

## DCUSA Change Proposal Form

This form should be used by DCUSA Parties who wish raise a draft or formal Change Proposal and for DCUSA members and other interested parties to return their comments on DCUSA Change Proposals which have been circulated for consultation.

Originators - please complete Section A of this form and submit to [DCUSA@electralink.co.uk](mailto:DCUSA@electralink.co.uk).

Respondents – please complete Section B of this form and return it to [DCUSA@electralink.co.uk](mailto:DCUSA@electralink.co.uk) your response should include your assessment of the solution and comments on the Change Proposal drafting. If you reject the solution then please supply your reason for rejection and an alternative solution. Even if you reject a solution your responses should state whether the proposed implementation date is acceptable to your organisation. If it is not acceptable, please indicate the reasons why and an alternative date.

SECTION A: To be completed by originator

Document Control	
CP Status	Standard / <del>Urgent</del>
Date Submitted	17 July 2008
CP Number*	DCP 033
Version Number	1
CP Ref*	07/08
Attachments	Appendix A (in same electronic file)

\* Assigned by DCUSA Secretariat

Originator Details	
Party Name	EDF Energy Networks (EPN) plc
Originator Name	Peter Waymont
Party Category	Distributor / <del>Supplier</del> / IDNO / DG
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Change Proposal Details	
CP Title	Connection Terms
DCUSA Parties believed to be impacted	Distributor / <del>Supplier</del> / IDNO / DG
Proposal to Change	Part 1 / <del>Part 2</del> / Other

	Schedule / Clause: Schedule 2B
Summary of Change	This change seeks to expand the National Terms Of Connection
Related CPs	<i>Please indicate if this CP is related to or impacts any other CP already in the DCUSA or other industry Change Process</i> none

### Proposed Solution

*Please insert proposed change marked legal drafting here*

Change Schedule 2B to read as per Appendix A:

### Proposed Implementation Technique

Phased Implementation / Big Bang

### Proposed Implementation Date

*Please specify and give a reason if proposed date is outside the release schedule*

February / June / February Release      Year: 2009

Other: next release after Ofgem approval

### DCUSA Objectives

*Please state which DCUSA Objective(s) will be better facilitated by this CP*

1. The development, maintenance and operation by the DNO Parties and IDNO Parties of efficient, co-ordinated, and economical Distribution Networks;
2. The facilitation of effective competition in the generation and supply of electricity and (so far as is consistent therewith) the promotion of such competition in the sale, distribution and purchase of electricity;
3. The efficient discharge by the DNO Parties and IDNO Parties of obligations imposed upon them in their Distribution Licences; and
4. ~~The promotion of efficiency in the implementation and administration of this Agreement.~~

Objective 1 is better facilitated because the introduction of this proposal will ensure that all

Customers will be provided with standard terms by which they are bound for their Connection to any Distribution Network. This should enable them to more effectively engage with DNO parties and IDNO Parties in relation to their network requirements i.e. use of required power, modifications to their existing requirements etc.

Objective 2 is better facilitated because the housing of an expanded standard National Terms for Connections covering all Customers connected to any Distribution Network, on the ENA website, would provide a greater level of transparency/visibility of information in this area and therefore better facilitate competition and benefit customers.

Objective 3 is better facilitated because the distribution licence condition that created DCUSA included a requirement that DCUSA should include terms that relate to connection to the system. The DCUSA steering group decided that the short timescales for putting DCUSA in place prohibited addressing connection terms and so this aspect was included within the matters for further consideration as an item within Schedule 12 of DCUSA. This CP seeks to introduce terms into the National Terms of Connection in order to facilitate that work. In the recent Ofgem document 'Electricity Distribution Price control review – initial consultation document' consideration is suggested regarding standard connection agreements for Distributed Generation. This CP takes a proactive step forward in better facilitating this objective by such an introduction.

#### **Business Justification Including Market Benefits**

In this text a "connection offer" refers to an agreement to build a connection to the point of energisation (for simplicity matters such as independent connection providers and adoption agreements are parked) and a "connection agreement" refers to an agreement regarding the ongoing connection to the system once construction works have been completed.

The present national terms of connection are adequate for smaller customers and as a backstop position for larger customers where the Distributor has not put in a site specific bi-lateral connection agreement (e.g. on change of tenancy). With larger customers, Distributors tend to put a site-specific bi-lateral connection agreement in place governing the on-going use of the connection.

These site specific connection agreements only concern the on-going use of the connection or modifications to it and are not concerned with the initial building of the connection or any commercial terms pursuant to such works. Typically contractual arrangements are put in place between Distributors and customers or developers for the initial construction of the connection through to energisation (often referred to as connection agreements but for differentiation herein referred to as connection offer). Once energised, the Distributor relies on the connection agreement to cover appropriate commercial and technical requirements of the use of the connection.

The bi-lateral connection agreements used by most Distributors for large customers contain effectively the same "boilerplate" terms and conditions. By incorporating those into the national terms it gives transparency to such customers of the generic connection terms that Distributors wish to enter into with them.

There may still need to be bi-lateral connection agreements as connection agreements typically contain schedules regarding site specific requirements for

the ongoing use of the connection, namely: the assets of connection, the power requirements, technical data etc. However, in the main, the bi-lateral agreement would be slimmed down by removing the need to include the "boilerplate" Ts &Cs and could also refer to the national terms. These terms would not prevent Distributors entering into different terms should site-specific circumstances warrant it, in fact they would contain information advising of that need where it was required.

This change will not impact suppliers as the mechanism by which the NTC is referenced in supplier contracts is unaltered. It is merely the terms that are contained and governed within DCUSA and which are published on the website (or available from the ENA) that change.

**Authority Consent**

Yes (Part One) / ~~No (Part Two)~~

## Appendix A

### SCHEDULE 2B – NATIONAL TERMS OF CONNECTION

- A. The electricity you receive from your electricity supplier will be delivered using the distribution system owned or operated by your electricity network operator. To receive a supply of electricity you require both:
- a connection agreement with your electricity network operator to maintain the connection of your premises to the network; and
  - a supply contract with your electricity supplier.
- B. Your electricity supplier has been appointed as the agent of your electricity network operator to obtain a connection agreement with you on the National Terms of Connection set out below. When you enter into your electricity supply contract with your supplier, you are also entering into a connection agreement with your electricity network operator on these terms.

#### **Your Terms and Conditions if your connection is Whole Current metered or is Unmetered are:**

1. *Interpretation.* In this agreement the terms “we”, “our” and “electricity network operator” mean, for each connection to a distribution system through which electricity is conveyed to your premises, the electricity network operator which owns or operates that distribution system.
2. *Existing terms.* Any existing terms applying to your connection to our distribution system (except for another standard connection agreement) will apply instead of this agreement to the extent that they are inconsistent with this agreement.
3. *Duration of this connection agreement.* This agreement takes effect from the time that your electricity supply contract takes effect and will continue (even if your electricity supply contract ends) until it ends under Clause 12 below.

4. *Connection to our network.* Your premises will remain connected to our distribution system in accordance with the provisions of the Electricity Act 1989, any other legal requirements that apply from time to time, and the terms of this agreement.
5. *Network constraints.* Our obligations under this agreement are subject to the maximum capacity and any other design feature of your connection. In accordance with existing legal rules, you must contact us in advance if you propose to make any significant change to your connection, electric lines or electrical equipment, or do anything else that could affect our distribution system or require alterations to your connection.
6. *Generating equipment.* If you intend to install or operate small-scale embedded generating equipment – which means one or more sources of electrical energy that have an aggregate rating of no greater than 16 amps per phase connected at low voltage – then you must inform us of your intentions on or before the day that the equipment is connected. So long as you do this, you do not need our consent. However, if you intend to install or operate any other kind of generating equipment, you must contact us in advance and obtain our consent.
7. *Delivery of electricity.* We do not guarantee that we will deliver electricity through our distribution system at all times or that electricity delivered through our distribution system will be free of brief variations in voltage or frequency.
8. *Cutting off your supply.* We may cut off the supply of electricity to your connection where we are entitled to do so under the general law. We may also cut off your supply of electricity where we are required to do so under your electricity supply contract or because of the electricity industry arrangements under which we operate in accordance with our licence.
9. *If something goes wrong.* If we fail to comply with any term of this agreement, or are negligent, you may be entitled under the general law to recover compensation from us for any loss you have suffered. However, we will not be required to compensate you for loss caused by anything beyond our reasonable control, or for any indirect, consequential, economic, or financial loss (including wasted expenses or any loss of revenue, profit, or interest, any loss of business, commercial, market, or economic opportunity, or any loss of contract or goodwill), other than where you are entitled to recover compensation for such loss under the general law in relation to death or personal injury.
10. *Business customers.* If the electricity supplied to your premises is used wholly or mainly for business purposes, each of us will only be liable to the other in accordance with the limitations in Clause 9 and up to a maximum of £100,000 per calendar year.

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

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

12. *Ending this connection agreement.* This agreement will end in relation to a connection when one of the following occurs:
- you permanently stop having electricity delivered through that connection;
  - you no longer either own or occupy the premises at which that connection is situated; or
  - any circumstances arise which legally entitle us to cut off your electricity supply to that connection and we write to you advising you that this agreement is ended.

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

13. *Transferring this connection agreement.* You are not entitled to transfer this agreement to another person without our consent.
14. *Providing information.* You must provide us with any information we request in relation to the nature, or use by you, of electrical equipment on your premises. We will only ask for information that we need in relation to this agreement or the Distribution Code that applies under our licence.
15. *Governing law.* This agreement will be governed by and interpreted in accordance with English law, under the jurisdiction of the English and Scottish courts.
16. *Unmetered Supplies.* Where your electricity network operator has agreed that your connection may be unmetered, you shall provide them with an inventory of your equipment not less than once a year.

**For information: supply characteristics**

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

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



**Your Terms and Conditions if your connection is metered via Current Transformers (C/Ts) are:**

1. DEFINITIONS

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

**"Act"** the Electricity Act 1989 including any modification, extension or re-enactment thereof and any subordinate legislation made thereunder;

**"Affiliate"** any holding company or subsidiary company of the Company, or any company which is a subsidiary of such holding company and "holding company" and "subsidiary" have the meanings given in Section 736 of the Companies Act 1985;

**"Agreement"** the agreement between the Company and the Customer to which these Conditions are attached and "this Agreement" shall be construed as meaning the Agreement and includes these Conditions;

**"Application for a Modification"** the Company's standard form of Application for a Modification;

**"Apparatus"** all equipment in which electrical conductors are used, supported or of which they may form part;

**"Authorised"** in relation to any business or activity means authorised by licence granted under Section 6 or by exemption granted under Section 5 of the Act;

**"Authorised Persons"** persons authorised by the Company to undertake certain work on the Connection Equipment and Metering Equipment at the Metering Point;

**"Authorised Electricity Operator"** a person who is the holder of a licence to supply electricity under Section 6 of the Act or exempted from holding such a licence under that Act;

**"Authority"** the Gas and Electricity Markets Authority as established by Section 1 of the Utilities Act 2000;

**"Balancing and Settlement Code" or "BSC"** the code approved by the Authority relating to the electricity transmission system in Great Britain and, at any time, any and all regulations and procedures made under it at that time;

**"Business Day(s)"** any day, other than a Saturday, a Sunday, Christmas Day, Good Friday, a day which is a bank holiday in England within the meaning of the Banking and Financial Dealings Act 1971 or a day (a) which is a local holiday in the locality in which any Party has its registered office for the time being and (b) on which the premises at which the registered office of that Party is situated are not open for business;

**"Company's Equipment"** the switchgear, metering or other equipment, lines or other parts of the Distribution System or any other property or rights of the Company, including any substation apparatus;

**"Company's Premises"** any land or buildings of the Company in which any of the Customer's Installation is to be installed or is for the time being situate;

**"Competent Authority"** includes the Secretary of State, the Authority and any local or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of the government of the United Kingdom or of the European Union in so far as it is acting within the limits of its proper authority;

**"Connect(ed) (ion)"** the installation of the Connection Equipment in such a way that subject to Energisation the Customer may import and/or export electricity to and/or from the Customer's Installation over the Distribution System;

**"Connection Equipment"** that part of the Company's Equipment which has been provided and installed by the Company for the purposes of providing a connection at the Exit Point;

**"the Connection and Use of System Code" or "CUSC"** the Connection and Use of System Code (and the CUSC Framework Agreement) established pursuant to the GB System Operator Licence;

**"the Connection Site"** the location at which the Plant and Apparatus of both the Customer and the Company are situated;

**"the CUSC Framework Agreement"** means the agreement of that name, in the form approved by the Secretary of State, by which the CUSC is made contractually binding between the parties to it;

**"Customer's Installation"** any structures, equipment, lines, appliances or devices (not being Company's Equipment) used or to be used by the Customer and connected or to be connected to the Distribution System;

**"CVA"** central volume allocation;

**"De-energisation"** the movement of any switch or the removal of any fuse or the taking of any other step whereby no electrical current can flow from the Distribution System through the Connection Equipment to the Customer's Installation at the Exit Point and "De-energise(d)" shall be construed accordingly;

**"Distribution Connection and Use of System Agreement" or "DCUSA"** means the Distribution Connection and Use of System Agreement designated as such by the Gas and Electricity Markets Authority under condition 22 of the Electricity Distribution Licence;

**"DGNU Payment" or "Distributed Generation Network Unavailability Payment"** means the compensation mechanism created by the Authority to make compensation payments for network outages experienced by customers with distributed generation;

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

**"Disconnection"** the permanent electrical disconnection of all or any of the Connection Equipment;

**"Distribution Code"** the distribution code as defined in the Electricity Distribution Licence;

**"Distribution System"** the Company's system or network for the distribution of electricity as defined in the Electricity Distribution Licence;

**"Electricity Distribution Licence"** a distribution licence granted to the Company pursuant to section 6 (1) (c) of the Act;

**"Energisation"** the movement of any switch or the insertion of any fuse or the taking of any other step so as to enable an electrical current to flow from the Distribution System through the Connection Equipment to the Customer's Installation at the Exit Point and "Energised" shall be construed accordingly;

**"Exit Point"** the point of connection at which a supply of electricity may flow between the Distribution System and the Customer's Installation upon Energisation;

**"Force Majeure"** any event or circumstance which is beyond the reasonable control of either Party and which results in or causes the failure of that Party to perform any of its obligations under this Agreement including act of God, strike, lockout or other industrial disturbance, act of 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, lack of water arising from weather or environmental problems, explosion, infrequent transient voltage variations whether substantial or otherwise, fault or failure of Plant and Apparatus, to the extent that any such event or circumstance could not have been prevented by Good Industry Practice, and also including governmental restraint, any Act of Parliament, other legislation, by law, and Directive (not being any order, regulation or direction under Section 33 34 or 35 of the Act) or the failure of any generator or NGET to supply the Company with electricity or any deficiency in such supply to the extent that such failure or deficiency or the consequences thereof could

not have been prevented by the exercise of Good Industry Practice by either Party. Provided that lack of funds shall not be interpreted as a cause beyond that Party's reasonable control;

**"GB Transmission System"** shall have the meaning given to that term within the CUSC;

**"Generating Plant"** the Customer's Generating Plant;

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

**"GB System Operator"** means the holder, from time to time, of the GB System Operator Licence;

**"Grid Code"** has the meaning given to that term in the GB System Operator Licence;

**"GB System Operator Licence"** means a transmission licence granted, or treated as granted, pursuant to Section 6(1)(b) of the Act and in which section C of the standard transmission licence conditions applies;

**"GSP"** means a grid supply point, which is where the Company's distribution substation connects directly to the GB Transmission System;

**"kVA"** kilovoltamperes;

**"kW"** kilowatts;

**"Mainsborne Communications"** the application of electrical or electronic manipulation upon or into the Distribution System arising from;

- i) the intentional purpose of transmitting analogue or digital communications and/or data through the Distribution System, or
- ii) the unintentional application of electrical or electronic manipulation upon the Distribution System from premises connected to the Distribution System arising from the intentional purpose of transmitting analogue or digital communications and/or data solely within the relevant premises.

**"Material Effect"** an effect causing a Party to effect any works or to alter the manner of operation of the Company's Equipment or Customer's Installation (as the case may be) which in either case involves that Party in expenditure of more than £1,000;

**"Maximum Export Capacity"** means in respect of the Entry Point, the maximum amount of electricity expressed in kW or kVA to be passed into the Distribution System via the Entry Point;

**"Maximum Import Capacity"** means in respect of the Exit Point, the maximum amount of electricity expressed in kW or kVA which may be imported from the Distribution System via that Exit Point and which subject to Clause 13 may be varied by agreement between the Parties from time to time;

**"Meter"** a device that measures the electricity that flows through the Exit Point(s) or Entry Point(s);

**"Metering"** any structures, equipment, lines, appliances or Meter including where necessary communication and/or control equipment (not being Company's Equipment) used or to be used by the Meter Operator Agent at the Metering Point;

**"Metering Equipment"** the equipment belonging to the Company and associated with the Metering, including any related current transformer, voltage transformer, potential fuses, etc.;

**"Metering Point"** the position of the Meter, which will normally be located as near as possible to the Exit Point(s);

**"Metering Potential Fuses"** the fuses which control the voltage supply to the Metering;

**"Meter Operator Agent"** a person appointed by the Authorised Electricity Operator or where applicable the Customer to install, commission, test and maintain Metering Equipment, as described in the BSC;

**"Modification"** any actual or proposed replacement, renovation, modification, alteration or construction by or on behalf of a Party to either that Party's Plant or Apparatus or the manner of its operation which has or will have a Material Effect on the other Party;

**"Modification Notification"** the Company's standard form of Modification Notification from time to time applicable;

**"Modification Offer"** an offer by the Company to the Customer made pursuant to Clause 13 of terms for connection in relation to any proposed Modification at or affecting the Exit Point including any revision or extension of such offer;

**"NGET"** National Grid Electricity Transmission plc, registered number [02366977] whose registered office is at 1-3 Strand, London WC2N 5EH and their successors as operators of the GB Transmission System;

**"Party"** each person for the time being and from time to time party to this Agreement and any successor(s) in title to, or permitted assign(s) of, such person;

**"Plant"** fixed and movable items other than Apparatus;

**"Premises"** any land or buildings of the Customer in which any of the Company's Equipment is to be installed or is for the time being situated;

**"the Regulations"** the Electricity Safety, Quality and Continuity Regulations 2002 (as amended from time to time) and the Electricity at Work Regulations 1989;

**"Substation"** an electricity substation (as defined in Regulation 1(5) of the Electricity Safety, Quality and Continuity Regulations 2002), of the Company;

**"SVA"** supplier volume allocation.

1.2 In this Agreement any reference to:

"a Clause" is a reference to a clause hereof;

"the Customer" is a reference to you;

"the Company" is a reference to the electricity network operator to whose Distribution System your Premises are connected;

the word "including" is to be construed without limitation.

1.3 Any reference in this Agreement to a statute, statutory instrument, regulation or order shall be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.

1.4 Any reference in this Agreement to another agreement or any deed or other instrument shall be construed as a reference to that other agreement, deed or other instrument as the same may have been, or may from time to time be, amended, varied, supplemented or novated.

1.5 Any reference in this Agreement to the masculine shall include the feminine and any reference to the singular shall include the plural and vice versa in each case.

1.6 Clause headings are for ease of reference only.

## 2. CONNECTION

This Agreement shall govern the terms upon which the Customer's Installation shall be entitled to remain Connected to the Distribution System at the Exit Point or Entry Point. However, any other terms applying to your connection to the Company's Distribution System will apply instead of this Agreement to the extent that they are inconsistent with this Agreement.

## 3. THE CUSTOMER'S RIGHT TO BE (AND REMAIN) CONNECTED

3.1 The Customer warrants to the Company that at the date hereof it has power to enter into, perform and comply with all of its obligations under this Agreement and in relation to any electricity generated in accordance with this Agreement that either:-

- (A) it will trade the electricity generated by the Generating Plant through a Licensed Supplier in SVA and that
- it is not required to enter into the CUSC or any supplemental agreement thereto;
  - it is exempted from the requirements to obtain a generation licence pursuant to Section 5 of the Act; and
  - it is not required to be a party to the Balancing and Settlement Code: OR
- (B) it will trade independently the electricity generated by the Generating Plant in CVA and that
- it has entered into the CUSC and supplemental agreement thereto;
  - it holds a generation licence under section 6 of the Act; and
  - it has become a party to the Balancing and Settlement Code: OR
- (C) it will trade the electricity generated by the Generating Plant through a consolidator in CVA and that:
- it has entered into the CUSC and supplemental agreement thereto or it is not required to enter into the CUSC or any supplemental agreement thereto ;
  - it holds a generation licence under section 6 of the Act or it is exempted from the requirements to obtain a generation licence pursuant to Section 5 of the Act; and
  - it has assigned its output from the Generating Plant to the consolidator at the GSP and the consolidator is a party to the Balancing and Settlement Code:

The Customer undertakes to the Company that it shall forthwith notify the Company of any change of circumstances occurring hereafter as a result of which any of the above statements ceases to apply and the Customer shall indemnify the Company against all actions, proceedings, claims or demands brought or threatened against the Company by a third party as a result of any breach of the warranties or undertaking contained in this Clause 3.1.

- 3.2 Subject to Clause 3.1 and the other terms of this Agreement, the Customer shall have the right for the Customer's Installation to be Connected and to remain Connected to the Distribution System at the Exit Point or Entry Point.

3.3 Subject to the terms of this Agreement (and in particular its right to make Modifications pursuant to Clause 13) the Company shall during the currency of this Agreement continue to keep in existence and maintain the Connection Equipment at the Exit Point or Entry Point in the condition necessary to render the same fit for the purpose of passing the Maximum Export Capacity (if any) and the Maximum Import Capacity between the Customer's Installation and the Distribution System.

3.4 For the avoidance of doubt, the right to be (and remain) Connected does not include the right to be (and remain) Energised. Under the terms of this Agreement, the right of the Customer to be (and remain) Energised is subject to and conditional upon the Customer having entered into an agreement with an Authorised Electricity Operator that is a party to the DCUSA for the supply of electricity to the Customer at the Connection Point and :-

(A) In the event of Clause 3.1 (A) applying

(a) the Customer having provided evidence to the Company in a form reasonably satisfactory to the Company that an Authorised Electricity Operator has entered into an agreement with the Customer for the supply of electricity to the Customer at the Connection Point and is a party to the DCUSA; and

(b) the Customer having:-

(1) entered into an agreement with an Authorised Electricity Operator for the purchase by such operator of the electricity (if any) which the Customer exports through the Connection Point on to the Distribution System; and

(2) the Authorised Electricity Operator is a party to the DCUSA and has provided reasonable evidence in a form reasonably satisfactory to the Company that such Authorised Electricity Operator is:

(i) the holder of a current licence to supply electricity pursuant to Section 6(2) of the Act or is exempt from holding such a licence; and

(ii) a party to the Balancing and Settlement Code; and

(3) in each case such agreements and licences having become unconditional and continuing in full force and effect.

(B) In the event of Clauses 3.1 (B) and (C) applying

(a) the Customer having provided evidence to the Company in a form reasonably satisfactory to the Company that an Authorised Electricity Operator has entered into an agreement



- with the Customer for the supply of electricity to the Customer at the Connection Point and is a party to the DCUSA; or
- (b) the Customer having purchased its supply requirements at the GSP through the BSC and using the Distribution System for import as later provided in this Agreement; and
  - (c) the Customer using the Distribution System for export as later provided in this Agreement; and
  - (d) in each case such agreements and licences having become unconditional and continuing in full force and effect.

Nothing in this Agreement shall of itself entitle the Customer to provide a supply of electricity through the Distribution System to persons connected to the Distribution System in pursuance of a right to supply electricity under a license granted under the provisions of the Act or under an exemption from the requirement to have such a supply license as provided for under the Act.

#### USE OF DISTRIBUTION SYSTEM FOR EXPORT AND IMPORT

- 3.5 If Clause 3.1 (B) or (C) apply then subject to the terms of this Agreement the Company shall during the currency of this Agreement (unless Clause 3.1 (B) or (C) cease to apply) accept into the Distribution System at the Connection Point electricity generated by the Customer up to the Maximum Export Capacity and shall transport such electricity through the Distribution System to the GB Transmission System.
- 3.6 Nothing in this Agreement shall of itself entitle the Customer to provide a supply of electricity to customers through the Distribution System in pursuance of a right to supply electricity under a licence granted under the provisions of the Act.
- 3.7 If the Customer shall purchase its import supply requirements at the GSP then subject to this Agreement and provided that the Customer complies with all the provisions of this Agreement the Company shall during the currency of this Agreement and during such period as the Customer shall purchase its import supply requirements at the GSP transport a supply of electricity to the Connection Point through the Distribution System up to the Maximum Import Capacity.
- 3.8 Subject to the provisions of the Distribution Code, and notwithstanding any other provisions of this Agreement each Party shall be entitled to plan and execute outages of parts of its Plant and Apparatus and in the case of the Company the Distribution System at any time and from time to time and for that purpose (if necessary) to De-energise the Customer's Connection Plant.

#### 4 DE-ENERGISATION

##### 4.1 Emergency De-Energisation

If, in the reasonable opinion of:-

- (A) the Company, the condition or manner of operation of the Customer's Installation or other equipment and/or the condition or manner of operation of the Distribution System poses an immediate threat of injury or material damage to any person or to the Distribution System or to other users of the distribution system and their electrical systems or to the Customer's Installation the Company shall have the right to immediately De-Energise the Exit Point if it is necessary or expedient to do so to avoid the occurrence of such injury or damage; or
- (B) the Customer, the condition or manner of operation of the Distribution System or the Connection Equipment poses an immediate threat of injury or material damage to any person or to the Customer's Installation or other equipment, the Customer shall have the right to De-Energise the Customer's Installation if it is necessary or expedient to do so to avoid the occurrence of such injury or damage.

The Company shall re-Energise the Exit Point as quickly as practicable after the circumstances leading to any De-energisation under Clauses 4.1(A) have ceased to exist.

## 4.2 De-Energisation

- 4.2.1 The Company shall De-energise the Exit Point within a reasonable time or, in circumstances of urgency as soon as is reasonably practicable after being instructed to do so by the Customer or by the Customer's Authorised Electricity Operator referred to in Clause 3.4 (A), and shall act in accordance with Good Industry Practice in relation to such De-energisation.

Provided always that, where the instruction has been given by an Authorised Electricity Operator, the Company will give the Customer notice of its intention to De-Energise, and any grounds stated in the instruction unless Force Majeure prevents the Company from doing so.

- 4.2.2 The Company may De-energise the Exit Point forthwith where:-

- (A) it is instructed to do so by GB System Operator pursuant to the terms of the Connection and Use of System Code; or
- (B) it is required to do so pursuant to the Balancing and Settlement Code; or
- (C) it is required to do so by or under the Act; or
- (D) where the Company may do so in accordance with the Regulations; or

- (E) any of the conditions referred to in Clauses 3.1 and 3.4 cease to be satisfied; or
- (F) it is otherwise permitted to do so under the terms of this Agreement; or
- (G) the Customer in the reasonable belief of the Company has made unauthorised use of electricity or committed theft of electricity;

and shall at all times act in accordance with Good Industry Practice in relation to such De-energisation.

Provided always that if the Company shall be notified of circumstances in which it may be instructed or required to act under (A) or (B) above, or becomes aware of circumstances in which it may wish to act under (C), (D), (E), (F) or (G) above, it shall forthwith notify the Customer.

- 4.2.3 The Company may De-energise the Exit Point on the provision of not less than two days notice in writing for the purpose of testing or for any other purpose connected with the carrying on of its activities in accordance with regulation 29 of the Regulations.

#### 4.3 De-Energisation Resulting from Breach

- 4.3.1 Subject to Sub-Clauses 4.1 and 4.2, if the Customer commits a breach of this Agreement then the Company may (without prejudice to its other rights and remedies):

- (A) where the breach is capable of remedy, give notice to the Customer specifying in reasonable detail the nature of the breach and requiring the Customer within 28 days (or any shorter period which the Company may reasonably require) after receipt of such notice to remedy the breach;
- (B) where the breach is incapable of remedy, give notice to the Customer specifying in reasonable detail the nature of the breach and requiring the Customer within 5 Working Days after receipt of such notice to give a written undertaking to the Company not to repeat the breach;
- (C) whenever the Company serves a notice on the Customer pursuant to Sub-Clauses 4.3.1 (A) or 4.3.1 (B) the Parties shall where appropriate discuss in good faith and without delay the nature of the breach and each shall use all appropriate procedures available to it in an attempt to establish as quickly as reasonably practicable a mutually acceptable way of ensuring future compliance by the Customer.

- 4.3.2 In the event that:

- (A) the Customer fails to comply with the terms of any valid notice served on it by the Company in accordance with Sub-Clause 4.3.1 (A) or is in breach of any undertaking given in accordance with Sub-Clause 4.3.1 (B); or
- (B) two Working Days have elapsed since the date of any valid notice served on the Customer in accordance with Sub-Clause 4.3.1 (A) and no written undertaking is given by the Customer in accordance with Sub-Clause 4.3.1 (B)

the Company may De-Energise the Exit Point provided that at the time of such De-energisation the failure or breach concerned remains unremedied.

- (C) Notwithstanding Sub-Clauses 4.3.1 and 4.3.2, if, following the occurrence of a breach of the nature referred to in Sub-Clause 4.3.1, such breach places the Company in breach of the Licence the Regulations, the Distribution Code, the Act, the BSC, the CUSC, and/or the Grid Code, the Company may De-Energise the Exit Point

4.4 This Agreement shall not give the Customer any right to a supply of electricity or to use the Distribution System, and the Company therefore makes no warranty to the Customer in relation thereto. Without prejudice to the foregoing, but subject to the provisions of the Distribution Code, the Company shall be entitled to plan and execute outages of the Distribution System and the Company's Equipment at any time and from time to time provided always that:

- (A) the Company shall give the Customer a minimum of two days' notice of its intention to De-energise the Exit Point unless:-
  - (1) Force Majeure prevents the Company from doing so; or
  - (2) the Exit Point must be De-energised forthwith by reason of accident or other emergency, or to avoid failure of, or serious interference with, other supplies.

- (B) the Company will re-Energise the Exit Point as quickly as reasonably practicable and with all due diligence.

4.5 At such times as the Exit Point is Energised in accordance with the terms of this Agreement, the characteristics of the supply of electricity delivered at the Exit Point shall be subject to such variations as may be permitted by the Regulations.

4.6 If the Exit Point is temporarily De-energised or Disconnected at the request of the Customer, the Customer shall pay to the Company on demand any costs incurred by the Company as a result of such De-energisation or Disconnection and any subsequent re-Energisation or re-Connection.

## 5. THE CUSTOMER'S INSTALLATION AND EQUIPMENT

- 5.1 The Customer shall ensure compliance at all times with the Regulations and any statutes, statutory instruments, regulations or orders in respect of the Customer's Installation which are binding on the Customer.
- 5.2 Save where express written representations are made by the Company, neither by inspection, if any, or non-rejection, nor in any other way, does the Company give any warranty, expressed or implied, as to the adequacy, safety, or other characteristics of the Customer's Installation and the Company shall not be responsible therefore.
- 5.3 The Customer hereby acknowledges that the Company may use switchgear with auto-reclosing facilities, that the Customer's Installation should be designed so as not to suffer damage through the operation of such facilities and that the Company accepts no liability for such damage (subject to Clause 6) to the extent (if any) such damage is attributable to the Customer's failure to so design the Customer's Installation.
- 5.4 If the Customer takes a supply of electricity from the Distribution System for the operation of any equipment which adversely affects or impairs voltage regulation or impairs the supply of electricity to the Customer or others supplied from the Distribution System (or in the reasonable opinion of the Company is likely to do so) the Customer shall at its own expense remedy the condition in a manner deemed adequate in the reasonable opinion of the Company (and if the condition is not remedied within a reasonable time of the Company giving notice to the Customer of such condition the Company may forthwith De-energise the Exit Point until such condition has been so remedied) and pay to the Company the full amounts of all costs losses and expenses thereby caused to the Company.
- 5.5 The Customer shall not connect any electricity generating plant to the Distribution System directly or indirectly without the prior written consent of the Company. Where the Customer possesses an emergency back-up electricity generation facility, it may utilise such facility at such times as a supply of electricity is not available from the Distribution System provided that it first isolates its generating plant from the Distribution System by De-Energising the Exit Point.
- 5.6 The Customer shall not Connect or permit to be Connected any Mainsborne Communications to the Customer's Installation whose purpose is to intentionally transmit communications and/or data to or receive communications and/or data from the Distribution System directly or indirectly without the prior written consent of the Company and such consent if granted may be conditional upon *inter alia* the Customer agreeing Technical Conditions.
- 5.7 If the Customer operates any equipment, including *inter alia* Mainsborne Communication to the Customer's Installation intended solely for the transmitting and receiving communications and/or data within the

Customer's Installation, which by its connection through the Customer's Installation to the Distribution System adversely affects or causes the failure of the Company or any other party, whether or not connected to the Distribution System, to comply at all times with the Regulations and any statutes, statutory instruments, regulations or orders as apply to those parties from time to time (or in the reasonable opinion of the Company may do so) the Customer shall, at its own expense, remedy the condition in a manner deemed adequate in the reasonable opinion of the Company and if the condition is not remedied within the time specified time by the Company in a notice to the Customer of such condition the Company may at any time De-Energise the Exit Point until such condition has been so remedied and the Customer shall pay to the Company the full amount of all reasonable costs, losses and expenses caused in effecting such De-Energisation and/or by the adverse effects or failure to comply aforesaid.

## 6. METERING

6.1 The Customer or the Authorised Electricity Operator must ensure that all relevant flows of electricity are Metered and must employ, as their agent, a Meter Operator Agent to install, maintain and/or remove the Metering.

6.2 Only Authorised Persons will be allowed to operate the Company's Connection Equipment or Metering Equipment including metering potential fuses (as appropriate) in order to connect any Metering at the Metering Point.

## 7 PLANT AND APPARATUS

7.1 Each Party shall ensure that its agents, employees and invitees will not interfere in any way with any of the Plant or Apparatus of the other Party without the other Party's consent except where emergency action has to be taken to protect the health and safety of persons or to protect the Company's Distribution System.

7.2 Each Party shall take all reasonable precautions at all times to protect the other Party's equipment on the Premises from damage and to comply with any reasonable requirements from time to time made by the other Party for that purpose.

7.3 If either Party breaches sub-clause 7.1 and/or 7.2 and as a result any equipment is lost or damaged, the Party in breach shall pay the other Party the full amount of, any loss, damage and expenses the other Party suffers as a result, unless such loss or damage was caused by fair wear and tear or Force Majeure.

## 8. ACCOMMODATION FOR THE COMPANY'S EQUIPMENT

8.1 The Customer shall provide or procure the provision of, at its own expense such building or other suitable accommodation or facilities as the Company may reasonably require for any of its Apparatus, Plant and

equipment at the Premises and the Customer shall at its own expense keep such accommodation or facilities in good and safe repair and condition.

8.2 The Customer shall grant or procure the grant free of charge (or procure the grant free of charge by the freehold or leasehold owner as the case may be of the Premises) to the Company a substation lease relating to the accommodation referred to above and the Customer shall obtain or procure the obtaining of all consents (including any mortgagees landlords or statutory consents) of any kind necessary to enable a valid substation lease to be granted.

8.3 If the lease referred to above is not granted or shall be terminated forfeited or surrendered (other than by replacement by a substitute lease) then the Company may terminate this Agreement by notice in writing to this effect to the Customer and the provisions of Clauses 17.4 and 17.5 shall apply.

8.4 The Company shall not be liable for any breach of this Agreement arising as a result of or caused by the landlord failing to comply with its obligations contained in the lease including in particular the obligation of the landlord to keep the substation building in good repair and water tight condition.

## 9. RIGHTS OF ACCESS

9.1 Each Party shall procure that such employees and/or agents and/or sub-contractors and/or invitees of the other as are reasonably necessary shall at all times be entitled to enter the Premises or the Company's Premises (as the case may be) at convenient times (except in the case of emergency) and upon reasonable notice (except in the case of emergency and reading of meters) for the purpose of carrying out of connection or modification works under Clause 5 and inspecting, testing, repairing, renewing, maintaining, isolating, protecting or removing the Company's Equipment or the Customer's Installation or any part thereof, reading of Meters and lawfully Disconnecting or De-Energising the Exit Point and for any other purpose required for the operation of the Distribution System and shall be given safe and unobstructed access thereto. In particular the provisions as to rights of access specified in paragraphs 7 to 10 of Schedule 6 to the Act shall apply to this Agreement. Any individuals to whom access is given pursuant to this Clause 9 shall comply with all reasonable directions given by the Company or the Customer (as the case may be) and its appropriately authorised employees and agents as to general safety and site security requirements.

## 10. NON-INTERFERENCE

10.1 Each Party shall ensure that its agents, employees and invitees will not interfere in any way with any of the Plant and/or Apparatus of the other

without the consent of the other and neither Party shall knowingly do anything which would place the other in breach of the Regulations.

- 10.2 The obligations contained in Clause 10.1 shall be suspended if a situation should occur whereby emergency action has to be taken to protect the health and safety of persons or to prevent damage to property proximate to the relevant asset or to preserve or protect the Distribution System, in which case interference in order to protect the health and safety of such persons or to prevent such damage to property shall be allowed.
- 10.3 If, in the reasonable opinion of the Company, the condition or manner of operation of the Customer's Installation or other equipment poses an immediate threat of injury or material damage to any person or to the Company's Equipment or the Distribution System, the Company shall have the right to De-energise the Customer's Installation if it is necessary or expedient to do so to avoid the occurrence of such injury or damage.
- 10.4 If, in the reasonable opinion of the Customer, the condition or manner of operation of the Distribution System or the Company's Equipment poses an immediate threat of injury or material damage to any person or to the Customer's Installation or other equipment the Customer shall have the right to De-energise the Customer's Installation if it is necessary or expedient to do so to avoid the occurrence of such injury or damage.
- 10.5 The Company may temporarily De-energise the Connection Point to avoid danger or a breach of the Regulations or in the case of an emergency affecting or likely to affect the Distribution System or GB Transmission System or any other distribution or transmission system or to permit other persons to connect to the Distribution System provided that the Company shall give the Customer at least 2 days notice (using its best endeavours to provide as long a notice as practicable) unless prevented by Force Majeure.
- 10.6 The Company or, as the case may be, the Customer shall re-Energise the Customer's Installation as quickly as practicable after the circumstances leading to any De-energisation under Clauses 10.3, 10.4 or 10.5 (as the case may be) have ceased to exist.
- 10.7 The Customer shall maintain the Customer's Installation so that it is reasonably fit for the purpose for which it is used and so that neither it or its operation or use shall be liable to cause damage to or interference with the Distribution System or its operation or use or the supply to other customers connected to that system or to the GB Transmission System.

## 11 LIMITATION OF CAPACITY

- 11.1 The Customer shall not at any time:-
  - (A) pass electricity through the Customer's Installation on to the Distribution System at the Entry Point in excess of the Maximum Export Capacity; or



(B) take any supply of electricity through the Customer's Installation from the Distribution System at the Exit Point in excess of the Maximum Import Capacity.

- 11.2 In the event that either the Maximum Export Capacity or the Maximum Import Capacity is exceeded, the Company may give written notice setting out details of and requesting the Customer to remedy the situation. If the Customer has not remedied the situation within three days of receipt of such written notice or such longer period as may be agreed between the Company and the Customer both parties acting reasonably, the Company reserves the right to De-energise the Exit Point until such time as the Customer is able to satisfy the Company that the Maximum Export Capacity or the Maximum Import Capacity (as appropriate) will not be exceeded on the Connection being renewed or that arrangements have been made to vary the Maximum Export Capacity or Maximum Import Capacity (as appropriate) pursuant to Clause 11.4 or for a Modification pursuant to Clause 13.
- 11.3 Where the Maximum Export Capacity or the Maximum Import Capacity (as the case may be) is exceeded the Customer shall pay to the Company the reasonable additional costs incurred by the Company as a result thereof, including the cost of De-energising the Exit Point pursuant to Clause 11.2 and any subsequent re-Energisation.
- 11.4 Except where such variation requires construction works to be carried out by the Company at the Exit Point or amounts to a Modification, the Customer may request that the Company agrees to vary the Maximum Export Capacity and/or Maximum Import Capacity by giving 28 days' notice to the Company. Where construction works are so required, or the variation amounts to a Modification, the Parties will proceed in accordance with the provisions of Clauses 13.2, 13.3 and 13.4.
- 11.5 No notice served pursuant to Clause 11.4 to reduce the Maximum Export Capacity or the Maximum Import Capacity shall take effect earlier than twelve months from the last variation made pursuant to Clause 11.4, unless otherwise agreed by the Company.

## 12. POWER FACTOR AND PHASE BALANCE

- 12.1 Subject to Clause 12.2 the Customer shall at all times maintain the power factor of any supply at or as near to unity as practicable but in any case no less than 0.95 lagging. The Customer shall not allow its power factor to vary such as to cause damage or disturbance to the Distribution System.
- 12.2 The Customer shall not at any time operate a leading power factor without prior agreement with the Company or unless required to do so by the Company for operational reasons.
- 12.3 Where a supply of electricity is provided in two or more phases, the Customer shall ensure as far as it is reasonably practicable that the demand is at all time balanced between the phases.

12.4 If the Customer fails to comply with Clause 12.1, 12.2 or 12.3 the Company may in its reasonable discretion and having given such notice as it considers reasonable in the circumstances De-energise the Exit Point until the causes of the failure are remedied. The Customer shall pay to the Company on demand the costs of any such De-Energisation and any subsequent re-Energisation. If the Customer is unable to remedy the situation within a reasonable time, the Company may require a modification to be made to the Company's Equipment and/or the Customer's Installation.

### 13. MODIFICATIONS

- 13.1 No Modification may be made by or on behalf of either Party otherwise than in accordance with the provisions of this Clause 13.
- 13.2 Where the Customer wishes to make a Modification it shall complete and submit to the Company an Application for a Modification.
- 13.3 The Company shall make a Modification Offer to the Customer as soon as reasonably practicable and (save where the Authority consents to a longer period) in any event not more than 3 months after receipt by the Company of the Application for a Modification. The Modification Offer shall include details of any variations the Company proposes to this Agreement. During such period the Parties shall discuss in good faith the implications of the proposed Modification(s).
- 13.4 The Modification Offer made by the Company in response to the application will be open for acceptance in accordance with its terms for 3 months from its date of despatch to the Customer unless either the Company or the Customer makes an application to the Authority under Condition 7 of the Electricity Distribution Licence in which event the Modification Offer shall remain open for acceptance until the date 14 days after the determination by the Authority pursuant to such application. If the Modification Offer is accepted by the Customer this Agreement shall be varied to reflect the terms of the Modification Offer and the Modification shall proceed according to the terms of this Agreement as varied.
- 13.5 Where the Company wishes to make a Modification to the Distribution System the Company shall complete and submit to the Customer a Modification Notification and shall advise the Customer of any works which the Company reasonably believes the Customer may have to carry out as a result.
- 13.6 The Customer may as soon as practicable after receipt of the Modification Notification and (save where the Authority consents to a longer period) within the period stated therein (which shall be sufficient to enable the Customer to assess the implications of the proposed Modification) make an application to the Authority under Condition 7 of the Electricity Distribution Licence.

- 13.7 As soon as practicable after the receipt of the Modification Notification or, if an application to the Authority has been made, the determination by the Authority, and in any event within 2 months thereof, the Customer shall submit an Application for a Modification to the Company.
- 13.8 Once an Application for a Modification has been made by the Customer pursuant to Clause 13.7 the provisions of Clauses 13.3 and 13.4 shall thereafter apply.
- 13.9 Subject to the payment of its reasonable charges, if any, as provided in this Clause 13.9 the Company undertakes to the Customer to provide all advice and assistance reasonably requested by the Customer to enable the Customer adequately to assess the implications including the feasibility of making a Modification to the Customer's Installation (whether such Modification is to be made at the request of the Company or of the Customer). If the proposed Modification by the Customer is or may be required as a result of a Modification proposed by the Company, then the Company shall provide such advice and assistance free of charge. If the proposed Modification is or may be proposed by the Customer, the Company may charge the Customer such amount as is reasonable in all the circumstances for such advice and assistance. The provisions of such advice and assistance shall be subject to any confidentiality obligations binding on the Parties.

#### 14 LIMITATION OF LIABILITY

- 14.1 Neither Party shall be liable for any breach of this Agreement directly or indirectly caused by Force Majeure.
- 14.2 Subject to Clause 14.5 and save as provided in this Clause 14.2 and Clause 14.3 and save where any provisions of this Agreement provide for an indemnity neither Party ("the Party Liable") nor any of its officers, employees or agents shall be liable to the 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 :
- (A) physical damage to the property of the other Party, its officers, employees or agents; and/or
  - (B) 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:-

- (1) the liability of either Party in respect of claims for such loss shall in no circumstance exceed one million pounds

(£1,000,000) per incident or series of related incidents in any 12 month period; and

(2) where such incident or series of related incidents entitles the Customer to claim compensation from the Company under this Agreement and any other Agreement the Company's aggregate liability under this Agreement and all such other agreements in respect of that incident or series of related incidents shall not exceed one million pounds (£1,000,000), irrespective of whether the Customer has claimed under this Agreement and/or any other agreement; and

(3) the Company shall be entitled to deduct from any sums payable by way of compensation for loss or damage under this Agreement, any sums payable by the Company under the agreement for use of the Distribution System referred to in Clause 3.4(A) above and any agreement for an electricity supply made between the Company and the Customer in respect of such loss or damage suffered by the Customer its officers, employees or agents.

Provided further that the Company shall be entitled to deduct from any sums payable by way of compensation for loss or damage under this Agreement, any sums payable by the Company under the DCUSA in respect of any such loss or damage suffered by the Customer, its officers, employees, or agents.

- 14.3 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 Party, its officers, employees or agents from and against all such and any loss or liability which such other Party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liable, or any of its officers, employees or agents.
- 14.4 Subject to Clause 14.5 neither Party, nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other Party for any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill or any indirect or consequential loss or loss resulting from the liability of such other Party to any other person however and whenever arising except under Clause 14.3. For the avoidance of doubt, the Company shall have no liability to the Customer to pay to any person the DGNU Payment unless by prior agreement in writing.
- 14.5 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 without limitation any rights either Party may

possess in tort which shall include without limitation actions brought in negligence and/or nuisance. Accordingly, each Party hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute, and releases the Company 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.

14.6 Save as otherwise expressly provided in this Agreement, this Clause 14 insofar as it excludes or limits liability shall override any other provision of this Agreement, provided that nothing in this Clause 14 shall exclude or restrict or otherwise prejudice or affect any of:

(A) the rights, powers, duties and obligations of either Party which are conferred or created by the Act, (or any subordinate legislation made under it), the Licence, or the Regulations; or

(B) the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, the Licence or otherwise howsoever.

14.7 Each of the Clauses of this Clause 14 shall:

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

(B) survive termination of this Agreement.

14.8 Each of the Parties agrees that the other Party holds the benefit of Clauses 14.2 and 14.3 for itself and as trustee and agent for its officers, employees and agents.

14.9 Nothing in this Clause 14 shall be construed so as to prevent the Company from bringing an action in debt against the Customer and for the avoidance of doubt such right shall survive termination of this Agreement.

14.10 Each Party hereby acknowledges and agrees that the provisions of this Clause 14 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof.

## 15. COMPLIANCE WITH DISTRIBUTION CODE

15.1 The Parties undertake with each other to comply with all provisions of the Distribution Code applicable to them.

15.2 In the event of any conflict between this Agreement and the Distribution Code the Distribution Code shall prevail.

16. ASSIGNMENT AND SUB-CONTRACTING

- 16.1 (a) Subject to Clause 16.1(b), neither Party shall assign its benefit or burden under this Agreement without the prior written consent of the other Company, such consent not to be unreasonably withheld.
- (b) Either Party may assign or charge its benefit under this Agreement in whole or in part by way of security.
- 16.2 Notwithstanding Clause 16.1, the Company shall be entitled without the consent of the Customer to assign its right and/or obligations under this Agreement, whether in whole or in part, where such assignment is to an Affiliate of the Company and such Affiliate is or will be entitled in terms of an Electricity Distribution Licence to perform the obligations of the Company under this Agreement thereby assigned.
- 16.3 Neither Party shall have the right to sub-contract or delegate the performance of any of its obligations or duties arising under this Agreement including activities envisaged by the Distribution Code without the prior consent of the other. The sub-contracting by the Company or the Customer of the performance of any obligations or duties under this Agreement or of any activities envisaged by the Distribution Code shall not relieve the Company or the Customer (as the case may be) from liability for performance of such obligation or duty.

17. TERM, EVENTS OF DEFAULT AND TERMINATION

- 17.1 Subject to Clause 2, this Agreement shall continue until terminated in accordance with this Clause 17 or it is replaced with a later Agreement.
- 17.2 Either Party may terminate this Agreement by giving the other not less than one month's notice in writing provided that the Company shall not give such notice so long as it is required to offer terms to the Customer for a connection of the Customer's Installation to the Distribution System at the Exit Point.
- 17.3 In the event that:-
- (a) the Customer shall fail in any material respect to perform or comply with any of the obligations expressed to be assumed by it under this Agreement including for the avoidance of doubt its obligation (subject to derogations) to comply with the Distribution Code and (if it is capable of remedy) it is not remedied to the reasonable satisfaction of the Company within 30 days of receiving written notice from the Company of the occurrence thereof and requiring the same to be remedied; or
- (b) (1) an interim order or bankruptcy order is made in respect of the Customer under the Insolvency Act 1986 or a voluntary arrangement is proposed in respect of him; or

- (2) an order of the Court is made or an effective resolution passed for the insolvent winding up or dissolution of the Customer; or
  - (1) a receiver (which expression shall include an administrative receiver within the meaning of Section 29 of the Insolvency Act 1986) of the whole or any material part of the assets or undertaking of the Customer is appointed; or
  - (2) an administration order under Section 8 of the Insolvency Act 1986 is made or if a voluntary arrangement is proposed under Section 1 of that Act in respect of the Customer; or
  - (3) the Customer enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation); or
  - (4) the Customer is unable to pay its debts (within the meaning of Section 123(1) or (2) of the Insolvency Act 1986

and in any such case within 28 days of his appointment the trustee in bankruptcy, liquidator, receiver, administrative receiver, administrator, nominee or other similar officer has not provided to the Company a guarantee of future performance by the Customer of this Agreement in such form and amount as the Company may reasonably require;

such event shall become an event of default when the Company declares by notice in writing to the Customer that such event has become an event of default provided that at that time the event of default continues unremedied.

- 17.4 Once any termination notice under Clause 17.2 has expired or the Company has given notice of an event of default pursuant to Clause 17.3 this Agreement shall terminate and, without prejudice to the other rights and remedies of the Company, the Company may Disconnect the Exit Point.
- 17.5 Upon termination of this Agreement the Customer shall allow the Company at its sole option to enter the Premises and the Company's Premises in order to remove the Company's Equipment and shall pay to the Company all sums then due and payable or accrued due under this Agreement and any reasonable costs incurred by the Company in Disconnecting the Exit Point and removing the Company's Equipment.

## 18. FORCE MAJEURE

If either Party shall be unable to carry out any of its obligations under this Agreement due to a circumstance of Force Majeure this Agreement shall remain in effect but save as otherwise provided herein both Parties' obligations other than any obligation as to payment of charges shall be suspended without liability for a period equal to the circumstance of Force Majeure provided that:

- (a) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (b) no obligations of either Party that arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure; and
- (c) the non-performing Party uses all reasonable efforts to remedy its inability to perform.

## 19. NON-WAIVER

19.1 None of the provisions of this Agreement shall be considered waived by either Party except when such waiver is given in writing.

19.2 No delay by or omission of either Party in exercising any right, power, privilege or remedy under this Agreement or the Distribution Code shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other future exercise thereof or the exercise of any other right, power, privilege or remedy.

## 20. GOVERNING LAW

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

## 21. DISPUTES RESOLUTION

Without prejudice to the rights of the Parties given in the Electricity Distribution Licence or the Act in respect of dispute resolution, the Parties shall not be obliged to submit any dispute, difference or question arising under or in connection with this Agreement to any prescribed method of resolution but shall be entitled, in the event of a failure to agree between them on a method of dispute resolution, to commence such proceedings or make such reference as they may competently pursue.

## 22. VARIATIONS

22.1 The terms of this Agreement will be changed automatically to incorporate any changes which are approved by the regulator, the Authority. Any change which is approved will be published on the website of the Energy Networks Association and in the national press.



- 22.2 Subject to Clause 22.1, no variations to this Agreement shall be effective unless made in writing and signed by or on behalf of both Parties. Each Party shall effect any amendment required to be made to this Agreement as a result of settling any of the terms hereof and the Customer hereby authorises and instructs the Company to make any such amendment on its behalf and undertakes not to withdraw, qualify or revoke such authority or instruction at any time.
- 22.3 Either Party shall at any time be entitled to propose variations to this Agreement by notice in writing to the other Party. The Company and the Customer shall negotiate in good faith the terms of any such variation, but if a variation to the Agreement has not been agreed and put into effect within one month after it has been proposed, either Party shall be entitled to refer the matter to the Authority, pursuant to Condition 7 of the Electricity Distribution Licence, as if the variation were a new agreement as referred to in that condition. The Parties shall give effect to the determination of the Authority and shall enter into any agreement supplemental to this Agreement as shall be necessary to give effect to any variation agreed or so determined.

## 23. SAVINGS CLAUSE

If any provision of this Agreement is or becomes or is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject or by order of the Commission of the European Union or by order of the Secretary of State such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.

## 24. NOTICES

- 24.1 Any notice, demand, certificate or other communication required to be given or sent under this Agreement shall be in writing and either delivered personally or by first class post.
- 24.2 The required address for the Company for the purposes of this Clause shall be its registered address and for the Customer for the purposes of this Clause shall be the Premises or such other address notified by such Party to the other from time to time.
- 24.3 A notice or other form of communication shall be deemed to have been served as follows:
- (a) if given or delivered personally at the time when given or delivered;
  - (b) if sent by pre-paid first class post at the expiration of two Business Days after the document was delivered into the custody of the postal authorities.

In proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing the notice was properly addressed as set out above and delivered into the custody of the postal authorities as a pre-paid first class letter as the case may be.

25. CONTRACTS (Rights of Third Parties) ACT 1999

The parties hereto hereby acknowledge and agree for the purposes of the Contracts (Rights of Third Parties) Act 1999 that no rights, powers or benefits are or shall be conferred on any person pursuant to this Agreement except for such rights, powers or benefits as are expressly conferred on the parties hereto in accordance with, and subject to, its terms.