must require the provision by the Proposer of all of the information listed at Clause 10.4, but may also require it to provide such further information as the Panel may reasonably specify. The Panel shall ensure that the latest version of any standard form of Change Proposal is made available on the Website.

10.6 Where a standard form of Change Proposal has been published under Clause 10.5, a Proposer must submit its Change Proposal in accordance with that standard form.

Urgent Change Proposals

10.7 A Change Proposal specified as urgent in accordance with Clause 10.4.8 shall be an **Urgent Change Proposal**. The criteria for assessing whether a Change Proposal should properly be treated as an Urgent Change Proposal are that:

10.7.1 there is a very real likelihood of significant adverse commercial impact upon the Parties (or a class of Party) and/or electricity consumers if the Change Proposal is not dealt with urgently;

10.7.2 the safety and security of the Distribution Network is likely to be adversely affected if the Change Proposal is not dealt with urgently; or

10.7.3 the Change Proposal is linked to an imminent date-related event.

Refusal by the Secretariat

- 10.8 The Secretariat may refuse to accept the submission of any Change Proposal that does not contain all of the information listed at Clause 10.4 or is not made in accordance with any standard form that has been published by the Panel.
- 10.9 Where the Secretariat refuses to accept the submission of a Change Proposal, it shall:
- 10.9.1 notify the Proposer of that refusal as soon as is reasonably practicable, specifying the reason for such refusal; and
 - 10.9.2 notify the Panel of that refusal at the next Panel meeting.
- 10.10 Where the Panel is notified that the Secretariat has refused to accept the submission of a Change Proposal, it may decide to instruct the Secretariat to accept the submission of that proposal, in which case the proposal shall be treated with effect from the time of the decision as if it had been referred to the Panel under Clause 10.11.

Initial Assessment

- 10.11 Except where the Secretariat refuses to accept the submission of a Change Proposal, it shall:
- 10.11.1 refer that proposal to the Panel;
 - 10.11.2 (without altering the Change Proposal in any way and without undertaking any detailed evaluation of the Change Proposal) prepare an initial written assessment of the likely effect of the proposal for the assistance of the Panel; and
 - 10.11.3 suggest a timetable to apply if the Panel chooses to place the proposal into the Assessment Process.
- 10.12 The Panel shall consider the Change Proposal and the accompanying documents referred to in Clause 10.11.2:
- 10.12.1 in respect of Urgent Change Proposals, within five Working Days of the proposal's submission;
 - 10.12.2 in respect of all other Change Proposals, within 25 Working Days of the

proposal's submission,

and, where necessary, the Panel Secretary shall convene a Panel meeting for such purpose.

Refusal by the Panel

10.13 The Panel may choose to refuse the referral of a Change Proposal by the Secretariat if that proposal has substantively the same effect as another Change Proposal which was submitted by a Proposer on an earlier date and:

10.13.1 which has been neither accepted nor rejected in accordance with the provisions of this Section 1C at the time of the Panel meeting; or

10.13.2 which was rejected in accordance with the provisions of this Section 1C on a date that falls within the period of two months that immediately precedes the date of the Panel meeting.

10.14 The Panel may choose to refuse the referral of a Change Proposal by the Secretariat if in its opinion the content of the proposed variation of the Agreement is outside the scope of the Agreement as set out at Condition 9B of the Distribution Licence.

10.15 Where the Panel refuses the referral of a Change Proposal, the Secretariat shall notify the Proposer of that refusal as soon as is reasonably practicable, and shall publish details of the Change Proposal in question and the Panel's reasons for such rejection on the Website.

10.16 Nothing in this Clause 10 shall prevent the Proposer of a Change Proposal that is refused by the Secretariat or by the Panel from submitting a subsequent Change Proposal in relation to the same subject matter, and any such subsequent proposal shall be treated for the purposes of this Clause 10 as a new Change Proposal.

10.17 Where a Change Proposal is referred to the Panel, and where the Panel has not refused to accept the referral of that proposal, the Panel shall ensure that the proposal is placed into the Assessment Process in accordance with Clause 11.

Referral to the Authority

10.18 If the Panel refuses to accept the referral of a Change Proposal pursuant to Clause

10.13 or 10.14, the Proposer may ask the Authority to direct the Panel to accept the referral of that proposal.

10.19 Such a request by a Proposer may only be made within 10 Working Days of the Proposer being notified by the Secretariat of the Panel's refusal to accept the referral of the Change Proposal.

10.20 Such a request by a Proposer must:

10.20.1 be made in writing;

10.20.2 be accompanied by a copy of the Change Proposal;

10.20.3 (in the case of a refusal under Clause 10.13) state the reasons why the Proposer believes that the Panel was wrong to conclude that the proposed variation has substantively the same effect as another proposal;

10.20.4 (in the case of a refusal under Clause 10.14) state the reasons why the Proposer believes that the Panel was wrong to conclude that the content of the proposed variation was outside the scope of the Agreement; and

10.20.5 be copied to the Panel and to the Secretariat.

10.21 If the Authority, within 10 Working Days of receiving a request by a Proposer (and after having consulted with any persons and had regard to any information that it thinks fit), directs the Panel to accept the referral of the Change Proposal, the Panel shall comply with that direction and ensure that the Change Proposal is placed into the Assessment Process in accordance with Clause 11.

11. ASSESSMENT PROCESS

11.1 Where the Panel receives and accepts the referral of a Change Proposal in accordance with Clause 10, it shall ensure that the proposal is subjected to a process of assessment in accordance with this Clause 11 (the **Assessment Process**).

Notification of Parties

11.2 The Secretariat shall, as soon as is reasonably practicable after a Change Proposal is placed into the Assessment Process, send a copy both of that proposal and of its initial written assessment of the proposal to:

11.2.1 each Party;

11.2.2 the Consumer Council;

11.2.3 the GB System Operator;

11.2.4 any person or body which is designated in writing by the Authority for the purpose of Clause 10.2.4; and

11.2.5 the Authority.

Determination of Procedure

11.3 At the Panel meeting at which the Panel receives and accepts the referral of a Change Proposal, it shall determine whether that proposal is to be subject to the Definition Procedure.

11.4 Where the Panel determines that a Change Proposal is to be subject to the Definition Procedure, that procedure shall first be completed before the proposal is submitted to the Secretariat for the purposes of the Report Phase.

11.5 In every other case, the proposal shall be submitted directly to the Secretariat for the purposes of the Report Phase.

11.6 The Panel shall not determine that a Change Proposal is to be subject to the Definition Procedure if in its opinion the proposal is:

11.6.1 insubstantial in nature, concerned solely with the technical legal drafting of

this Agreement, or concerned solely with a variation to this Agreement that is obligatory under or by virtue of any legislation; and

11.6.2 unlikely to be the subject of significant controversy between the Parties.

11.7 The Panel shall otherwise, having regard in respect of a Change Proposal to:

11.7.1 the complexity, significance and urgency of that proposal; and

11.7.2 the degree of clarity as to the issues to which the proposal gives rise and the likely effects of the proposed variation of the Agreement,

consider whether in its opinion it would be appropriate for the proposal to be subject to the Definition Procedure and determine the matter accordingly.

Part 1/Part 2 Matters

11.8 At the same meeting at which the Panel determines whether a Change Proposal is to be subject to the Definition Procedure, it shall also determine whether in its opinion the proposal relates to a Part 1 Matter or a Part 2 Matter.

11.9 A Change Proposal shall be treated as relating to a Part 1 Matter or a Part 2 Matter in accordance with the determination of the Panel for all the purposes of this Section 1C, unless and until the Authority determines to the contrary under Clause 11.21, Clause 13.19 or Clause 13.20.

Timetable

11.10 At the same meeting at which the Panel determines whether a Change Proposal is to be subject to the Definition Procedure, it shall also, having regard to the complexity, significance and urgency of that proposal, determine a timetable for the completion of each stage of the Assessment Process.

11.11 The overall timetable originally established for an Assessment Process in accordance with Clause 11.10 may not exceed 60 Working Days. Where a Change Proposal is an Urgent Change Proposal, the Authority may, either on the application of a Party or of its own volition, direct that an alternative timetable applies in place of that set by the Panel.

11.12 The Panel may agree to vary the timetable at any subsequent meeting, having regard to any information about the complexity and significance of the Change Proposal that has been revealed by the Assessment Process prior to the date of that meeting. The overall timetable for an Assessment Process may, where the Panel so determines, be extended beyond the original limit of 60 Working Days by successive periods of up to 40 Working Days. The Authority may, either on the application of a Party or of its own volition, veto any such extension, in which case the timetable will remain as it was immediately before the extension in question.

11.13 The Panel, the Secretariat and any Working Group shall use their best endeavours to complete tasks assigned to them under the Assessment Process within the timetable determined by the Panel.

Definition Procedure

11.14 The Panel may establish, in respect of a Change Proposal, a Working Group for the purpose of undertaking the activities (the **Definition Procedure**) of:

11.14.1 consulting with the Parties, and (where appropriate) with any interested third party, on the proposal;

11.14.2 considering and clarifying the likely effects of the proposed variation to the Agreement, and indicating which Party Categories it considers will be affected by the proposed variation;

11.14.3 evaluating, developing and refining the proposed variation to the Agreement;

11.14.4 evaluating the likely impact of the proposed date for implementation of the variation, and where it considers appropriate amending this date; and

11.14.5 considering whether, if the proposed variation were made, the Agreement would better facilitate the achievement of the DCUSA Objectives than if that variation were not made.

11.15 A Working Group established for the purposes of the Definition Procedure shall comprise:

11.15.1 at least five individuals who each have relevant experience and expertise in

relation to the subject matter of the Change Proposal and whose backgrounds are broadly representative of the persons likely to be affected by the proposed variation to the Agreement; and

11.15.2 where the Proposer nominates such a person, one person nominated by the Proposer.

11.16 The Secretariat shall be invited to, and shall attend, meetings of the Working Group for the purposes of providing support to the group and facilitating the fulfilment of its duties in the Report Phase.

11.17 A Working Group established for the purposes of the Definition Procedure shall:

11.17.1 publish on the Website, and bring to the Parties' attention, a final consultation draft of the Change Proposal, including in particular the text of the proposed variation, the proposed implementation date and the Party Categories that it considers will be affected by the variation;

11.17.2 publish on the Website all consultation responses received and not marked as confidential; and

11.17.3 in accordance with the applicable timetable (but not less than five Working Days, and not more than 20 Working Days, after publication of such consultation draft), prepare, having regard to any consultation responses received, instructions to the Secretariat on the content of the Change Report.

11.18 Where any person serving on the Working Group objects to any aspect of the final consultation draft referred to in Clause 11.17, that person may require the Working Group to include in the final consultation draft such alternative to any aspect of the final consultation draft as he may specify, so as to allow the Parties to comment on those alternatives.

Report Phase

11.19 The Secretariat shall, in respect of any Change Proposal submitted to it by the Panel, prepare a written report (the **Change Report**) on the proposal (the **Report Phase**). Where the Definition Procedure has been followed, the Secretariat shall prepare the Change Report in accordance with the instructions of the relevant Working Group.

11.20 The Change Report shall:

11.20.1 be addressed and delivered to the Panel;

11.20.2 specify which Party Categories should (in the opinion of the Secretariat or, where the proposal was subject to the Definition Procedure, the Working Group) be eligible to vote on the Change Proposal;

11.20.3 set out the proposed variation to the Agreement;

11.20.4 specify the likely effects of the proposed variation were they to be implemented;

11.20.5 state the proposed date for implementation; and

11.20.6 in any case in which the proposal was subject to the Definition Procedure prior to the Report Phase, provide a summary of:

- (A) the views of the Working Group as to whether, if the proposed variation were made, the Agreement would better facilitate the achievement of the DCUSA Objectives than if that variation were not made;
- (B) any responses received to the consultation process conducted by the Working Group under the Definition Procedure and not marked as confidential, together with a statement of the location on the Website at which such responses can be found; and
- (C) why the Working Group considers that the proposed variation better facilitates the achievement of the DCUSA Objectives than any alternative variation put forward in accordance with Clause 11.18 or by a respondent to the consultation.

11.21 At any time before the completion of the Change Report, the Authority may decide, having regard to any determination made by the Panel under Clause 11.8, that in its opinion the Change Proposal relates to a Part 1 Matter or a Part 2 Matter, in which case –

- 11.21.1 the Authority shall inform the Panel and the Secretariat of its opinion;
 - 11.21.2 the Secretariat shall ensure that a statement of the Authority's opinion is included in the Change Report;
 - 11.21.3 the Authority's opinion shall prevail over any contrary determination of the Panel under Clause 11.8, and the proposal shall be treated as relating to a Part 1 Matter or a Part 2 Matter in accordance with that opinion for all the purposes of this Section 1C; and
 - 11.21.4 the Authority's opinion shall be without prejudice to its right subsequently to make a determination contrary to that opinion under Clause 13.19 or Clause 13.20, and any such determination, when made, shall prevail over any earlier opinion of the Authority.
- 11.22 On receipt of a Change Report, the Panel shall, subject to Clause 11.24, ensure that the Change Proposal is submitted to the Voting Procedure in accordance with Clause 12.
- 11.23 The Panel may, prior to submitting a Change Report to the Voting Procedure, and having had regard to the consultation responses received, direct the Secretariat to amend the Change Report in one or more of the following ways:
- 11.23.1 to alter the Party Categories who will be eligible to vote on the proposal;
 - 11.23.2 to alter the proposed date for the implementation of the proposal; and
 - 11.23.3 to add (in addition to the variation proposed) up to two of the alternative variations referred to in Clause 11.20.6(C),
 - 11.23.4 but where one of the alternative variations referred to in Clause 11.20.6(C) is a variation that was submitted by the Proposer, the Panel must use its power under Clause 11.23.3 to direct the Secretariat to add that variation to the Change Report, whether or not it also directs that a second alternative variation shall be added.
- 11.24 Where the Change Report is amended in accordance with Clause 11.23.3, unless the Panel considers it necessary to modify the applicable Voting Procedure in some other

manner, the Voting Procedure applying to such a Change Report will be modified so that the Parties can vote either to reject all of the proposed variations or to accept one of the proposed variations and reject the others.

The Change Register

11.25 The Secretariat shall establish and maintain a register (the **Change Register**) for the purpose of assisting the Panel in the operation of the Assessment Process and ensuring that the Parties and any interested third parties may be informed as to the progress of Change Proposals.

11.26 The Change Register shall contain, in respect of each Change Proposal that is in the Assessment Process:

11.26.1 details of the proposal (including the name of the Proposer, the date of the proposal and a short summary of its intended purpose and effect);

11.26.2 whether the proposal relates to a Part 1 Matter or a Part 2 Matter;

11.26.3 whether the proposal is an Urgent Change Proposal;

11.26.4 the timetable for the completion of each stage of the Assessment Process;

11.26.5 the current level of progress of the proposal within the Assessment Process;
and

11.26.6 such other matters relating to the proposal as the Panel may from time to time direct the Secretariat to include in the Change Register.

11.27 The Secretariat shall ensure that the Change Register is updated at regular intervals so that the information it contains in relation to each Change Proposal that is in the Assessment Process is, so far as is reasonably practicable, accurate and up-to-date.

11.28 The Secretariat shall ensure that the Change Register is made available on the Website. The Secretariat shall send a copy of the Change Register to the Authority on the first Working Day of each month.

Withdrawal by Proposer

11.29 The Proposer may withdraw his support for a Change Proposal on notice to the

Secretariat at any time.

- 11.30 As soon as is reasonably practicable after receiving any such notice, the Secretariat shall notify the Parties that the Proposer has withdrawn his support and shall update the Change Register accordingly.
- 11.31 Where, within 10 Working Days of the Secretariat sending notice under Clause 11.29, the Secretariat receives notice from a Party that it is prepared to support the Change Proposal, that Party shall:
- 11.31.1 become the Proposer for the Change Proposal (and the Secretariat shall amend the Change Register accordingly); and
 - 11.31.2 where the original Proposer has already nominated a person to serve on the relevant Working Group in accordance with Clause 11.15.2, be entitled to nominate a person to serve on the Working Group in place of the person so nominated.
- 11.32 Unless the Secretariat receives a notice under Clause 11.31, a Change Proposal withdrawn in accordance with Clause 11.29 shall cease to be subject to the Assessment Process and any Working Group established in respect of it shall be dissolved.

12. VOTING

- 12.1 The purpose of this Clause 12 is to make provision for the Parties to vote as to whether any Change Proposal should be accepted or rejected (the **Voting Procedure**).
- 12.2 Each Change Proposal shall be put to a vote of the Parties in accordance with the Voting Procedure.

Groups – DNO Parties

- 12.3 The IDNO Parties, the Supplier Parties and the DG Parties shall cast their votes on a corporate group basis, so that all of the Parties in each such Party Category that fall within a single Group shall collectively have only one vote. The DNO Parties shall cast their votes individually, so that each such Party has one vote. References in this Clause 12 and in Clause 13 to a “Group” shall, therefore, in the case of DNO Parties only, be taken as references to a “Party”.

The Voting Procedure

- 12.4 The Panel shall procure the design, establishment and maintenance of a system by which:
- 12.4.1 the Change Report on each Change Proposal is sent to all Parties, specifying the time period within which votes must be cast;
 - 12.4.2 each Group within each Party Category that is eligible to vote may cast one (and not more than one) vote on each of the questions comprising each vote (whether to accept or reject the proposed variation and whether to accept or reject the proposed implementation date);
 - 12.4.3 each Group that votes is given the opportunity (but is not obliged) to comment on the reasons for its vote;
 - 12.4.4 the vote of each Group is cast by means of a standard form;
 - 12.4.5 the vote of each Group is cast in such a way as to permit its authentication as the valid and properly authorised vote of that Group;
 - 12.4.6 the vote of each Group may be transmitted in such a manner as (so far as is

reasonably practicable) ensures that it is secure and will not be interfered with; and

12.4.7 the votes of all of the Groups are received and collated for the purposes of Clause 13.

12.5 The Panel shall ensure that all Parties are informed of the means by which they may have access to and use the system established under Clause 12.4 for the purposes of the Voting Procedure, and of any changes made to that system from time to time which are likely to affect the way in which it may be accessed and used.

The Vote

12.6 In respect of each Change Proposal and the Change Report relating to that proposal, the Groups within the Party Categories specified in that Change Report as eligible to vote shall be entitled to cast a vote to accept or to reject either or both of:

12.6.1 the proposed variation set out in that proposal; and

12.6.2 the proposed implementation date set out in that proposal,

by means of the system established under Clause 12.4.

12.7 Each Group which casts a vote on whether to accept or reject the proposed variation in respect of a Change Proposal shall:

12.7.1 vote on the basis of its judgment, made by it in good faith, as to whether or not, if the proposed variation were made, this Agreement would better facilitate the achievement of the DCUSA Objectives than if that variation were not made; and

12.7.2 where it wishes to do so, provide a statement in accordance with the system established under Clause 12.4 of the reasons, by reference to the DCUSA Objectives, for its vote.

Weighted Votes

12.8 The vote of each Group shall be allocated a weighting expressed as a percentage of the votes of all of the Groups within the same Party Category who voted (the

Weighted Vote), which weighting shall be calculated in accordance with the provisions of Clauses 12.9 to 12.16.

- 12.9 If five or fewer Groups in any Party Category cast their vote, each such Group shall have an equal Weighted Vote, calculated by dividing 100% by the number of Groups within that Party Category who cast their vote.
- 12.10 If more than five Groups in any Party Category cast their vote, the Weighted Vote of each such Group shall be calculated as follows:

$$WV = V + SVA$$

where:

WV is the Weighted Vote;

V is an initial allocation of a weighting to the vote of that Group (the **Basic Vote**), calculated in accordance with Clause 12.11; and

SVA is an adjustment factor (expressed as a percentage), designed to re-allocate between the Parties in a Party Category the Basic Vote of any Party in that category that is greater than 20% (the **Surplus Vote Adjustment**), and calculated in accordance with Clause 12.13.

Basic Vote

- 12.11 For the purposes of Clause 12.10, the Basic Vote (**V**) shall be calculated as follows:

$$V = \frac{N}{TN} \times 100\%$$

where:

N is (subject to Clause 12.12):

- (i) in respect of a Group comprised of DNO Parties, the aggregate number of Metering Points which each such DNO Party has on its MPAS Registration System;
- (ii) in respect of a Group comprised of IDNO Parties, the aggregate number of Metering Points which each such IDNO Party has on its MPAS Registration Systems;
- (iii) in respect of a Group comprised of Supplier Parties, the aggregate number of Metering Points against which those Suppliers are registered across all of the MPAS Registration Systems; and
- (iv) in respect of a Group comprised of DG Parties, the sum of the Maximum Export Capacities of all of the Entry Points relating to Metering Systems for which those DG Parties are Registered; and

TN is, in respect of any Group, the sum of the values of N for all the Groups within the same Party Category as that Group which cast a vote.

12.12 In undertaking the calculations provided for in Clause 12.11, the Secretariat shall rely upon:

12.12.1 in the case of Clauses 12.11(i), (ii) and (iii), the information regarding registrations last provided under clause 27.6 of the MRA and made available to the Secretariat prior to the vote in question; and

12.12.2 in the case of Clause 12.11(iv), the Party Details as set out in Schedule 11 on the date of the vote in question.

Surplus Vote Adjustment

12.13 For the purposes of Clause 12.10, the Surplus Vote Adjustment (**SVA**) shall:

12.13.1 in respect of a Party Category within which the Basic Vote of any Group is greater than 20%:

- (A) for that Group, have a negative value equal to the sum by which its

Basic Vote is greater than 20% (the **Surplus Vote**); and

- (B) for each other Group within the same Party Category who casts a vote, be calculated in accordance with Clause 12.14; and

12.13.2 in respect of each Group in any other Party Category, have the value of zero.

12.14 In respect of each Group to which Clause 12.13.1(B) refers, the Surplus Vote Adjustment (**SVA**) shall have a positive value calculated as follows:

$$SVA = SV \times \frac{N}{XN}$$

where:

SV is the sum of the values of the Surplus Votes of any Groups in the same Party Category as that Group;

N has the same meaning for that Group as it does in Clause 12.11; and

XN is the sum of the values of N for all the Groups in the same Party Category as that Party which cast a vote, excepting those with a Surplus Vote.

Further Adjustment

12.15 Where, on applying the formula at Clause 12.14 in respect of any Group, the Weighted Vote of that Group is greater than 20%:

12.15.1 the Weighted Vote of that Group shall be 20%;

12.15.2 the amount by which the Weighted Vote of that Group would otherwise have exceeded 20% shall be allocated between the other Groups within the same Party Category which cast a vote and which have Weighted Votes of less than 20%;

12.15.3 that amount shall be allocated between those other Groups on the same basis as a Surplus Vote allocated in accordance with Clause 12.14; and

12.15.4 the Weighted Votes of those other Groups shall be increased accordingly.

12.16 Where the effect of any adjustment in accordance with Clause 12.15 is to increase the Weighted Vote of any Group so that it is greater than 20%, a process of adjustment equivalent to that set out in Clause 12.15 shall be repeated until no Group's Weighted Vote is greater than 20%.

If no Group in a Party Category Votes

12.17 Where, in respect of a Change Proposal and a Party Category that is specified in the relevant Change Report as being eligible to vote, no Group in that Party Category casts a vote, such Party Category shall, for the purposes of Clause 13, be treated as if it were not eligible to vote.

13. THE CHANGE DECISION

- 13.1 The purpose of this Clause 13 is to determine whether or not a Change Proposal is to be accepted and the proposed variation to this Agreement made accordingly. The process shall be applied independently to the vote concerning the proposed variation and to the vote concerning the proposed implementation date, to determine in each case whether the proposal is accepted or rejected.
- 13.2 In the case of a Change Proposal that relates to a Part 1 Matter:
- 13.2.1 that proposal shall not be accepted unless, in accordance with the provisions of this Clause 13, the Authority determines that it shall be so accepted; and
- 13.2.2 a vote by the Parties to accept or reject that proposal shall have the status of a recommendation to the Authority to determine that the proposal is to be accepted or rejected, and shall not by itself have the effect of an acceptance or rejection of the proposal.
- 13.3 In the case of a Change Proposal which relates to a Part 2 Matter, a vote which meets the criteria set out in this Clause 13 shall be effective to determine the acceptance or the rejection of the proposal.

Declaration by the Secretariat

- 13.4 The Secretariat shall be responsible, in respect of each Change Proposal, for:
- 13.4.1 monitoring the votes which are received and collated in accordance with Clause 12.4;
- 13.4.2 calculating whether the votes, having regard to the Weighted Vote allocated to each Group, are sufficient to meet the thresholds set out in Clauses 13.5 and 13.6;
- 13.4.3 having made those calculations, declaring whether:
- (A) in the case of a Change Proposal that relates to a Part 1 Matter, the Parties are deemed to have recommended to the Authority that the proposal should be accepted or rejected; and

(B) in the case of a Change Proposal that relates to a Part 2 Matter, the proposal is accepted or rejected; and

13.4.4 publishing, on the Website, which Groups voted and how each such Group voted.

Part 1 Matters

13.5 Where a Change Proposal relates to a Part 1 Matter, the Parties shall:

13.5.1 be deemed to recommend to the Authority that the proposal should be accepted where, in respect of each Party Category that was eligible to vote, the sum of the Weighted Votes of the Groups in that Party Category which voted to accept the proposal is more than 50%; and

13.5.2 in all other cases, be deemed to recommend to the Authority that the proposal should be rejected.

Part 2 Matters

13.6 Where a Change Proposal relates to a Part 2 Matter, that proposal shall be accepted where, in respect of each Party Category that was eligible to vote:

13.6.1 the number of Groups in that Party Category which voted to accept the proposal is greater than 65% of the total number of Groups in that Party Category which voted; and

13.6.2 the sum of the Weighted Votes of those Groups in that Party Category which voted to accept the proposal is greater than 65%.

13.7 In all other cases a Change Proposal which relates to a Part 2 Matter shall be rejected.

Notice by the Secretariat

13.8 The Secretariat shall, as soon as is reasonably practicable after making a declaration under Clause 13.4.3, give notice of that declaration to:

13.8.1 each Party;

13.8.2 the Consumer Council;

13.8.3 the GB System Operator;

13.8.4 any person or body that is designated in writing by the Authority for the purpose of Clause 10.2.4; and

13.8.5 the Authority,

and shall ensure that the Change Register is updated so as to indicate the declaration made in relation to the Change Proposal.

The Change Decision – Part 1 Matters

13.9 Where the Authority receives notice from the Secretariat of a declaration made under Clause 13.4.3 in respect of a Change Proposal relating to a Part 1 Matter, the Authority shall determine whether that proposal shall be accepted or rejected having regard to:

13.9.1 its principal objective and statutory duties under sections 3A to 3D of the Act; and

13.9.2 whether in its opinion the proposed variation, if it were made, would better facilitate the achievement of the DCUSA Objectives than if that variation were not made.

13.10 In making a determination under Clause 13.9, the Authority:

13.10.1 may follow such procedure as it considers appropriate;

13.10.2 may have regard to such matters, and to any representations by such Parties, as it considers appropriate; and

13.10.3 shall in any event have regard to the recommendation made by the Parties by virtue of the Voting Procedure.

13.11 Where the Authority is to make a determination under Clause 13.9, the Secretariat shall provide the Authority with a copy of the relevant Change Report (with the notice referred to in Clause 13.8 attached) and shall, at the Authority's request, provide any other existing documents or information in respect of the Change Proposal in question.

13.12 Where the Authority, acting in accordance with Clauses 13.9 and 13.10, determines that a Change Proposal shall be accepted or rejected, it shall direct the DNO Parties and IDNO Parties accordingly and that proposal shall be so accepted or rejected for the purposes of this Clause 13. As soon as practicable following receipt of such direction, each DNO Party and IDNO Party shall forward a copy of the determination contained therein to the Panel (care of the Secretariat). The DNO Parties and IDNO Parties agree that the receipt by the Panel of any one such copy shall be an instruction on behalf of all DNO Parties and IDNO Parties to amend the DCUSA in accordance with the determination.

13.13 The Secretariat shall, as soon as is reasonably practicable after the receipt by the Panel of a determination by the Authority, give notice of that determination to:

13.13.1 each Party;

13.13.2 the Consumer Council;

13.13.3 the GB System Operator; and

13.13.4 any person or body that is designated in writing by the Authority for the purpose of Clause 10.2.4,

and shall ensure that the Change Register is updated so as to indicate the determination made in relation to the Change Proposal.

13.14 Where any Change Proposal that relates to a Part 1 Matter is accepted by virtue of Clause 13.12, the Panel shall ensure that the proposal is subject to Implementation in accordance with Clause 14.

The Change Decision – Part 2 Matters

13.15 The Panel shall, in the case of any Change Proposal that relates to a Part 2 Matter and that is accepted in accordance with Clause 13.6, ensure that the proposal is subject to Implementation in accordance with Clause 14.

Appeal of Part 2 Decisions

13.16 Any Party which is aggrieved by the acceptance or rejection of a Change Proposal by virtue of Clause 13.6 or Clause 13.7 may ask the Authority to determine that the

proposal relates not to a Part 2 Matter but to a Part 1 Matter.

13.17 Such a request may only be made within 10 Working Days after the Secretariat notifies the aggrieved Party of the acceptance or rejection of the proposal in accordance with Clause 13.8.

13.18 Such a request must:

13.18.1 be made in writing;

13.18.2 state why the Party believes (having regard to the criteria set out in Clause 9.4) that the Change Proposal relates to a Part 1 Matter; and

13.18.3 be copied to the Secretariat and to the Panel.

13.19 If the Authority, within 15 Working Days of receiving a request under Clause 13.18 (and after having consulted with any persons and had regard to any information that it thinks fit) determines (having regard to the criteria set out in Clause 9.4) that the Change Proposal relates to a Part 1 Matter:

13.19.1 the acceptance or rejection of the proposal by virtue of Clause 13.6 shall be deemed to have no effect;

13.19.2 on being notified of the determination by the Authority, the Secretariat shall treat the proposal as relating to a Part 1 Matter for the purposes of Clause 13.5 and shall make a declaration under that Clause as if no declaration had previously been made; and

13.19.3 the Authority shall determine whether the proposal shall be accepted or rejected in accordance with Clauses 13.9 and 13.10.

13.20 If the Authority, within 15 Working Days of receiving a request under Clause 13.18 (and after having consulted with any persons and had regard to any information that it thinks fit) determines (having regard to the criteria set out in Clause 9.4) that the Change Proposal does not relate to a Part 1 Matter, the acceptance or rejection of the proposal by virtue of Clause 13.6 or Clause 13.7 shall continue to have effect.

14. IMPLEMENTATION

- 14.1 The purpose of this Clause 14 is to provide that, where a Change Proposal has been accepted in accordance with Clause 13, the Panel shall make arrangements by which this Agreement will be varied in accordance with the variation so accepted (**Implementation**).

Implementation Date

- 14.2 Where, in respect of any Change Proposal, the proposed variation to this Agreement is accepted in accordance with Clause 13 but the proposed implementation date is rejected:

14.2.1 the Change Proposal will be re-submitted to the Assessment Process and Voting Procedure but so that only the newly proposed implementation date (and not the proposed variation to the Agreement) is assessed and voted upon; and

14.2.2 the provisions of this Clause 14 shall not apply to the Change Proposal until the proposed implementation date is also accepted in accordance with Clause 13.

- 14.3 Where, in respect of any Change Proposal, the proposed variation to this Agreement is rejected in accordance with Clause 13 but the proposed implementation date is accepted, the Change Proposal as a whole shall be deemed to have been rejected in accordance with Clause 13.

Implementation

- 14.4 The Panel shall, at the next Panel meeting after a Change Proposal has been accepted:

14.4.1 determine what actions are required in order to ensure that the accepted variation may be made by the accepted implementation date; and

14.4.2 set a timetable for the completion of each of those actions which is required to ensure that the accepted variation may be made by the accepted implementation date.

- 14.5 It shall be the duty of the Panel to ensure that actions which are required to secure that

an accepted variation may be made by the accepted implementation date are taken so as to secure that the variation is made by that date.

- 14.6 It shall be the duty of each Party to co-operate with the Panel to the extent required to ensure that such variation may be made by such date.

Subsequent Amendment to Implementation Date

- 14.7 Where, having regard to representations received from the Secretariat or from any Party, the Panel considers that it is not reasonably practicable to vary this Agreement by the relevant implementation date:

14.7.1 the Panel may request the Authority to direct that a new later implementation date be substituted for the first such date; and

14.7.2 where the Authority makes such a direction following a request by the Panel, the implementation date directed by the Authority shall have effect in substitution for the first such date, and the duties of the Panel and of each Party under this Clause 14 shall be defined by relation to that later date.

- 14.8 Where, having received representations from any Party as to the appropriateness of the relevant implementation date, the Authority (having first consulted with the Panel) considers that the implementation date should be amended so as to be either a later or an earlier date:

14.8.1 the Authority may direct that a new implementation date be substituted for the first such date; and

14.8.2 where the Authority makes such a direction following representations from any Party, the implementation date directed by the Authority shall have effect in substitution for the first such date, and the duties of the Panel and of each Party under this Clause 14 shall be defined by relation to the date so directed.

**SECTION 2
COMMERCIAL ARRANGEMENTS**

SECTION 2A – COMPANY / USER RELATIONSHIPS

15. INTERPRETATION OF SECTION 2A

Party Obligations

- 15.1 In this Section 2A and the Schedules referred to in it, a reference to a **Company** is a reference to each Party that is either a DNO Party or an IDNO Party separately and individually 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 Party separately and independently.
- 15.2 In this Section 2A and the Schedules referred to in it, a reference to a **User** is:
- 15.2.1 a reference to each Party that is either, or both of, a Supplier Party or a DG Party separately and individually and, where an obligation is imposed on, or a right is granted to, a User, that obligation is imposed on, and that right is granted to, each such Party separately and independently; and
- 15.2.2 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, Registered in respect of a Metering Point or Metering System relating to an Entry Point or an Exit Point on that Company's Distribution System (provided that, in the case of Clauses 16, 17 and 24, it shall include those Users who are taking steps to be so Registered, and that, in the case of Clauses 24, 34 and 35, it shall include those Users who were once so Registered).
- 15.3 This Section 2A and the Schedules referred to in it shall:
- 15.3.1 only create rights and obligations between Companies and Users, and shall not create rights or obligations between Companies and other Companies or between Users and other Users;
- 15.3.2 only create obligations between a Company and a User to the extent that, and in relation to those periods for which, that User is (or was) Registered in respect of a Metering Point or Metering System relating to an Entry Point or an Exit Point on that Company's Distribution System; and
- 15.3.3 not impose any obligations between a Company and a User in relation to

periods for which that User is (or was) not Registered in respect of any Metering Points or Metering Systems relating to Entry Points or Exit Points on that Company's Distribution System.

References in Relation to Companies and Users

15.4 In this Agreement, references to:

15.4.1 a Metering Point or Metering System are, when made in relation to a User and any period of time, references to a Metering Point or Metering System Registered to that User during that period;

15.4.2 an Entry Point or Exit Point are, when made in relation to a Company, references to an Entry Point or Exit Point on that Company's Distribution System;

15.4.3 an Entry Point or Exit Point are, when made in relation to a User and any period of time, references to an Entry Point or Exit Point relating to a Metering Point or Metering System Registered to that User during that period;

15.4.4 a Connectee, Connected Installation, Connection Agreement, Contract, Metering Point, Metering System or Charge are, when made in relation to a Company, references to a Connectee, Connected Installation, Connection Agreement, Contract, Metering Point, Metering System or Charge relating to an Entry Point or Exit Point on such Company's Distribution System; and

15.4.5 a Connectee, Connected Installation, Connection Agreement, Contract or Charge are, when made in relation to a User and any period of time, references to a Connectee, Connected Installation, Connection Agreement, Contract or Charge relating to an Entry Point or Exit Point relating to a Metering Point or Metering System Registered to that User during that period.

Use of the Same Market Domain I.D.

15.5 Where, in relation to any period of time, more than one User is using the same Market Domain I.D. and where it is not reasonably practicable for a Company to identify

which of those Users is Registered in respect of a particular Metering Point or Metering System, the Users shall be deemed, as against that Company, to be jointly and severally liable in respect of that Metering Point or Metering System.

Additional Interpretation

- 15.6 In this Section 2A and the Schedules referred to in it, 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).

16. CONDITIONS PRECEDENT

- 16.1 The rights and obligations of each Company as against each User (and of each User as against each Company) under Clauses 18 to 25 (inclusive) and 29 to 33 (inclusive) are conditional upon each of the following conditions precedent being fulfilled:
- 16.1.1 where the User has not previously been Registered in respect of any Metering System or Metering Point relating to an Entry Point or an Exit Point on the Company's Distribution System, that the User has notified the Company that the User intends to become so Registered and that the User and the Company have exchanged such contact, invoicing and other similar information as the other reasonably requests;
 - 16.1.2 where the User is a Supplier Party, that the User holds a Supply Licence;
 - 16.1.3 where the User is a DG Party, that the User holds a Generation Licence or is exempt from the requirement to hold such a licence pursuant to Section 5 of the Act;
 - 16.1.4 that the Company holds a Distribution Licence;
 - 16.1.5 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;
 - 16.1.6 that both the User and the Company are party to the Balancing and Settlement Code; and
 - 16.1.7 where the User is a Supplier Party, that the Master Registration Agreement and the Data Transfer Service Agreement are in full force and effect between the User and the Company, and that such agreements are unconditional save for any conditions that this Agreement becomes unconditional.
- 16.2 If the conditions precedent set out in Clause 16.1.2 to 16.1.7 (inclusive) are not fulfilled as between a Company and a User at the date this Agreement becomes effective between those Parties, that Company and that User shall each take all appropriate steps within its power to procure the fulfilment of those conditions relating to it which have not already been fulfilled.

16.3 Once each of the conditions precedent in Clause 16.1 has been fulfilled as between a Company and a User, the Company and the User shall each take all appropriate steps within its power to keep such conditions precedent relating to it fulfilled.

17. CONTRACTS

Appointment as Agent

- 17.1 The Company hereby appoints the User as the Company's agent for the purpose of procuring agreements with Customers and Generators on the terms set out at Schedule 2B (the **National Terms of Connection**) in accordance with this Clause 17, and the User agrees to act in that capacity.
- 17.2 In respect of the Customers of a Relevant Exempt Supplier, the User is authorised to, and shall, appoint the Relevant Exempt Supplier as the sub-agent of the User for the purpose of procuring agreements on the National Terms of Connection in accordance with this Clause 17, and shall procure that the Relevant Exempt Supplier agrees to and does act in that capacity.

Obligation to Include Wording in Contracts

- 17.3 The User shall ensure that, on each occasion on which it, or any Relevant Exempt Supplier, enters into a Contract (whether written, oral, or deemed), the wording set out in Schedule 2A is included within that Contract. The User shall ensure that such wording is presented in such a way as to create an effective contract (insofar as one can be created by presentation alone) between the Company and the relevant Customer or Generator on the terms and conditions of the NTC.
- 17.4 The User shall, on request, provide the Company with accurate and complete copies of the User's then current standard form of Contract.

Nature of Agency

- 17.5 The Company does not give authority to the agent or sub-agent to:
- 17.5.1 vary any of the wording included in a Contract in accordance with this Clause 17;
 - 17.5.2 sue or be sued on the wording set out in Schedule 2A or on the National Terms of Connection;
 - 17.5.3 make any profit out of the agency or sub-agency;
 - 17.5.4 receive any payment in respect of its duties as agent or sub-agent; or

- 17.5.5 enter into any transactions involving the transfer of money.
- 17.6 The agency in respect of any single Contract ends when that Contract becomes effective.
- 17.7 The User shall not in its capacity as agent (and shall procure that any agent or sub-agent of the User shall not in that capacity):
- 17.7.1 pledge the credit of the Company in any way;
- 17.7.2 make or give any representation or warranty in relation to the Company unless the representation or warranty itself has been expressly approved in writing by the Company; or
- 17.7.3 agree or purport to agree to any obligations on the Company other than as set out in Schedule 2A.
- 17.8 The User shall indemnify the Company against all actions, proceedings, costs, demands, claims, expenses, liability, loss or damage arising from, or incurred by the Company as a consequence of, the User (or any Relevant Exempt Supplier) failing to comply with this Clause 17.
- 17.9 Where the User or any other Relevant Exempt Supplier does not, on the Company's reasonable request, in the context of an actual or threatened dispute, difference or disagreement with the relevant Customer or Generator, provide sufficient evidence to establish in any particular case that the User complied with Clause 17.3, then the User shall indemnify the Company as if the User had failed to comply with Clause 17.3 in that case. Where such evidence is released to the Company, they shall be subject to the Company's obligations of confidentiality under Clause 34.

Non-standard Connection Terms

- 17.10 Where the User, or any Relevant Exempt Supplier, has procured an agreement on behalf of the Company in accordance with this Clause 17 and the Company intends to negotiate non-standard connection terms to apply in addition to or in substitution for the terms of such agreement, the Company shall notify the User of any of those non-standard terms which affect the Use of System Charges payable in respect of the Customer or Generator in question. The Company shall use reasonable endeavours to

notify the User, by a method agreed between the Company and the User, of such non-standard terms within 10 Working Days after the later of their being entered into and any conditions therein being satisfied. Such notification shall specify, as a minimum, the relevant Metering Point(s) or Metering System(s), the relevant Maximum Import Capacity and / or Maximum Export Capacity and the effective date for such non-standard terms.

Transition

- 17.11 In Clause 17.12, **Old Terms of Connection** means provisions that have the same or a similar effect to the National Terms of Connection and which the User was obliged to include in Contracts in accordance with any use of distribution system agreement existing between the User and the Company immediately before this Agreement became effective.
- 17.12 During the period of three months following the date upon which this Agreement became effective, the User shall be entitled to comply with its obligations under Clause 17.3 by ensuring that, on each occasion on which the User or any Relevant Exempt Supplier enters into a Contract (whether written, oral, or deemed), the Old Terms of Connection are presented within the Contract.
- 17.13 The User is hereby appointed by the Company as the Company's agent (and in that capacity has power to appoint any Relevant Exempt Supplier as its sub-agent) for the purpose (subject to Clauses 17.5 to 17.9) of procuring agreements in accordance with Clause 17.12. On the expiry of the period referred to in Clause 17.12, the User's appointment under this Clause 17.13 shall cease.

18. USE OF SYSTEM

Provision of Use of System

- 18.1 Subject to the other provisions of this Agreement, the Company shall convey electricity through its Distribution System, for the User, to each Exit Point and from each Entry Point relating to a Metering Point or Metering System Registered to that User, subject to (in respect of each such Entry Point and Exit Point):
- 18.1.1 any arrangements made between the respective Connectee and the Company and the requirements (if any) of the respective Connectee agreed between such Connectee and the Company;
 - 18.1.2 the Maximum Import Capacity (if any) or the Maximum Export Capacity (if any); and
 - 18.1.3 such variations (if any) as may be permitted by the Regulations.

Prior Requirements: General

- 18.2 The obligation of the Company to convey electricity to a particular Exit Point or from a particular Entry Point pursuant to Clause 18.1 is, in each case, subject to:
- 18.2.1 there being a Connection Agreement in full force and effect relating to the connection of the relevant Connected Installation (whether such Connection Agreement was entered into in accordance with Clause 17 or otherwise);
 - 18.2.2 the Company receiving confirmation that an Accredited Meter Operator, Accredited Data Collector and Accredited Data Aggregator (where that Exit Point or Entry Point relates to a Metering Point) or an Accredited Meter Operator Agent (where that Exit Point or Entry Point relates to a Metering System) have been appointed (except that no Meter Operator is required to be appointed in relation to an Unmetered Supply);
 - 18.2.3 subject to Clause 29.11, the Company receiving confirmation that metering equipment has been installed in accordance with Clause 29;
 - 18.2.4 where applicable, the Company receiving confirmation that the User has given notice of that Exit Point or Entry Point (as the case may be) to the GB

System Operator pursuant to the Connection and Use of System Code and the Grid Code (where appropriate); and

18.2.5 the Company not being entitled under Schedule 6 of the Act to De-energise an Exit Point or Entry Point.

Prior Requirements: Exit Points

18.3 In addition to the conditions set out in Clause 18.2, the obligation of the Company to convey electricity to an Exit Point is also subject to:

18.3.1 the User being validly Registered in respect of each Metering Point or Metering System relating to that Exit Point;

18.3.2 the User being authorised by its Supply Licence to supply electricity to each of the premises to be supplied with electricity through such Exit Point (or, where the Exit Point relates to a User Installation that comprises a generating station, the User being authorised by its Generation Licence to generate electricity at that generating station);

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

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

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

Prior Requirements: Entry Points

18.4 In addition to the conditions set out in Clause 18.2, the obligation of the Company to convey electricity from an Entry Point is also subject to:

18.4.1 the User being validly Registered in respect of each Metering Point or Metering System relating to that Entry Point; and

18.4.2 where the Entry Point is also an Exit Point, the User or another user being validly Registered for the supply of electricity at such Entry Point.

19. CHARGES

Charges

- 19.1 The User shall pay to the Company in respect of services provided under this Agreement (and under the agreements referred to in Clause 19.2) the charges set out in the Relevant Charging Statement. 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 the period specified in the Company's Relevant Charging Statement or, where no such period is specified, 40 days). The Company shall use reasonable endeavours to vary such charges no more than two times per year, such variations to apply 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.
- 19.2 The charges referred to in Clause 19.1 (the **Charges**) shall be:
- 19.2.1 the charges contained or referred to in the Company's Relevant Charging Statement for the time being in force pursuant to Condition 4A of its Distribution Licence (**Use of System Charges**);
- 19.2.2 the charges for (i) the provision of MPAS, (ii) (where applicable) the provision of Basic Metering Services, (iii) the provision of data transfer services, and (iv) (where applicable) the provision of last resort supply payments (all pursuant to the Company's obligations under, respectively, Condition 14, Condition 36, Condition 36A, and Condition 48 of its Distribution Licence);
- 19.2.3 (to the extent not captured within Clause 19.2.1) the charges for certain services ancillary to those for which Use of System Charges are levied and which are provided by the Company to the User pursuant to any of:
- (A) the BSC and the CUSC; or
- (B) the Master Registration Agreement; and
- 19.2.4 the charges for any other services provided by the Company to the User pursuant to:

- (A) a provision of this Section 2A; 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

19.3 On any occasion upon which the Charges payable by the User under Clause 19.1 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.

19.4 Where an adjustment in accordance with Clause 19.3:

19.4.1 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

19.4.2 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,

and 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 of them may refer the dispute to arbitration in accordance with Clause 41 and the User or the Company (as applicable) shall pay the amount payable or repayable (if any) as so determined.

Invoicing of Charges

- 19.5 The Company shall invoice Use of System Charges (but excluding any Transactional Charges) to the User by reference to Settlement Class using aggregated data obtained from the Supercustomer DUoS Report, except in relation to Metering Points or Metering Systems where:
- 19.5.1 the electricity imported via an Exit Point or exported via an Entry Point is measured by Half-Hourly Metering Equipment (as defined in the Balancing and Settlement Code) or by an Equivalent Meter for the purposes of Settlement; and/or
 - 19.5.2 the Use of System Charge is not comprised solely of one or more standing charges and/or one or more Unit Rates; and/or
 - 19.5.3 the Use of System Charge is specified in the Relevant Charging Statement as not being billed by Settlement Class; and/or
 - 19.5.4 Use of System Charges are to be determined as a result of an Extra-Settlement Determination.
- 19.6 All charges payable by the User pursuant to this Clause 19 and Clauses 20, 21 and 22:
- 19.6.1 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
 - 19.6.2 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.
- 19.7 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 onto, or imported from, the Distribution System at an Entry Point or Exit Point relating to a Metering Point or a Metering System for which the User is Registered but not recorded at the time of such export or import (for whatever reason) by the metering

equipment installed pursuant to Clause 29.1. At any time when the Company charges the User Use of System Charges under this Clause 19.7, it shall explain to the User the calculation of those charges and the basis of that calculation.

Revision of Charges

- 19.8 Without prejudice to Clause 19.1, 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 5 of Condition 4A of its Distribution Licence on the User as soon as is reasonably practicable after such notice is sent to the Authority.

Other Matters

- 19.9 The Company may charge the User Use of System Charges calculated by reference to electricity assessed to have been supplied to a Customer while a customer of the User during a period in which the User was supplying electricity to that Customer in accordance with a last resort supply direction issued by the Authority in accordance with Condition 29 of the User's Supply Licence from the time that the direction takes effect. This right subsists from the date on which the last resort supply direction takes effect, and continues regardless of whether the Metering Point applying to the Customer is registered to the User in accordance with the Master Registration Agreement, until such time as the relevant Metering Point is registered to another supplier in accordance with the terms of the Master Registration Agreement.
- 19.10 For the avoidance of doubt, nothing in this Clause 19 precludes the Company and the User, at the request of either of them, from negotiating Use of System Charges arising from or pursuant to an Extra-Settlement Determination.
- 19.11 Where any dispute arises under Clause 19.10, either of the Company or the User shall be entitled to refer the matter to the Authority as if it were a dispute falling within Condition 4E of the Company's Distribution Licence.

20. BILLING AND PAYMENT BY SETTLEMENT CLASS

20.1 This Clause 20 applies in respect of those services falling within the scope of Clause 19.1 for which the charges to be levied are invoiced by reference to Settlement Class in accordance with Clause 19.5.

Initial Account

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

20.3 The Company shall submit to the User as soon as is reasonably practicable after the end of each charging period an account (the **Initial Account**) specifying the Use of System Charges payable in respect of each Initial Settlement Run in respect of which a Daily Statement has been produced and which has not previously been included in an Initial Account. Such Initial Accounts shall be based on the Daily Statements provided pursuant to Clause 20.2.

Reconciliation Account

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

20.5 Within 14 days of the date of an Initial Account or Reconciliation Account submitted in accordance with Clause 20.3 or 20.4, the User shall pay to the Company all sums due in respect of such Initial Account or Reconciliation Account in pounds sterling by electronic transfer of funds to such bank account (located in the United Kingdom) as is specified in the Initial Account or Reconciliation Account, quoting the Initial Account or Reconciliation Account number against which payment is made and/or

such other details as the Company may reasonably require.

Disputes

- 20.6 Where any sum included in an Initial Account or Reconciliation Account submitted in accordance with Clause 20.3 or 20.4 is disputed by the User, the provisions of Schedule 4 shall apply.

21. SITE-SPECIFIC BILLING AND PAYMENT

21.1 This Clause 21 applies in respect of those services falling within the scope of Clause 19.1 for which the charges to be levied relate to Metering Points or Metering Systems that fall within Clauses 19.5.1 to 19.5.3 (inclusive).

Submission of Account

21.2 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:

21.2.1 data from metering equipment or any Equivalent Meter provided by the User in accordance with Clause 29.2 or, where actual data are not available, estimated data prepared in accordance with methods of estimation established under the Balancing and Settlement Code by the relevant Data Collector; and

21.2.2 other data as specified in the Relevant Charging Statement and/or the relevant Connection Agreement,

provided that the Company may use estimated data prepared by the Company where the User fails to provide the data under Clause 21.2.1 and 21.2.2, and, where an account is based on estimated data, the account shall be subject to any adjustment which may be necessary following the receipt of actual data from the User.

Obligation to Pay

21.3 Within 14 days of the date of an account submitted in accordance with Clause 21.2, the User shall pay to the Company all sums due in respect of such account by electronic transfer of cleared funds to such bank account (located in the United Kingdom) as is specified in the account, quoting the account number against which payment is made and/or such other details as the Company may reasonably require.

Disputes

21.4 Where any sum included in an account submitted in accordance with Clause 21.2 is disputed by the User, the provisions of Schedule 4 shall apply.

22. TRANSACTIONAL CHARGES

22.1 This Clause 22 applies in respect of those services falling within the scope of Clause 19.1 for which the charges to be levied are not billed in accordance with Clause 20 or 21 and, instead, are calculated by reference to the number or frequency of specific transactions (**Transactional Charges**), except where the billing and payment arrangements in respect of such services are otherwise provided for under the Master Registration Agreement, the BSC, or the CUSC.

Submission of Account

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

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

22.2.2 any Value Added Tax payable thereon.

Obligation to Pay

22.3 Within 30 days of the date of an account submitted in accordance with Clause 22.2, the User shall pay to the Company all sums due in respect of such account in pounds sterling by electronic transfer of cleared funds to such bank account (located in the United Kingdom) as is specified in the statement, quoting the invoice number against which payment is made.

Disputes

22.4 Where any sum included in an account submitted in accordance with Clause 22.2 is disputed by the User, the provisions of Schedule 4 shall apply.

23. PAYMENT DEFAULT

- 23.1 Subject to Clause 20.6, Clause 21.4 and Clause 22.4, failure by the User to pay any sum due as cleared funds by the due date for payment in accordance with Clause 20.5, Clause 21.3, or Clause 22.3 shall be a **Payment Default**.
- 23.2 Where the User so defaults, the Company shall send a notice (a **Late Payment Notice**) to the User:
- 23.2.1 setting out the amount owed by the User to the Company, and identifying the specific account to which the Payment Default relates;
 - 23.2.2 stating to whom payment should be made;
 - 23.2.3 specifying the method of payment; and
 - 23.2.4 where the Company intends to exercise its rights under Clause 23.3 and/or Clause 23.4, advising the User of its intention.

Interest

- 23.3 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 20.5, Clause 21.3, or Clause 22.3 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

- 23.4 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 37.1.1 and the Company shall be entitled to take actions to suspend registration services in accordance with the provisions of the Master Registration Agreement. Where the Company takes such action, it shall send a copy of any notice that it is required to issue pursuant to those provisions to the User.

24. SECURITY COVER

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

25. ENERGISATION, DE-ENERGISATION AND RE-ENERGISATION

Requirements for Those Undertaking Works

25.1 Energisation Works, De-energisation Works and Re-energisation Works carried out by or on behalf of the User pursuant to this Clause 25 shall be carried out by a person who is either engaged by the Company to carry out such work or who:

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

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

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

Works Undertaken by the Company

25.2 Where:

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

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

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

25.2.4 the parties so agree,

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

Good Industry Practice

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

Works Undertaken by the User

- 25.4 If circumstances exist which entitle the User or any Relevant Exempt Supplier to Energise, De-energise or Re-energise Metering Point(s) or Metering System(s) pursuant to the Contract with the relevant Connectee, then, subject to Clause 25.13, the User may Energise, De-energise or Re-energise such Metering Points or Metering Systems provided that the User acts (where applicable and to the extent relevant) in accordance with the code of practice on payment of bills and guidance for dealing with customers in difficulty that supply licensees must submit to and have approved by the Authority in accordance with Condition 35 of the Supply Licences.

- 25.5 If the User resolves to Energise or Re-energise a Metering Point or Metering System pursuant to Clause 25.4:

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

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

- 25.6 If the User resolves to De-energise a Metering Point or a Metering System pursuant to Clause 25.4:

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

25.6.2 (in respect of Metering Points) when such De-energisation Works are

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

- 25.6.3 (in respect of Metering Systems) when such De-energisation Works are complete, the User shall, in accordance with the BSC, instruct the CRA to register the relevant Metering System as De-energised.

Duty to Indemnify

- 25.7 Where the Company carries out Works on behalf of the User pursuant to Clause 25.2:
- 25.7.1 the Company shall indemnify the User against all actions, proceedings, costs, demands, claims, expenses, liability, loss or damage arising from, or incurred by the User as a consequence of, physical damage to the property of the User, its officers, employees or agents, and in respect of the liability of the User to any other person for loss in respect of physical damage to the property of any person, in each case as a consequence of acting contrary to an accurate and appropriate instruction to De-energise a Metering Point or Metering System;
- 25.7.2 the User shall indemnify the Company against all actions, proceedings, costs, demands, claims, expenses, liability, loss or damage arising from, or incurred by the Company as a consequence of, physical damage to the property of the Company, its officers, employees or agents, and in respect of the liability of the Company to any other person for loss in respect of physical damage to the property of any person, in each case as a consequence of acting in reliance on any instructions given by the User to the Company which are materially inaccurate or misleading; and
- 25.7.3 where the User requests the Company to Energise, De-energise or Re-energise a single point of connection that is both an Exit Point and an Entry Point, the User shall also indemnify the Company against all actions, proceedings, costs, demands, claims, expenses, liability, loss or damage made against or incurred or suffered by the Company and resulting directly from

such Works howsoever arising (including, where the User is Registered in respect of the Exit Point, any claim by the user Registered in respect of the Entry Point, and vice versa) except insofar as such actions, proceedings, costs, demands, claims, expenses, liability, loss or damage arise from the negligent act or omission or default of the Company, its officers, employees or agents (but, for the avoidance of doubt, in complying with any such request the Company shall not be obliged to consider whether the point of connection is both an Exit Point and an Entry Point or whether different users may be Registered in respect thereof).

Company's Right to De-energise

- 25.8 The Company may, on giving the User two Working Days' prior written notice, De-energise any Metering Point or Metering System if:
- 25.8.1 the Company is entitled to do so pursuant to the Connection Agreement relating to such Metering Point or Metering System; or
 - 25.8.2 any of the conditions set out in Clause 18.2 and 18.3 in relation to an Exit Point (or, in the case of an Unmetered Supply, any one or more of the relevant Exit Points) or in Clause 18.2 and Clause 18.4 in relation to an Entry Point cease to be fulfilled (or, in the case of Clause 18.2.2, remain unfulfilled 10 Working Days after the service of notice by the Company requiring the User to remedy the situation).
- 25.9 Notwithstanding the provisions of Clause 25.8, the Company may, at any time with no prior notice to the User, De-energise any Metering Point or Metering System if:
- 25.9.1 the Company is instructed, pursuant to the terms of the Connection and Use of System Code or the Balancing and Settlement Code to do so;
 - 25.9.2 the Company reasonably considers it necessary to do so for safety or system security reasons;
 - 25.9.3 the Company reasonably considers it necessary to do so to avoid interference with the regularity or efficiency of its Distribution System;
 - 25.9.4 an accident or emergency occurs or threatens to occur which requires the

Company to do so to avoid the risk of personal injury to any person or physical damage to the property of the Company, its officers, employees or agents, or the property of any other person;

25.9.5 it is entitled to do so under Schedule 8;

25.9.6 the rights of the User are suspended in accordance with Clause 37.2;

25.9.7 subject to the terms of a replacement agreement, this Agreement is terminated, or the User ceases to be a Party in accordance with the provisions of Clause 37.

25.10 In any of the circumstances set out in Clause 25.9, the Company shall inform the User as soon as is reasonably practicable, and in any event by the end of the next Working Day when MPAS is available, of the fact that the Metering Point or Metering System has been De-energised.

25.11 If the Company resolves to De-energise a Metering Point or Metering System pursuant to Clause 25.8 or 25.9:

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

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

25.11.3 except where the Company resolves to De-energise a Metering Point or Metering System pursuant to Clause 25.8.1, 25.9.1, 25.9.2, 25.9.3, 25.9.4 or 25.9.6, the Company shall undertake both the De-energisation Works and the subsequent Re-energisation Works at the cost of the User, and the User shall pay to the Company the relevant Transactional Charges associated with both the De-energisation Works and the subsequent Re-energisation Works.

25.12 If the Company De-energises a Metering Point or Metering System pursuant to Clause 25.8 or 25.9 and such Metering Point remains De-energised for a period of three

Working Days:

- 25.12.1 the Company shall forthwith instruct the User to send a Registration Notice to the MPAS Provider or to the CRA (as applicable) instructing it to register the relevant Metering Point or Metering System as De-energised (but only, in the case of an Unmetered Supply, if the De-energisation Works have stopped the flow of electricity through the relevant Exit Point); and
- 25.12.2 within two Working Days of receiving an instruction from the Company pursuant to Clause 25.12.1, the User shall send such a Registration Notice to the MPAS Provider or to the CRA (as applicable) and notify the relevant Meter Operator.
- 25.13 If the Company Re-energises a Metering Point or a Metering System pursuant to Clause 25.11:
- 25.13.1 if an instruction has been given by the Company under Clause 25.12.1, the Company shall forthwith instruct the User to send a Registration Notice to the MPAS Provider or to the CRA (as applicable) instructing it to register the relevant Metering Point or Metering System as Energised (but only, in the case of an Unmetered Supply, if the Re-energisation Works have allowed the flow of electricity through the relevant Exit Point); and
- 25.13.2 within two Working Days of receiving an instruction from the Company pursuant to Clause 25.13.1, the User shall send such a Registration Notice to the MPAS Provider or to the CRA (as applicable).
- 25.14 The User shall not be entitled to Re-energise a Metering Point or Metering System which has previously been De-energised by the Company on its own behalf (for the avoidance of doubt, not acting on the instructions or at the request of the User) or on behalf of the Company. For the avoidance of doubt, the User shall be entitled to Re-energise a Metering Point or Metering System which has previously been De-energised by or on behalf of another supplier.

Disconnection Procedure

- 25.15 If there is no reasonably foreseeable future use for a Metering Point or a Metering

System, the User shall be entitled to send to the Company a Disconnection Notice. In respect of any Disconnection Notice sent to the Company pursuant to this Clause 25.15, the User shall:

25.15.1 warrant that to the best of its knowledge and belief, having exercised Good Industry Practice, the Metering Point or Metering System has been De-energised and that there is no reasonably foreseeable future use for the Metering Point or Metering System, giving details of any De-energisation Works which it has undertaken and providing an explanation for why there is no reasonably foreseeable future use for the Metering Point or Metering System; and

25.15.2 indemnify the Company against all costs, demands, claims, expenses, liability, loss, or damage which the Company incurs in consequence of acting in reliance on the warranty given in Clause 25.15.1 which proves to be in any way inaccurate or misleading.

25.16 If a third party contacts the Company to request directly or indirectly that the Company undertakes Works in relation to a Metering Point or Metering System because there is no reasonably foreseeable future use for that Metering Point or Metering System and the Company is satisfied that the third party is entitled to make such request, then the Company shall contact the relevant User and request it to submit a Disconnection Notice. Upon receiving such a request, the User shall send the Company the requested Disconnection Notice unless in the User's reasonable opinion there is a reasonably foreseeable future use for the Metering Point or Metering System.

25.17 If, in any case, in the reasonable opinion of the Company there is a reasonably foreseeable future use for the Metering Point or Metering System, then the Company shall not be obliged to comply with a Disconnection Notice received under Clause 25.15 or 25.16 and where the Company decides not to comply it shall provide the User with the reasons for its decision.

25.18 If the Company is of the reasonable opinion that there is no reasonably foreseeable future use for a Metering Point or Metering System then the Company shall contact the relevant User and request it to submit a Disconnection Notice. Upon receiving

such a request, the User shall send the Company the requested Disconnection Notice unless in the User's reasonable opinion there is a reasonably foreseeable future use for the Metering Point or Metering System.

25.19 For the avoidance of doubt, the warranty and indemnity contained in Clause 25.15 shall not apply to any Disconnection Notice requested by the Company pursuant to Clause 25.16 or 25.18.

25.20 Subject to Clause 25.17, within five Working Days of receipt of the Disconnection Notice, the Company shall send a Registration Notice to the MPAS Provider instructing it to register the Metering Point as de-registered.

Other Matters

25.21 If a Metering Point or Metering System has been De-energised by or on behalf of a previous user and the Company receives a request from the User to Re-energise such Metering Point or Metering System:

25.21.1 the Company shall Re-energise the Metering Point or Metering System as soon as is reasonably practicable and notify the User of when it expects to carry out the Re-Energisation Works;

25.21.2 the Company shall carry out all necessary Re-energisation Works at its own cost and shall then reclaim such costs from the previous user; and

25.21.3 the Company shall notify the User as soon as the Re-energisation Works are complete and the User shall, within two Working Days of receiving such notification, send a Registration Notice to the MPAS Provider or the CRA (as applicable) instructing it to register the relevant Metering Point or Metering System as Energised.

25.22 The Company shall notify Connectees of and carry out System Outages in accordance with its statutory rights and obligations and Good Industry Practice.

25.23 The User shall be entitled to use the enquiry service established by the Company pursuant to Condition 6 of its Distribution Licence as if the User were a Connectee.

26. COMPLIANCE WITH THE DISTRIBUTION CODE

- 26.1 The Company and the User each undertake to comply with the Company's Distribution Code.
- 26.2 In the event of any conflict between this Section 2A and the Distribution Code, the Distribution Code shall prevail.

27. COMPLIANCE WITH MOCOPA

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

28. COMPLIANCE WITH RADIO TELESWITCH AGREEMENT

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

29. METERING DATA AND METERING EQUIPMENT

User's Obligation

- 29.1 Subject to Clause 29.11, the User shall at its own cost install and maintain or procure the installation and maintenance of metering equipment at or as close as is reasonably practicable to each Exit Point and Entry Point relating to Metering Systems or Metering Points for which the User is Registered. Such metering equipment shall be capable of providing the relevant metering data required by the Company for the calculation of Use of System Charges and shall comply with the requirements detailed in the Relevant Charging Statement and with those specified in the relevant BSC Codes of Practice and Schedule 7 of the Act.
- 29.2 The Company shall not be obliged to supply electricity through a relevant Exit Point or distribute electricity imported onto the Distribution System through a relevant Entry Point unless and until the necessary metering equipment has been installed. The User shall procure that metering equipment installed and maintained pursuant to this Clause 29.1 shall be capable of operating within the accuracy limits specified in Schedule 6.

Provision of Data

- 29.3 The User shall provide to the Company without charge such data from metering equipment installed and maintained pursuant to Clause 29.1 and from any Equivalent Meter operated under the Unmetered Supplies Procedure as the Company may reasonably require for:
- 29.3.1 the calculation of Use of System Charges; and
- 29.3.2 the operation, design and planning of its Distribution System.
- 29.4 For the purposes of Clause 29.3, the Company and the User acknowledge that it shall be reasonable for the Company to require any data:
- 29.4.1 of a type which, prior to 1 August 1998, the operators of the Distribution Network received without charge from suppliers; or
- 29.4.2 of a type which is provided by the SVAA in the Supercustomer DUoS

Report,

and which in each case is required for the purpose of calculating charges for Use of Distribution System or the operation and planning of the Distribution System. The User shall collect and provide data to the Company in accordance with this Clause 29.4 in compliance with the requirements detailed in the Relevant Charging Statement.

- 29.5 The User shall not and shall procure that no Relevant Exempt Supplier will change or modify the type of metering equipment installed and maintained pursuant to Clause 29.1 except in accordance with Clause 29.1.
- 29.6 The User shall procure that the Meter Operator, Data Collector and Data Aggregator appointed for each Metering Point supplied in relation to which the supply of electricity is measured by Non-Half-Hourly Metering Equipment (as defined in the Balancing and Settlement Code) for the purposes of Settlement shall provide the Company with any data required to be provided to the Distribution Business by the person appointed in that capacity in accordance with the timescales specified in the relevant provisions of the BSC.

Rights of Inspection

- 29.7 The Company shall be entitled to inspect, test and if necessary require the User to correct any metering equipment installed and maintained pursuant to Clause 29.1. The User shall use its reasonable endeavours, including the inclusion of appropriate terms in its Supply Contract and Power Purchase Contract, to procure that the employees, agents, sub-contractors and invitees of the Company shall at all reasonable times have safe and unobstructed access to such metering equipment. Where the Company exercises its right under this Clause 29.7, the provisions set out in Part 2 of Schedule 6 shall apply.
- 29.8 The Company shall be entitled to install Operational Metering Equipment at or as close as reasonably practicable to any Exit Point or Entry Point in addition to any metering equipment installed and maintained pursuant to Clause 29.1 to collect data for the operation, design and planning of its Distribution System, but if it exercises this right it shall make no additional charge to the User in respect of such Operational

Metering Equipment and shall not (except in the case of the failure of metering equipment installed and maintained pursuant to Clause 29.1) use data from the Operational Metering Equipment for the calculation of Use of System Charges. The Operational Metering Equipment need not be certified under paragraph 5 of Schedule 7 of the Act.

29.9 Where the Company installs Operational Metering Equipment in accordance with Clause 29.8:

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

29.9.2 the User shall (and shall procure that any Relevant Exempt Supplier shall) use its reasonable endeavours, including the inclusion of appropriate terms in its Supply Contract and Power Purchase Contract, to procure that the employees, agents, sub-contractors and invitees of the Company shall at all reasonable times have safe and unobstructed access to the Operational Metering Equipment. The Company agrees to procure that any individuals to whom access is given pursuant to this Clause 29.9.2 shall comply with all reasonable directions given by the User or the relevant Connectee and its appropriately authorised employees and agents as to general safety and site security arrangements.

Unmetered Supply

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

respect of which an Unmetered Supplies Certificate has been issued by the Company.

- 29.11 The provisions of Clauses 29.1, 29.2, 29.5, 29.6 and 29.7 shall not apply in relation to an Unmetered Supply which the User is permitted to supply under this Section 2A. When at any time the User ceases to be permitted to supply electricity on the basis that the supply of electricity is an Unmetered Supply, the User shall immediately become bound by all the provisions of this Clause 29 (other than those relating only to an Unmetered Supply).

30. PROVISION OF INFORMATION

New Contracts

30.1 The User shall:

30.1.1 in the case of Metering Points, except for the renewal of an existing Contract entered into after 31 August 1998, as soon as is reasonably practicable following, either:

(A) where a Notice of Objection (as defined in the Master Registration Agreement) is not received in relation to the User's application to become Registered in respect of that Metering Point, the expiry of the Objection Raising Period (as defined in the Master Registration Agreement); or

(B) where a Notice of Objection is received in relation to the User's application for Registration, the withdrawal of that Notice of Objection; or

30.1.2 in the case of Metering Systems, except for the renewal of an existing Contract entered into after 31 August 1998, as soon as is reasonably practicable following the Registration Effective From Date (as defined in the Balancing and Settlement Code, BSCP20) in respect of that Metering System,

(in each case) provide the information set out in Clause 30.2 to the Company in respect of the relevant Exit Point or Entry Point.

30.2 The information referred to in Clause 30.1 is:

30.2.1 the relevant Supply Number core data (as defined in the Master Registration Agreement) or (as applicable) the relevant Metering System Identifier (as referred to in the Balancing and Settlement Code, BSCP20);

30.2.2 the relevant Connectee's name;

30.2.3 the Metering Point or Metering System address;

30.2.4 in respect of an Exit Point, the Customer's Maximum Import Capacity if:

- (A) the Customer is not a Domestic Customer (as defined in the Supply Licences);
- (B) the Customer has a maximum power requirement of not less than 20 kVA; and
- (C) the Customer is a new owner or occupier of the site; and

30.2.5 in respect of an Entry Point, the Maximum Export Capacity.

30.3 Where the provisions of Clause 30.1.1 or 30.1.2 are satisfied, the User shall use reasonable endeavours to provide the following information to the Company in respect of the relevant Exit Point or Entry Point:

30.3.1 the contact name for the Connectee if different from the Connectee's name; and

30.3.2 the Connectee's postal address if different from the Metering Point or Metering System address.

30.4 The User shall use reasonable endeavours to notify the Company of any changes to the details set out in Clause 30.2 and Clause 30.3 as soon as reasonably practicable following that change by reference to the Supply Number or Metering System Identifier (as applicable).

Dangerous Incidents

30.5 Where the User or its agent or any Relevant Exempt Supplier receives a report or enquiry from any person about any matter or incident that does or is likely to:

30.5.1 cause danger or require urgent attention in relation to the supply or distribution of electricity in the Company's Distribution Services Area through the Distribution System; or

30.5.2 affect the maintenance of the security, availability and quality of service of the Distribution System,

the User shall notify the Company of such report or enquiry in a prompt and appropriate manner having regard to the nature of the incident to which the report

relates. The User shall notify the Company by telephone or post using the telephone number and postal address identified in the Security and Safety of Supplies Statement or such other telephone number as may from time to time be notified in writing by the Company. Where the User does not hold a Supply Licence (or to the extent the User does not discharge its obligation under Condition 15 of its Supply Licence) the User shall notify the Company of reports received from Connectees in accordance with this Clause 30.5.

Advance Notice of Interruptions

- 30.6 Where the User holds a Supply Licence and a Connectee is a Customer, the User shall, with the consent of the relevant Customer, provide the Company with details of any Customer who may be expected (by virtue of being of pensionable age or disabled or chronically sick) to require advance notice of interruptions to the supply of electricity and his requirement within three Working Days of receiving such details and requirements pursuant to the User's obligations under Condition 37 of its Supply Licence.
- 30.7 The User shall, with the consent of any Customer who has agreed a password with the User or any Relevant Exempt Supplier for access to the Customer's premises, provide the Company with appropriate details concerning that Customer and his password within two Working Days of notification of such password by the Customer.
- 30.8 The User shall use reasonable endeavours to ensure that all the facts, information and other details provided pursuant to Clause 30.6 and 30.7 remain true, accurate and complete in all respects.

Damage or Interference

- 30.9 Where the User holds a Supply Licence, the User shall (and shall ensure that its contractors and agents shall) in a prompt and appropriate manner having regard to the nature of the incident, inform the Company where the User has (or in the case of the User's contractors and agents, such contractors and agents have) reason to believe:
- 30.9.1 that there has been damage to electrical plant, lines or metering equipment owned by the Company; or

30.9.2 that there has been interference with any metering equipment at an Entry Point or an Exit Point on the Company's Distribution System that has prevented such metering equipment from correctly registering the quantity of electricity supplied,

unless the User believes that the damage or interference was caused by the Company.

30.10 Where the User has reason to believe that any damage or interference reported by it (or by its contractors or agents) under Clause 30.9, or any incident reported to the User by the Company in accordance with paragraph 2 of Condition 7 of the Distribution Licence, has been caused by a criminal act it shall provide the Company with such information as is reasonably required for investigating the incident and resolving any safety concerns arising out of it.

30.11 Where the User holds a Supply Licence, the User shall inform the Company of the User's policy in relation to how incidents of the type described in Clauses 30.9 and 30.10 will be remedied, which may include:

30.11.1 the substitution of alternative meters;

30.11.2 the provision of prepayment meters; or

30.11.3 De-energisation Works.

30.12 Where the Company undertakes any remedial work in relation to a matter that:

30.12.1 has been reported to it by the User in accordance with Clause 30.9;

30.12.2 has been reported to the User in the manner referred to in Clause 30.10,

the Company shall inform the User, in a prompt and appropriate manner, of the remedial work undertaken.

31. DEMAND CONTROL

31.1 In respect of Metering Points for which the User is Registered that relate to Exit Points on the Company's Distribution System, the Company and the User each undertake to comply with Schedule 8.

32. REVENUE PROTECTION

- 32.1 Where the Company provides a revenue protection service under this Agreement, it shall do so in accordance with the provisions of the Revenue Protection Code of Practice. Charges for the services so provided shall be calculated in accordance with those specified as applicable to such services in the Relevant Charging Statement and shall be paid in accordance with the provisions of this Section 2A.
- 32.2 The User shall comply with its obligations under the Revenue Protection Code of Practice.

33. GUARANTEED PERFORMANCE STANDARDS

Compensation

- 33.1 To the extent that, due to an act or omission on the part of the Company, compensation would be payable by the User pursuant to the ESPR to a Customer, the Company shall make an equivalent compensation payment to the User for the benefit of the Customer in accordance with the provisions of this Clause 33.
- 33.2 Where electricity flows from the Distribution System into another electricity distributor's distribution system and, due to an act or omission on the part of the Company, compensation would be payable by the User pursuant to the ESPR to a Customer connected to that distribution system, the Company undertakes either to make an equivalent compensation payment directly to the User for the benefit of the Customer, or to arrange for the other electricity distributor to make such payment. The Company's liability under this Clause 33.2 shall be subject to such apportionment of responsibilities as is agreed between the Company and the other electricity distributor pursuant to the provisions of paragraph 3 of Condition 20 of the Distribution Licences.
- 33.3 To the extent that, due to circumstances other than those described in Clause 33.1 or 33.2, compensation pursuant to the ESPR would be payable to the Customer by the Company, the Company shall not be liable to make any payment to the User for the benefit of the Customer.

Terms and Procedures of ESPR

- 33.4 In the circumstances described in Clause 33.1 or 33.2, the Company will comply with the terms and procedures of the ESPR provided that:
- 33.4.1 the User shall be deemed to be a "person having apparent authority to represent the Customer" for the purposes of ESPR regulation 3(4)(d) if the Customer independently contacts the User in relation to a matter which forms the basis of the Customer's claim under the ESPR; and
- 33.4.2 where the ESPR require the Company to "pay to the customer the Prescribed Sum", the Company shall pay the User the Prescribed Sum for the benefit of the Customer and the User shall pass the payment on to the Customer as soon

as is reasonably practicable.

- 33.5 If the Customer contacts the User in relation to a matter which might form the basis of a claim under the ESPR, the User shall diligently record the details of the Customer's complaint and shall not agree or imply that the Customer's complaint is valid unless the matter is one which would be governed by Clause 33.3. If the matter is one which in the User's reasonable opinion will be governed by Clause 33.1 or 33.2, the User shall pass on the details of the Customer's complaint to the Company as soon as is reasonably practicable together with details of the Customer's name and address. In such circumstances, the Prescribed Period will relate to the time at which the Customer or the User on behalf of the Customer contacts the Company, and the time at which the Customer contacts the User will not be relevant to the calculation of the Prescribed Period.
- 33.6 If the Customer contacts the Company in relation to a matter which might form the basis of a claim under the ESPR, the Company shall diligently record the details of the Customer's complaint and shall not agree or imply that the Customer's complaint is valid unless the matter is one which would be governed by Clause 33.1 or 33.2. If the matter is one which in the Company's reasonable opinion will be governed by Clause 33.3, the Company shall tell the Customer to contact the User direct. In such circumstances, the Prescribed Period will relate to the time at which the Customer contacts the User and the time at which the Customer contacts the Company will not be relevant to the calculation of the Prescribed Period.
- 33.7 When the User has received a payment from the Company pursuant to Clause 33.4.2, the User shall pass such payment to the Customer as soon as reasonably practicable and if, due to the User's delay, an additional payment becomes due pursuant to ESPR regulation 19(5), then this additional payment shall be the liability of the User.

Other Matters

- 33.8 Neither the Company nor the User 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 33.8 shall not excuse the Party against whom the claim lies from making the relevant payment.

- 33.9 In the event of a dispute between the Company and the User as to which of them is liable to pay compensation pursuant to Clause 33.1 or 33.3, in the first instance the Company shall make the compensation payment for the benefit of the Customer and then the dispute shall be referred to the Authority and shall be deemed to be a dispute 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 2 shall be deemed to apply to any such dispute.
- 33.10 The Company shall from time to time provide the User with a report on its performance against the ESPR on the standards of performance.

34. CONFIDENTIALITY RESTRICTIONS ON THE COMPANY

Confidential Information

34.1 In this Clause 34, **Confidential Information** means any information which the Company or any Affiliate or Related Undertaking of the Company:

34.1.1 receives from the User under this Agreement; or

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

34.1.3 receives from any Connectee, which, if received from the User, would fall within Clause 34.1.1; or

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

and the provisions of this Clause 34 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

34.2 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):

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

34.2.2 without prejudice to Clause 34.2.1, not use the Confidential Information in a manner which may obtain for the Company or any Affiliate or Related Undertaking of the Company (as the case may be) any commercial advantage in the operation of a Supply Business except, in relation to information falling within Clause 34.1.2, where the Company supplied electricity to the relevant Connectee at the time the information was acquired by the Company;

- 34.2.3 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 2A or any other agreement entered into between the Company and the User for the provision of services by the Distribution Business of the Company or for the effective operation of the Distribution Business;
 - (B) to such agents, consultants, professional or other advisors, and contractors as require to be informed thereof or to provide advice which is in connection with the operation of the Distribution Business;
 - (C) to the Authority;
 - (D) information which the Company or any Affiliate or Related Undertaking of the Company (as the case may be) is required or permitted to make disclosure of:
 - (E) 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;
 - (F) in compliance with the provisions of any Relevant Instruments;
 - (G) in compliance with any other requirement of law;
 - (H) 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
 - (I) pursuant to the arbitration rules of the Electricity Arbitration Association or pursuant to any judicial or other arbitral process or tribunal of competent jurisdiction; or
 - (J) in the case of information falling within Clause 34.1.2, to the person who supplied electricity to the relevant Customer or purchased electricity from the relevant Generator at the time at which such

information was acquired by the Company; and

34.2.4 take all reasonable steps to ensure that any such person as is referred to in sub-clauses 34.2.3(A), (B) and (E) 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 34.

Other Matters

- 34.3 The Company warrants that it has effected, and undertakes that it will during the term of this Agreement effect and maintain, all such registrations as it is required to effect and maintain under the Data Protection Act to enable it lawfully to perform the obligations imposed on it by this Agreement. The Company undertakes to comply with the Data Protection Act in the performance of this Agreement.
- 34.4 The User agrees that where the Company uses or discloses Confidential Information in accordance with this Clause 34, such Confidential Information need not be treated as confidential for the purposes of Condition 39 of the Distribution Licence to the extent of such use or disclosure.
- 34.5 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 2A, provided that where the consent of the Connectee is required to be obtained for the purposes of this Section 2A, the User (and not the Company) shall have the obligation to obtain such consent under Clause 35.6.

35. CONFIDENTIALITY RESTRICTIONS ON THE USER

Confidential Information

35.1 In this Clause 35, **Confidential Information** means:

35.1.1 any information (whether in writing, in disc or electronic form, or otherwise) which has been properly disclosed by the Company under this Agreement but which would usually be considered to be confidential (but shall not include any information relating to a Connectee which has been collected by the Company and disclosed to the User pursuant to this Section 2A); and

35.1.2 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 35.2 to 35.4 (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

35.2 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:

35.2.1 in the circumstances set out in Clause 35.3;

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

35.2.3 with the prior consent in writing of the Company.

35.3 The circumstances set out in this Clause 35.3 are:

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

35.3.2 where the Confidential Information:

- (A) is acquired by the User in circumstances in which this Clause 35 does not apply;
- (B) is acquired by the User in circumstances in which this Clause 35 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 35; 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 35; 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;

35.3.3 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;

35.3.4 to any Affiliate or Related Undertaking of the User, to the employees, directors, agents, consultants and professional advisers of the User or any Affiliate or Related Undertaking of the User, and to any Relevant Exempt Supplier, in each case on the basis set out in Clause 35.4; or

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

35.4 The User shall take all reasonable steps to ensure that any such person as is referred to in Clause 35.3.4 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 35.

Other Matters

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

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

SECTION 2B – COMPANY / COMPANY RELATIONSHIPS

**[The Parties have agreed to develop this Section 2B in accordance with Clause 5.3.7(C)
and paragraph 1 of Schedule 12.]**

SECTION 3
GENERAL LEGAL PROVISIONS

36. LIMITATION OF LIABILITY

Physical Damage

36.1 Subject to Clause 36.5 and save as provided in this Clause 36.1 and Clause 36.2, and save where any provision of this Agreement provides for an indemnity, no Party (the **Party Liable**) nor any of its officers, employees or agents shall be liable to any other Party for loss arising from any breach of this Agreement other than for loss directly resulting from such breach and which at the date hereof was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:

36.1.1 physical damage to the property of that other Party, its officers, employees or agents; and/or

36.1.2 the liability of that other Party to any other person for loss in respect of physical damage to the property of any person,

provided that the liability of the Party Liable in respect of all claims for such loss shall in no circumstances exceed £1 million per incident or series of related incidents, and provided further that the Party Liable shall be entitled:

36.1.3 to deduct from any sums payable to another Party in respect of its liability for loss or damage in respect of any event under this Agreement any sums which it is liable to pay to a person who has a connection to the Distribution System or any other person (whether or not a Party) in respect of the same loss or damage in respect of the same event; and

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

provided that where any Party Liable becomes aware of any claim, difference, dispute or proceedings (actual or threatened) which it reasonably expects may lead to a

liability to a person other than another Party in respect of an event which may also give rise to a liability to another Party under this Agreement, then the Party Liable shall consult with the other Party as to the conduct of that claim, difference, or dispute or those proceedings (actual or threatened).

Death or Personal Injury

- 36.2 Nothing in this Agreement shall exclude or limit the liability of any Party Liable for death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents, and the Party Liable shall indemnify and keep indemnified the other Parties and their officers, employees and agents, from and against all such liability and any loss or liability which such other Parties may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents.

Economic and Consequential Loss

- 36.3 Subject to Clause 36.5, and save where any provision of this Agreement provides for an indemnity, neither the Party Liable, nor any of its officers, employees or agents, shall in any circumstances whatsoever be liable, under or in relation to this Agreement, to another Party for:

36.3.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or

36.3.2 any indirect or consequential loss; or

36.3.3 loss resulting from the liability of such other Party to any other person howsoever and whenever arising save as provided in Clauses 36.1 and 36.2.

Exclusive Remedies

- 36.4 The rights and remedies provided by this Agreement to the Parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of this Agreement, including any rights any Party may possess in tort (or delict) which shall include actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives to the fullest extent possible

all such rights and remedies provided by common law or statute, and releases the Party Liabe, its officers, employees and agents to the same extent from, all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein.

Overriding Nature of this Clause

36.5 Save as otherwise expressly provided in this Agreement, this Clause 36 insofar as it excludes or limits liability shall override any other provision in this Agreement, provided that nothing in this Clause 36 shall exclude or restrict or otherwise prejudice or affect any of:

36.5.1 the rights, powers, duties and obligations of any Party which are conferred or created by the Act, any licence granted pursuant to the Act, or any subordinate legislation made under the Act; or

36.5.2 the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any such licence or otherwise howsoever.

Other Matters

36.6 Each of the sub-clauses of this Clause 36:

36.6.1 shall be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable, then the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the Parties; and

36.6.2 shall survive the termination or expiry of this Agreement.

36.7 Each Party hereby acknowledges and agrees that each other Party holds the benefit of Clauses 36.1, 36.2 and 36.3 for itself and as trustee and agent for its officers, employees and agents.

36.8 Each Party hereby acknowledges and agrees that the provisions of this Clause 36 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof.

36.9 Nothing in this Clause 36 shall prevent or restrict any Party from enforcing any payment obligation (including suing for a debt) owed to it under or pursuant to this Agreement, or prevent DCUSA Ltd from enforcing any payment obligation (including suing for debts owed under Clause 8) owed to the Panel.

37. TERMINATION

Events of Default

- 37.1 It shall be an **Event of Default** in respect of a Party (the **Breaching Party**) if:
- 37.1.1 the Breaching Party is in material breach of any of its material obligations under this Agreement and, if the breach is or was capable of remedy, the Breaching Party has failed to remedy the breach within 20 Working Days of receipt of a notice from any Party to whom that obligation was owed giving full details of the breach, requiring the Breaching Party to remedy the breach, and stating that a failure to remedy the breach may give rise to the consequences set out in this Clause 37;
 - 37.1.2 the Breaching Party passes a resolution for its own winding-up, dissolution, administration or reorganisation (except for the purposes of a solvent reconstruction or reorganisation approved by the Panel), or a court of competent jurisdiction makes an order for the winding-up or dissolution of the Breaching Party;
 - 37.1.3 the Breaching Party has an administrator appointed in respect of it, or an administration order is made in relation to it, or a receiver, administrative receiver, trustee, liquidator, compulsory manager or other similar officer is appointed in respect of the Breaching Party or the whole or a substantial part of its assets, or an encumbrancer takes possession of or sells the whole or a substantial part of the Breaching Party's assets, rights, or revenues;
 - 37.1.4 the Breaching Party makes an arrangement, compromise, composition, assignment or assignation with its creditors generally or makes an application to a court for protection from its creditors generally;
 - 37.1.5 the Breaching Party is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, but as if in that section the sum of £10,000 was substituted for the sum of £750;
 - 37.1.6 without prejudice to Clause 38, a circumstance of Force Majeure that affects the performance by the Breaching Party of substantially all of its obligations

under this Agreement continues for more than 180 days and any Party to whom any such obligation was owed serves a notice on the Breaching Party referring to this Clause 37; or

37.1.7 any of the conditions precedent set out in Clauses 16.1.2 to 16.1.7 (inclusive) and relating to the Breaching Party cease to be satisfied in respect of the Breaching Party.

Suspension of Rights

37.2 For so long as an Event of Default is continuing, where a DG Party and/or a Supplier Party is a Breaching Party pursuant to:

37.2.1 Clause 37.1.1 or 37.1.6, any Party to whom the obligations in question were owed shall be entitled to suspend its performance of the services described in Schedule 2 to the Breaching Party by notice in writing to the Breaching Party; and

37.2.2 any other provision of Clause 37.1, any Party shall be entitled to suspend its performance of the services described in Schedule 2 to the Breaching Party by notice in writing to the Breaching Party,

and the Breaching Party shall pay to the suspending Party an amount equal to any reasonable costs incurred by such Party as a result of such suspension.

37.3 Where an Event of Default is continuing, the Panel may resolve that the Breaching Party in question shall not, for such period as the Panel may specify, be entitled to exercise its election and voting rights under Section 1, in which case the provisions of Clause 6 and Section 1C shall operate (during that period) as if that Party were not a Party. The Panel shall notify the Authority and all the Parties of any such resolution.

37.4 Any Party whose rights are restricted in accordance with Clause 37.3 may apply to the Panel to have those restrictions removed. The Panel shall consider such application and may levy a fee on the relevant Party for doing so. Where the Panel considers that no Event of Default is continuing in respect of the applicant, it shall notify the Parties and the Authority accordingly, and the restrictions imposed under Clause 37.3 shall cease to apply.

Ceasing to be a Party

37.5 Subject to Clause 37.6:

37.5.1 where a Party applies to the Panel to be removed as a Party; or

37.5.2 where an Event of Default occurs in respect of a Party, and is continuing, and has been continuing for at least six months,

the Panel may resolve to terminate that Party's accession to this Agreement. On written notice by the Panel of such resolution to the Parties and the Authority, the Party in question shall cease to be a Party.

37.6 A Party's accession to this Agreement may not be terminated:

37.6.1 in the case of a DNO Party or an IDNO Party, where that Party holds a Distribution Licence which requires it to be a party to this Agreement;

37.6.2 in the case of a Supplier Party, where that Party holds a Supply Licence which requires it to be a party to this Agreement.

Panel Member Conflict

37.7 A Panel Member shall be disqualified from acting, and shall not act in his capacity as a Panel Member, in relation to a resolution pursuant to this Clause 37 and a Breaching Party where his employer is that Breaching Party or an Affiliate of that Breaching Party. Any Alternate of such Panel Member shall act in that Panel Member's place (unless that Alternate is also employed by that Breaching Party or an Affiliate of that Breaching Party).

Consequences of Termination

37.8 Except where expressly stated to the contrary, the rights and obligations of a Party under this Agreement shall cease immediately upon that Party's accession to this Agreement being terminated and it ceasing to be a Party. However, such termination shall not affect any rights and obligations which have accrued on or before the date of such termination.

37.9 Clauses 1, 8 (only in respect of those Financial Years, and parts thereof, during which

it was a Party), 15, 19 to 25 (inclusive), 32, 34 to 36 (inclusive) and 37.8 to 37.10 shall survive the termination of such accession and continue to apply to a Party after it ceases to be a Party.

38. FORCE MAJEURE

38.1 If any Party (the **Affected Party**) is unable to carry out any of its obligations under this Agreement due to any circumstance of Force Majeure, this Agreement shall (subject to Clause 37.1.6) remain in effect but:

38.1.1 the Affected Party's obligations;

38.1.2 the obligations any other Party owes to the Affected Party under this Agreement; and

38.1.3 any obligations such other Parties owe between themselves under this Agreement which the relevant Party is unable to carry out directly as a result of the suspension of the Affected Party's obligations in accordance with this Clause 38,

shall be suspended without liability for the period during which the circumstance of Force Majeure prevails provided that:

38.1.4 the Affected Party gives the other Parties prompt notice describing the circumstance of Force Majeure including the nature of the occurrence and its expected duration and, where reasonably practicable, continues to furnish regular reports with respect thereto during the period of Force Majeure; and

38.1.5 the suspension of performance is of no greater scope and of no longer duration than is required by the circumstance of Force Majeure; and

38.1.6 no obligations of any Party that arose before the circumstance of Force Majeure causing the suspension of performance are excused as a result of the Force Majeure; and

38.1.7 the Affected Party uses all reasonable efforts to mitigate the impact of the circumstance of Force Majeure and to remedy its inability to perform as quickly as possible; and

38.1.8 immediately after the end of the circumstance of Force Majeure, the Affected Party notifies the other Parties in writing that the circumstance of Force

Majeure has ended and resumes performance of its obligations under this Agreement.

39. DEROGATIONS

Panel's Ability to Grant Derogations

- 39.1 The Panel may (subject to Clause 39.3) resolve, on the application of any Party, to grant a derogation to any Party or Parties in relation to any obligation or obligations contained in this Agreement. In resolving to grant such derogation, the Panel may impose such conditions as it sees fit, and shall specify the term, scope and application of such derogation.
- 39.2 The Panel may, from time to time and as it sees fit (subject to Clause 39.3), resolve to retract any derogation, or to amend or add to the conditions applicable to any derogation.
- 39.3 A derogation granted to any Party by the Panel, or any retraction, amendment or addition under Clause 39.2, shall, in each case, only be effective if made in conformity with any representations received from the Authority in accordance with Clause 39.5.3, or as otherwise approved by the Authority.

Application for Derogation

- 39.4 A Party may, at any time, apply to the Panel for a derogation under this Clause 39 by notice in writing to the Panel Secretary.
- 39.5 Where the Panel Secretary receives such an application, it shall ensure that the matter is added to the agenda for the next Panel meeting occurring more than 10 Working Days after receipt of such application, and shall give notice to all the Parties and to the Authority, at least 10 Working Days before the Panel meeting in question:
- 39.5.1 setting out the identity of the Party by whom the application has been made and the terms of the derogation sought;
- 39.5.2 specifying the date on which the Panel is due to consider the matter; and
- 39.5.3 inviting representations or objections with respect to the derogation before that time.
- 39.6 Where representations or objections are made in accordance with Clause 39.5.3, the Panel Secretary shall, as soon as reasonably practicable after receipt thereof and

unless such representations or objections have been marked as confidential, publish those representations or objections on the Website.

Derogation from Performance

- 39.7 Where a Party is granted a derogation by the Panel in accordance with Clause 39.1, that Party shall (subject to Clause 39.3) be excused from complying with the obligations specified in the terms of that derogation, and shall be deemed not to be in breach of this Agreement for failing to comply with the relevant obligations for the term of the derogation, but shall be required to comply with any modified obligations which are specified as a condition of the derogation.
- 39.8 A Party may, immediately by notice in writing to the Panel at any time, reject any derogation then applying to it, in which case the derogation shall cease to apply and the Party shall become subject to the obligations under this Agreement set out in the derogation in question.

40. FURTHER INFORMATION PROVISIONS

Confidentiality and the Panel

- 40.1 The Parties acknowledge that, in order for the Panel (and its Working Groups) to properly carry out its duties under this Agreement, the Panel may decide, or be obliged, to keep confidential to it (and may instruct its Working Groups to keep confidential) matters, minutes, reports, consultation responses, data and other information produced by or for, or made available to, the Panel, the Secretariat, the Panel Secretary or any Working Group. In such cases, the Panel, the Panel Members, the Secretariat, the Panel Secretary and any Working Group and its members shall not disclose such matters, minutes, reports, consultation responses, data and other information. The Panel shall use reasonable endeavours to keep such cases to a minimum.
- 40.2 Each Party agrees, subject to any relevant confidentiality provision binding on it, to provide the Panel, the Panel Secretary and the Secretariat with all data and other information reasonably requested by the Panel and necessary for the Panel, the Panel Secretary and/or the Secretariat properly to carry out their duties and responsibilities under this Agreement.
- 40.3 Where a Party wishes any information that it provides under Clause 40.2 to remain confidential, it shall clearly mark such information as such. The Panel, its Working Groups and the Secretariat shall ensure that all information so marked is kept secret and confidential, provided that such information shall still be made available to the Authority on the understanding that the Authority shall keep such information confidential.

Intellectual Property in Change Proposals

- 40.4 In respect of each Change Proposal that a Proposer may make, the Proposer hereby:
- 40.4.1 assigns fully, irrevocably and unconditionally any and all present and future Intellectual Property Rights that it may have in such Change Proposal to DCUSA Ltd; and
- 40.4.2 confirms that, to the best of its knowledge and belief, no other person has any Intellectual Property Rights in such Change Proposal.

Party Details

- 40.5 On each Party's accession to this Agreement, the Secretariat shall add that Party's Party Details to Schedule 11.
- 40.6 Each Party shall ensure that the Secretariat is notified of any changes from time to time in that Party's Party Details, so as to ensure that the same can be kept up-to-date from time to time.
- 40.7 The Secretariat shall, on receipt of any notification under Clause 40.6, promptly:
- 40.7.1 amend Schedule 11 to reflect the relevant changes in the relevant Party's Party Details; and
- 40.7.2 circulate a copy of the amended Schedule 11 to all the Parties.
- 40.8 Notwithstanding Clauses 9.2 and 10.1, any changes to Schedule 11 in accordance with Clause 40.5 or 40.7 shall not constitute a change to which Section 1 C applies.

41. DISPUTES

Arbitration

- 41.1 Save where expressly stated in this Agreement to the contrary, and subject to:
- 41.1.1 any contrary provisions of the Act, of any licence issued pursuant to the Act, or of the Regulations (or any other regulations made under Section 29 of the Act); and
- 41.1.2 the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, or under any such licence, or otherwise howsoever,
- any dispute or difference of whatever nature howsoever arising under, out of, or in connection with this Agreement between two or more Parties shall be and is hereby referred to arbitration between such Parties, pursuant to the arbitration rules of the Electricity Arbitration Association from time to time in force.
- 41.2 Whatever the nationality, residence, or domicile of the Parties in question and wherever the dispute or difference or any part thereof arose, the law of England shall be the proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the seat of any such arbitration shall be Great Britain and the provisions of the Arbitration Act 1996 shall apply to any such arbitration wherever the same or any part of it shall be conducted.

Third Party Claims

- 41.3 Subject always to Clause 41.5, if any consumer of electricity (the **consumer**) brings any legal proceedings in any court against any Party (the **defendant party**) and the defendant party wishes to make a third party claim (as defined in Clause 41.4) against another Party which would but for this Clause 41.3 have been a dispute or difference referred to arbitration by virtue of Clause 41.1, then, notwithstanding the provisions of Clause 41.1 (which shall not apply) and in lieu of arbitration, the court in which the legal proceedings have been commenced shall hear and completely determine and adjudicate upon the legal proceedings and the third party claim not only between the consumer and the defendant party but also between either or both of them and the other such Party, whether by way of third party proceedings or otherwise as may be ordered by the court.

41.4 For the purposes of this Clause 41, **third party claim** shall mean:

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

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

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

41.5 Clause 41.3 shall apply only if, at the time at which the legal proceedings are commenced, no arbitration has been commenced between the defendant party and the other Party in question that raises or involves the same or substantially the same issues as would be raised by or involved in the third party claim. The tribunal in any arbitration which has been commenced prior to the commencement of legal proceedings shall determine the question, in the event of dispute, whether the issues raised or involved are the same or substantially the same.

42. DATA TRANSFER AND NOTICES

Data Transfer

- 42.1 Any notice, request or other communication under Section 2A shall be sent by the means (if any) indicated in Schedule 7 and shall have the content (if any) indicated in Schedule 7 and where Schedule 7 specifies a Data Transfer Catalogue reference number in relation to any notice, request or other communication, such notice, request or communication shall be sent in the format and with the content described under such reference in the Data Transfer Catalogue, as amended from time to time.
- 42.2 Where this Agreement requires any notice, request or other communication to be sent via the Data Transfer Network, the relevant message shall be addressed to the Market Domain I.D. specified for such purpose in that Party's Party Details.

Data Transfer Responsibility

- 42.3 Where this Agreement requires any notice, request or other communication to be sent via the Data Transfer Network, the Party sending the relevant message shall be responsible for ensuring that it reaches the relevant Gateway within any time period laid down in this Agreement for the provision of such notice, request or communication (and any such message shall be deemed to be received by the recipient at the point in time at which it is delivered to such Gateway): provided that the Party sending a message shall have no obligation to ensure receipt where the intended recipient has failed, contrary to the Data Transfer Service Agreement, to remove or process all messages delivered to its Gateway and to ensure that such messages are made available to its internal systems as expeditiously as possible so that the Gateway is able to continue to process incoming and outgoing messages effectively.

Unavailability of DTN

- 42.4 If the Data Transfer Network or any relevant part of such network is at any time for any reason unavailable for the sending of messages between the Parties, then during the period of unavailability:
- 42.4.1 the Parties shall use any means reasonable in the circumstances to send any notice, request or other communication that this Agreement would otherwise

require to be sent via the Data Transfer Network;

42.4.2 where other means are used in accordance with Clause 42.4.1, the Parties shall be relieved from any service levels set out in this Agreement relating to any affected notice, request or other communication (except to the extent that this Agreement expressly provides for alternative service levels in such circumstances) but shall use their reasonable endeavours to send such notice, request or other communication as soon as is reasonably practicable; and

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

42.5 Where any Party, in breach of its obligations under Clause 42.3, fails to deliver any notice, request or other communication to the recipient's Gateway and such failure occurs for reasons outside that Party's direct control, the breaching Party shall have no liability to the other under this Agreement and the relevant Parties shall rely instead upon the provisions of the Data Transfer Service Agreement.

Notices

42.6 Save as provided in Clause 30.5, Clause 42.1 and Schedule 8, any notice, request or other communication to be made by one Party to another Party under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first class post, courier, fax or email to that other Party at the address specified for such purpose in that Party's Party Details.

42.7 Unless otherwise stated in this Agreement, a notice, request or other communication sent in accordance with Clauses 30.5, 42.6 or paragraph 11.1 of Schedule 8 shall be deemed to be received:

42.7.1 if delivered personally, when left at the address set out for such purpose in the relevant Party's Party Details;

42.7.2 if sent by post, three Working Days after the date of posting;

- 42.7.3 if sent by fax, upon production by the sender's equipment of a transmission report indicating that the fax was sent to the fax number of the recipient in full without error; and
 - 42.7.4 if sent by email, one hour after being sent, unless an error message is received by the sender in respect of that email before that hour has elapsed.
- 42.8 Notices to or from DCUSA Ltd shall also be subject to the provisions of Clause 42.7, and notices to DCUSA Ltd shall be sent to the address given, from time to time, on the Website (or, in the absence of any such address, to its registered office).

43. MISCELLANEOUS

Entire Agreement

- 43.1 This Agreement and any document referred to therein represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter; and supersedes any previous agreement whether written, oral, or deemed between any of the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom.
- 43.2 Each Party confirms that, except as provided in this Agreement and without prejudice to any liability for fraudulent misrepresentation, it has not relied on any representation, warranty or undertaking which is not contained in this Agreement or any document referred to therein.

Severability

- 43.3 If any provision of this Agreement shall be held to be invalid or unenforceable by a judgement or decision of any court of competent jurisdiction or any Competent Authority whose decisions are binding on the Parties, that provision shall be deemed severable and the remainder of this Agreement shall remain valid and enforceable to the fullest extent permitted by law. In any such case, the Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid or unenforceable provision in order to give effect, so far as practicable, to the spirit of this Agreement.

Waivers

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

Contract Management

- 43.5 Each Party (other than DCUSA Ltd) shall appoint an appropriate person (each a

Contract Manager and together the **Contract Managers**) to manage all matters arising under or in connection with this Agreement and to monitor the general operation of this Agreement.

43.6 The Contract Manager relating to each Party from time to time shall be the person referred to in that Party's Party Details.

43.7 The Contract Manager of each Party shall meet with the Contract Manager of each other Party (collectively or individually) at such venues and at such intervals as may be agreed between the Parties from time to time.

Third Party Rights

43.8 Except for the benefit that DCUSA Ltd holds under Clause 6.22 and that each Party holds under Clause 36.8, the Parties do not intend that any of the Agreement's terms will be enforceable by a third party (whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise).

43.9 Notwithstanding that a person who is not a Party may have a right to enforce particular Clauses under the Contracts (Rights of Third Parties) Act 1999 in accordance with Clause 43.8, the Parties may vary or terminate this Agreement in accordance with its terms without requiring the consent of any such person.

Assignment and Sub-contracting

43.10 No Party may assign any of its rights under this Agreement without the prior written consent of the other Parties, such consent not to be unreasonably withheld.

43.11 Any Party may sub-contract or delegate the performance of all or any of its obligations under this Agreement (including activities envisaged by the Distribution Code) to any appropriately qualified and experienced third party, but shall at all times remain liable to the other Parties in relation to all sub-contracted or delegated obligations.

Law and Jurisdiction

43.12 Each Party agrees that, in performing its obligations pursuant to this Agreement, it shall be required to comply with relevant statutes, statutory instruments and the general law and shall not be liable for any failure to perform its obligations in

accordance with this Agreement where to do so would put it in breach of any such statute, statutory instrument or general provision of law.

43.13 Each Party agrees that, without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any Party by being delivered to or left for that Party at its address for service of notices referred to in Clause 42.

43.14 This Agreement shall be governed by and construed in accordance with the laws of England and Wales. Subject to Clause 41, the Parties hereby submit to the exclusive jurisdiction of the courts of England and Wales and of Scotland.

SCHEDULES

SCHEDULE 1 – COVER

1 PROVISION OF COVER

Forms of Collateral

1.1 The User shall deliver to the Company one or more of the following forms of Collateral such that the aggregate value of such Collateral is equal to or greater than the sum notified to the User by the Company as the User's Value at Risk to the extent that it exceeds the User's Credit Allowance:

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

1.2 Any dispute raised by the User or the Company on the form of Collateral provided under Paragraph 1.1(d) or on the rating of any such Collateral shall be dealt with under Paragraph 8. Any requirement for payment to be made under such Collateral shall be dealt with in accordance with Paragraph 4.

Maintenance of Cover

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

1.4 Where:

- (a) there is any reduction in the amount of Collateral provided by the User as Cover; or

- (b) the Company makes a demand against such Collateral following a Payment Default by the User,

the User shall provide additional Collateral to ensure that the Indebtedness Ratio is equal to or lower than the Indebtedness Ratio Limit according to the provisions of this Schedule.

2 CALCULATION OF COVER

2.1 For the duration of this Schedule's application, the Company shall calculate and maintain a record of each of the following values with respect to the User, that is to say:

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

in such manner as will enable the Company, upon request by the User, to provide a written and up-to-date statement of such values without delay.

The User's Value at Risk

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

- (a) billed but unpaid Charges which are not currently subject to a Designated Dispute (as defined in Schedule 4) and which have been billed to the User according to an established billing cycle operated by the Company pursuant to this Agreement;

plus

- (b) the Fifteen Days' Value, which shall be the estimated value of the Charges that would be incurred by the User for a further 15 days from that time, based on the average daily Charges billed to the User (whether under this Agreement or any use of system agreement applying between the User and the Company

immediately before this Agreement became effective) during the previous month according to the established billing cycle operated by the Company;

less

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

The User's Credit Allowance

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

$$\mathbf{CA = RAV \times 2\% \times CAF}$$

where:

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

CAF is the Credit Allowance Factor (which is to be expressed as a percentage determined under Paragraph 2.4 or 2.5 or in accordance with Paragraph 2.10).

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

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

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

- (a) where the User has requested that the Company use an Independent Credit Assessment, CAF shall be determined by reference to the Credit Assessment Score provided to the User pursuant to Paragraph 2.7 and in accordance with the table set out at Paragraph 2.8; or
- (b) where the User has not requested that the Company use an Independent Credit Assessment, CAF shall equal the Payment Record Factor (which shall be determined in accordance with the provisions of Paragraphs 2.11 to 2.13).

Credit Assessment Score

- 2.6 For the purposes of determining CAF pursuant to Paragraph 2.5(a), the User may, once a year, request that the Company obtain an Independent Credit Assessment from a Recognised Credit Assessment Agency chosen by the User.
- 2.7 Within one month of such request, the Company must procure from that Recognised Credit Assessment Agency (and must provide to the User) an Independent Credit Assessment which shall include a Credit Assessment Score determined on a scale from zero to 10 in respect of the User.
- 2.8 The value of CAF corresponding in the following table to the Credit Assessment Score so determined shall be the Credit Allowance Factor which, pursuant to Paragraph 2.5(a), is to be used for the purposes of calculating the User's Credit Allowance pursuant to Paragraph 2.3.

Credit Assessment Score	CAF (%)
10	20
9	19
8	18
7	17
6	16.66
5	15
4	13.33
3	10
2	7
1	3.33
0	0

Additional Credit Assessment

- 2.9 During the 12-month period following completion of an annual Independent Credit Assessment pursuant to Paragraph 2.6, the User may at its own cost procure from a Recognised Credit Assessment Agency, and submit to the Company, an interim Independent Credit Assessment for the purpose of requiring the Company to recalculate the User's Credit Allowance.

Payment Record Factor

- 2.10 The Company shall at any time be entitled to use (and, on request by the User, must use) the Payment Record Factor to determine the Credit Allowance Factor. For this purpose, and for that of Paragraph 2.5(b), the Credit Allowance Factor shall equal the value of the Payment Record Factor determined in accordance with Paragraphs 2.11 to 2.13.
- 2.11 The Payment Record Factor shall equal the number of months since the Good Payment Performance Start Date (as specified in Paragraph 2.12) multiplied by 0.033% (that is to say, by 0.4% per annum) up to a maximum value of 2% after five years of good payment history. The Company shall give the User notice of any adverse change in the calculation of the Payment Record Factor pursuant to Paragraph 2.12.
- 2.12 For all Users, the Good Payment Performance Start Date shall:
- (a) initially, be the date of the earliest of the first Initial Account, the first Reconciliation Account, the first account issued pursuant to Clause 21, or the first account comparable to the foregoing issued under the use of system agreement applying between the User and the Company immediately before this Agreement became effective (the **relevant account**); and
 - (b) where the User fails, or has failed, on any occasion to pay any relevant account relating to undisputed Charges in full on the applicable payment date, be the date on which the relevant account is submitted in the month subsequent to the month in which such payment failure occurs (unless, having regard to all the circumstances, including in particular the value, duration, and frequency of failure, the Company reasonably determines an earlier date).

- 2.13 Where any unpaid disputed invoice is found to have been disputed without merit, a failure to have paid the relevant account in accordance with the terms of this Agreement shall be treated as a failed payment and the provisions of Paragraph 2.12 shall apply accordingly.

The User's Indebtedness Ratio

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

Credit Allowance Where Credit Support is Provided by a Third Party

- 2.17 Where credit support is provided for the User through a Qualifying Guarantee by a third party (the **Credit Support Provider**), the maximum Credit Allowance assigned to the User shall be calculated in accordance with Paragraph 2.3, but substituting the Credit Support Provider for the User in all such calculations. Where the value of the Qualifying Guarantee is lower than the Credit Allowance calculated pursuant to Paragraph 2.3, the User's actual Credit Allowance shall be the maximum value of the Qualifying Guarantee.
- 2.18 Where a Credit Support Provider provides a Qualifying Guarantee for another user of the Distribution System, the aggregate of all Qualifying Guarantees so offered shall not exceed the maximum Credit Allowance that could be determined for that Credit Support Provider pursuant to Paragraph 2.3.
- 2.19 Where the User disputes the Company's calculation of Value at Risk or the Credit Allowance, the provisions of Paragraph 8 of this Schedule shall apply.

3 INCREASE OR DECREASE OF COVER REQUIREMENT

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

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

- 3.2 If, on any Working Day, the User's Indebtedness Ratio equals or is greater than its Indebtedness Ratio Limit because of an increase in the User's Value at Risk, the Company shall give notice of this to the User on the following Working Day and the User shall take all appropriate action to ensure that its Indebtedness Ratio is equal to or below 80% within two Working Days of its receipt of such notice.
- 3.3 It shall be a Cover Default if the User fails to remedy a default under Paragraph 3.2 within the prescribed timescale.
- 3.4 Following a Cover Default under Paragraph 3.3, the User's Indebtedness Ratio Limit shall be decreased to 80% for one year following rectification of the default, after which time it shall be increased back to 100%.

Actions in Relation to Cover Default

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

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

	Agreement, and notify the Authority.
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Increase or Decrease in Cover Requirements Pursuant to a Change in the RAV

- 3.6 The Company shall give the User one month's written notice of its intention to use a new value of RAV to calculate the Credit Allowance according to Paragraph 2.3. Such notice shall state the new value of RAV and the date on which the Company will begin to use that value in such calculation.

Decrease in Cover Requirements

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

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

- 3.9 Not later than 10 Working Days before any outstanding Letter of Credit is due to expire, the User shall either procure to the satisfaction of the Company that it (or a suitable replacement Letter of Credit which meets the Company's reasonable requirements) will be available for a further period of not less than six months, or provide an alternative form of Collateral as set out in Paragraph 1.1.

Release from Cover Obligations

- 3.10 Upon the User ceasing to be a Party to this Agreement, and once all the amounts owed by the User in respect of Charges and any other amount owed by the User to the Company under this Agreement have been duly and finally paid, including interest, the User shall be released from the obligation to maintain Cover in respect of the Company and the Company shall consent to the revocation of any outstanding Qualifying Guarantee or Letter of Credit, and the User shall be entitled to withdraw the balance (if any) (including interest credited thereto) outstanding to the credit of

the User in the Escrow Account at the relevant date and to request the return or termination of any other form of Collateral provided.

4 USE OF COVER FOLLOWING PAYMENT DEFAULT

- 4.1 This Paragraph applies if, after 17:30 hours on any Payment Date, the Company has been notified by the User or otherwise has reason to believe that the User has not remitted to it by close of banking business on the Payment Date all or any part (the **amount in default**) of any amount which has been notified by the Company to the User as being payable by the User by way of the Charges on the relevant Payment Date, or any other amounts owing under this Agreement except for the disputed amount of a Designated Dispute (as defined in Schedule 4).
- 4.2 Where Paragraph 4.1 applies, a Payment Default exists and the Company shall (in addition to any other remedies available to it) be entitled to act in accordance with the following provisions (or whichever of them may apply) in the order in which they appear below until the Company is satisfied that the User has discharged its obligations in respect of Charges or such other amounts under this Agreement which are payable in respect of the relevant account:
- (a) the Company, to the extent that the User is entitled to receive payment from the Company pursuant to this Agreement (unless it reasonably believes that such set-off would be unlawful), shall be entitled to set off the amount of such entitlement against the amount in default;
 - (b) the amount of funds then standing to the credit of the Escrow Account or the amount of any Cash Deposit (excluding any interest accrued thereon to the benefit of the User) shall be released to the Company and set off against the amounts unpaid by the User, and for that purpose the Company shall be entitled to place such funds in any account of the Company at its sole discretion and shall notify the User accordingly;
 - (c) the Company may demand payment under any Letter of Credit for a sum not exceeding the amount of the Cover;

- (d) the Company may demand payment under any outstanding Qualifying Guarantee provided for the benefit of the User pursuant to Paragraph 2.17; or
- (e) the Company may demand payment under any other form of Collateral provided under Paragraph 1.1(d) in the manner which the Company and the User have previously agreed as appropriate in relation to that particular form of Collateral or, in the absence of such agreement, in a manner which the Company (acting reasonably) considers appropriate in relation thereto.

5 UTILISATION OF FUNDS

5.1 In addition to the provisions of Paragraph 4, if an Event of Default occurs in respect of the User in accordance with Clause 37, the Company shall be entitled:

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

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

6 USER'S RIGHT TO WITHDRAW FUNDS

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

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

7 NO SECURITY

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

8 DISPUTES

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

8.2 Where any such dispute remains unresolved after 10 Working Days, either of the Company or the User may refer the matter to the Authority for determination as if it were a dispute falling within Condition 4E of the Company's Distribution Licence.

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

9 NOTICES

9.1 Contact details for notices issued under this Schedule, and the form of such notices and the manner of their service, shall be as agreed between the Company and the User. Where no such agreement exists, the provisions of Clause 42 shall apply.

10 DEFINITIONS

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

Advance Payment	means a deposit of funds by or on behalf of the User as early payment relating to any invoice issued but not yet due into a bank account specified by the Company, in the name of the Company.
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Approved Credit Referencing Agency	means Moody's Investors Service or Standard and Poor's Ratings Group or such replacement agency as may be notified by the Authority from time to time for the purposes of this Schedule.
Cash Deposit	means a deposit of funds by or on behalf of the User into a bank account in the name of the Company.
Collateral	means the implements (excluding parent company guarantees) through which the User can provide Cover, as set out in Paragraph 1.1 and as may be amended or added to from time to time by the Company with the Authority's approval.
Cover	means the aggregate amount of Collateral which the User is required to provide and maintain in accordance with the provisions of this Schedule.
Cover Default	has the meaning given to that term in Paragraph 3.3.
Credit Allowance (CA)	has the meaning given to that term in Paragraph 2.3.
Credit Allowance Factor (CAF)	has the meaning given to that term in Paragraph 2.3.
Credit Assessment Score	has the meaning given to that term in Paragraph 2.7.
Credit Limit	has the meaning given to that term in Paragraph 2.14.
Credit Rating	means a long-term debt rating from an Approved Credit Referencing Agency.

Credit Support Provider	has the meaning given in Paragraph 2.17.
Escrow Account	means a separately designated bank account in the name of the User at such branch of any bank in the United Kingdom as the Company shall specify (the Bank) (on terms to be approved by the Company and which provide, amongst other things, that the funds held in the Escrow Account may be released by the Bank to the Company in the circumstances envisaged in Paragraphs 3 and 4 with the right to direct payments from the Escrow Account in favour only of the Company until the events specified in Paragraph 3.10 have occurred) to which all deposits required to be made by the User pursuant to this Schedule shall be placed, provided that such proceeds are not to be withdrawn by the User save in accordance with the provisions of this Schedule.
Escrow Account Deposit	means a deposit of funds by or on behalf of the User into an Escrow Account.
Fifteen Days' Value	has the meaning given to that term in Paragraph 2.2(b).
Good Payment	has the meaning given to that term in Paragraph 2.12.
Performance Start Date	
Indebtedness Ratio	has the meaning given to that term in Paragraph 2.15.
Indebtedness Ratio Limit	shall be 100% unless otherwise notified by the Company under the provisions of this Agreement.

Independent Credit Assessment	means a credit assessment of the User procured by the Company at the User's request in accordance with Paragraph 2.7 from a Recognised Credit Assessment Agency chosen by the User.
Letter of Credit	means an unconditional irrevocable standby letter of credit in such form as the Company may reasonably approve issued for the account of the User in sterling in favour of the Company, allowing for partial drawings and providing for the payment to the Company forthwith on demand by any United Kingdom clearing bank or any other bank which in each case has a long-term debt rating of not less than single A by Standard and Poor's Ratings Group or by Moody's Investors Service, or such other bank as the Company may approve and which shall be available for payment at a branch of the issuing bank.
Payment Date	means the due date for payment of any Initial Account, Reconciliation Account, or other account submitted to the User pursuant to this Agreement.
Payment Default	has the meaning given to that term in Paragraph 4.2.
Payment Record Factor	has the meaning given to that term in Paragraph 2.11.
Prepayment	means a deposit of funds by or on behalf of the User as early payment relating to future invoices not yet issued into a bank account specified by the Company, in the name of the Company.

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

Recognised Credit Assessment Agency means a credit assessment agency selected by the User from a list, maintained by the Company, of at least three credit assessment agencies (each of which is reasonably believed by the Company to be fit for the purpose of providing credit assessments pursuant to this Schedule, taking account of all the circumstances applicable to the User).

Regulatory Asset Value (RAV) has the meaning given to that term in Paragraph 2.3.

Value at Risk has the meaning given to that term in Paragraph 2.2.

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

SCHEDULE 2A – MANDATORY TERMS FOR CONTRACTS

The following wording is to be included in Contracts in accordance with Clause 17:

National Terms of Connection

Your supplier is acting on behalf of your network operator to make an agreement with you. The agreement is that you and your network operator both accept the National Terms of Connection (NTC) and agree to keep to its conditions. This will happen from the time that you enter into this contract and it affects your legal rights. The NTC is a legal agreement. It sets out rights and duties in relation to the connection at which your network operator delivers electricity to, or accepts electricity from, your home or business. If you want a copy of the NTC or have any questions about it, please write to: Energy Networks Association, 18 Stanhope Place, London, W2 2HH: phone 0207 706 5137, or see the website at www.connectionterms.co.uk.

SCHEDULE 2B – NATIONAL TERMS OF CONNECTION

- A. The electricity you receive from your electricity supplier will be delivered using the distribution system owned or operated by your electricity network operator. To receive a supply of electricity you require both:
- a connection agreement with your electricity network operator to maintain the connection of your premises to the network; and
 - a supply contract with your electricity supplier.
- B. Your electricity supplier has been appointed as the agent of your electricity network operator to obtain a connection agreement with you on the National Terms of Connection set out below. When you enter into your electricity supply contract with your supplier, you are also entering into a connection agreement with your electricity network operator on these terms.
1. *Interpretation.* In this agreement the terms “we”, “our” and “electricity network operator” mean, for each connection to a distribution system through which electricity is conveyed to your premises, the electricity network operator which owns or operates that distribution system.
 2. *Existing terms.* Any existing terms applying to your connection to our distribution system (except for another standard connection agreement) will apply instead of this agreement to the extent that they are inconsistent with this agreement.
 3. *Duration of this connection agreement.* This agreement takes effect from the time that your electricity supply contract takes effect and will continue (even if your electricity supply contract ends) until it ends under Clause 12 below.
 4. *Connection to our network.* Your premises will remain connected to our distribution system in accordance with the provisions of the Electricity Act 1989, any other legal requirements that apply from time to time, and the terms of this agreement.
 5. *Network constraints.* Our obligations under this agreement are subject to the maximum capacity and any other design feature of your connection. In accordance with existing legal rules, you must contact us in advance if you propose to make any

significant change to your connection, electric lines or electrical equipment, or do anything else that could affect our distribution system or require alterations to your connection.

6. *Generating equipment.* If you intend to install or operate small-scale embedded generating equipment – which means one or more sources of electrical energy that have an aggregate rating of no greater than 16 amps per phase connected at low voltage – then you must inform us of your intentions on or before the day that the equipment is connected. So long as you do this, you do not need our consent. However, if you intend to install or operate any other kind of generating equipment, you must contact us in advance and obtain our consent.
7. *Delivery of electricity.* We do not guarantee that we will deliver electricity through our distribution system at all times or that electricity delivered through our distribution system will be free of brief variations in voltage or frequency.
8. *Cutting off your supply.* We may cut off the supply of electricity to your connection where we are entitled to do so under the general law. We may also cut off your supply of electricity where we are required to do so under your electricity supply contract or because of the electricity industry arrangements under which we operate in accordance with our licence.
9. *If something goes wrong.* If we fail to comply with any term of this agreement, or are negligent, you may be entitled under the general law to recover compensation from us for any loss you have suffered. However, we will not be required to compensate you for loss caused by anything beyond our reasonable control, or for any indirect, consequential, economic, or financial loss (including wasted expenses or any loss of revenue, profit, or interest, any loss of business, commercial, market, or economic opportunity, or any loss of contract or goodwill), other than where you are entitled to recover compensation for such loss under the general law in relation to death or personal injury.
10. *Business customers.* If the electricity supplied to your premises is used wholly or mainly for business purposes, each of us will only be liable to the other in accordance with the limitations in Clause 9 and up to a maximum of £100,000 per calendar year.

11. *Changing this connection agreement.* The terms of this connection agreement will be changed automatically to incorporate any changes which are approved by our regulator, the Gas and Electricity Markets Authority (GEMA). Any change which is approved will be published on the website of the Energy Networks Association and in the national press.

Either of us may ask the other to accept a change to any part of this agreement at any time if either believes the change is needed because of the nature of your connection or because this agreement is no longer appropriate. (It is unlikely that we will propose any changes unless your connection is at high voltage, you have generating equipment or there are other special features.) If a change is proposed under this clause, and cannot be agreed between us within 28 days, either of us may ask GEMA to decide whether the change should be made.

12. *Ending this connection agreement.* This agreement will end in relation to a connection when one of the following occurs:

- you permanently stop having electricity delivered through that connection;
- you no longer either own or occupy the premises at which that connection is situated; or
- any circumstances arise which legally entitle us to cut off your electricity supply to that connection and we write to you advising you that this agreement is ended.

The ending of this agreement will not affect any rights, remedies or obligations which may have come into being under this agreement and Clauses 9 and 10 will continue to apply to those rights, remedies and obligations.

13. *Transferring this connection agreement.* You are not entitled to transfer this agreement to another person without our consent.
14. *Providing information.* You must provide us with any information we request in relation to the nature, or use by you, of electrical equipment on your premises. We will only ask for information that we need in relation to this agreement or the Distribution Code that applies under our licence.

15. *Governing law.* This agreement will be governed by and interpreted in accordance with English law, under the jurisdiction of the English and Scottish courts.

For information: supply characteristics

As required by law, the electricity delivered to your premises through our distribution system will normally be at one of the voltages set out below and will have the technical characteristics stated there:

- At 230 volts nominal: normally a single-phase supply, with a permitted range of voltage variation from plus 10% to minus 6%.
- At 400 volts nominal: normally a three-phase supply, with a permitted range of voltage variation from plus 10% to minus 6%.
- At either of the above voltages: the supply frequency will be 50 hertz, with a permitted nominal variation of plus or minus 1%.

SCHEDULE 3 – INTEREST RECONCILIATION ACCOUNTS

Interest in respect of Reconciliation Accounts, as provided for in Clause 20.4, shall be calculated in accordance with the following provisions:

1. For the first day after the Invoice Date of the Initial Account, the following calculation shall be used by the Company in preparing a Reconciliation Account:

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

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

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

where:

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

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

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

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

n = day number count

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

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

SCHEDULE 4 – BILLING AND PAYMENT DISPUTES

1 Billing and Payment Disputes

1.1 Subject to Clause 19.11, this Schedule 4 applies to disputes in relation to charges payable by the User pursuant to any of the provisions of Section 2.

1.2 Where the User disputes an account issued under any of Clauses 20, 21 or 22 and the dispute is a Designated Dispute (as defined in Paragraph 1.3):

(a) the User shall pay such amount of the charges due as are not in dispute and shall be entitled to withhold the balance pending resolution of the dispute;

(b) the User and Company shall use reasonable endeavours to resolve the dispute in good faith;

(c) where the dispute remains unresolved after 20 Working Days, either of the User or the Company may refer the dispute to arbitration in accordance with Clause 41; and

(d) following resolution of the dispute, any amount agreed or determined to be payable shall be paid within 20 Working Days after such agreement or determination, and interest shall accrue on such amount plus Value Added Tax (if any) from the date on which such amount was originally due until the date of payment at the rate of 1% per annum above the base rate during such period of Barclays Bank plc, compounded annually.

1.3 A dispute shall be a **Designated Dispute** for the purposes of this Paragraph 1 where within 14 days of receiving a request for payment the User in good faith (i) notifies the Company that one or more of the circumstances mentioned in Paragraph 1.3(a) and (b) applies to the request, and (ii) provides the Company with a statement and explanation of the amount in dispute. Those circumstances are:

(a) that, in the calculation by the Company of the charges in question, there is a **manifest error**, being either (i) an error in the information used for, or (ii) an arithmetical error in, that calculation which is apparent on the face of the relevant account, or (iii) an error which, not being apparent thereon, the User

nevertheless in good faith believes will be shown to be present in the calculation upon investigation; and/or

- (b) that, for a Metering Point or Metering System within Clause 19.5.1, the Company has chosen not to use the half-hourly data (whether actual or estimated) provided by the Data Collector for the purposes of Settlement in calculating Use of System Charges, and the User disputes the accuracy or validity of the data actually used.

1.4 Disputes about the matters listed at Paragraph 1.4(a) and (b) are not Designated Disputes and Paragraph 1.2 shall not apply (except in the case of a manifest error) where:

- (a) the Company has invoiced Use of System Charges in accordance with Clause 19.5; or
- (b) the Company has used estimated data in accordance with Clause 21.2.1.

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

- (a) the User shall pay the total amount of such charges as they fall due in accordance with Clause 19.6;
- (b) the Company and the User shall use reasonable endeavours to resolve the dispute in good faith;
- (c) 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 41; and
- (d) following resolution of the dispute, any amount agreed or determined to be repayable (including where appropriate any interest paid pursuant to Clause 23.3) by the Company shall be paid within 20 Working Days after such agreement or determination, and interest shall accrue on such amount from the date on which such amount was originally paid by the User until the date of

repayment at 1% per annum above the base rate during such period of Barclays Bank plc, compounded annually.

SCHEDULE 5 – APPROVAL AND PERMISSION PROCEDURES

1 DEFINITIONS

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

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

2 PRINCIPLES

- 2.1 Subject to the provisions of Clause 25 and this Schedule 5, the User shall be entitled to procure the performance of Works on the Distribution System by a person who is

not an employee of the Company. This Schedule 5 does not apply to work carried out by a Meter Operator pursuant to the Meter Operation Services Agreement.

- 2.2 A Competent Person shall be recognised to be a suitable person to carry out Works on the Distribution System in accordance with and to the extent specified in a Permission.
- 2.3 Where the User elects to have Works performed on the Distribution System by an Approved Contractor rather than the Company, the Approved Contractor shall undertake to perform all the categories of Works in accordance with and to the extent specified in the Permissions held by its Competent Persons, and the Company shall only be obliged to undertake such categories of Works as are not so specified. The User shall remunerate the Company for undertaking any such Works by reference to the relevant charges set out in the Relevant Charging Statement, or by agreement where the charges for such Works are not set out therein.

3 PROCEDURE FOR APPROVING CONTRACTORS

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

4 PROCEDURE FOR RECOGNISING COMPETENT PERSONS

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

5 PROCEDURE FOR GRANTING PERMISSION

- 5.1 The User shall be entitled to procure the performance of Works on the Distribution System by a Competent Person, provided that the Competent Person has a valid Permission. The grant of a Permission to a Competent Person shall not be unreasonably withheld, provided that the Company shall always have a prior right to undertake a trade test and safety awareness assessment of that person and that the reasonable costs of exercising this right shall be paid by the Approved Contractor if requested by the Company.
- 5.2 The nature, scope, and extent of the Works which a Competent Person may undertake shall be at the Company's sole discretion. A Permission shall specify in writing the categories of Works which the Competent Person is allowed to undertake on the Distribution System, and the Competent Person's authority to undertake Works shall

be limited to those categories alone and shall in no circumstances whatsoever extend to any other category of Works howsoever described.

5.3 Notwithstanding anything in Paragraph 5.2, the categories of Works specified in a Permission may (for example only and without limitation) include any of the following:

- (a) the withdrawal or replacement of fuse links in the service terminations;
- (b) the connection or severing of wiring between service terminations, meters and distribution boards;
- (c) attendance at or the performance of work in a Distribution System substation without the need for personal supervision;
- (d) the supervision or control of a working party which undertakes any of the above; and
- (e) the operating of high or low voltage switchgear.

6 DISPUTES

6.1 The Company and the User shall attempt to resolve in good faith any dispute in relation to assessment fees payable to the Company pursuant to Paragraph 3.1. Where a dispute remains unresolved after 10 Working Days, either of the Company or the User may refer the dispute to the Authority for determination. Any determination by the Authority under this Paragraph 6 shall be final and binding.

SCHEDULE 6 – METERING ACCURACY

1 METERING ACCURACY

- 1.1 Metering equipment installed and maintained pursuant to Clause 29.1 shall be capable of operating within the accuracy limits specified pursuant to the Balancing and Settlement Code and, where no accuracy limits are specified in relation to an element of any metering equipment under the Balancing and Settlement Code, the accuracy of that element shall be no less than that specified in Tables 1 to 4 (inclusive) of Code of Practice Four approved pursuant to the Balancing and Settlement Code (**the agreed accuracy limits**).

2 DISPUTES IN RELATION TO METERING ACCURACY

- 2.1 Unless the accuracy of metering equipment installed and maintained pursuant to Clause 29.1 is disputed by notice in writing (**a dispute notice**) given by one party to the other, such metering equipment shall be deemed to be accurate.
- 2.2 If a dispute notice is given under Paragraph 2.1, then, unless otherwise agreed, the metering equipment shall as soon as practicable be examined and tested by a meter examiner in accordance with Schedule 7 to the Act.
- 2.3 If on such test:
- (a) it is found that the inaccuracy of the registration of the metering equipment at normal loads exceeds the agreed accuracy limits, suitable adjustment shall be made in the accounts rendered by the Company and the metering equipment or part thereof found to be inaccurate shall be recalibrated or replaced and the cost of such test and recalibration or replacement shall be paid by the User;
 - (b) the metering equipment is found to be accurate within the said limits, the metering equipment shall be deemed to be accurate and the cost of moving, testing and replacing the metering equipment or any part thereof shall be paid by the party who gave the relevant dispute notice.

SCHEDULE 7 – EVENT LOG

1. In the following table:
 - (A) **DTC ref** means the relevant reference number in the Data Transfer Catalogue;
 - (B) **DTN** means the Data Transfer Network and **Phone** means telephone;
 - (C) the descriptions of the data flows concerned under **Message** are for ease of reference only and shall not affect the obligations of either party under the relevant provisions of this Agreement; and
 - (D) **CR** means that there is currently no DTC reference, but that a change request is required.
2. Where there is more than one means of transmission specified in the following table (one of them being via the Data Transfer Network), it is expected that the parties will transmit any notice, request or other communication via the Data Transfer Network.
3. Where the Company and the User agree, or have agreed (whether under the use of system agreement applying immediately before this Agreement became effective or otherwise), alternative means of transmission to those specified in the following table, the means of transmission so agreed shall apply until the Company and the User agree otherwise.

SCHEDULE 7 (CONTINUED)

EVENT LOG

Agreement Clause Number	From	To	Message	Medium				DTC ref
				DTN	Phone	Fax	Post or email	
17.4/17.9	Company	User	Request for evidence that the Contract contains the terms set out in Schedule 2A.	n/a	NO	YES	YES	
17.4/17.9	User	Company	Provision of evidence that the Contract contains the terms set out in Schedule 2A.	n/a	NO	YES	YES	
17.10	Company	User	Notification that non-standard terms apply to a connection.	n/a	NO	YES	YES	
18.2.2	User/agent	Company	Confirmation of appointment of Meter Operator, Data Collector and Data Aggregator or Meter Operator Agent.	YES	NO	NO	NO	D0205
18.2.3	User/agent	Company	Confirmation that metering equipment is installed.	YES	NO	NO	NO	D0012
18.3.4	User/agent	Company	Confirmation of customer's appointed Meter Administrator.	NO	NO	YES	YES	
18.4.2	User/agent	Company	Confirmation that the User is registered for import onto the Distribution System and that the User or other supplier is registered for supply.	[]	[]	[]		
19.1	Company	User	Notification of variation of charges.	NO	NO	NO	YES	

20.2	User/agent	Company	Provision of non-half-hourly Supercustomer DUoS Report.	YES	NO	NO	NO	D0030
20.2	Company	User	Provision of Daily Statements.	YES	NO	NO	NO	D0242
20.3, 20.4	Company	User	Billing by Settlement Class.	NO	NO	NO	YES	
21.2	Company	User	Company refund/cheque.	NO	NO	NO	YES	
21.2	Company	User	Company invoice for site specific billing.	NO	NO	NO	YES	
25.2	User	Agent	Request to Company to undertake Energisation, De-energisation, or Re-energisation Works.	YES	NO	YES	YES	D0134
25.2	User	Company	Request for details needed to identify Metering Points.	NO	YES	YES	YES	
25.2	Company	User	Provision of details needed to identify Metering Points.	NO	YES	YES	YES	
25.8	Company	User	Two Working Days' notice of De-energisation Works.	NO	NO	YES	YES	
25.8.2	Company	User	10 Working Days' request for appointments to be made in compliance with Clause 18.2.2.	NO	NO	YES	YES	
25.10	Company	User	Notice that Metering Point has been De-energised by Company.	NO	NO	YES	YES	D0139
25.12	Company	User	Instruction to send Registration Notice (following De-energisation).	NO	NO	YES	YES	
25.13	Company	User	Instruction to send Registration Notice (following Re-energisation).	NO	NO	YES	YES	

25.15	User	Company	Disconnection Notice.	YES	NO	YES	YES	D0132
25.16								
25.18								
25.16	Company	User	Request for Disconnection Notice.	NO	YES	YES	YES	
25.18								
25.17	Company	User	Refusal to disconnect.	YES	NO	YES	YES	D0262
25.21	User	Company	Request to Re-energise.	YES	NO	YES	YES	D0134
25.21.1	Company	User/agent	Notification of when Re-energisation Works are expected to be undertaken.	NO	NO	YES	YES	
25.21.3	Company	User	Instruct User to send Registration Notice.	NO	NO	YES	YES	
29.3	User/Agent	Company	Metering technical data (non-half-hourly).	YES	NO	YES	YES	D0150
29.3	User/agent	Company	Metering technical data (half-hourly).	YES	NO	YES	YES	D0268
29.3	User/agent	Company	Meter readings (half-hourly).	YES	NO	NO	NO	D0010
29.3	User/agent	Company	Meter advance reconciliation report (half-hourly meters).	YES	NO	NO	NO	D0008
29.3	User/agent	Company	Estimated half-hourly data report.	YES	NO	NO	NO	D0022
29.3	User/agent	Company	Validated half-hourly advances for inclusion in aggregated supplier matrix, including unmetered volumes.	YES	NO	NO	NO	D0275
29.6	User/agent	Company	Notification of meter mapping details.	YES	NO	NO	NO	D0149
29.6	User/agent	Company	Non-half-hourly meter readings.	YES	NO	NO	NO	D0010
29.6	User/agent	Company	Meter technical details.	YES	NO	YES	YES	D0150
29.7	Company	User/agent	Test metering system.	YES	YES	YES	YES	D0001

29.10	Company	Agent (DC)	Estimated annual consumption for unmetered sites which are not subject to half-hourly trading.				YES	
30.1, 30.3	User	Company	Customer details.	YES	NO	YES	YES	D0131
30.4	User	Company	Change of customer details.	YES	NO	YES	YES	D0131
30.5, 30.9	User/ agent	Company	Report possible safety problem.	YES	YES	NO	NO	DO135
30.5, 30.9	User / Agent (MOP, DC)	Company	Report urgent possible safety problem to Security and Safety of Supplies Enquiry Service.	NO	YES	NO	NO	
30.6, 30.8	User	Company	Provision of details of special needs customers.	YES	NO	YES	YES	D0225
30.7, 30.8	User	Company	Provision of details of password.	YES	NO	YES	YES	D0131
30.9	User	Company	Report interference to metering system	NO	YES	NO	NO	
30.10	User	Company	Provide information in relation to possible criminal act	NO	NO	YES	YES	
30.11	User	Company	Inform how incidents of damage or interference will be remedied	NO	NO	NO	YES	
30.11	Company	User	Report any remedial action carried out after incidents of damage or interference	YES	NO	NO	YES	D0150, D0268
33.5	User	Company	Details of customer complaint in respect of a guaranteed service standard claim.	NO	YES	YES	YES	
	Company	Agent	Confirmation of Energisation/ De-energisation of prepayment meter.	YES	NO	YES	YES	D0179
	Company	Agent	Instruction on action.	YES	NO	YES	YES	D0005
	Agent	Company	Notification of change of supplier readings.	YES	NO	NO	NO	D0086

	User/Agent	Company	Fault resolution report or request for decision on further action.	NO	YES	YES	NO	D0002
	Agent	Company	Confirmation of proving tests.	YES	NO	YES	YES	D0214
	Company	User/ Agent	Provision of site technical details.	YES	NO	YES	YES	D0215
	User	SFIC	Distribution System enquiry.	NO	YES	YES	YES	D0166
	SFIC	User	Action to make Distribution System safe.	NO	YES	NO	NO	D0126
	SFIC	User	Response to Distribution System enquiry.	NO	YES	YES	YES	D0167
	Agent	Company	Half-hourly advances.	NO	NO	YES	YES	D0003
	Company	User	Confirmation of disconnection of supply.	NO	NO	YES	YES	D0125
	Company	User	Report to User of possible irregularity.	NO	NO	YES	YES	D0136
	Company	User	Allocation of new/additional MPAN core(s).	YES	NO	YES	YES	D0169
	Agent	Company	Request for Metering System details.	YES	NO	YES	YES	D0170
	User	Company	Request for additional/new MPAN cores.	YES	NO	YES	YES	D0168
	Company	Agent	Meter readings.	YES	NO	YES	YES	D0010
	Company Agent	Agent/ User Company	Confirmation or rejection of Energisation status change.	YES	NO	YES	YES	D0139

Where no means of transmission is specified, the Company and the User shall agree such means as they consider appropriate.

SCHEDULE 8 – DEMAND CONTROL

1 INTRODUCTION

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

2 DEFINITIONS

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

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

Compliance Notice means a notice issued to a Supplier pursuant to Paragraph 8.6.

Demand has the meaning given to that term in the Distribution Code.

Effective Date means the date on which a notice issued pursuant to this Schedule 8 is deemed to be received in accordance with Clause 42 and/or Paragraph 11.3 (as appropriate).

Emergency SRN means a notice issued pursuant to Paragraph 8.1.

Firm SRN means a notice issued pursuant to Paragraph 7.1.

Load Managed Area means an area designated pursuant to Paragraph 5.1.

Load Managed Area Notice	means a notice issued pursuant to Paragraph 5.1.
Provisional SRN	means a notice issued pursuant to Paragraph 6.1.
Security of Supply	means the ability of the Company to provide supplies to Customers that comply with the Regulations and with Engineering Recommendation P2/5 (or such other planning standard as may be in force for the Company under Condition 5 of the Distribution Licence) as amended or re-enacted from time to time.
SSC	means Standard Settlement Configuration.
Supplier	means a person authorised to supply electricity pursuant to Section 6(1)(d) of the Act.
Total System	has the meaning given to that term in the Distribution Code.

3 GENERAL OBLIGATIONS

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

(ii) normally not to issue a notice for a relevant geographic area within 20 Working Days of the Effective Date of the last notice for that area.

4 CONSULTATION

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

5 LOAD MANAGED AREAS

5.1 The Company may from time to time designate areas of the Distribution System as Load Managed Areas where the Company has identified a need to reinforce or extend the capacity of such areas and, prior to issuing a Load Managed Area Notice, has either:

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

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

5.3 A Load Managed Area Notice shall be effective when received or deemed to be received in accordance with Clause 42 and shall indicate:

- (a) the geographical area to which it applies by map, postcode or such other method as the Company considers reasonable;
- (b) the time or times of day during which in the Company's opinion changes to SSCs in force at particular Metering Points induced by Suppliers have increased the coincidence of Demand to such an extent that Security of Supply may be threatened; and

- (c) that it shall continue in force until withdrawn in writing by the Company by serving a notice on all Suppliers.

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

- (a) significant modifications of Customer Demand in the area identified in such notice may threaten Security of Supply;
- (b) Provisional SRNs, Firm SRNs and Emergency SRNs may be issued in respect of that area;
- (c) any future changes to SSCs in force at particular Metering Points in that area may be subject at the request of the Company to change in accordance with Paragraph 7.6 or 8.6; and
- (d) any changes to SSCs referred to in Paragraph 5.4(c) will, if requested by the Company pursuant to Paragraph 7.6 or 8.6 or if made voluntarily by a Supplier, be at the relevant Supplier's cost.

6 PROVISIONAL SECURITY RESTRICTION NOTICES

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

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

6.3 A Provisional SRN shall be effective when received or deemed to be received in accordance with Clause 42 and shall indicate:

- (a) the geographical area to which it applies by map, postcode or such other method as the Company considers reasonable;

- (b) the time or times of day during which Capacity Headroom has been infringed from the Effective Date of the Load Managed Area Notice; and
- (c) that it shall continue in force until withdrawn in writing by the Company by serving a notice on all Suppliers.

6.4 The Company and the User acknowledge and agree that the issue of a Provisional SRN constitutes notice that:

- (a) any modifications of Customer Demand induced by changes to SSCs in the area identified in such notice may threaten Security of Supply;
- (b) Firm SRNs and Emergency SRNs may be issued in respect of that area and that such notices will normally not be issued within 20 Working Days of the Effective Date of the relevant Provisional SRN;
- (c) any future changes to SSCs in force at particular Metering Points in that area may be subject at the request of the Company to change in accordance with Paragraph 7.6 or 8.6; and
- (d) any changes to switching times in order to effect changes to SSCs referred to in Paragraph 6.4(c) will, if requested by the Company pursuant to Paragraph 7.5 or 8.5 or if made voluntarily by a Supplier, be at the relevant Supplier's cost.

7 FIRM SECURITY RESTRICTION NOTICES

7.1 The Company may from time to time issue a Firm Security Restriction Notice where in the Company's opinion the changes to SSCs in force at particular Metering Points since the Effective Date of a Load Managed Area Notice have increased the coincidence of Demand in the whole or part of the area identified in that notice and as a result there is a material risk to Security of Supply.

7.2 A Firm SRN shall be sent to the User, all other Suppliers and the Authority.

7.3 A Firm SRN shall be effective when received or deemed received in accordance with Clause 42 and shall indicate:

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

7.4 The Company and the User acknowledge and agree that the issue of a Firm SRN constitutes notice that:

- (a) any modifications of Customer Demand induced by changes to SSCs in the area identified in such notice may threaten Security of Supply;
- (b) Emergency SRNs may be issued in respect of that area and that such notices will normally not be issued within 20 Working Days of the Effective Date of the relevant Firm SRN;
- (c) any future changes to SSCs in force at particular Metering Points in that area may be subject at the request of the Company to change in accordance with Paragraph 7.6 or 8.6; and
- (d) any changes to switching times in order to effect changes to SSCs referred to in Paragraph 7.4(c) will, if requested by the Company pursuant to Paragraph 7.6 or 8.6 or if made voluntarily by a Supplier, be at the relevant Supplier's cost.

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

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

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

8 EMERGENCY SECURITY RESTRICTION NOTICES

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

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

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

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

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

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

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

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

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

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

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

Emergency SRN or Compliance Notice for which the User is registered in MPAS as the Supplier.

9 CONFIDENTIALITY

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

10 APPEALS PROCEDURE

- 10.1 The Company and the User shall attempt to resolve in good faith any dispute in relation to this Schedule 8. Where the dispute remains unresolved after 10 Working Days, either of them may refer the dispute to the Authority for determination. Any determination by the Authority under this Paragraph 10 shall be final and binding.

11 NOTICES

- 11.1 Save as provided in Paragraph 11.2, a notice, approval, consent or other communication to be made by the Company or the User under or in connection with this Schedule 8 shall be in writing and shall be delivered personally or sent by first class post, courier, fax or email to the other at the address specified for such purpose in that Party's Party Details.
- 11.2 An Emergency SRN shall be dictated by the Company to the User to the person(s) specified for such purpose in the User's Party Details on the telephone number so specified who shall record it and on completion shall repeat the notification in full to the Company and check that it has been accurately recorded.
- 11.3 An Emergency Security Restriction Notice shall be deemed received when the Company has dictated it to the User in accordance with Paragraph 11.2.
- 11.4 The Company shall also send an Emergency SRN in writing as soon as is reasonably practicable to the User in accordance with Paragraph 11.1. For the avoidance of

doubt, such notice shall be for the record and shall not replace the notice given in accordance with Paragraph 11.2 but shall be deemed to be received in accordance with Clause 42.

12 REVIEW PROCEDURE

- 12.1 The Company shall, no later than the later of six months after its Effective Date or six months after its last review, review every Load Managed Area Notice, Provisional SRN, Firm SRN and Emergency SRN issued by it pursuant to this Schedule 8 which is still in force.
- 12.2 Where the Company reasonably believes that the relevant notice should continue in force, it shall notify all Suppliers and the Authority accordingly, together with its reasons.
- 12.3 Where the Company reasonably believes that the relevant notice should not continue in force, it shall withdraw the relevant notice and notify all Suppliers and the Authority.

SCHEDULE 9 – ACCESSION AGREEMENT

THIS ACCESSION AGREEMENT is made on 20

BETWEEN:

- (A) [] a company incorporated in [] (registered number []) whose registered office is at [] (the “**New Party**”); and
- (B) **DCUSA LIMITED** a company incorporated in England and Wales (registered number []) whose registered office is at [] (“**DCUSA Ltd**”).

WHEREAS

- (A) The DNO Parties and IDNO Parties are required, by their licences, to establish, accede to, maintain and comply with the DCUSA.
- (B) The Supplier Parties are required, by their licences, to be party to, and comply with, the DCUSA.
- (C) The DG Parties are under certain obligations, under other industry agreements, regarding distribution use of system arrangements, and have agreed to accede to the DCUSA in order to meet those obligations.
- (D) DCUSA Ltd is a company established under the DCUSA to facilitate the operation of the DCUSA.
- (E) The New Party wishes to become a party to, and bind itself by, and DCUSA Ltd has agreed (on behalf of the DCUSA Parties) to admit the New Party as a party to, the DCUSA in accordance with the terms and conditions of this Accession Agreement.

NOW IT IS HEREBY AGREED as follows:

1. The “**DCUSA**” is the Distribution Connection and Use of System Agreement designated as such by the Gas and Electricity Markets Authority (as such agreement is amended from time to time). A “**DCUSA Party**” is a party from time to time to the

DCUSA. Unless the context otherwise requires, the words and expressions defined in the DCUSA shall bear the same respective meanings when used herein.

2. With effect from [ACCESSION DATE]:

43.14.1 the New Party hereby accepts its admission to the DCUSA, and undertakes to DCUSA Ltd (acting on behalf of itself and each DCUSA Party) to perform its obligations under the DCUSA in accordance with, and subject to, the terms and conditions thereof; and

43.14.2 DCUSA Ltd (acting on behalf of itself and each DCUSA Party) hereby admits the New Party as a party to the DCUSA.

3. The New Party’s Party Details shall, initially, be as set out in the schedule hereto and those Party Details shall be added to schedule 11 of the DCUSA in accordance with clause 40.5 of the DCUSA.

4. This Accession Agreement may be executed in two counterparts, each signed by one of the parties hereto.

5. This Accession Agreement shall be governed by and construed in accordance with the laws of England and Wales. The parties hereto hereby submit to the exclusive jurisdiction of the courts of England and Wales and of Scotland.

THIS ACCESSION AGREEMENT has been entered into on the date first stated above.

SIGNED by)
duly authorised)
for and on behalf of)
NEW PARTY)

SIGNED by)
duly authorised)
for and on behalf of)
DCUSA LTD)

SCHEDULE 10 – DCUSA LTD

1 BACKGROUND

- 1.1 *Establishment of joint venture.* The Parties have agreed to establish a joint venture company to carry on the Business.
- 1.2 *DCUSA Ltd.* DCUSA Ltd was incorporated in England and Wales on 10 May 2006, and on the date the DCUSA became effective had an authorised share capital of £1,000 divided into 1,000 ordinary shares of £1 each of which three shares have been issued.
- 1.3 *Shareholders of DCUSA Ltd.* It is intended that the shareholders of DCUSA Ltd shall be limited to the Parties from time to time, each of whom shall hold a single share, and any nominee as referred to in Paragraph 3.2(a).
- 1.4 *Regulation of rights.* The Shareholders have agreed that their respective rights as shareholders in DCUSA Ltd shall be regulated by the provisions of this Schedule (which, for the avoidance of doubt, shall include the provisions of the Annexes hereto) and DCUSA Ltd has agreed with the Shareholders to comply with such of the matters contained in this Schedule as relate to DCUSA Ltd.

2 ADDITIONAL DEFINITIONS AND INTERPRETATION

- 2.1 *Definitions.* In this Schedule, except where the context otherwise requires:

Articles means the Articles of Association of DCUSA Ltd as the same may be amended from time to time, which Articles shall, on the Completion Date, be in the form set out in Annex 4.

Board means the board of directors of DCUSA Ltd.

Business means acting as a corporate vehicle in relation to this Agreement pursuant to:

- (a) a resolution of the Panel (or any Working Group) passed pursuant to Clause 7 and effective by virtue

of the provisions of that Clause; or

- (b) a decision of the Secretariat acting within the scope of its authority,

which it is necessary or desirable to implement by means of a binding contract on an arm's-length basis.

Company Chairman	means the chairman of the Board from time to time.
Company Secretary	means the company secretary of DCUSA Ltd from time to time.
Completion Date	means the first Working Day after the date on which this Agreement becomes effective or such later date as shall be agreed by the Panel.
Directors	means the directors of DCUSA Ltd from time to time.
Shareholders	means the persons from time to time registered as holders of Shares.
Shares	means ordinary shares of £1 each in the ordinary share capital of DCUSA Ltd and any shares issued in exchange therefor by way of conversion or reclassification and any shares representing or deriving from such shares as a result of any increase in or reorganisation or variation of the ordinary share capital of DCUSA Ltd.

2.2 *Interpretation.* The Parties and DCUSA Ltd acknowledge and agree that, notwithstanding any other provision of this Agreement:

- (a) DCUSA Ltd is a party to this Agreement solely for the purposes of this Schedule and the obligations expressly imposed on it by this Agreement. DCUSA Ltd shall only be bound by those provisions of this Agreement that are set out (or referred to) in this Schedule or that are set out elsewhere and expressly refer to DCUSA Ltd;

- (b) DCUSA Ltd shall have only such rights under or in respect of this Agreement as are set out (or referred to) in this Schedule or as are set out elsewhere and expressly refer to DCUSA Ltd (or to the Parties where such expression is defined as including DCUSA Ltd);
- (c) the consent or agreement of DCUSA Ltd shall not be required to any modification, abrogation, amendment or suspension of any provision of this Agreement which is not set out in this Schedule, and DCUSA Ltd hereby irrevocably waives any rights which it might be considered, or held, to have to consent or agree to any such modification, abrogation, amendment or suspension;
- (d) the rights of the Parties as Shareholders are set out exclusively in this Schedule and no other provision of this Agreement shall apply to the regulation of the rights and obligations of Shareholders in their capacity as Shareholders or as between the Shareholders (or any of them) and DCUSA Ltd; and
- (e) DCUSA Ltd shall take no action (and the Shareholders shall not take any step which could cause DCUSA Ltd to take any such action) which could prejudice in any way the rights or interests of any Party under this Agreement.

3 ESTABLISHMENT OF DCUSA LTD AND NEW PARTIES

3.1 *Completion.* On the Completion Date, each Party, each Director and DCUSA Ltd shall perform its respective obligations set out in Annex 1 to this Schedule.

3.2 *New Parties.* Upon the accession of a new Party in accordance with Clause 4, the Directors shall either:

- (a) transfer to such Party one Share held by a nominee in accordance with the provisions of Paragraph 10.3 or 10.4; or
- (b) allot to such Party one unissued Share (and the Shareholders agree that, where no Shares are otherwise available for issue, they will exercise the voting rights attaching to their Shares to procure that all necessary steps are taken to create and/or authorise the issue of further Shares).

4 DCUSA LTD'S BUSINESS

4.1 *Compliance.* Each Shareholder agrees with each other Shareholder to exercise its rights under this Schedule and as a shareholder in DCUSA Ltd so as to ensure that:

- (a) DCUSA Ltd performs and complies with all its obligations under this Agreement and complies with the restrictions (if any) imposed on it by the Articles; and
- (b) the Business is conducted in accordance with sound and good business practice with the intention of breaking even each year.

4.2 *Sole business of DCUSA Ltd.* The Shareholders and DCUSA Ltd acknowledge and agree that, unless and until the Shareholders give their explicit written consent, the business of DCUSA Ltd shall be confined to the Business.

4.3 *Independence of operations.* Each Shareholder acknowledges and agrees that DCUSA Ltd will have complete independence in its operations and undertakes not to take any action which obstructs or interferes with, or seeks to obstruct or interfere with, the Business, provided that this Paragraph 4.3 shall not affect the manner in which any Shareholder may exercise its rights in respect of Shares held by it.

5 THE MANAGEMENT OF DCUSA LTD

5.1 *Directors.*

- (a) The Shareholders shall procure that the Directors shall be all the Panel Members from time to time, and each Director shall have as his alternate for the purposes of this Schedule the Alternate appointed by him pursuant to Clause 6.
- (b) The Parties shall indemnify DCUSA Ltd against all claims, demands, liabilities, losses, costs and expenses which DCUSA Ltd may suffer or incur by reason of any claim by any Director in connection with his removal from office as a Director and the liability to indemnify shall be met:
 - (i) in the case of a Director who was elected to the Panel by the DNO Parties, severally and rateably by the DNO Parties in accordance with

the same proportions by which each DNO Party's Basic Vote would be calculated in the month such liabilities, losses, costs and expenses were incurred;

- (ii) in the case of a Director who was elected to the Panel by the Supplier Parties, severally and rateably by the Supplier Parties in accordance with the same proportions by which each Supplier Party's Basic Vote would be calculated in the month such liabilities, losses, costs and expenses were incurred; and
- (iii) in the case of any other Director, as if it were a cost included within an Approved Budget.

5.2 *Company Chairman.* The Company Chairman shall be the person appointed as the Panel Chairman from time to time. If the Company Chairman is unable to be present at a meeting, he may nominate another Director (or any Director's alternate) to act as Company Chairman. If neither the Company Chairman nor his nominee is present within half an hour after the time appointed for holding the meeting, the Directors present may appoint any one of their number to be Company Chairman of that meeting.

5.3 *Committees.* The Directors may delegate any of their powers to committees of the Board consisting of such persons as the Directors may resolve. Any such committee shall exercise only powers expressly delegated to it and shall comply with any regulations imposed on it by the Board.

5.4 *Company Secretary.* The Company Secretary shall be the Secretary for the time being and from time to time.

5.5 *Proceedings at Board Meetings.*

- (a) Voting rights: Each Director shall have one vote. The Company Chairman shall have no second or casting vote.
- (b) Frequency: The Board shall meet at intervals of not less than once in any period of three months unless otherwise agreed by the Directors and insofar as reasonably practicable meetings of the Board shall follow on immediately

from meetings of the Panel. A meeting of the Board may be convened at any reasonable time at the request of any Director by written notice to the Company Secretary.

- (c) Meetings: Meetings of the Board may be held by conference telephone call provided that participants acknowledge that they can speak to and hear each other.
- (d) Notice: Each of the Directors shall be given notice by the Company Secretary of each meeting of the Board setting out details of the time, date and place of meeting at least five Working Days prior to the date of such meeting, provided that such period of notice may be shortened for particular meetings by unanimous written consent of all Directors entitled to attend and vote thereat.
- (e) Quorum: The quorum for each meeting of the Board shall be four Directors, at least one of whom must have been elected to the Panel by the DNO Parties and at least one of whom must have been elected to the Panel by the Supplier Parties.
- (f) Resolutions: All resolutions of the Board shall be made by simple majority of those Directors present or participating by conference telephone call.
- (g) Written resolutions: A written resolution signed by all Directors shall be as valid and effective as a resolution passed by a meeting of the Board properly convened and constituted in accordance with the terms of this Schedule and the Articles.
- (h) Minutes: No later than five Working Days after each Board meeting, the Company Secretary shall circulate minutes of that meeting to each of the Directors.

5.6 *Exercise of Shareholders' rights.* The Shareholders shall exercise the rights attaching to their Shares in the manner best calculated to secure the implementation of decisions taken by the Panel, by the Parties in accordance with Section 1C, or (where this Agreement provides that the decision of the Authority is to be binding) by the

Authority, and shall not exercise their rights in a manner which is inconsistent with any such decision.

6 RESERVED MATTERS

6.1 The Shareholders shall exercise the rights attaching to their shares to procure, so far as they are able, that DCUSA Ltd shall not take any action (and no resolution relating to such action shall be passed by DCUSA Ltd) in respect of the matters set out in Annex 2 to this Schedule, except pursuant to a decision of the Panel in accordance with this Agreement.

6.2 For the avoidance of doubt, to the extent that DCUSA Ltd takes any action in respect of any matter set out in Annex 2 to this Schedule pursuant to a decision of the Panel in accordance with this Agreement, no resolution of the Shareholders shall be required to ratify such action.

7 DCUSA LTD'S EXPENDITURE

7.1 *Inclusion of expenditure in budgets.* The anticipated expenditure of DCUSA Ltd shall be included in any budget prepared pursuant to Clause 8, and shall be subject to approval in accordance with that Clause.

7.2 *DCUSA Ltd obligations.* The Shareholders shall exercise the rights attaching to their shares to procure that DCUSA Ltd shall not incur costs unless authorised by a budget approved pursuant to Clause 8, except insofar as is necessary in order to comply with legally binding obligations to which it is subject.

7.3 *Authorisation and reimbursement.* Expenditure by DCUSA Ltd shall be authorised by the Panel, submitted to the Secretariat for payment, and reimbursed by the Parties in accordance with the provisions of Clause 8.

8 ACCOUNTS

8.1 *Annual accounts.* At the end of each of Financial Year, or as soon as is reasonably practicable thereafter, DCUSA Ltd shall procure that an account shall be taken of all the assets and liabilities of DCUSA Ltd and of all the dealings and transactions of DCUSA Ltd during such financial year and that the Board shall prepare a report and

accounts in accordance with the Companies Act 1985 (as amended) to be audited within three months after the end of each Financial Year.

- 8.2 *Audit.* Any Party shall have the right at any time to require DCUSA Ltd to instruct the auditors of DCUSA Ltd to conduct a review in respect of the financial affairs of DCUSA Ltd. The cost of such review shall be borne by the Party requesting such review, unless such review is approved by the Directors, in which case it shall be borne by DCUSA Ltd. If any such review is requested, DCUSA Ltd shall procure that DCUSA Ltd's auditors are given all reasonable assistance to complete the review within a reasonable period of time.

9 DISTRIBUTION POLICY

- 9.1 The Shareholders shall take such action as may be necessary to procure that:
- (a) *Annual general meeting.* DCUSA Ltd's annual general meeting at which audited accounts in respect of the preceding Financial Year are laid before the Shareholders is held not later than the date falling six months after the end of that Financial Year;
 - (b) *Auditors' report.* DCUSA Ltd's auditors are instructed, at the expense of DCUSA Ltd, to report on the amount of the profits available for distribution by DCUSA Ltd for each accounting reference period at the same time as they sign their report on DCUSA Ltd's audited accounts for the accounting reference period in question;
 - (c) *Distribution of profits.* DCUSA Ltd distributes to and among the Shareholders within 20 Working Days of approval of the audited accounts 100 per cent of its profits available in each year, subject to the appropriation of such reasonable and proper reserves for working capital or otherwise as the Board may consider appropriate; and
 - (d) *Shareholder guarantees.* if any indemnity, guarantee or other assurance against loss is given by a Shareholder for any obligation or liability of DCUSA Ltd at the request of DCUSA Ltd, all the other Shareholders shall indemnify such Shareholder in respect of any liability arising out of such

indemnity, guarantee or other assurance against loss severally and rateably in accordance with the same proportion as would be used to calculate each Party's Cost Contribution in accordance with Clause 8 were such calculation to be carried out on the date such liability arises.

10 TRANSFER OF SHARES

10.1 *Restrictions on transfer.* Otherwise than in accordance with the following provisions of this Paragraph 10, no Shareholder shall:

- (a) pledge, mortgage (whether by way of fixed or floating charge) or otherwise encumber its legal or beneficial interest in its Shares; or
- (b) sell, transfer or otherwise dispose of any of such Shares (or any legal or beneficial interest therein); or
- (c) enter into any agreement in respect of the votes attached to Shares; or
- (d) agree, whether or not subject to any condition precedent or subsequent, to do any of the foregoing.

10.2 *Intra-group transfers.* A Shareholder may transfer its Share to its Affiliate in circumstances where such person becomes a Party at the same time as such Shareholder ceases to be a Party.

10.3 *Retiring Shareholders.* If any Shareholder ceases to be a Party for any reason (the **Retiring Shareholder**), then upon written notice to the Retiring Shareholder by any other Shareholder, the Retiring Shareholder shall transfer at par to a nominee for all the Shareholders (other than the Retiring Shareholder) selected by the Directors the Share held by the Retiring Shareholder. All costs and expenses of such transfer shall be for the account of the Retiring Shareholder.

10.4 *Enforced transfer.* If a Retiring Shareholder fails or refuses to transfer any Shares in accordance with its obligations under Paragraph 10.3, the Directors may authorise DCUSA Ltd to execute and deliver a transfer from the Retiring Shareholder to a nominee on behalf of the Retiring Shareholder. DCUSA Ltd may accept the consideration for the transfer and hold it on trust for the Retiring Shareholder, which

acceptance shall be a good discharge to the nominee, and may set off such amount against the costs and expenses of the transfer. The Directors shall cause the transferee to be registered as the holder of such Share and following the registration of the transfer the validity of the proceedings shall not be questioned by any person.

- 10.5 *Nominee's holding.* The nominee referred to in Paragraphs 10.3 and 10.4 shall hold Shares transferred to it until such time as it is directed by the Directors to transfer them (or some of them) in accordance with Paragraph 3.2. For the avoidance of doubt, wherever in this Schedule a percentage figure of the number of Shares in issue is referred to, this figure shall be calculated as if all Shares held by the nominee were not in issue.

11 DURATION AND TERMINATION

- 11.1 This Schedule shall continue in full force and effect until the earlier of:

- (a) the termination of this Agreement; and
- (b) the date on which an effective resolution is passed, or a binding order is made, for the winding up of DCUSA Ltd,

provided, however, that this Schedule shall cease to have effect as regards any Party who, having been entitled under the terms of this Schedule to hold Shares, ceases to hold any Shares.

12 SHAREHOLDERS GENERALLY

- 12.1 The Shareholders shall procure that:

- (a) save for any nominee referred to in Paragraph 10.3, only the Parties shall acquire Shares (whether by transfer or allotment);
- (b) no Party shall be a Shareholder unless and until it has agreed to be bound by this Schedule in the capacity of a Shareholder (which a Party shall be taken to have done by being a signatory to an Accession Agreement);
- (c) the Directors shall neither transfer nor allot any Share or Shares other than as set out in Annex 1 or Paragraph 3.2, 10.4 or 10.5; and

- (d) save in the case of a nominee as referred to in Paragraphs 10.3 and 10.4, no Party shall at any point hold more than one Share.

13 INTELLECTUAL PROPERTY

If and to the extent that any Shareholder discloses any of its Intellectual Property to DCUSA Ltd, unless that Shareholder is unable to do so, it shall grant (and shall be deemed to have granted), from the date of such disclosure, licences of such Intellectual Property to DCUSA Ltd for use in connection with the Business and for no other purpose whatsoever. Unless expressly agreed otherwise, any such licence shall be non-assignable, irrevocable, non-exclusive, perpetual and royalty-free.

14 CONFLICT WITH THE ARTICLES

In the event of any ambiguity created by or discrepancy between the provisions of this Schedule and the Articles, it is the intention that the provisions of this Schedule shall prevail and accordingly the Shareholders shall exercise all voting and other rights and powers available to them so as to give effect to the provisions of this Schedule and shall further, if necessary, procure any required amendment to the Articles.

15 FURTHER ASSURANCE

Each Shareholder shall co-operate with the other Shareholders and execute and deliver to the other Shareholders such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm their rights under, and the intended purpose of, this Schedule.

ANNEX 1 TO SCHEDULE 10

Completion

1. *Board meeting.* On the Completion Date a meeting of the Board shall be held and a resolution shall be passed to convene an Extraordinary General Meeting of DCUSA Ltd, immediately following the conclusion of the Board meeting, for the purposes referred to in paragraph 2 below.
2. *Extraordinary general meeting.* Upon the calling of the Extraordinary General Meeting referred to in paragraph 1 above, the Shareholders shall give consent to short notice in respect of such Extraordinary General Meeting and shall vote thereat in favour of resolutions:
 - (i) authorising the Directors to issue and allot at par one Share to each Party who is not at that time a Shareholder (the **Subscribing Parties**);
 - (ii) amending clause 3 of the Memorandum of Association of DCUSA Ltd by insertion of the new sub-clause set out in Annex 3 as sub-clause 3(1) and renumbering the remaining sub-clauses accordingly; and
 - (iii) adopting the regulations in the form set out in Annex 4 as the Articles of Association of DCUSA Ltd.
3. *Initial subscription for Shares.* Forthwith upon the passing of the resolutions pursuant to paragraph 2 above, each Subscribing Party shall complete, sign and deliver to DCUSA Ltd an application for the allotment to that Party of one Share in consideration of the payment by cash of £1 on allotment in respect of each such Share.
4. *Board meeting.* A further meeting of the Board shall be held and resolutions passed to:
 - (a) approve the application of each Subscribing Party for a Share; and
 - (b) authorise the name of each Subscribing Party to be entered in the Register of Members of DCUSA Ltd as holder of one Share and directing the sealing of a certificate in respect thereof.

5. *Allotment.* Upon receipt of the relevant consideration moneys referred to in paragraph 3 above, DCUSA Ltd shall allot and issue one Share to each Party whose application has been approved pursuant to paragraph 4 above and shall register each such Party as the holder of that Share and shall prepare, seal and deliver to each such Party a share certificate in respect thereof in its name.

ANNEX 2 TO SCHEDULE 10

Limitations on Dealings

1. The acquisition or disposal by DCUSA Ltd of any share capital or other securities of any person.
2. The reduction of DCUSA Ltd's share capital, any variation of the rights attaching to any class of shares in its capital, or any redemption, purchase or other acquisition by DCUSA Ltd of any shares or other securities of DCUSA Ltd.
3. The making of decisions relating to material contracts or arrangements to which DCUSA Ltd is a party.
4. The making by DCUSA Ltd of a material claim, disclaimer, surrender, election or consent for tax purposes.
5. The incurring of costs in respect of any period which are not envisaged by a budget drawn up and approved pursuant to Clause 8.
6. Entering into any contract or guarantee with a Shareholder or an Affiliate of a Shareholder.
7. Entering into any contract of a material nature.
8. The obtaining by DCUSA Ltd of finance from a third party lender.
9. The making of any change to DCUSA Ltd's Memorandum of Association or the Articles.
10. The presentation of any petition for the winding-up of DCUSA Ltd or the making of any application for an administration order in relation to DCUSA Ltd or for the appointment of an administrator or receiver of DCUSA Ltd.
11. The commencement, settlement or defence of any litigation, arbitration or other proceedings brought by or against DCUSA Ltd for an amount of more than £25,000.
12. The increase of the amount of debt with a maturity greater than three months owed by DCUSA Ltd.

13. The entering into of an agreement of a type or length which is unusual in the context of the Business.

ANNEX 3 TO SCHEDULE 10

Amendment to Objects clause

To carry on the business of acting as a corporate vehicle in relation to, and in accordance with, the Distribution Connection and Use of System Agreement designated as such by the Gas and Electricity Markets Authority (established by Section 1(1) of the Utilities Act 2000), as such agreement is amended from time to time.

ANNEX 4 TO SCHEDULE 10

Form of New Articles

ARTICLES OF ASSOCIATION

THE COMPANIES ACT 1985-1989

ARTICLES OF ASSOCIATION

of

DCUSA LIMITED (the “Company”)

(Registered No. 5812381)

(adopted by Special Resolution passed on [DATE])

1. Adoption of Table A

In these articles “Table A” means Table A scheduled to the Companies (Tables A to F) Regulations 1985 as amended prior to the date of incorporation of the Company. The regulations contained in Table A shall, except where they are excluded or modified by these articles, apply to the Company and, together with these articles, shall constitute the articles of the Company. No other regulations set out in any statute concerning companies, or in any statutory instrument or other subordinate legislation made under any statute, shall apply as the regulations or articles of the Company.

2. Interpretation

2.1. Words and expressions which bear particular meanings in Table A shall bear the same meanings in these articles.

2.2. In these articles:

Act means the Companies Act 1985 (as amended from time to time).

Affiliate means, in respect of any body corporate, a body corporate which is its subsidiary or holding company, or a company which is a subsidiary of that holding company, and each such company.

Authority means the Gas and Electricity Markets Authority established by Section 1(1) of the Utilities Act 2000.

Panel means the panel appointed pursuant to the DCUSA.

Panel Members means the members of the Panel appointed pursuant to the DCUSA.

DCUSA means the Distribution Connection and Use of System Agreement designated as such by the Authority (as amended from time to time).

Party means a party to the DCUSA (other than the Company).

Retiring Shareholder has the meaning given to that expression in Article 10.4.

Shareholder means the holder of a share or shares in the Company.

- 2.3. References in these articles to writing include references to any method of representing or reproducing words in a legible and non-transitory form.
- 2.4. Headings are for convenience only and shall not affect construction.
- 2.5. If, and for so long as, the Company has only one member, these articles shall (in the absence of any express provision to the contrary) apply with such modification as may be necessary in relation to such a company.

3. Share Capital

The authorised share capital of the Company at the date of adoption of this article is £1,000 divided in 1,000 shares of £1 each.

4. Restriction on Share Ownership

Save with the prior written consent of the directors, no person other than a nominee as referred to in Articles 9.4 and 9.5 shall be the holder of more than one share of the Company at any time.

5. Rights Attaching to Shares

- 5.1. The Shareholders shall exercise all rights attached to their shares to procure, so far as they are able, that no action shall be taken or resolution passed by the Company in respect of those matters set out in Article 5.2 except pursuant to a decision of the

Panel, taken in accordance with the provisions of the DCUSA. The right to vote on the matters set out in Article 5.2 shall constitute rights attaching to the Shares.

5.2. The matters referred to in Article 5.1 are:

- 5.2.1 the acquisition or disposal by the Company of any share capital or other securities of any person;
- 5.2.2 the reduction of the Company's share capital, any variation of the rights attaching to any class of shares in its capital, or any redemption, purchase or other acquisition by the Company of any shares or other securities of the Company;
- 5.2.3 the making of decisions relating to material contracts to which the Company is a party;
- 5.2.4 the making by the Company of a material claim, disclaimer, surrender, election or consent for tax purposes;
- 5.2.5 the incurring of costs in respect of any period which are not envisaged by a budget drawn up and approved pursuant to clause 8 of the DCUSA;
- 5.2.6 the making of any contract or guarantee with a member or an Affiliate of a Shareholder;
- 5.2.7 the making of any contract of a material nature;
- 5.2.8 the obtaining by the Company of finance from a third-party lender;
- 5.2.9 the making of any change to the Company's Memorandum of Association or these articles;
- 5.2.10 the presentation of any petition for the winding-up of the Company or the making of any application for an administration order in relation to the Company or for the appointment of an administrator or receiver of the Company;
- 5.2.11 the commencement, settlement or defence of any litigation, arbitration or other proceedings brought by or against the Company for an amount of more than £25,000;

5.2.12 the increase of the amount of debt with a maturity greater than three months owed by the Company; and

5.2.13 the entering into of an agreement of a type or length which is unusual in the context of the business of the Company.

5.3. Each Shareholder shall be entitled to dividends in respect of its share calculated in the same proportions as would be used to calculate that Shareholder's cost contribution in accordance with clause 8 of the DCUSA on the date the dividend is calculated (rather than in proportion to the amounts paid up on the shares). Regulation 104 of Table A shall be modified accordingly.

5.4. Subject to the provisions of the Act and to any rights conferred on the holders of any other shares, any share may be issued with or have attached to it such rights and restrictions as the Company may by ordinary resolution decide or, if no such resolution has been passed or so far as the resolution does not make specific provision, as the directors may decide. Regulation 2 of Table A shall not apply.

6. Unissued Shares

Subject to the provisions of the Act and to these articles, any unissued shares of the Company (whether forming part of the original or any increased capital) shall be at the disposal of the directors who may (subject to Article 4) offer, allot, grant options over or otherwise dispose of them to such persons at such times and for such consideration and upon such terms and conditions as they may determine.

7. Initial Authority to Issue Relevant Securities

Subject to any direction to the contrary which may be given by the Company in general meeting and to Article 4, the directors are unconditionally authorised to exercise all powers of the Company to allot relevant securities. The maximum nominal amount of relevant securities that may be allotted under this authority shall be the nominal amount of the unissued share capital at the date of incorporation of the Company or such other amount as may from time to time be authorised by the Company in general meeting, The authority conferred on the directors by this article shall remain in force for a period of five years from the date of incorporation of the

Company but may be revoked, varied or renewed from time to time by the Company in general meeting in accordance with the Act.

8. Exclusion of Rights to Offers on a Pre-emptive Basis

Section 89(1) of the Act shall not apply to the allotment by the Company of any equity security.

9. Transfer of Shares

9.1. The instrument of transfer of a subscriber's share which is not fully paid need not be executed by or on behalf of the transferee. Regulation 23 of Table A shall be modified accordingly.

9.2. Otherwise than in accordance with Articles 9.3 and 9.4, no Shareholder shall:

9.2.1 pledge, mortgage (whether by way of fixed or floating charge) or otherwise encumber its legal or beneficial interest in its shares; or

(c) sell, transfer or otherwise dispose of any of such shares (or any legal or beneficial interest therein); or

9.2.2 enter into any agreement in respect of the votes attached to shares; or

9.2.3 agree, whether or not subject to any condition precedent or subsequent, to do any of the foregoing.

9.3. A member may transfer its share to an Affiliate in circumstances where such Affiliate becomes a Party at the same time as such member ceases to be a Party.

9.4. If any Shareholder ceases to be a Party for any reason (the **Retiring Shareholder**), then upon written notice to the Retiring Shareholder by any other Shareholder, the Retiring Shareholder shall transfer at par to a nominee for all the Shareholders (other than the Retiring Shareholder) selected by the directors the Share held by the Retiring Shareholder. All costs and expenses of such transfer shall be for the account of the Retiring Shareholder.

9.5. If a Retiring Shareholder shall fail or refuse to transfer any Shares in accordance with its obligations under Article 9.4, the directors may authorise the Company to execute and deliver a transfer from the Retiring Shareholder to a nominee on behalf of the

Retiring Shareholder. The Company may accept the consideration for the transfer and hold it on trust for the Retiring Shareholder, which acceptance shall be a good discharge to the nominee and may set off such amount against the costs and expenses of the transfer. The directors shall cause the transferee to be registered as the holder of such shares and following the registration of the transfer the validity of the proceedings shall not be questioned by any person.

- 9.6. The nominee referred to in Articles 9.4 and 9.5 shall hold shares transferred to it until such time as it is directed by the directors to transfer them (or some of them) to one or more parties. For the avoidance of doubt, wherever in these Articles a percentage figure of the number of shares in issue is referred to, this figure shall be calculated as if all shares held by the nominee were not in issue.

10. Proceedings at General Meetings

- 10.1. The quorum at any general meeting shall consist of six Shareholders present in person or by proxy: provided that at least two such Shareholders must be DNO Parties and at least two such Shareholders must be Supplier Parties (where the terms DNO Parties and Supplier Parties have the respective meaning given to them in the DCUSA). Regulation 40 of Table A shall be modified accordingly.
- 10.2. If, and for so long as, the Company has only one member, that member or the proxy for that member or, where that member is a corporation, its duly authorised representative shall be a quorum at any general meeting of the Company or of the holders of any class of shares. Regulation 40 of Table A shall be modified accordingly.
- 10.3. The chairman at any general meeting shall not be entitled to a second or casting vote. Regulation 50 of Table A shall not apply.
- 10.4. In the case of a corporation, a resolution in writing may be signed on its behalf by a director or the secretary of the corporation or by its duly appointed attorney or duly authorised representative. Regulation 53 of Table A shall be extended accordingly.

11. Votes of Members

At a general meeting, but subject to any rights or restrictions attached to any shares, on a show of hands every member who (being an individual) is present in person or

(being a corporation) is present by a duly authorised representative and every proxy for any member (regardless of the number or the holdings of the members for whom he is a proxy) shall have one vote, and on a poll every member who is present in person or by proxy shall have one vote for every share of which he is the holder. Regulation 54 of Table A shall not apply.

12. Delivery of Proxies

The instrument appointing a proxy shall be in writing from a duly authorised representative of the member. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a certified copy of that power or authority shall be delivered to the registered office of the Company or at such other place within the United Kingdom as is specified for that purpose in the notice convening the meeting of the members, not less than 24 hours before the time appointed for the meeting or adjourned meeting at which the person named in the instrument proposes to act or in the case of a poll taken subsequently to the date of the meeting or the adjourned meeting, before the time appointed for taking of the poll, and in default the instrument of proxy shall not be treated as valid. Regulation 62 of Table A shall not apply.

13. Alternate Directors

Each director shall have as his alternate for the purposes of these Articles the alternate appointed by him pursuant to clause 6 of the DCUSA. Regulation 65 of Table A shall not apply.

14. Delegation of Directors' Powers

The Directors may delegate any of their powers (with power to sub-delegate) to committees consisting of such person or persons (whether directors or not) as they may resolve. Any such committee shall exercise only powers expressly delegated to it and shall comply with any regulations imposed on it by the directors. Regulation 72 of Table A shall be modified accordingly and references in Table A to a committee of Directors or to a Director as a member of such a committee shall include a committee established under this article or such person or persons.

15. No Age Limit or Share Qualification

No Director shall be required to retire or vacate his office, and no person shall be ineligible for appointment as a director, by reason of his having attained any particular age. No shareholding qualification for directors shall be required.

16. Exclusion of Rotation Requirements and Other Provisions

The Directors shall be the Panel Members from time to time. Regulations 73 to 80 (inclusive) and the last sentence of Regulation 84 of Table A shall not apply.

17. Disqualification and Removal of Directors

The office of a Director shall be vacated if he ceases to be a Panel Member. Regulation 81 of Table A shall not apply.

18. Directors' Gratuities and Pensions

Regulation 87 of Table A shall not apply.

19. Notice and Conduct of Board Meetings

Notice of a meeting of the directors shall be deemed to be properly given to a director if it is given to him personally or sent in writing to him at his last known address or any other address given by him to the Company for this purpose, or by any other means authorised in writing by the director concerned. Notice shall be given in this manner to all directors including any director who is for the time being absent from the United Kingdom. A director may waive notice of any meeting either prospectively or retrospectively. All resolutions of the board shall be made by unanimous vote of the Directors present or participating by conference telephone. In the case of an equality of votes, the chairman shall not have a second or casting vote. Regulation 88 of Table A shall be modified accordingly.

20. Quorum for Board Meetings

The quorum for meetings of the board shall be constituted by the attendance of four Directors, at least one of whom must have been elected as a Panel Member by the DNO Parties and at least one of whom must have been elected as a Panel Member by the Supplier Parties (where the terms DNO Parties and Supplier Parties have the

respective meaning given to them in the DCUSA). Directors can attend in person, by means of their alternate or by way of conference telephone or video call throughout such meeting. Regulation 89 of Table A shall not apply.

21. Participation in Board Meetings by Telephone

All or any of the members of the board or any committee of the board may participate in a meeting of the board or that committee by means of a conference telephone or video call provided that participants acknowledge that they can speak to and hear each other. A person so participating shall be deemed to be present in person at the meeting and shall be entitled to vote or be counted in a quorum accordingly. Such a meeting shall be deemed to take place where the largest group of those participating is assembled, or, if there is no such group, where the chairman of the meeting is then situated.

22. Resolution in Writing

A resolution in writing executed by all the directors or by all the members of a committee for the time being shall be as valid and effective as a resolution passed unanimously at a meeting of the board or, as the case may be, of the committee properly convened and constituted. The resolution may be contained in one document or in several documents in like form each executed by one or more of the directors or members of the committee concerned. A resolution signed by an alternate director need not also be signed by his appointor and, if it is signed by a director who has appointed an alternate director, it need not be signed by the alternate director in that capacity. Regulation 93 of Table A shall not apply.

23. Directors May Vote When Interested

A director who to his knowledge is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall declare the nature of his interest at a meeting of the directors in accordance with the Act. Subject where applicable to such disclosure, a director shall be entitled to vote in respect of any contract or proposed contract in which he is interested and, if he does so, his vote shall be counted and he shall be taken into account in ascertaining whether a quorum is present. Regulations 94 and 95 of Table A shall not apply.

24. Official Seal

The company may exercise all the powers conferred by the Act with regard to having any official seal and such powers shall be vested in the directors. Subject to the provisions of the Act, any instrument to which an official seal is affixed shall be signed by such persons, if any, as the directors may from time to time determine.

25. Notices

Any notice or other document may be served on or delivered to any member by the Company either personally, or by sending it by post addressed to the member at his registered address or by fax or telex to a number provided by the member for this purpose, or by leaving it at his registered address addressed to the member, or by any other means authorised in writing by the member concerned. In the case of joint holders of a share, service or delivery of any notice or other document on or to one of the joint holders shall for all purposes be deemed a sufficient service on or delivery to all the joint holders. Regulation 112 of Table A shall not apply.

26. Time of Service

Any notice or other document, if sent by the Company by post, shall be deemed to have been served or delivered 48 hours after posting and, in proving such service or delivery, it shall be sufficient to prove that the notice or document was properly addressed, stamped and put in the post. Any notice or other document left by the company at a registered address otherwise than by post, or sent by fax or telex or other instantaneous means of transmission, shall be deemed to have been served or delivered when it was so left or sent. Regulation 115 of Table A shall not apply.

SCHEDULE 11 – PARTY DETAILS

Full Party Name		
Registered number		
Registered address		
Applicable Party Category(ies)		
Date of accession		
Date of termination		
Market Domain I.D.	<i>[applicable dates]</i>	<i>[I.D.]</i>
	<i>[applicable dates]</i>	<i>[I.D.]</i>
Contract Manager		
UK address, fax and email for notices		
Emergency SRN		
Current aggregate of Maximum Export Capacities (<i>DG Parties only</i>)		

SCHEDULE 12 – MATTERS FOR FUTURE DEVELOPMENT**Purpose of this Schedule**

The relationships and arrangements listed in this Schedule 12 have been identified as ones for which it may be desirable for this Agreement to cater in the future. The future inclusion, or not, of such relationships and arrangements is subject to further consideration and the change control procedure set out in Section 1C.

Relationships / arrangements

1. The development of rights and obligations as between each DNO Party or IDNO Party and each other DNO Party or IDNO Party.
2. The further standardisation of distribution connection arrangements, and/or the creation of further standardised bilateral agreements relating to distribution connection.
3. The development of voluntary schedules that can be adopted at the discretion of the Parties in question on a bilateral basis.
4. The extent to which, and manner in which, the DG Parties should contribute to the costs and expenses of the DCUSA's governance under Clause 8.
5. The development of a dispute escalation process to apply as a precursor to arbitration.
6. The creation of a standard list of Recognised Credit Assessment Agencies.
7. The development of a revised event log in Schedule 7.