

DATED 28 SEPTEMBER

1999

The RTS ACCESS PROVIDERS as named herein

and

The SUPPLIERS as named herein

and

The SECRETARIAT

RADIO TELESWITCH AGREEMENT

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THIS AGREEMENT is made on the 28 day of September 1999

BETWEEN:

1. The persons whose names, registered numbers and registered or principal offices are set out in Part 1 of Schedule 1 in their capacity as providers of the RTS Access Service and not in their capacity as a Supply Business (each an "RTS Access Provider" and together the "RTS Access Providers");
 2. the persons whose names, registered numbers and registered or principal offices are set out in Part 2 of Schedule 1 (each a "Supplier" and together the "Suppliers"); and
 3. the Secretariat appointed from time to time pursuant to Clause 8;
- each a "Party" and together the "Parties".

WHEREAS:

- (A) The RTS Service is a service operated by EASL on behalf of PESs to control remotely Radio Teleswitches on Customers' premises.
- (B) The current CTCU allows for a maximum of 16 users of the RTS Service (the fourteen PESs, Viridian and EASL itself).
- (C) The RTS Service is run via a message service operated by the BBC, using phase-shift encoding of the 198 kHz amplitude modulated broadcast service (Radio 4). It offers users a 32 bit message, embedded within a 50 bit message (29 of such 50 bit messages can be transmitted each minute after a time and date message, broadcast before the start of every minute) which is transmitted nationally and which all Radio Teleswitches made to current standards at the date hereof which are located in an area receiving a sufficient signal can receive and respond to if set appropriately.
- (D) Each Radio Teleswitch has a three part address:
 - (i) the first part being the Block Application Code (4 bits);
 - (ii) the second part being the Access Provider ID (4 bits); and
 - (iii) the third part being the Group Code (8 bits).

Radio Teleswitches respond in families (i.e. those with the same Access Provider ID and Group Code will respond to a message in the same way).
- (E) Each Radio Teleswitch can have up to four RTS Contacts.
- (F) RTS Contacts A and B are normally used to control the metering registers of the meter to which the Radio Teleswitch is connected. The settings of the A and B RTS Contacts will determine the tariff rate generated on the connected meter in response to a Group Code.
- (G) Programmed switching times for each day are determined to the nearest 7.5 minutes, with the duration of switch closures in multiples of 15 minutes. The CTCU holds information on which switching programme is to be applied for each day of the week.

- (H) To limit the rate of change of aggregate load each Radio Teleswitch normally applies a random offset in the range +/- 3 minutes to each of its programmed switching times.
- (I) Prior to the date of this Agreement the RTS Access Providers acted as Group Code Sponsors in relation to the Group Codes operated by them.
- (J) The Parties have agreed to publish details of Switching Schedules on the terms and conditions set out in this Agreement.
- (K) The Parties recognise that the CTCU allows a maximum of 16 users of the RTS Service because it only recognises 16 Access Provider IDs. The Parties also recognise that a Party may wish to sponsor a Group Code to enable it to determine the Switching Schedule for that Group Code.

THE PARTIES AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement except where the context otherwise requires the following expressions shall have the meanings set opposite them:

"Access Provider ID"	means a two digit code in the range 01 to 15 which uniquely identifies each RTS Access Provider;
"Accession Agreement"	means an agreement substantially in the form set out in Schedule 2;
"Act"	means the Electricity Act 1989;
"Affiliate"	in relation to any Party means any holding company of that Party, any subsidiary of that Party or any subsidiary of a holding company of that Party, in each case within the meaning of Sections 736, 736A and 736B of the Companies Act 1985;
"Applicant"	means a person who applies to become a Party to this Agreement after the date of this Agreement and who holds a PES Licence or a Second Tier Supply Licence;
"Block Application Code"	has the meaning given to that term in the EASL/BBC Agreement;
"Change Notice"	means a notice served under Clause 4.1, Clause 5.1 or Clause 5.2;
"Competent Authority"	means the Secretary of State, the Director, 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;

"CTCU"	means the computer installations owned by and/or under the control of EASL which hold data submitted by authorised users of the RTS Service and which send that data to the Message Assembler pursuant to the EASL/BBC Agreement;
"Customer"	means a person to whom a Supplier supplies electricity;
"Data Protection Act"	means the Data Protection Act 1984 and the Data Protection Act 1998;
"Data Transfer Service"	means the service to be provided by the Data Transfer Service Controller and described in Condition 11B (or, where the PES is incorporated in Scotland Condition 8B) of the PES Licence;
"Data Transfer Service Agreement"	means the agreement dated 30th July 1997 between the Data Transfer Service Controller, and users of the Data Transfer Service as at the date of this Agreement;
"Data Transfer Service Controller"	means the body established by all Public Electricity Suppliers (as defined in the Act) to provide the Data Transfer Service;
"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;
"Director"	means the Director General of Electricity Supply appointed for the time being pursuant to the Act;
"Distribution Business"	has the meaning given to that term in the PES Licence;
"Dynamic Regime"	means a daily schedule of switching times for a particular RTS Contact which varies from day to day other than in response to a specified calendar pattern;
"EASL"	means Electricity Association Services Limited, whose registered office is at 30 Millbank, London SW1P 4RD;
"EASL/BBC Agreement"	means the agreement dated 9th February 1996 entered into between the British Broadcasting Corporation and EASL to allow EASL to use part of the data capacity of the Radio Teleswitching System

(as defined therein);

**"EASL/RTS Access
Providers Agreement"**

means the agreement to be entered into between EASL, the RTS Access Providers and Viridian to allow Viridian and the RTS Access Providers to use the RT System (as defined therein);

"First Report(s)"

means the first report(s) issued within 10 Working Days of the date of this Agreement pursuant to Clause 3.1;

"Force Majeure"

means any event or circumstance which is beyond the reasonable control of any Party and which results in or causes the failure of that Party to perform any of its obligations under this Agreement including act of God, strike, lockout or other industrial disturbance, act of 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, suspension of the RTS Service which (in each case) could not have been prevented by Good Industry Practice in England and Wales or as the case may be a Reasonable and Prudent Operator in Scotland, governmental restraint, Act of Parliament, other legislation, bye law and Directive (not being any order, regulation or direction under Section 32, 33, 34 or 35 of the Act), provided that lack of funds shall not be interpreted as a cause beyond that Party's reasonable control other than payments due and outstanding to the Secretariat pursuant to this Agreement;

"Good Industry Practice"

means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;

"Group Code"

means the three digit code in the range 000 to 127 which, together with an Access Provider ID determine which Radio Teleswitches will respond to the Switching Schedule for that three digit code;

"Group Code Definition"

means the information set out in the columns headed I-VI, inclusive and VIII and IX in a report provided to the Secretariat pursuant to Clause 3.1 in respect of a Group Code describing in outline inter alia the operation of a Radio Teleswitch set to a particular

	Group Code;
"Group Code Sponsor"	means the Party who determines the Switching Schedule of the relevant Group Code. The Group Code Sponsor for a Group Code shall be the RTS Access Provider operating that Group Code at the relevant time or, where there is an RTS Access Service Agreement in place in relation to the relevant Group Code between that RTS Access Provider and another Party, the latter Party;
"Implementation Date"	means the date from which the changes proposed in a Change Notice will be implemented;
"Intellectual Property"	means patents, registered designs, unregistered design rights, database rights, copyrights, rights in trade marks and service 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);
"Master Connection and Use of System Agreement"	means the agreement of that name dated 30th March 1990 governing connection to and use of NGC's transmission system, as at the date of this Agreement;
"Master Registration Agreement"	means the agreement of that name dated 1 June 1998, as at the date of this Agreement;
"Message Assembler"	means the computer installation owned by the BBC which receives and processes data submitted to it by or on behalf of authorised users of the RTS Service pursuant to the EASL/BBC Agreement;
"Metering Point"	has the meaning given to that term in the Master Registration Agreement;
"NGC"	means The National Grid Company plc;
"Operating Window"	means the period defined within the Group Code Definition during which an RTS Contact within a Radio Teleswitch set to that Group Code may be in a closed state;
"PES"	means the holder of a PES Licence;
"PES Licence"	means a public electricity supply licence granted pursuant to Section 6(1)(c) of the Act (and, where the PES is incorporated in Scotland, the composite generation, transmission and public electricity supply licence granted pursuant to Sections 6(1)(a), (b) and

	(c) of the Act);
"Quarter"	means a period of 3 months commencing on 1st January, 1st April, 1st July and 1st October in each year;
"Radio Teleswitch"	means a device which receives and acts upon control data sent via the RTS Service;
"Reasonable and Prudent Operator"	means a person exercising 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;
"Regulations"	means the Electricity Supply Regulations 1988 SI 1988/1057 as amended or re-enacted from time to time;
"Related Undertaking"	in relation to any Party means any undertaking in which that Party has a participating interest as defined in Section 260 of the Companies Act 1985;
"Relevant Instruments"	means: <ul style="list-style-type: none"> (a) the Act and all subordinate legislation made under the Act, as at the date of this Agreement; (b) the Data Protection Act and all subordinate legislation made under it, as at the date of this Agreement; (c) the PES Licence and the Second Tier Supply Licence, and any determination or notice made or issued by the Director pursuant to the terms thereof; (d) the Settlement Agreement; (e) the Data Transfer Service Agreement; (f) the Master Registration Agreement; and (g) the Master Connection and Use of System Agreement,

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 the Party acting in accordance with Good Industry Practice (or,

	where the Party is incorporated in Scotland, acting as a Reasonable and Prudent Operator) would obtain, in connection with the provision of the services under this Agreement, of or from any Competent Authority as at the date of this Agreement;
"Review Date"	means the date set opposite a Group Code in a report published pursuant to Clause 3.1, prior to which the relevant Group Code Sponsor will not issue a Change Notice in respect of the relevant Group Code Definition;
"RTS Access Service"	means the service provided by an RTS Access Provider to a Group Code Sponsor to enable that Group Code Sponsor to determine the Switching Schedule of a relevant Group Code;
"RTS Access Service Agreement"	means an agreement entered into pursuant to Clause 6.2;
"RTS Contact"	means one of the contacts (up to four) (conventionally known as A, B, C and D) within a Radio Teleswitch which can normally each be programmed to close independently up to 4 times a day. Each "on" period has a maximum duration of 8 hours, but longer continuous duration is possible using 2 or more "on" periods;
"RTS Service"	means the service operated by EASL on behalf of the RTS Access Providers to control remotely Radio Teleswitches on Customers' premises, potentially to switch loads and meter registers;
"Second Tier Supply Business"	has the meaning given to that term in the PES Licence;
"Second Tier Supply Licence"	means a second tier supply licence granted pursuant to Section 6(2) of the Act;
"Secretariat"	means the person appointed from time to time pursuant to Clause 8;
"Secretariat's Costs"	means reasonable costs and expenses properly incurred by the Secretariat in performing the duties and obligations owed by the Secretariat to the other Parties pursuant to this Agreement, and do not include costs and expenses incurred by the Secretariat pursuant to Clause 8.1;
"Secretary of State"	has the meaning given to that expression in the Interpretation Act 1978;

"Semi-Static Regime"	means a daily schedule of switching times for a particular RTS Contact which varies from day to day following a specified calendar pattern;
"Settlement Agreement"	means the Pooling and Settlement Agreement dated 30th March 1990 (as amended), including all Service Lines and Agreed Procedures (as therein defined) made under it, as at the date of this Agreement (and, where relevant, the Settlement Agreement for Scotland dated 14 August 1998 including all Service Requirements and Market Procedures (as therein defined) made under it, as at the date of this Agreement);
"Static Regime"	means a daily schedule of switching times for a particular RTS Contact which does not vary from day to day;
"Supply Business"	has the meaning given to that term in the PES Licence;
"Switching Schedule"	means the schedule of times at which the RTS Service instructs Radio Teleswitches set to a particular Group Code to close or open RTS Contacts;
"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;
"Working Day"	has the meaning given to that term in Section 64 of the Act; and
"Year"	means any continuous period of twelve months, during the term of this Agreement, commencing on the date of this Agreement or any anniversary thereof.

1.2 In this Agreement, unless the context requires otherwise, any reference to:

- 1.2.1 a "person" includes a reference to a body corporate, association or partnership;
- 1.2.2 the singular shall include the plural and vice versa;
- 1.2.3 this "Agreement" shall mean this agreement and the Schedules;
- 1.2.4 a Clause or Schedule is a reference to a clause of or schedule to this Agreement;
- 1.2.5 writing includes all methods of reproducing words in a legible and non-transitory form; and

- 1.2.6 any enactment or statutory provision shall be deemed to include references to such enactment or statute as extended, re-enacted, consolidated or amended from time to time and to any subordinate legislation made under it.
- 1.3 The headings in this Agreement are for ease of reference only and shall not affect its interpretation.
- 1.4 In this Agreement, references to "include" or "including" are to be construed without limitation to the generality of the preceding words.
- 2. COMMENCEMENT AND DURATION**
- 2.1 In relation to those Parties which have executed this Agreement on or prior to the date hereof, this Agreement shall take effect on the date hereof, save for any rights or obligations of a Party which are expressed to be conditional under the terms of Clause 6.1.
- 2.2 In respect of each Party which accedes to this Agreement after the date hereof, this Agreement shall commence upon the coming into effect of an Accession Agreement, save for any rights or obligations of a Party which are expressed to be conditional under the terms of Clause 6.1.
- 2.3 This Agreement shall continue in respect of a Party until terminated in respect of that Party or all Parties in accordance with this Agreement.
- 2.4 This Agreement shall continue until terminated in respect of all Parties in accordance with Clause 10.
- 3. PUBLICATION OF GROUP CODE DEFINITIONS**
- 3.1 Each RTS Access Provider shall, within 10 Working Days after the date of this Agreement and within 10 Working Days of the end of each subsequent Quarter, provide (by recorded delivery or such other means as the relevant RTS Access Provider and the Secretariat may agree in writing) the Secretariat with a report for every Group Code broadcast for use by Radio Teleswitches in Customers' premises and not Group Codes broadcast exclusively for the purpose of research and development, in relation to which it is the Group Code Sponsor or in relation to which it has entered into an RTS Access Service Agreement."
- 3.2 Subject to Clause 18.7 the Secretariat shall, within 20 Working Days of the date of this Agreement and within 20 Working Days of the end of each subsequent Quarter, collate and distribute to all Parties a copy of every First Report or every report provided to it for that Quarter (as the case may be) pursuant to Clause 3.1.
- 3.3 The Secretariat represents that each report circulated pursuant to Clause 3.2 accurately and completely contains all relevant information provided to the Secretariat pursuant to Clause 3.1 for the relevant Quarter or the First Report(s) (as the case may be).
- 3.4 Where the Secretariat receives electronic files which it is unable to access or read it shall, as soon as reasonably practicable, notify the Party that provided the files and request that new files are provided. The Secretariat shall circulate any replacement files, that it is able to access and read, as soon as reasonably practicable. The

Secretariat accepts no liability for any loss arising from incomplete or inaccurate information in the information provided to it.

- 3.5 All reports issued pursuant to Clause 3.1 and Clause 3.2 shall be issued on paper and on disk in electronic format on the spreadsheet file format listed below:

Microsoft Excel Version 4.0

- 3.6 The Secretariat shall give 120 days notice to the Parties of any changes to the spreadsheet software applications accepted by the Secretariat for the purpose of Clause 3.5.
- 3.7 In the event of any conflict between a report issued on paper and the same report issued in electronic format the paper report shall prevail.
- 3.8 Reports issued pursuant to Clause 3.1 shall contain the information required to complete correctly the First Report(s) or a report as at the end of the relevant Quarter, in the same format as Schedule 4 (the contents of which are by way of example only) including a general description of the operation of any relevant Dynamic Regime in the column headed "Additional Information" and any other relevant information which the relevant Group Code Sponsor provides to the RTS Access Provider for inclusion in that column.
- 3.9 The Secretariat shall retain a copy of each First Report and report circulated pursuant to Clause 3.2.

4. CHANGES TO GROUP CODE DEFINITIONS

- 4.1 Subject to Clause 4.3, where a Group Code Sponsor intends to change the Group Code Definition for a Group Code it shall serve notice of the proposed amended Group Code Definition, together with the proposed Implementation Date, such date to be not less than 90 days from the start of the next Quarter, on the relevant RTS Access Provider, who will include the proposals in the next report issued by it for that Group Code pursuant to Clause 3.1.
- 4.2 The relevant Group Code Sponsor shall implement its proposals on the Implementation Date unless it advises all Parties prior to the Implementation Date that it does not intend to do so (in which case, the Change Notice will lapse).
- 4.3 A Group Code Sponsor shall not issue a Change Notice pursuant to Clause 4.1 or Clause 5.1 for a Group Code prior to the Review Date for that Group Code.

5. CHANGE OF GROUP CODE SPONSOR/TERMINATION OF GROUP CODE

- 5.1 After 1st April 2000 a Group Code Sponsor may serve notice expressing its intention to stop sponsoring a Group Code and indicating the proposed Implementation Date, such date to be not less than 6 months from the date of such notice, on the relevant RTS Access Provider. The RTS Access Provider shall include any proposal served on it pursuant to this Clause 5.1 in the section headed "Notices" in the next report issued by it for that Group Code pursuant to Clause 3.1. The provisions of Clause 4.2 shall apply to a Change Notice served pursuant to this Clause 5.1 mutatis mutandis.

- 5.2 Where an RTS Access Provider operates a Group Code pursuant to Clause 7 it shall be entitled to serve notice on all Parties at any time expressing its intention to stop operating that Group Code and indicating the proposed Implementation Date. Such notice shall take effect on the Implementation Date, such date to be not less than 14 days after the date of the Change Notice. The RTS Access Provider shall implement its proposals on the Implementation Date unless it advises all Parties prior to the Implementation Date that it does not intend to do so (in which case, the Change Notice shall lapse).
- 5.3 Each Group Code Sponsor of Group Codes transmitted prior to the date of this Agreement and listed in the First Report(s) shall not stop the transmission of those Group Codes prior to the earlier of:
- 5.3.1 1st April 2000; or
- 5.3.2 where the relevant RTS Access Provider reasonably believes that no Radio Teleswitches in Customers' premises are responding to a particular Group Code at the date of this Agreement and it has included a planned termination date in the First Report(s) for the relevant Group Code, that planned termination date.

6. SPONSORSHIP OF GROUP CODES

- 6.1 The provisions of Clause 6.2 are conditional upon the following conditions precedent being fulfilled and remaining fulfilled:
- 6.1.1 the EASL/BBC Agreement and the EASL/RTS Access Providers Agreement being in full force and effect;
- 6.1.2 EASL making available the RTS Service to the relevant RTS Access Provider;
- 6.1.3 the relevant Parties entering into an RTS Access Service Agreement on the terms set out at Schedule 3, or such other terms as they may agree in writing;
- 6.1.4 the relevant RTS Access Provider being able to obtain sufficient additional reserved message capacity from EASL for the RTS Service for the purposes of the RTS Access Service Agreement proposed by the other relevant Party;
- 6.1.5 the relevant RTS Access Provider holding a PES Licence; and
- 6.1.6 the relevant Group Code Sponsor holding a Second Tier Supply Licence or a PES Licence (as appropriate).
- 6.2 An RTS Access Provider shall make available to another Party an RTS Access Service in accordance with Clauses 6.4 and 6.5. For the avoidance of doubt, the RTS Service is a national service, Group Codes are transmitted nationally by the BBC and a Group Code Sponsor may therefore transmit to Radio Teleswitches throughout the United Kingdom by entering into one RTS Access Service Agreement.
- 6.3 Subject to Clause 11, an RTS Access Provider shall have no liability to any Party for any loss caused to any Party where it accurately implements the Group Code Sponsor's instructions pursuant to the relevant RTS Access Service Agreement.

- 6.4 Each RTS Access Provider shall allow other Parties to sponsor Group Codes with the type of Switching Schedules (i.e. Dynamic Regimes, Semi-Static Regimes or Static Regimes) which were operated by the Supply Business of that PES prior to the date of this Agreement, on similar terms, other than price, as were available to that Supply Business, provided that the operation of such new Group Codes shall not require the RTS Access Provider to:
- 6.4.1 provide any services (for example, frequency of changes, hours of operation and processing of data) which it did not previously provide; or
 - 6.4.2 provide increased or higher levels of services than it previously provided;
- to the Supply Business for the operation of that type of Switching Schedule.
- 6.5 Each RTS Access Provider shall allow other Parties to sponsor Group Codes with the type of Switching Schedules (i.e. Dynamic Regimes, Semi-Static Regimes or Static Regimes) which are operated by that RTS Access Provider for another Party from time to time, on similar terms as are available to such other Parties, provided that the operation of such new Group Codes shall not require the RTS Access Provider to:
- 6.5.1 provide any services (for example, frequency of changes, hours of operation and processing of data) which it did not previously provide; or
 - 6.5.2 provide increased or higher levels of services than it previously provided;
- to another Party for the operation of that type of Switching Schedule.
- 6.6 Where an RTS Access Provider and a Supplier are unable to agree terms for access in accordance with Clause 6.2 either party shall be entitled to refer the matter to the Director.
- 7. SPONSOR OF LAST RESORT**
- 7.1 Where a Party which acts as a Group Code Sponsor pursuant to an RTS Access Service Agreement ceases to be a party to this Agreement the relevant RTS Access Provider shall:
- 7.1.1 subject to Clause 7.3 and Clause 7.7, any relevant licence of Intellectual Property pursuant to Clause 13 and the terms of this Agreement, use its reasonable endeavours to operate the relevant Group Codes as the Group Code Sponsor for such Group Code; and
 - 7.1.2 issue a notice to each Party, specifying for each relevant Group Code that it shall be acting pursuant to Clause 7.1.1.
- 7.2 Where a Party which acts as a Group Code Sponsor pursuant to an RTS Access Service Agreement ceases to be a party to that RTS Access Service Agreement, the relevant RTS Access Provider for that RTS Access Service Agreement shall:
- 7.2.1 subject to Clause 7.3 and Clause 7.7, any relevant licence of Intellectual Property pursuant to that RTS Access Service Agreement and the terms of this Agreement, use its reasonable endeavours to operate the relevant Group Codes as the Group Code Sponsor for such Group Code; and
 - 7.2.2 issue a notice to each Party, specifying for each relevant Group Code that it shall be acting pursuant to Clause 7.2.1.

- 7.3 In the case of Dynamic Regimes which require instructions or data to be provided to the RTS Access Provider, the Parties acknowledge that in the circumstances contemplated by Clause 7.1 and Clause 7.2 such instructions or data may not be available to the relevant RTS Access Provider who takes over the operation of such Group Codes or may require it to incur costs to obtain or process such data. The Parties also acknowledge that some functionality may be lost if such instructions or data are not provided to or processed by the RTS Access Provider.
- 7.4 Where an RTS Access Provider takes over the operation, pursuant to this Clause 7, of a Group Code previously sponsored by a Party which acted as a Group Code Sponsor pursuant to an RTS Access Service Agreement, it shall have no liability to any Party for any loss caused to any Party as a consequence of changes to the Switching Schedule where, in the RTS Access Provider's opinion, data, instructions or Intellectual Property necessary to the Switching Schedule are not reasonably available to the RTS Access Provider.
- 7.5 The Parties acknowledge that where an RTS Access Provider takes over the sponsorship of a Group Code in the circumstances contemplated by Clause 7.1 and Clause 7.2 another Party may wish to enter into an RTS Access Service Agreement in respect of such Group Code.
- 7.6 Notices issued by an RTS Access Provider pursuant to Clauses 5.1, 7.1 and 7.2 shall contain a statement that any Party which wishes to enter into an RTS Access Service Agreement in respect of the Group Code to which that notice applies should contact the relevant RTS Access Provider.
- 7.7 For the purposes of operating a Group Code pursuant to Clause 7.1 and 7.2, the Parties acknowledge that, in the exercise of its reasonable endeavours to operate a Group Code, an RTS Access Provider shall not be obliged to incur any costs over and above the costs normally incurred by a Group Code Sponsor in the operation of a Group Code for a Static Regime.

8. ADDITIONAL PARTIES/THE SECRETARIAT

- 8.1 The Parties shall admit as a Party to this Agreement any Applicant who signs an Accession Agreement. The Accession Agreement shall for these purposes be prepared by the Secretariat, and shall be executed by the Secretariat on behalf of all Parties other than the Applicant.
- 8.2 Upon execution of the Accession Agreement by the Applicant and the Secretariat, the Applicant will become a Party for all purposes of this Agreement with effect from the date specified in such Accession Agreement (and, if no such date is specified, the date of such Accession Agreement).
- 8.3 The Applicant shall pay to the Secretariat, on request, any reasonable costs and expenses associated with the preparation and execution of its Accession Agreement.
- 8.4 Each Party hereby authorises and instructs the Secretariat to sign any Accession Agreement on its behalf and undertakes not to withdraw, qualify or revoke such authority or instruction at any time.

- 8.5 The Secretariat shall notify all other Parties of the execution of each Accession Agreement within 10 Working Days of the date of such Accession Agreement, shall maintain an up-to-date list of the Parties and shall make available to any requesting Party a list of the Parties.
- 8.6 The first Secretariat shall be EASL.
- 8.7 The Secretariat shall cease to be a Party 12 months after receiving a notice or notices:
- 8.7.1 signed by at least 75% of RTS Access Providers and at least 75% of Suppliers stating that they have agreed to replace the Secretariat; and
 - 8.7.2 signed by at least 75% of the RTS Access Providers and at least 75% of Suppliers stating that they have agreed the person who shall be the new Secretariat; and
 - 8.7.3 signed by the person proposed as the New Secretariat, stating that it has consented to become the new Secretariat and sign an Accession Agreement.
- 8.8 Within 10 Working Days of receiving a valid notice or notices of termination pursuant to Clause 8.7 the Secretariat shall send a copy of the notice or notices to all Parties.
- 8.9 Within 40 Working Days of receiving a valid notice or notices of termination pursuant to Clause 8.7 the Secretariat shall prepare and send to the new Secretariat an Accession Agreement, with an Accession Date (as defined therein) with the same date that the Secretariat ceases to be a Party, executed by the Secretariat on behalf of the other Parties.
- 8.10 When:
- 8.10.1 the Secretariat has given notice pursuant to Clause 10.1 that it shall resign as a Party; and
 - 8.10.2 the Secretariat receives a valid notice or notices:
 - (A) signed by at least 75% of the RTS Access Providers and at least 75% of Suppliers stating that they have agreed the person who shall be the new Secretariat; and
 - (B) signed by the person proposed as the new Secretariat, stating that it has consented to become the new Secretariat and sign an Accession Agreement;
- the Secretariat shall prepare and send to the new Secretariat an Accession Agreement, with an Accession Date (as defined therein) with the same date that the Secretariat ceases to be a Party, executed by the Secretariat on behalf of the other Parties.
- 8.11 Upon execution of the Accession Agreement by the Secretariat and the new Secretariat, the new Secretariat will become a Party for all purposes of this Agreement with effect from the Accession Date (specified in the Accession Agreement).

- 8.12 The new Secretariat shall pay to the Secretariat, on request, any reasonable costs and expenses associated with the preparation and execution of its Accession Agreement and notwithstanding the definition of the Secretariat's Costs shall be entitled to include such sum in the Secretariat's Costs.
- 8.13 On the date on which the Secretariat ceases to be a Party it shall give the new Secretariat:
- 8.13.1 the original signed Agreement and any variations thereto;
 - 8.13.2 the original signed Accession Agreements;
 - 8.13.3 the originals of any documents (including copies of First Reports and reports retained pursuant to Clause 3.9) or correspondence relating to the above which are held by the Secretariat; and
 - 8.13.4 the latest list of Parties.

9. VARIATIONS

- 9.1 Any Party (for the purposes of this Clause 9 the "**Requesting Party**") may propose amendments to this Agreement (for the purposes of this Clause 9 a "**Proposed Amendment**"). Any such Proposed Amendment shall be in writing addressed to the Secretariat and shall specify:
- 9.1.1 the proposed amendments to the Agreement; and
 - 9.1.2 the reasons why the Requesting Party considers the Proposed Amendments to be appropriate.
- 9.2 Within 20 Working Days of receipt of a Proposed Amendment in accordance with Clause 9.1 the Secretariat shall notify each Party of the Proposed Amendment and request a vote in writing either agreeing to or rejecting the Proposed Amendment within 40 Working Days of such notification.
- 9.3 The Secretariat may notify each Party of its comments on a Proposed Amendment at the same time that it provides notification of that Proposed Amendment pursuant to Clause 9.2.
- 9.4 A Proposed Amendment shall not be made unless the Secretariat receives the agreement in writing of:
- 9.4.1 at least 75% of the RTS Access Providers; and
 - 9.4.2 at least 75% of the Suppliers;
- in each case that have provided the Secretariat with a vote in writing either agreeing to or rejecting the Proposed Amendment in accordance with Clause 9.2.
- 9.5 The Secretariat shall notify all Parties of the results of voting on a Proposed Amendment, together with a list of those Parties who voted for and against the Proposed Amendment, within 50 Working Days of the notification of the Proposed Amendment pursuant to Clause 9.2.

- 9.6 Where a Proposed Amendment is agreed or it is determined that the Proposed Amendment should be made, in accordance with Clause 9.6, 9.8 or 14.6, the Proposed Amendment shall, subject to Clause 9.7 and Clause 9.9, take effect (and be binding on all Parties) on the date specified by the Secretariat, which date shall be within 28 days of such agreement or determination (as the case may be).
- 9.7 Where a Party objects to the results of voting on a Proposed Amendment and wants to prevent the introduction of a Proposed Amendment which has been approved or wants to make a Proposed Amendment which was not approved after it was voted on in accordance with Clause 9.4 it may refer the matter to the Director within 14 days of the date of notification pursuant to Clause 9.5.
- 9.8 Where a Proposed Amendment is referred to the Director pursuant to Clause 9.7 then:
- 9.8.1 the Party referring a Proposed Amendment shall notify the Secretariat of the referral on the same day as it notifies the Director;
- 9.8.2 the Secretariat shall notify the Parties of the referral within 5 Working Days of receiving notice pursuant to Clause 9.8.1; and
- 9.8.3 the Director shall determine the Proposed Amendment and notify all Parties of his determination within 28 days of receiving notice pursuant to Clause 9.7.
- 9.9 The Parties agree not to make any amendments to this Agreement which materially increase the Secretariat's obligations or liabilities pursuant to this Agreement without obtaining the Secretariat's consent in writing to such amendment.

10. TERMINATION

- 10.1 A Party, other than the Secretariat, that is not a Group Code Sponsor shall be entitled to resign as a Party at any time by giving 3 months' notice in writing to all the other Parties. The Secretariat, provided that it is not a Group Code Sponsor, shall be entitled to resign as a Party at any time by giving 12 months' notice in writing to all the other Parties.
- 10.2 A Party (the "**Breaching Party**") shall cease forthwith to be a Party upon the occurrence of any one or more of the following events:
- 10.2.1 the Breaching Party being in material breach of any of the material terms or conditions of this Agreement and, if the breach is or was capable of remedy, having failed to remedy the breach within 30 Working Days of receipt of a notice from any other Party and copied to the Secretariat 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 termination under this Clause 10.2.1;
- 10.2.2 the Breaching Party passing a resolution for its winding-up or a court of competent jurisdiction making an order for the winding-up or dissolution of the Breaching Party;
- 10.2.3 the making of an administration order in relation to the Breaching Party or the appointment of a receiver over, or an encumbrance taking possession of or

selling, any substantial part or parts of the Breaching Party's assets, rights, or revenues;

10.2.4 the Breaching Party making an arrangement or composition with its creditors generally or making an application to a court for protection from its creditors generally;

10.2.5 the Breaching Party being 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; or

10.2.6 without prejudice to Clause 12 a circumstance of Force Majeure which affects the performance by the Breaching Party of substantially all of its obligations under this Agreement continuing for more than 180 Working Days.

10.3 Where:

10.3.1 the EASL/RTS Access Providers Agreement expires or terminates and is not replaced by a similar agreement each Party shall be entitled to resign as a Party, with immediate effect, by giving notice in writing to all the other Parties; or

10.3.2 an RTS Access Provider ceases to be a party to the EASL/RTS Access Providers Agreement (for the purposes of this Clause 10.3.2 a "**Ceded Party**"), that Ceded Party shall be entitled to resign as a Party, with immediate effect, by giving notice in writing to all the other Parties.

10.4 This Agreement may be terminated by means of a written resolution to that effect delivered to the Secretariat and signed by at least 75% of the RTS Access Providers and at least 75% of the Suppliers, provided that the Director issues his written approval to such termination.

10.5 Except where expressly stated to the contrary, where this Agreement is terminated in relation to any Party in accordance with Clause 10.1, 10.2, 10.3 or 10.4 the rights and obligations of that Party under this Agreement shall cease immediately. However, such termination shall not affect any rights and obligations of that Party which have accrued on or before the date of termination.

10.6 Clauses 1, 7, 10, 11, 13-18 and 20-26 shall survive termination of this Agreement and shall survive a Party ceasing to be a party to this Agreement.

10.7 Where a Party ceases to be a party to this Agreement pursuant to Clause 10.1 or Clause 10.2 then that Party shall be liable to the other Parties for their reasonable costs incurred as a result of that Party ceasing to be a party to this Agreement.

11. LIMITATION OF LIABILITY

11.1 No Party shall be liable for any breach of this Agreement directly or indirectly caused by Force Majeure.

11.2 Subject to Clause 11.5 and save as provided in this Clause 11.2 and Clause 11.3 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:

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

11.2.2 the liability of such other Party to any other person for loss in respect of physical damage to the property of any person.

Provided that the liability of any Party in respect of all claims for such loss arising from any incident or series of related incidents shall in no circumstances exceed £100,000;

and provided further that a Party Liable shall be entitled:

(A) to deduct from any sums payable 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 pursuant to an RTS Access Service Agreement or any other person in respect of the same loss or damage in respect of the same event;

(B) 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 to a person pursuant to an RTS Access Service Agreement or to any other person in respect of loss or damage in respect of the same event, to reclaim from the other Parties the amount of its liability to such person, but not exceeding the amount already paid to the relevant Party in respect of loss or damage in respect of the same event.

11.3 Nothing in this Agreement shall exclude or limit the liability of the 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, their officers, employees or agents from and against all such and any loss or liability which another Party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of that Party or any of its officers, employees or agents.

11.4 Subject to Clause 11.5 and save where any provision of this Agreement provides for an indemnity no Party, nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to another Party for:

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

11.4.2 any indirect or consequential loss; or

11.4.3 loss resulting from the liability of another Party to any other person howsoever and whensoever arising save as provided in Clause 11.3; or

11.4.4 corruption or destruction of data or any loss or damage whatsoever caused by the introduction by any means of viruses, trojan horses, logic bombs or

analogous macros, programs or sub-routines as the same are known in the computing industry.

- 11.5 Save as otherwise expressly provided in this Agreement, this Clause 11 insofar as it excludes or limits liability shall override any other provision of this Agreement, provided that nothing in this Clause 11 shall exclude or restrict or otherwise prejudice or affect any of:

11.5.1 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 regulations made pursuant to the Act; or

11.5.2 the rights, powers, duties and obligations of the Director under the Act, any licence granted pursuant to the Act or otherwise howsoever.

- 11.6 Each of the sub-clauses of this Clause 11 shall:

11.6.1 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 the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the Parties; and

11.6.2 survive termination of this Agreement.

- 11.7 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 either party may possess in tort 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 liable, 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.

- 11.8 For the avoidance of doubt, nothing in this Clause 11 shall prevent or restrict a Party enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Agreement.

- 11.9 Without prejudice to the generality of Clause 11 each RTS Access Provider makes no representation that the information contained in any report provided to the Secretariat pursuant to Clause 3.1 is accurate or complete and shall not be liable for any loss arising from incomplete or inaccurate information which is contained in or omitted from such reports.

12. **FORCE MAJEURE**

- 12.1 If any Party (the "**Affected Party**") shall be unable to carry out any of its obligations under this Agreement due to any circumstance of Force Majeure, this Agreement shall remain in effect but save as otherwise provided in this Agreement the Affected Party's relevant obligations, the obligations of any other Party owed to the Affected Party

under this Agreement, and any other obligations of the Parties under this Agreement owed inter se which the relevant Party is unable to carry out directly or as a result of the suspension of the Affected Party's obligations shall (in each case) be suspended without liability for the period during which the circumstance of Force Majeure prevails provided that:

- 12.1.1 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;
- 12.1.2 the suspension of performance is of no greater scope and of no longer duration than is required by the circumstance of Force Majeure;
- 12.1.3 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;
- 12.1.4 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
- 12.1.5 immediately after the end of the circumstance of Force Majeure the Affected Party notifies the other Parties in writing of the same and each Party resumes performance of its obligations under this Agreement.

13. INTELLECTUAL PROPERTY

If and to the extent that any Party other than the Secretariat discloses any of its Intellectual Property to another Party which is necessary for use in connection with this Agreement, that Party shall grant, and shall be deemed to have granted from the date of such disclosure, a licence of such Intellectual Property to such other Party for use in connection with this Agreement or any replacement agreement and for no other purpose whatsoever. Any such licence shall be irrevocable, non-exclusive, perpetual and royalty-free, and shall not be capable of assignment or sub-licence.

14. DISPUTES

- 14.1 Save where expressly stated in this Agreement to the contrary, and subject to any contrary provisions of the Act, any licence issued pursuant to the Act or the Regulations (or any other regulations made under Section 29 of the Act), or the rights, powers, duties and obligations of the Director or the Secretary of State under the Act, 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 the relevant Parties shall be and is hereby referred to arbitration pursuant to the arbitration rules of the Electricity Arbitration Association in force from time to time.
- 14.2 Whatever the nationality, residence, or domicile of either relevant Party 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

England or Wales 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.

- 14.3 Subject always to Clause 14.5, 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 14.4) against the other relevant Party which would but for this Clause 14.3 have been a dispute or difference referred to arbitration by virtue of Clause 14.1 then, notwithstanding the provisions of Clause 14.1 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 relevant Party whether by way of third party proceedings or otherwise as may be ordered by the court.
- 14.4 For the purpose of this Clause 14 "**third party claim**" shall mean:
- 14.4.1 any claim by a defendant party against the other relevant Party (whether or not already a party to the legal proceedings) for any contribution or indemnity; or
 - 14.4.2 any claim by a defendant party against the other relevant 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
 - 14.4.3 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 the other relevant Party (whether or not already a party to the legal proceedings).
- 14.5 Clause 14.3 shall apply only if at the time the legal proceedings are commenced no arbitration has been commenced between the defendant party and the other relevant Party raising or involving 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.
- 14.6 Where a failure to agree is referred to the Director in accordance with this Agreement, the Parties agree that any determination by the Director shall be final and binding.

15. CONFIDENTIALITY RESTRICTIONS ON RTS ACCESS PROVIDERS

- 15.1 In this Clause 15 "**Confidential Information**" means any information which an RTS Access Provider or any Affiliate or Related Undertaking of an RTS Access Provider either:
- 15.1.1 receives from a Party properly under this Agreement; or
 - 15.1.2 holds in respect of a Customer which information it has previously acquired in its capacity as the operator of the Distribution Business; or

15.1.3 receives from any Customer, which, if received from a Party, would fall within Clause 15.1.1; or

15.1.4 received from a Party in error, but which would usually be considered to be confidential,

and the provisions of this Clause 15 shall apply to such Confidential Information, save where the relevant Party notifies or otherwise gives prior written agreement to the relevant RTS Access Provider that such Confidential Information need not be treated as confidential.

15.2 Where an RTS Access Provider or any Affiliate or Related Undertaking of an RTS Access Provider receives or holds Confidential Information the relevant RTS Access Provider undertakes (and shall procure that such Affiliate or Related Undertaking shall) with the relevant Party to whom the Confidential Information relates or from whom it was received that it shall:

15.2.1 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 relevant RTS Access Provider and the relevant Party for the provision of services by the Distribution Business of the relevant RTS Access Provider or entered into between the relevant RTS Access Provider and the Secretariat;

15.2.2 without prejudice to Clause 15.2.1, not use the Confidential Information in a manner which may obtain for that RTS Access Provider or any Affiliate or Related Undertaking of that RTS Access Provider (as the case may be) any commercial advantage in the operation of the Supply Business or of the Second Tier Supply Business except, in relation to the information falling within Clause 15.1.2 where that RTS Access Provider supplied electricity to the relevant Customer at the time the information was acquired by that RTS Access Provider;

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

- (A) to such of the employees of that RTS Access Provider or any Affiliate or Related Undertaking of that RTS Access Provider as require to be informed thereof for the effective performance of that RTS Access Provider's obligations under this Agreement or any other agreement entered into between that RTS Access Provider and the relevant Party for the provision of services by the Distribution Business of that RTS Access Provider 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 Director; or
- (D) information which that RTS Access Provider or any Affiliate or Related Undertaking of that RTS Access Provider (as the case may be) is required or permitted to make disclosure of:

- (1) in compliance with the duties of that RTS Access Provider or any Affiliate or Related Undertaking of that RTS Access Provider (as the case may be) under the Act or any other requirement of a Competent Authority;
 - (2) in compliance with the provisions of any Relevant Instruments;
 - (3) in compliance with any other requirement of law;
 - (4) 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
 - (5) pursuant to the arbitration rules of the Electricity Arbitration Association or pursuant to any judicial or other arbitral process or tribunal of competent jurisdiction;
 - (E) in the case of information falling within Clause 15.1.2 to the person who supplied electricity to the relevant Customer at the time such information was acquired by that RTS Access Provider; and
- 15.2.4 take all reasonable steps to ensure that any such person as is referred to in sub-Clauses 15.2.3(A), (B) and (C) above to whom that RTS Access Provider or any Affiliate or Related Undertaking of that RTS Access Provider (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 15.
- 15.3 Each RTS Access Provider 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. Each RTS Access Provider undertakes to comply with the Data Protection Act in the performance of this Agreement.
- 15.4 Each Party agrees that where an RTS Access Provider uses or discloses Confidential Information in accordance with this Clause 15 such Confidential Information need not be treated as confidential for the purposes of Condition 12 (or, where the PES is incorporated in Scotland Condition 9) of the PES Licence to the extent of such use or disclosure.
- 15.5 Each RTS Access Provider 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 relevant Party as the case may be, promptly to perform its obligations under this Agreement, provided that where the consent of the Customer is required to be obtained for the purposes of this Agreement, the Party which supplies the relevant Customer (and not the RTS Access Provider) shall have the obligation to obtain such consent under Clause 16.6.

16. CONFIDENTIALITY RESTRICTIONS ON SUPPLIERS

16.1 In this Clause 16 "**Confidential Information**" means:

16.1.1 any information (whether in writing, in disk or electronic form or otherwise) which has been properly disclosed by a Party under this Agreement but which would usually be considered to be confidential; and

16.1.2 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 a Supplier is in possession of Confidential Information that Supplier shall procure that such Affiliate or Related Undertaking observes the restrictions in Clauses 16.2 to 16.4 inclusive as if in each sub-clause there was substituted for that Supplier the name of the Affiliate or Related Undertaking.

16.2 Each Supplier hereby undertakes to each Party 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:

16.2.1 in the circumstances set out in Clause 16.3;

16.2.2 to the extent otherwise required or expressly permitted by this Agreement or any other agreement entered into between the relevant Party and the relevant Supplier for the provision of services by the Distribution Business of the relevant Party or entered into between the Secretariat and the relevant Supplier; or

16.2.3 with the prior consent of the relevant Party.

16.3 The circumstances set out in this Clause 16.3 are:

16.3.1 where the Confidential Information, before it is furnished to the relevant Supplier, is in the public domain;

16.3.2 where the Confidential Information:

(A) is acquired by the relevant Supplier in circumstances in which this Clause 16 does not apply;

(B) is acquired by the relevant Supplier in circumstances in which this Clause 16 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 16; or

(C) (after it is furnished to the relevant Supplier) enters the public domain;

otherwise (in any such case) than as a result of (i) a breach by the relevant Supplier of its obligations in this Clause 16 or (ii) a breach by the person who disclosed that Confidential Information of that person's confidentiality obligation and the relevant Supplier is aware of such breach;

16.3.3 if the relevant Supplier is required or permitted to make disclosure of the Confidential Information to any person:

- (A) in compliance with the duties of the relevant Supplier 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;

16.3.4 where the disclosure is to any Affiliate or Related Undertaking of the relevant Supplier, to the employees, directors, agents, consultants and professional advisers of the relevant Supplier or any Affiliate or Related Undertaking of the relevant Supplier, and to any Relevant Exempt Supplier in each case on the basis set out in Clause 16.4; or

16.3.5 to the extent the Confidential Information is required to be disclosed by the relevant Supplier for the purposes of providing billing information to Customers.

16.4 The relevant Supplier shall take all reasonable steps to ensure that any such person as is referred to in Clause 16.3.4 to whom the relevant Supplier 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 16.

16.5 Each Supplier 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. Each Supplier undertakes to comply with the Data Protection Act in the performance of this Agreement.

16.6 Each Supplier 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) such prior consent so as to enable it, or the relevant RTS Access Provider as the case may be, promptly to perform its obligations under this Agreement.

17. CONFIDENTIALITY RESTRICTIONS ON THE SECRETARIAT

17.1 In this Clause 17 "**Confidential Information**" means any information (whether in writing, in disk or electronic form or otherwise) which has been properly disclosed by a Party under this Agreement:

17.1.1 which would usually be considered to be confidential; and

17.1.2 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 Secretariat is in possession of Confidential Information the Secretariat shall procure that such Affiliate or Related Undertaking observes the restrictions in Clauses 17.2 to 17.4 inclusive as if in each sub-clause there was substituted for the Secretariat the name of the Affiliate or Related Undertaking.

17.2 The Secretariat hereby undertakes to each Party 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:

17.2.1 in the circumstances set out in Clause 17.3;

17.2.2 to the extent otherwise required or expressly permitted by this Agreement; or

17.2.3 with the prior consent of the relevant Party.

17.3 The circumstances set out in this Clause 17.3 are:

17.3.1 where the Confidential Information, before it is furnished to the Secretariat, is in the public domain;

17.3.2 where the Confidential Information:

(A) is acquired by the Secretariat in circumstances in which this Clause 17 does not apply;

(B) is acquired by the Secretariat in circumstances in which this Clause 17 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 17; or

(C) (after it is furnished to the Secretariat) enters the public domain,

otherwise (in any such case) than as a result of (i) a breach by the Secretariat of its obligations in this Clause 17 or (ii) a breach by the person who disclosed that Confidential Information of that person's confidentiality obligation and the Secretariat is aware of such breach;

17.3.3 if the Secretariat is required or permitted to make disclosure of the Confidential Information to any person:

(A) in compliance with the duties of the Secretariat 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;

17.3.4 where the disclosure is to any Affiliate or Related Undertaking of the Secretariat, to the employees, directors, agents, consultants and professional advisers of the Secretariat or any Affiliate or Related Undertaking of the Secretariat.

- 17.4 The Secretariat shall take all reasonable steps to ensure that any such person as is referred to in Clause 17.3.4 to whom the Secretariat 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 17.
- 17.5 The Secretariat 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 Secretariat undertakes to comply with the Data Protection Act in the performance of this Agreement.
- 17.6 The Secretariat undertakes that, in any case where information to be disclosed by the Secretariat 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 relevant Party as the case may be, promptly to perform its obligations under this Agreement.

18. THE SECRETARIAT'S COSTS

- 18.1 In consideration of the Secretariat fulfilling its obligations under this Agreement, each RTS Access Provider shall pay a proportion of the Secretariat's Costs in accordance with this Clause 18 provided that:
- 18.1.1 the Secretariat's Costs shall not exceed £50,000 in any Year unless it obtains the prior written approval of at least 75% of the RTS Access Providers;
- 18.1.2 the Secretariat will give at least two months' notice to the RTS Access Providers should it estimate that the Secretariat's Costs are likely to exceed £50,000 in any Year;
- 18.1.3 if the Secretariat does not receive approval from at least 75% of the RTS Access Providers pursuant to Clause 18.1.1 for the Secretariat's Costs to exceed £50,000 within two months of the notice given pursuant to Clause 18.1.2 then, when the Secretariat's Costs for the relevant Year reach £50,000, the Secretariat shall not for the remainder of the relevant Year be required to perform any obligations under this Agreement which would cause the Secretariat's Costs to exceed £50,000 in the relevant Year.
- 18.2 No later than two months after the start of the first Year the Secretariat shall issue each RTS Access Provider with a statement setting out its reasonable estimate of the Secretariat's Costs for the first Year together with a statement and an invoice of the

amount due from the relevant RTS Access Provider, calculated in accordance with the following formula:

estimate of the Secretariat's Costs for the first Year

number of RTS Access Providers at the date of this calculation

- 18.3 Where a new Secretariat is appointed pursuant to Clause 8 then each Secretariat shall be entitled to recover the Secretariat's Costs which relate to it for the relevant Year or part Year during which it was or is Secretariat. No later than two months after its appointment a new Secretariat shall issue each RTS Access Provider with a statement setting out its reasonable estimate of the Secretariat's Costs for that Year or part Year together with a statement and an invoice of the amount due from the relevant RTS Access Provider calculated in accordance with the following formula:

estimate of the Secretariat's Costs for that Year or part Year

number of RTS Access Providers at the date of this calculation

- 18.4 No later than two months after the start of each subsequent Year or upon the Secretariat ceasing to be a Party the Secretariat shall issue each RTS Access Provider with a statement certified by a responsible officer of the Secretariat setting out:

18.4.1 the Secretariat's Costs for the previous Year or part Year; and

18.4.2 the amount due from the relevant RTS Access Provider, or where the Secretariat has ceased to be a Party, the amount due from the relevant RTS Access Provider or owed by the Secretariat to the relevant RTS Access Provider, calculated in accordance with the following formula:

$$\frac{\text{estimate} + / - \text{shortfall} / \text{excess}}{\text{RTS Access Providers}}$$

where:

- | | | |
|-----------|---|--|
| estimate | - | is the total reasonable estimate of the Secretariat's Costs for the current Year or part Year; |
| shortfall | - | is the amount by which the Secretariat's Costs for the previous Year or part Year exceeded the estimate of the Secretariat's Costs for the previous Year or part Year; |
| excess | - | is the amount by which the estimate of the Secretariat's Costs for the previous Year or part Year exceeded the Secretariat's Costs for the previous Year or part Year; and |

RTS Access Providers - is the number of RTS Access Providers at the date of this calculation,

together with an invoice for the amount due from the relevant RTS Access Provider, or where the Secretariat has ceased to be a Party, an invoice for the amount due from the relevant RTS Access Provider or, as appropriate, a cheque for the amount owed by the Secretariat to the relevant RTS Access Provider.

18.5 The amounts due from each RTS Access Provider shall be payable:

18.5.1 within 28 days of the relevant invoice date;

18.5.2 into such bank account nominated by the Secretariat in the relevant statement;

18.5.3 together with the addition of such Value Added Tax (if any) as the Secretariat may have properly charged.

18.6 The Secretariat shall be entitled to charge interest on any amount due and unpaid, including interest on any Value Added Tax unpaid, from the due date to the date of payment at the rate of 3% per annum above the base lending rate during such period of Barclays Bank plc, compounded annually.

18.7 Where any amount included in a statement submitted in accordance with Clause 18.2, 18.3 or 18.4 is unpaid by an RTS Access Provider and is not disputed pursuant to Clause 18.8 the Secretariat shall:

18.7.1 be entitled to cease providing reports to that RTS Access Provider until such amount is paid together with interest (if any) calculated in accordance with Clause 18.6; and

18.7.2 use its reasonable endeavours to obtain such unpaid amounts from the relevant RTS Access Providers.

18.8 Where any amount included in a statement submitted in accordance with Clause 18.2, 18.3 or 18.4 is disputed by the relevant RTS Access Provider in good faith, that RTS Access Provider shall within 21 days of the invoice date provide the Secretariat with a statement of the amount in dispute. The relevant RTS Access Provider shall pay such amount included in the invoice as is not in dispute and shall be entitled to withhold the balance pending resolution of the dispute.

18.9 If a statement is served pursuant to Clause 18.8, the Secretariat and the relevant RTS Access Provider shall use reasonable endeavours to resolve that dispute within 30 days of the date of the statement, failing which the provisions of Clause 14 shall apply.

18.10 Following resolution of a dispute pursuant to Clause 18.8, any amount agreed or determined payable or repayable shall be paid within 14 days after such agreement or determination and interest shall accrue on such amount from the date 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.

- 18.11 Save where expressly stated in this Agreement to the contrary, all payments made under this Agreement shall be made without any set-off or deduction in respect of any claims or disputes or otherwise.

19. RESTRICTIVE TRADE PRACTICES ACT

Unless this Agreement is a non-notifiable agreement pursuant to Section 27A of the Restrictive Trade Practices Act 1976 (the "**RTPA**") or Schedule 13, paragraph 5 Competition Act 1998, to the extent that any provision of this Agreement or of any arrangement of which it forms part constitutes a restriction or information provision within the meaning of the RTPA so as to render this Agreement or that arrangement (as the case may be) registrable under the RTPA, no such restriction or information provision shall take effect until the earlier of:

- (A) the day after particulars of this Agreement or that arrangement have been furnished to the Director General of Fair Trading in accordance with the RTPA; or
- (B) the day after the Secretary of State for Trade and Industry has granted an exemption pursuant to Section 100 of the Act in respect of this Agreement or that arrangement.

20. ENTIRE AGREEMENT

- 20.1 This Agreement and any document referred to herein represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between 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.
- 20.2 Each Party confirms that, except as provided in this Agreement and without prejudice to any liability for fraudulent misrepresentation, no Party has relied on any representation, warranty or undertaking which is not contained in this Agreement or any document referred to herein.

21. SEVERABILITY

If any provision of this Agreement shall be held to be invalid or unenforceable by a judgment or decision of any court of competent jurisdiction or any authority (including the Director) whose decisions shall be binding on the Parties, the same shall be deemed to be 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.

22. WAIVERS

The failure by any Party to exercise, or the delay by any Party in exercising, any right, power, privilege or remedy provided by this Agreement 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 further exercise thereof or the exercise of any other right, power, privilege or remedy.

23. NOTICES

- 23.1 Any notice, request or other communication required to be given or sent under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first class post or fax. Such notice request or other communication shall be addressed to the recipient and sent to the address or fax number of such Party set out in Schedule 1, marked for the attention of the individual named in that Schedule, or to such other persons, addresses, or fax numbers as may from time to time be notified by one Party to another.
- 23.2 Unless otherwise stated in this Agreement, a notice, request or other communication sent in accordance with Clause 23.1 shall be deemed received:
- 23.2.1 if delivered personally, when left at the address referred to above;
- 23.2.2 if sent by pre-paid first class post, 3 Working Days after the date of posting;
and
- 23.2.3 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.

24. ASSIGNMENT AND SUB-CONTRACTING

- 24.1 No Party shall assign any of its rights under this Agreement without the prior written consent of all the other Parties, such approval not to be unreasonably withheld.
- 24.2 Any Party may sub-contract or delegate the performance of all or any of its obligations under this Agreement 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.
- 24.3 The Secretariat may assign its rights under this Agreement to any company in the same group of companies as the Secretariat, provided that in the event that the assignee leaves that group it will assign it back to the Secretariat.

25. GOVERNING LAW AND JURISDICTION

- 25.1 This Agreement shall be governed by and construed in all respects in accordance with the law of England and Wales.
- 25.2 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 determined in accordance with Clause 23.1 and each Party undertakes to maintain such an address at all times in the United Kingdom and to notify the other party in advance of any change from time to time of the details of such address in the manner prescribed in Clause 23.1

26. COUNTERPARTS

- 26.1 This Agreement may be executed in any number of counterparts each of which when executed and delivered shall be an original, but all the counterparts together shall constitute the same document.
- 26.2 The original signed Agreement, Accession Agreements and any signed variations thereto shall be retained by the Secretariat.

IN WITNESS whereof this Agreement has been executed on the day and year first above written.

SCHEDULE 1

Parties to this Agreement

PART 1 - RTS Access Providers:

Name:	EAST MIDLANDS ELECTRICITY PLC
Company Number:	2366923
Registered Office:	PO Box 44, Wollaton, Nottingham, NG8 IEZ
Access Provider ID:	6
Notices For Attention Of:	Geoff Huckerby, Registration Services Manager, Woolsthorpe Close, off Wigman Road, Bilborough, Nottingham, NG8 3JP.
Fax:	0115 935 9035
Name:	EASTERN ELECTRICITY PLC
Company Number:	2366906
Registered Office:	Wherstead Park, Wherstead, Ipswich, Suffolk, IP9 2AQ
Access Provider ID:	5
Notices For Attention Of:	Peter Waymont, Distribution Contracts Manager, Networks Business, Russell House, 8 Russell Road, Ipswich, Suffolk, IP1 2DQ
Fax:	01473 544 366
Name:	LONDON ELECTRICITY PLC
Company Number:	2366852
Registered Office:	Templar House, 81-87 High Holborn, London, WC1 6NU
Access Provider ID:	1
Notices For Attention Of:	Ronald Slade, Distribution Contracts Manager, London Electricity, Public Networks, 261 City Road, London, EC1V 1LE
Fax:	0171 865 7339
Name:	MANWEB PLC
Company Number:	2366937
Registered Office:	Manweb House, Kingsfield Court, Chester Business Park, Chester, CH4 9RF
Access Provider ID:	09
Notices For Attention Of:	Mr M Harison, Operational Control Manager, Grid Control Centre, Strathkelvin House, Kirkintilloch G66 1RN
Fax:	0141 636 4706

Name: **MIDLANDS ELECTRICITY PLC**
Company Number: 2366928
Registered Office: Blackpole Road, Worcester, WR4 9TB
Access Provider ID: 7
Notices For Attention Of: N.J. Birchley, System Commercial, Toll End Road, Tipton, West Midlands, DY4 0HH
Fax: 0121 522 5054

Name: **NORTHERN ELECTRIC PLC**
Company Number: 2366942
Registered Office: Carlil House, Newcastle upon Tyne, NE1 6NE
Access Provider ID: 11
Notices For Attention Of: Tim Mold
Fax: 0191 210 2138

Name: **NORWEB PLC**
Company Number: 2366949
Registered Office: PO Box 14, 410 Birchwoold Boulevard, Warrington WA3 7GA
Access Provider ID: 12
Notices For Attention Of: Mike Haniak
Fax: 01772 848 102

Name: **SCOTTISH HYDRO-ELECTRIC PLC**
Company Number: 117119
Registered Office: 10 Dunkeld Road, Perth, PH1 5WA
Access Provider ID: 14
Notices For Attention Of: Company Secretary
Fax: 01738 455281

Name: **SCOTTISH POWER PLC**
Company Number: 117120
Registered Office: Corporate Offices, 1 Atlantic Quay, Glasgow G2 8SP
Access Provider ID: 13
Notices For Attention Of: Mr M Harison, Operational Control Manager, Grid Control Centre, Strathkelvin House, Kirkintilloch G66 1RN
Fax: 0141 636 4706

Name: **SEEBOARD PLC**
Company Number: 2366867
Registered Office: Forest Gate, Brighton Road, Crawley, West Sussex RH11 9BH
Access Provider ID: 2
Notices For Attention Of: K. Blakiston, Use of System Manager, Russell Way, Crawley, West Sussex, RH10 1UL
Fax: 01293 656247

Name: **SOUTH WALES ELECTRICITY PLC**
Company Number: 2366985
Registered Office: Newport Road, St. Mellons, Cardiff, CF3 9XW
Access Provider ID: 8
Notices For Attention Of: Andrew David, Utilisation Manager, Phase 2, Newport Road,
St. Mellons, Cardiff, CF3 9XW.
Fax: 01222 773980

NOTE: Postal code CF3 9XW will be recoded to CF3 5WW
from 1 April 1999

Name: **SOUTH WESTERN ELECTRICITY PLC**
Company Number: 2366894
Registered Office: 800 Park Avenue, Aztec West, Almondsbury, Nr. Bristol,
BS32 4SE
Access Provider ID: 04
Notices For Attention Of: Emma Croad
Fax: 01392 448641

Name: **SOUTHERN ELECTRIC PLC**
Company Number: 2366879
Registered Office: Westacott Way, Littlewick Green, Maidenhead, Berkshire
SL6 3QB
Access Provider ID: 03
Notices For Attention Of: Max Lalli
Fax: 01628 584523

Name: **YORKSHIRE ELECTRICITY GROUP PLC**
Company Number: 2366995
Registered Office: Wetherby Road, Scarcroft, Leeds LS14 3HS
Access Provider ID: 10
Notices For Attention Of: Steve Brady, Charges Manager, Yorkshire Electricity
Distribution, P.O. Box 161, 161 Gelderd Road, Leeds LS1
1QZ
Fax: 0113 241 5400

PART 2 - Suppliers:

Name: **BRITISH GAS TRADING LIMITED**
Company Number: 3078711
Registered Office: Charter Court, 50 Windsor Road, Slough, Berkshire SL1 2HA
Notices For Attention Of: Terry Brookshaw, British Gas Trading Limited, 17 London Road, Staines, Middlesex, TW18 4AE
Fax: 01784 645260

Name: **EAST MIDLANDS ELECTRICITY PLC** ~~Power~~
Company Number: 2366923
Registered Office: PO Box 44, Wollaton, Nottingham, NG8 IEZ
Notices For Attention Of: Customer Services Section, Phoenix Centre, Colliers Way, Nuttall, Nottinghamshire, NG8 6AT.
Fax: 0115 995 6560

Name: **EASTERN ELECTRICITY PLC**
Company Number: 2366906
Registered Office: Wherstead Park, Wherstead, Ipswich, Suffolk, IP9 2AQ
Notices For Attention Of: Ken McRae, Agency Manager, Retail Sales Management, Suffolk House, Civic Drive, Ipswich, Suffolk, IP1 2AE
Fax: 01473 554366

Name: **LONDON ELECTRICITY PLC**
Company Number: 2366852
Registered Office: Templar House, 81-87 High Holborn, London, WC1 6NU
Notices For Attention Of: David Hill, Retail Contracts Manager, London Electricity Communication Building, 48 Leicester Square, London, WC1V 6LA
Fax: 0171 747 9705

Name: **MANWEB PLC**
Company Number: 2366937
Registered Office: Manweb House, Kingsfield Court, Chester Business Park, Chester, CH4 9RF
Notices For Attention Of: Mr D Simpson, RTS Engineer, Commercial Section, Energy Supply Division, Cathcart Business Park, Spean Street, Glasgow, G44 4BE
Fax: 0141 568 3392

Name: **MIDLANDS ELECTRICITY PLC**
Company Number: 2366928
Registered Office: Blackpole Road, Worcester, WR4 9TB
Notices For Attention Of: Mrs R. Stokes, Agent Management, Blackpole Road, Worcester, WR4 9TB
Fax: 01905 720 955

Name:	NATIONAL POWER (ENERGY CO.) LIMITED
Company Number:	3653277
Registered Office:	Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB
Notices For Attention Of:	John Tarpey
Fax:	01793 892290
Name:	NORTHERN ELECTRIC PLC
Company Number:	2366942
Registered Office:	Carloli House, Newcastle upon Tyne, NE1 6NE
Notices For Attention Of:	Neil Johnson
Fax:	0191 210 1184
Name:	NORWEB PLC
Company Number:	2366949
Registered Office:	PO Box 14, 410 Birchwood Boulevard, Warrington WA3 7GA
Notices For Attention Of:	Vic Hughes
Fax:	0161 886 7727
Name:	POWERGEN UK PLC
Company Number:	2366970
Registered Office:	53 New Broad Street, London EC2M 1JJ
Notices For Attention Of:	David Porter
Fax:	01203 425 233
Name:	SCOTTISH HYDRO-ELECTRIC PLC
Company Number:	117119
Registered Office:	200 Dunkeld Road, Perth, PH1 3GH
Notices For Attention Of:	Margaret Doak
Fax:	01738 647005
Name:	SCOTTISH POWER PLC
Company Number:	117120
Registered Office:	Corporate Offices, 1 Atlantic Quay, Glasgow G2 8SP
Notices For Attention Of:	Mr D Simpson, RTS Engineer, Commercial Section, Energy Supply Division, Cathcart Business Park, Spean Street, Glasgow, G44 4BE
Fax:	0141 568 3392
Name:	SEEBOARD PLC
Company Number:	2366867
Registered Office:	Forest Gate, Brighton Road, Crawley, West Sussex RH11 9BH
Notices For Attention Of:	A. Pearson, P.O. Box 639, 329 Portland Road, Hove, East Sussex, BN3 5SY
Fax:	01273 428 323

Name: **SOUTH WALES ELECTRICITY PLC**
Company Number: 2366985
Registered Office: Newport Road, St. Mellons, Cardiff, CF3 9XW
Notices For Attention Of: John Loeb, Energy Pricing Manager, Phase 3, Newport Road, St. Mellons, Cardiff, CF3 9XW
Fax: 01222 773326

NOTE: Postal code CF3 9XW will be recoded to CF3 5WW from 1 April 1999

Name: **SOUTH WESTERN ELECTRICITY PLC**
Company Number: 2366894
Registered Office: 800 Park Avenue, Aztec West, Almondsbury, Nr. Bristol, BS32 4SE
Notices For Attention Of: Les Screen, Services Administration Manager
Fax: 01454 613046

Name: **SOUTHERN ELECTRIC PLC**
Company Number: 2366879
Registered Office: Westacott Way, Littlewick Green, Maidenhead, Berkshire SL6 3QB
Notices For Attention Of: Stephen Millward
Fax: 01628 584469

Name: **YORKSHIRE ELECTRICITY GROUP PLC**
Company Number: 2366995
Registered Office: Wetherby Road, Scarcroft, Leeds LS14 3HS
Notices For Attention Of: Ian Langley, Energy Tariffs Manager, Yorkshire Electricity
Wetherby Road, Scarcroft, Leeds LS14 3HS
Fax: 0113 289 5940

PART 3 - The Secretariat:

Name:

**ELECTRICITY ASSOCIATION
SERVICES LIMITED**

Company Number:

2366837

Registered Office:

30 Millbank, London SW1P 4RD

Notices For Attention Of:

Brian Venables, Company Secretary

Fax:

0171 963 5959

SCHEDULE 2

Form of Accession Agreement

THIS ACCESSION AGREEMENT is made on []

BETWEEN:

- (1) [], a company incorporated under the laws of []
[(registered number [])] and having its [registered] [principal] office at []
](the "**Applicant**"); and
- (2) [] ("**Secretariat**") on behalf of all the Parties to the Radio Teleswitch Agreement referred to below.

WHEREAS:

- (A) by an agreement dated [] made between the Secretariat and the persons whose names, registered numbers and registered or principal offices are set out in Schedule 1 therein (as amended, varied, supplemented, modified or suspended), (the "**Radio Teleswitch Agreement**" or "**RTA**") the Parties thereto agreed, inter alia, to publish details of Group Codes and to allow the sponsorship of Group Codes; and
- (B) the Applicant has requested that it be admitted as a Party pursuant to Clause 8 of the RTA and each of the Parties to that agreement has authorised the Secretariat to enter into this Accession Agreement, pursuant to Clause 8 of the RTA.

NOW IT IS HEREBY AGREED as follows:

1. Unless the context otherwise requires, words and expressions defined in the RTA shall bear the same meanings respectively when used herein.
2. The Secretariat (acting on behalf of each of the Parties) hereby admits the Applicant as an additional Party under the RTA on the terms and conditions hereof and with effect from [*insert effective date of admission*] (the "**Accession Date**").
3. The Applicant hereby accepts its admission as a Party and undertakes with the Secretariat (acting on behalf of each of the Parties) to perform and to be bound by the terms and conditions of the RTA as a Party as from the Accession Date.
4. For all purposes in connection with the RTA the Applicant shall as from the Accession Date be treated as if it had been a signatory of the RTA as [an RTS Access Provider] [a Supplier] [the new Secretariat], and as if this Accession Agreement were part of the RTA, and the rights and obligations of the Parties and the Applicant shall be construed accordingly.
5. This Accession Agreement and the RTA shall be read and construed as one document and references in the RTA to the RTA (howsoever expressed) shall be read and construed as references to the RTA and this Accession Agreement.

6. This Accession Agreement shall be governed by and construed in all respects in accordance with English law and the provisions of Clause 25 of the RTA shall apply to this Accession Agreement mutatis mutandis.
7. Unless this Accession Agreement is a non-notifiable agreement pursuant to Section 27A of the Restrictive Trade Practices Act 1976 (the "**RTPA**") or Schedule 13, paragraph 5 Competition Act 1998, to the extent that any provision of this Accession Agreement or of any arrangement of which it forms part constitutes a restriction or information provision within the meaning of the RTPA so as to render this Agreement or that arrangement (as the case may be) registrable under the RTPA, no such restriction or information provision shall take effect until the earlier of:
 - (A) the day after particulars of this Agreement or that arrangement have been furnished to the Director General of Fair Trading in accordance with the RTPA; or
 - (B) the day after the Secretary of State for Trade and Industry has granted an exemption pursuant to Section 100 of the Act in respect of this Agreement or that arrangement.

IN WITNESS whereof this Accession Agreement has been executed the day and year first above written.

Applicant

By:

Notice details:

Address:

Facsimile number:

Attention:

the Secretariat

(for and on behalf of each of the Parties to the Radio Teleswitch Agreement)

By:

NOTE: Consideration should be given to disapplying the provisions of the Contracts (Rights of Third Parties) Bill if it receives Royal Assent.

SCHEDULE 3
Form of RTS Access Service Agreement

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4.	LIMITATION OF LIABILITY	
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7.	INTELLECTUAL PROPERTY	
8.	CONFIDENTIALITY RESTRICTIONS ON THE RTS ACCESS PROVIDER	
9.	CONFIDENTIALITY RESTRICTIONS ON THE GROUP CODE SPONSOR	
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13.	SEVERABILITY	
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16.	ASSIGNMENT	
17.	GOVERNING LAW	
18.	COUNTERPARTS	

THIS RTS ACCESS SERVICE AGREEMENT is made on []

BETWEEN:

- (1) [], a company incorporated under the laws of []
[(registered number [])] and having its [registered] [principal] office at []
[] (the "**RTS Access Provider**"); and
- (2) [], a company incorporated under the laws of []
[(registered number [])] and having its [registered] [principal] office at []
[] (the "**Group Code Sponsor**");

each a "**Signatory**" and together the "**Signatories**".

WHEREAS:

- (A) By an agreement dated [] made between the Secretariat and the persons whose names, registered numbers and registered or principal offices are set out in Schedule 1 therein (as amended, varied, supplemented, modified or suspended), (the "**Radio Teleswitch Agreement**" or "**RTA**") the Parties thereto agreed, inter alia, to provide access to the RTS Service.
- (B) The RTS Access Provider has been allocated the Group Codes referred to in the Appendix to this Agreement by EASL.
- (C) The Group Code Sponsor has requested the RTS Access Provider to provide an RTS Access Service in relation to those Group Codes.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless the context otherwise requires, words and expressions defined in the RTA shall bear the same meanings respectively when used herein.
- 1.2 In this Agreement, except where the context otherwise requires, the following expressions shall have the meanings set opposite them:

"Distribution Business" has the meaning given to that term in the RTS Access Provider's PES Licence;

"Fees" means the fees set out in the Appendix to this Agreement;

"Forward" means to initiate electronic dialogue with the CTCU, including the provision of Access Provider ID and Password and the relevant changes of Sponsored Switching Schedule(s) and subsequent verification that the CTCU now holds the updated Sponsored Switching Schedule(s) for the relevant Group Code(s);

"Password"	means the current password for the RTS Access Provider accepted by the CTCU;
"Second Tier Supply Business"	has the meaning given to that term in the RTS Access Provider's PES Licence;
"Secretariat"	has the meaning given to that term in the Radio Teleswitch Agreement;
"Supply Business"	has the meaning given to that term in the RTS Access Provider's PES Licence;
"Sponsored Switching Schedule"	means details of switching times in the format stipulated in the Appendix to this Agreement; and
"Working Hours"	means [].

- 1.3 In this Agreement, unless the context requires otherwise, any reference to:
 - 1.3.1 a "person" includes a reference to a body corporate, association or partnership;
 - 1.3.2 the singular shall include the plural and vice versa;
 - 1.3.3 this "Agreement" shall mean this agreement and the Schedules;
 - 1.3.4 a Clause or Schedule is a reference to a clause of or schedule to this Agreement;
 - 1.3.5 writing includes all methods of reproducing words in a legible and non-transitory form; and
 - 1.3.6 any enactment or statutory provision shall be deemed to include references to such enactment or statute as extended, re-enacted, consolidated or amended from time to time and to any subordinate legislation made under it.
- 1.4 The headings in this Agreement are for ease of reference only and shall not affect its interpretation.
- 1.5 In this Agreement, references to "include" or "including" are to be construed without limitation to the generality of the preceding words.

2. RTS ACCESS SERVICE

- 2.1 Subject to Clause 2.5, the RTS Access Provider shall in relation to each Group Code referred to in the Appendix to this Agreement provide the RTS Access Service set out in this Clause 2 to the Group Code Sponsor from [] until this Agreement is terminated, or, if earlier, the relevant Group Code ceases to be allocated to the RTS Access Provider by EASL. The Group Code Sponsor shall, for so long as the RTS Access Service is provided pursuant to this Agreement in relation to a Group Code, act as the Group Code Sponsor in relation to that Group Code under the terms of the RTA.

- 2.2 Subject to Clause 2.6, where the RTS Access Provider receives [PES to insert means of transmission] Sponsored Switching Schedules [or other agreed information needed to derive the Sponsored Switching Schedules] from the Group Code Sponsor, it shall use reasonable endeavours to Forward the appropriate Sponsored Switching Schedules, if necessary, within [4 Working Hours of receipt] or such time as the Parties may agree in writing.
- 2.3 The Group Code Sponsor shall provide the RTS Access Provider on request with such information as the RTS Access Provider reasonably requests, at least 5 Working Days before the day on which the RTS Access Provider must submit a report to the Secretariat pursuant to Clause 3.1 of the Radio Teleswitch Agreement, to enable it to fulfil its obligations pursuant to Clause 3.1 of the Radio Teleswitch Agreement.
- 2.4 The RTS Access Provider shall use the information provided pursuant to Clause 2.3 to provide the Secretariat with a report for each Group Code referred to in the Appendix to this Agreement pursuant to Clause 3.1 of the Radio Teleswitch Agreement.
- 2.5 The provisions of this Clause 2 are subject to the following conditions precedent being fulfilled and remaining fulfilled:
- 2.5.1 the EASL/BBC Agreement being in full force and effect;
 - 2.5.2 EASL making available the RTS Service to the RTS Access Provider; and
 - 2.5.3 the Signatories being and remaining parties to the Radio Teleswitch Agreement.
- 2.6 Where the Group Code Sponsor intends to change the Group Code Definition for a relevant Group Code it shall comply with Clause 4 of the Radio Teleswitch Agreement. The Group Code Sponsor shall not send Sponsored Switching Schedules to the RTS Access Provider which are inconsistent with the Group Code Definition from time to time unless the Group Code Definition has been changed pursuant to Clause 4 of the Radio Teleswitch Agreement.

3. RTS ACCESS SERVICE CHARGES, BILLING AND PAYMENT

- 3.1 The Group Code Sponsor shall pay to the RTS Access Provider the Fees specified in the Appendix to this Agreement.
- 3.2 The Fees may be varied by agreement in writing between the Signatories.
- 3.3 Within [21 days] after the end of each [calendar month] the RTS Access Provider shall submit to the Group Code Sponsor an account specifying the Fees payable for that [calendar month] and any Value Added Tax payable thereon.
- 3.4 Subject to Clause 3.6, within [30 days] of the date of the account submitted in accordance with Clause 3.3, the Group Code Sponsor shall pay to the RTS Access Provider all sums due in respect of that account in pounds sterling by [method of payment].
- 3.5 Subject to Clause 3.6, the RTS Access Provider shall be entitled to charge interest on any amount due and unpaid, including interest on any Value Added Tax unpaid, from

the due date at the rate of 3% per annum above the base lending rate during such period of [Barclays] Bank Plc, compounded annually.

- 3.6 Where any sum included in an account submitted in accordance with Clause 3.3 is disputed by the Group Code Sponsor in good faith, the Group Code Sponsor shall within [14 days] of the date of that account provide the RTS Access Provider with a statement of the amount in dispute. The Group Code Sponsor shall pay such amount included in the statement as is not in dispute and shall be entitled to withhold the balance pending resolution of the dispute.
- 3.7 If a statement is served by the Group Code Sponsor under Clause 3.6, the Signatories shall use reasonable endeavours to resolve the dispute in question within [30 days] of it arising, failing which the provisions of Clause 11 shall apply. Following resolution of the dispute, any amount agreed or determined payable or repayable shall be paid within 14 days after such agreement or determination and interest shall accrue on such amount from the date 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.
- 3.8 Save where expressly stated in this Agreement to the contrary, all payments to be made by the Group Code Sponsor under this Agreement shall be made without any set-off or deduction in respect of any claims or disputes or otherwise.

4. LIMITATION OF LIABILITY

- 4.1 The RTS Access Provider shall have no liability to the Group Code Sponsor in respect of Sponsored Switching Schedules after they have been accurately Forwarded to the CTCU.
- 4.2 Neither Signatory shall be liable to the other Signatory for any breach of this Agreement directly or indirectly caused by Force Majeure.
- 4.3 Subject to Clause 4.6 and save as provided in this Clause 4.3 and Clause 4.4 or where this Agreement provides for an indemnity neither Signatory (the "**Signatory Liable**") nor any of its officers, employees or agents shall be liable to the other Signatory 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:
- 4.3.1 physical damage to the property of the other Signatory, its officers, employees or agents; and/or
- 4.3.2 the liability of such other Signatory to any other person for loss in respect of physical damage to the property of any person.

Provided that the liability of either Signatory in respect of all claims for such loss arising from any incident or series of related incidents shall in no circumstances exceed £100,000.

- 4.4 Nothing in this Agreement shall exclude or limit the liability of the Signatory Liable for death or personal injury resulting from the negligence of the Signatory Liable or any of its officers, employees or agents and the party liable shall indemnify and keep

indemnified the other Signatory, their officers, employees or agents from and against all such and any loss or liability which the other Signatory may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of that Signatory or any of its officers, employees or agents.

- 4.5 Subject to Clause 4.6 and save where any provision of this Agreement provides for an indemnity neither Signatory, nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other Signatory for:
- 4.5.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or
 - 4.5.2 any indirect or consequential loss; or
 - 4.5.3 loss resulting from the liability of the other Signatory to any other person howsoever and whensoever arising save as provided in Clause 4.4; or
 - 4.5.4 corruption or destruction of data or any loss or damage whatsoever caused by the introduction by any means of viruses, trojan horses, logic bombs or analogous macros, programs or sub-routines as the same are known in the computing industry.
- 4.6 Save as otherwise expressly provided in this Agreement, this Clause 4 insofar as it excludes or limits liability shall override any other provision of this Agreement, provided that nothing in this Clause 4 shall exclude or restrict or otherwise prejudice or affect any of:
- 4.6.1 the rights, powers, duties and obligations of either Signatory which are conferred or created by the Act, any licence granted pursuant to the Act or any regulations made pursuant to the Act; or
 - 4.6.2 the rights, powers, duties and obligations of the Director under the Act, any licence granted pursuant to the Act or otherwise howsoever.
- 4.7 Each of the sub-clauses of this Clause 4 shall:
- 4.7.1 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 the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the Signatories; and
 - 4.7.2 survive termination of this Agreement.
- 4.8 The Group Code Sponsor shall indemnify the RTS Access Provider against all costs, demands, claims, expenses, liability, loss or damage which the RTS Access Provider incurs, as a result of a breach by the Group Code Sponsor of Clause 2.3 of this Agreement.
- 4.9 The rights and remedies provided by this Agreement to the Signatories 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 either party may possess in tort which shall include actions brought in negligence and/or nuisance.

Accordingly, each of the Signatories hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute, and releases the party liable, 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.

- 4.10 For the avoidance of doubt, nothing in this Clause 4 shall prevent or restrict a Signatory enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Agreement.

5. VARIATION AND WAIVER

- 5.1 No variation of this Agreement shall be effective unless it is in writing signed by both Signatories.
- 5.2 The Signatories acknowledge that any changes to the EASL/BBC Agreement and/or the RTA are likely to require consequential changes to this Agreement. Whenever such a change occurs or is proposed either Signatory may serve upon the other Signatory a notice setting out the change to the EASL/BBC Agreement and/or the RTA and the consequent amendments which it believes are required to this Agreement. Upon receipt of such notice by the receiving Signatory, the Signatories shall negotiate in good faith the terms of any amendments. If such amendments have not been agreed and implemented within 20 Working Days after the notice proposing amendments was served, either Signatory shall be entitled to refer the matter to the Director and the provisions of Clause 11.6 shall apply.
- 5.3 No waiver of any term, provision or condition of this Agreement shall be effective unless it is in writing and signed by the waiving Signatory.
- 5.4 No failure to exercise nor any delay in exercising any right or remedy hereunder shall operate as a waiver thereof or of any other right or remedy hereunder, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy.
- 5.5 The waiver of any term, provision or condition of this Agreement on any occasion shall not constitute a waiver of:
- 5.5.1 any other term, provision or condition of this Agreement; or
- 5.5.2 such terms, provisions or conditions of this Agreement on any future occasion.

6. RTPA

Unless this Agreement is a non-notifiable agreement pursuant to Section 27A of the Restrictive Trade Practices Act 1976 (the "RTPA") or Schedule 13, paragraph 5 Competition Act 1998, to the extent that any provision of this Agreement or of any arrangement of which it forms part constitutes a restriction or information provision within the meaning of the RTPA so as to render this Agreement or that arrangement (as the case may be) registrable under the RTPA, no such restriction or information provision shall take effect until the earlier of:

- (A) the day after particulars of this Agreement or that arrangement have been furnished to the Director General of Fair Trading in accordance with the RTPA; or
- (B) the day after the Secretary of State for Trade and Industry has granted an exemption pursuant to Section 100 of the Act in respect of this Agreement or that arrangement.

7. INTELLECTUAL PROPERTY

If and to the extent that either Signatory discloses any of its Intellectual Property to the other Signatory which is necessary for use in connection with this Agreement, that Signatory shall be deemed to have granted from the date of such disclosure, a licence of such Intellectual Property to such other Signatory for use in connection with this Agreement and with Clause 7 of the Radio Teleswitch Agreement and for no other purpose whatsoever. Any such licence shall be irrevocable, non-exclusive, perpetual and royalty free, and shall not be capable of assignment or sub-licence.

8. CONFIDENTIALITY RESTRICTIONS ON THE RTS ACCESS PROVIDER

- 8.1 In this Clause 8 "**Confidential Information**" means any information which the RTS Access Provider or any Affiliate or Related Undertaking of the RTS Access Provider either:

- 8.1.1 receives from the Group Code Sponsor properly under this Agreement; or
- 8.1.2 holds in respect of a Customer supplied by the Group Code Sponsor which information it has previously acquired in its capacity as the operator of the Distribution Business; or
- 8.1.3 receives from any Customer, which, if received from the Group Code Sponsor, would fall within Clause 8.1.1; or
- 8.1.4 received from the Group Code Sponsor in error, but which would usually be considered to be confidential,

and the provisions of this Clause 8 shall apply to such Confidential Information, save where the Group Code Sponsor notifies or otherwise gives prior written agreement to the RTS Access Provider that such Confidential Information need not be treated as confidential.

- 8.2 Where the RTS Access Provider or any Affiliate or Related Undertaking of the RTS Access Provider receives or holds Confidential Information the RTS Access Provider shall (and shall procure that such Affiliate or Related Undertaking shall):

- 8.2.1 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 RTS Access Provider and the Group Code Sponsor for the provision of services by the Distribution Business of the RTS Access Provider;
- 8.2.2 without prejudice to Clause 8.2.1, not use the Confidential Information in a manner which may obtain for the RTS Access Provider or any Affiliate or Related Undertaking of that RTS Access Provider (as the case may be) any

commercial advantage in the operation of the Supply Business or of the Second Tier Supply Business except, in relation to the information falling within Clause 8.1.2 where the RTS Access Provider supplied electricity to the relevant Customer at the time the information was acquired by RTS Access Provider;

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

- (A) to such of the employees of the RTS Access Provider or any Affiliate or Related Undertaking of the RTS Access Provider as require to be informed thereof for the effective performance of the RTS Access Provider's obligations under this Agreement or any other agreement entered into between the RTS Access Provider and the Group Code Sponsor for the provision of services by the Distribution Business of the RTS Access Provider 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 Director; or
- (D) information which the RTS Access Provider or any Affiliate or Related Undertaking of the RTS Access Provider (as the case may be) is required or permitted to make disclosure of:
 - (1) in compliance with the duties of the RTS Access Provider or any Affiliate or Related Undertaking of the RTS Access Provider (as the case may be) under the Act or any other requirement of a Competent Authority;
 - (2) in compliance with the provisions of any Relevant Instruments;
 - (3) in compliance with any other requirement of law;
 - (4) 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
 - (5) pursuant to the arbitration rules of the Electricity Arbitration Association or pursuant to any judicial or other arbitral process or tribunal of competent jurisdiction;
- (E) in the case of information falling within Clause 8.1.2 to the person who supplied electricity to the relevant Customer at the time such information was acquired by the RTS Access Provider; and

8.2.4 take all reasonable steps to ensure that any such person as is referred to in Clauses 8.2.3(A), (B) and (C) above to whom the RTS Access Provider or any Affiliate or Related Undertaking of the RTS Access Provider (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 8.

- 8.3 The RTS Access Provider 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 RTS Access Provider undertakes to comply with the Data Protection Act in the performance of this Agreement.
- 8.4 The Group Code Sponsor agrees that where the RTS Access Provider uses or discloses Confidential Information in accordance with this Clause 8 such Confidential Information need not be treated as confidential for the purposes of Condition 12 of the PES Licence to the extent of such use or disclosure.
- 8.5 The RTS Access Provider 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 Group Code Sponsor as the case may be, promptly to perform its obligations under this Agreement, provided that where the consent of the Customer is required to be obtained for the purposes of this Agreement, the Group Code Sponsor (and not the RTS Access Provider) shall have the obligation to obtain such consent under Clause 9.

9. CONFIDENTIALITY RESTRICTIONS ON THE GROUP CODE SPONSOR

- 9.1 In this Clause 9 "**Confidential Information**" means:

- 9.1.1 any information (whether in writing, in disk or electronic form or otherwise) which has been properly disclosed by the RTS Access Provider under this Agreement but which would usually be considered to be confidential; and
- 9.1.2 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 Group Code Sponsor is in possession of Confidential Information the Group Code Sponsor shall procure that such Affiliate or Related Undertaking observes the restrictions in Clauses 9.2 to 9.4 inclusive as if in each sub-clause there was substituted for the Group Code Sponsor the name of the Affiliate or Related Undertaking.

- 9.2 The Group Code Sponsor hereby undertakes to the RTS Access Provider 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:
 - 9.2.1 in the circumstances set out in Clause 9.3;
 - 9.2.2 to the extent otherwise required or expressly permitted by this Agreement or any other agreement entered into between the RTS Access Provider and the Group Code Sponsor for the provision of services by the Distribution Business of the RTS Access Provider; or

- 9.2.3 with the prior consent in writing of the RTS Access Provider.
- 9.3 The circumstances set out in this Clause 9.3 are:
- 9.3.1 where the Confidential Information, before it is furnished to the Group Code Sponsor, is in the public domain;
- 9.3.2 where the Confidential Information:
- (A) is acquired by the Group Code Sponsor in circumstances in which this Clause 9 does not apply;
 - (B) is acquired by the Group Code Sponsor in circumstances in which this Clause 9 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 9; or
 - (C) (after it is furnished to the Group Code Sponsor) enters the public domain;
- otherwise (in any such case) than as a result of (i) a breach by the Group Code Sponsor of its obligations in this Clause 9 or (ii) a breach by the person who disclosed that Confidential Information of that person's confidentiality obligation and the Group Code Sponsor is aware of such breach;
- 9.3.3 if the Group Code Sponsor is required or permitted to make disclosure of the Confidential Information to any person:
- (A) in compliance with the duties of the Group Code Sponsor 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 requirement of 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 other arbitral process or tribunal of competent jurisdiction;
- 9.3.4 to any Affiliate or Related Undertaking of the Group Code Sponsor, to the employees, directors, agents, consultants and professional advisers of the Group Code Sponsor or any Affiliate or Related Undertaking of the Group Code Sponsor, and to any Relevant Exempt Supplier in each case on the basis set out in Clause 9.4; or
- 9.3.5 to the extent the Confidential Information is required to be disclosed by the Group Code Sponsor for the purposes of providing billing information to Customers.
- 9.4 The Group Code Sponsor shall take all reasonable steps to ensure that any such person as is referred to in Clause 9.3.4 to whom the Group Code Sponsor 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 9.

- 9.5 The Group Code Sponsor 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 Group Code Sponsor undertakes to comply with the Data Protection Act in the performance of this Agreement.
- 9.6 The Group Code Sponsor 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) such prior consent so as to enable it, or the RTS Access Provider as the case may be, promptly to perform its obligations under this Agreement.

10. FORCE MAJEURE

- 10.1 If any Signatory (the "**Affected Signatory**") shall be unable to carry out any of its obligations under this Agreement due to any circumstance of Force Majeure, this Agreement shall remain in effect but save as otherwise provided in this Agreement the Affected Signatory's relevant obligations, the obligations of the other Signatory owed to the Affected Signatory under this Agreement, and any other obligations of the Signatories under this Agreement owed inter se which the relevant Signatory is unable to carry out directly or as a result of the suspension of the Affected Signatory's obligations shall (in each case) be suspended without liability for the period during which the circumstance of Force Majeure prevails provided that:
- 10.1.1 the Affected Signatory gives the other Signatory 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;
 - 10.1.2 the suspension of performance is of no greater scope and of no longer duration than is required by the circumstance of Force Majeure;
 - 10.1.3 no obligations of any Signatory that arose before the circumstance of Force Majeure causing the suspension of performance are excused as a result of the Force Majeure;
 - 10.1.4 the Affected Signatory 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
 - 10.1.5 immediately after the end of the circumstance of Force Majeure the Affected Signatory notifies the other Signatory in writing of the same and each Signatory resumes performance of its obligations under this Agreement.

11. DISPUTES

- 11.1 Save where expressly stated in this Agreement to the contrary, and subject to any contrary provisions of the Act, any licence issued pursuant to the Act or the Regulations (or any other regulations made under Section 29 of the Act), or the rights, powers, duties and obligations of the Director or the Secretary of State under the Act, 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 the parties shall be and is hereby referred to arbitration pursuant to the arbitration rules of the Electricity Arbitration Association in force from time to time.
- 11.2 Whatever the nationality, residence, or domicile of either party 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 England or Wales 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.
- 11.3 Subject always to Clause 11.5, if any consumer of electricity (the "**consumer**") brings any legal proceedings in any court against any party (the "**defendant signatory**") and the defendant signatory wishes to make a third party claim (as defined in Clause 11.4) against the other party which would but for this Clause 11.3 have been a dispute or difference referred to arbitration by virtue of Clause 11.1 then, notwithstanding the provisions of Clause 11.1 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 signatory but also between either or both of them and the other party whether by way of third party proceedings or otherwise as may be ordered by the court.
- 11.4 For the purpose of this Clause 11 "**third party claim**" shall mean:
- 11.4.1 any claim by a defendant signatory against the other party (whether or not already a party to the legal proceedings) for any contribution or indemnity; or
 - 11.4.2 any claim by a defendant signatory against the other 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
 - 11.4.3 any requirement by a defendant signatory 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 signatory but also as between either or both of them and the other party (whether or not already a party to the legal proceedings).
- 11.5 Clause 11.3 shall apply only if at the time the legal proceedings are commenced no arbitration has been commenced between the defendant signatory and the other party raising or involving 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.

- 11.6 Where a failure to agree is referred to the Director in accordance with this Agreement, the Signatories agree that any determination by the Director shall be final and binding.

12. ENTIRE AGREEMENT

- 12.1 This Agreement and any document referred to herein represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Signatories 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.
- 12.2 Each Signatory confirms that, except as provided in this Agreement and without prejudice to any liability for fraudulent misrepresentation, neither Signatory has relied on any representation, warranty or undertaking which is not contained in this Agreement or any document referred to herein.

13. SEVERABILITY

If any provision of this Agreement shall be held to be invalid or unenforceable by a judgment or decision of any court of competent jurisdiction or any authority (including the Director) whose decisions shall be binding on the Signatories, the same shall be deemed to be severable and the remainder of this Agreement shall remain valid and enforceable to the fullest extent permitted by law. In any such case, the Signatories 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.

14. TERMINATION

Note: Please consider the provisions of Clauses 5 and 7 of the RTA when agreeing termination periods.

- 14.1 Either Signatory may terminate this Agreement by giving the other Signatory [3 months' notice in writing] (or such lesser period as may be agreed between the parties).
- 14.2 A party (the "**Initiating Signatory**") may terminate this Agreement with immediate effect by notice to the other party (the "**Breaching Signatory**") on or at any time after the occurrence of any of the following events:
- 14.2.1 the Breaching Signatory being in material breach of any of the material terms or conditions of this Agreement and, if the breach is or was capable of remedy, having failed to remedy the breach within 30 days of receipt of a notice from the Initiating Signatory giving full details of the breach, requiring the Breaching Signatory to remedy the breach and stating that a failure to remedy the breach may give rise to termination under this Clause 14.2.1;
- 14.2.2 the Breaching Signatory passing a resolution for its winding-up, or a court of competent jurisdiction making an order for the winding-up or dissolution of the Breaching Signatory;

- 14.2.3 the making of an administration order in relation to the Breaching Signatory or the appointment of a receiver or an administrative receiver over, or an encumbrancer taking possession of or selling, the whole or any substantial part or parts of the Breaching Signatory's assets, rights, or revenues;
- 14.2.4 the Breaching Signatory making an arrangement or composition with its creditors generally or making an application to a court for protection from its creditors generally;
- 14.2.5 the Breaching Signatory being 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;
- 14.2.6 without prejudice to Clause 10 a circumstance of Force Majeure which affects the performance by the Breaching Signatory of substantially all of its obligations under this Agreement continuing for more than 180 days;
- 14.2.7 either of the conditions set out at Clause 2.5 ceasing to be fulfilled.
- 14.3 Except where expressly stated to the contrary, the rights and obligations of the parties under this Agreement shall cease immediately upon termination of this Agreement. However, termination shall not affect any rights and obligations which have accrued on or before the date of termination.
- 14.4 Clauses 1, 3, 4, 5, 7, 8, 9, 11-17 inclusive shall survive the termination, for whatever reason, of this Agreement.
- 14.5 Where a Signatory terminates this Agreement pursuant to Clause 14.1 or this Agreement is terminated pursuant to Clause 14.2 where that Signatory is the Breaching Signatory then that Signatory shall be liable to the other Signatory for its reasonable costs incurred as a result of the termination of this Agreement.

15. NOTICES

- 15.1 Any notice, request or other communication required to be given or sent under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first class post or fax. Such notice request or other communication shall be addressed to the recipient and sent to the address or fax number of such Signatory set out in Schedule 1 to the RTA, marked for the attention of the individual named in that Schedule, or to such other persons, addresses, or fax numbers as may from time to time be notified by one Signatory to another pursuant to the RTA.
- 15.2 Unless otherwise stated in this Agreement, a notice, request or other communication sent in accordance with Clause 15.1 shall be deemed received:
 - 15.2.1 if delivered personally, when left at the address referred to above;
 - 15.2.2 if sent by pre-paid first class post, 3 Working Days after the date of posting; and
 - 15.2.3 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.

16. ASSIGNMENT

Neither Signatory shall assign any of its rights under this Agreement without the prior written consent of the other Signatory, such approval not to be unreasonably withheld.

17. GOVERNING LAW AND JURISDICTION

17.1 This Agreement shall be governed by and construed in all respects in accordance with the law of England and Wales.

17.2 Each Signatory 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 Signatory by being delivered to or left for that Signatory at its address for service of notices determined in accordance with Clause 15.1 and each Signatory undertakes to maintain such an address at all times in the United Kingdom and to notify the other Signatory in advance of any change from time to time of the details of such address in the manner prescribed in Clause 15.1.

18. COUNTERPARTS

This Agreement may be executed in any number of counterparts each of which when executed and delivered shall be an original, but all the counterparts together shall constitute the same document.

IN WITNESS whereof this Agreement has been executed the day and year first above written.

NOTE: Consideration should be given to disapplying the provisions of the Contracts (Rights of Third Parties) Bill if it receives Royal Assent.

Appendix
Details of Group Code
and
Details of Sponsored Switching Schedule

- [Fees] [consider termination fee to cover costs incurred by the RTS Access Provider as the Sponsor of Last Resort.]
- [Working Hours]
- [Any other miscellaneous general provisions]
- [Plus for each Group Code, all necessary detail to allow the RTS Access Provider to satisfy the Group Code Sponsor's requirements.]

SCHEDULE 4

Form of RTS Access Provider Report to the Secretariat

Group Code Definition [Example]

RTS Access Provider ID: [13]

Group Code Sponsor: [Scottish Power Energy Supply Division]

Contact Name/Telephone: [David Simpson
0141 568 3063]

I	II	III	IV	V	VI	VII	VIII	IX	X
Group Code	RTS Contact	Regime (1)	Duration (hours)	Operating Window GMT (2)	Days Regime Applies (3)	Review Date (4)	Transmitter(s) (5)	Repeats (6)	Additional Information
[127]	A	[Static	[8.50	[2300-0730	[All	[1/4/2000]	[W]	[0]	
	B	Static	8.50	2300-0730	All				
	C	Static	4.50	0300-0730	All				
	D]	Static]	8.50]	2300-0730]	All]				

I	II	III	IV	V	VI	VII	VIII	IX	X
Group Code	RTS Contact	Regime (1)	Duration (hours)	Operating Window GMT (2)	Days Regime Applies (3)	Review Date (4)	Transmitter(s) (5)	Repeats (6)	Additional Information
[123]	A	[Semi-Static	[8.5	[2345-0815	[Winter	[1/4/2000]	[W]	[2]	
	B	Semi-Static	8.5	2345-0814	Winter				
	C	Semi-Static	4.5	0345-0815	Winter				
	D	Semi-Static	8.5	2345-0815	Winter				
	A	Semi-Static	8.5	2245-0715	Summer				
	B	Semi-Static	4.5	0245-0715	Summer				
	C	Semi-Static	4.5	0245-0715	Summer				
	D]	Semi-Static]	8.5]	2245-0715]	Summer]				
[120]	A	[Semi-Static	[8.5	[2330-0800	[Winter	[1/1/2002]	[W]	[2]	[D switch ON duration will be split over at least two periods within window]
	B	Semi-Static	8.5	2330-0800	Winter				
	C	Semi-Static	4.5	0300-0800	Winter				
	D	Dynamic	8.5	1900-1600	Winter				

I	II	III	IV	V	VI	VII	VIII	IX	X
Group Code	RTS Contact	Regime (1)	Duration (hours)	Operating Window GMT (2)	Days Regime Applies (3)	Review Date (4)	Transmitter(s) (5)	Repeats (6)	Additional Information
	A	Semi-Static	8.5	2230-0700	Summer				
	B	Semi-Static	8.5	2230-0700	Summer				
	C	Semi-Static	4.5	0230-0700	Summer				
	D]	Dynamic]	8.5]	1800-1500]	Summer]				
[100]	A	[Semi-Static	[8.5	[2330-0800	[Winter	[1/4/2000]	[W]	[2]	[D switch ON duration will vary with Central & SW Scotland weather Average hours/day: 5.5 (winter) 2.5 (summer)]
	B	Semi-Static	8.5	2330-0800	Winter				
	C	Semi-Static	4.5	0330-0800	Winter				
	D	Dynamic	0-21	1900-1600	Winter				
	A	Semi-Static	8.5	2230-0700	Summer				
	B	Semi-Static	8.5	2230-0700	Summer				
	C	Semi-Static	4.5	0230-0700	Summer				
	D]	Dynamic]	0-21]	1800-1500]	Summer]				

Notices

[Insert any notices in this section]

Notes

1. Regime can be one of the following types:

Static: Daily Switching Schedule remains unchanged

Semi-Static: Daily Switching Schedule follows a predetermined pattern e.g. seasonal

Dynamic: Daily switch closure(s) are of stated total duration (fixed or variable) within stated ON time window(s)

2. Times are GMT as broadcast, either programmed switching times or limits of ON time window.

3. Unless otherwise defined "Summer" means days when BST is in force, "Winter" means all other days. A change of regime at Spring/Autumn clock change might involve movement of some times by 1 hour on previous day.

4. This is the date at which the Operating Window will next be reviewed .

5. This is the nominated transmitter(s) which are monitored. They are:

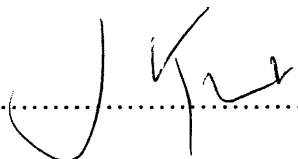
D - Droitwich;

W - Westerglen; and

B - Burghead

6. This is the number of repeats of programme broadcasts which should be sent each day. While the default is 2, it is possible to select 0 or 1.

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