

## **SCHEDULE 2B – NATIONAL TERMS OF CONNECTION**

- A. The electricity you receive from **or provide to** your electricity supplier will be delivered using the distribution system owned or operated by your electricity network operator. To receive a supply of or to provide electricity you require both:
- a connection agreement with your electricity network operator to maintain the connection of your **premises installation** to the network; and
  - a supply contract with your electricity supplier **(where appropriate)**.
- B. Your electricity supplier has been appointed as the agent of your electricity network operator to obtain a **standard** connection agreement with you on the National Terms of Connection set out below. When you enter into your contract with your electricity supplier, you are also entering into a **standard** connection agreement with your electricity network operator on these terms.
- C. **The National Terms of Connection contain 3 sections and only one of them will apply to you, depending on the physical nature of your connection:**
- i) **if your connection is metered directly by putting the full electrical current through the meter ("Whole Current Metering"), [as is usually the case with domestic properties and small industrial and commercial properties], Section 1 will apply.**
  - ii) **if your connection is metered indirectly by using current transformers to induce a reference current which is then put through the meter ("C/T Metering"), [as is usually the case with large industrial and commercial properties], Section 2 will apply.**
  - iii) **if your electricity network operator has agreed that your connection need not be metered ("Unmetered Supply"), [as is usually the case with street lighting], Section 3 will apply.**
- D. **Any existing terms applying to your connection to our distribution system (except for another standard connection agreement or connection terms contained within a supply contract) will apply instead of this agreement to the extent that they are inconsistent with this 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 in accordance with the terms contained herein.

- E. This Agreement entitles the Customer to use the Distribution System for the supply of electricity, pursuant to the Electricity Act 1989, only. Any other use of the Distribution System, including the transmission of data or communications, is strictly prohibited unless by prior written agreement of the Company. Where any other use of the Distribution System is made without such agreement it shall be a breach of this agreement and the Customer shall be liable for costs incurred by the Company, whether direct or indirect, arising from such other use.

### **For information: supply characteristics**

As required by law, the electricity delivered to your Connection Point 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 alternating voltage: normally a single-phase supply, with a permitted range of voltage variation from plus 10% to minus 6%.
- At 400 volts nominal alternating voltage: normally a three-phase supply, with a permitted range of voltage variation from plus 10% to minus 6%.
- At a nominal alternating voltage equal to or greater than 1000 volts but not exceeding 132,000 volts : normally a three-phase supply, with a permitted range of voltage variation from plus 6% to minus 6%.

For the avoidance of doubt this range includes not exhaustively Connection Points with a nominal alternating voltage of 3.3kV, 6.6kV, 11kV, 20kV, 22kV, 25kV, 33kV, 66kV.

- At a nominal alternating voltage equal to or greater than 132,000 volts : normally a three-phase supply, with a permitted range of voltage variation from plus 10% to minus 10%.
- At the above voltages: the supply frequency will be 50 hertz, with a permitted nominal variation of plus or minus 1%.

## SECTION 1

Your terms and conditions if your connection is Whole Current Metered 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 Connection Point, the electricity network operator which owns or operates that distribution system.
2. *Connection to our network.* Your Connection Point 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.
3. *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.
4. *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.
5. *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.
6. *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.

7. *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.
8. *Business customers.* If the electricity supplied to your Connection Point 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.
9. *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 [www.connectionterms.co.uk](http://www.connectionterms.co.uk) and in the national press.

Either of us may ask the other to enter into an alternative 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.
10. *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.

11. *Transferring this connection agreement.* You are not entitled to transfer this agreement to another person without our consent.
12. *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.
13. *Governing law.* This agreement will be governed by and interpreted in accordance with English law, under the jurisdiction of the English and Scottish courts.



## SECTION 2

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

### 1. **DEFINITIONS**

1.1 In this Section 2, except where the context otherwise requires, the following expressions shall have the meaning set out opposite them and cognate expressions shall be construed accordingly:

:**“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;

**"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)"** 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 Connection Point;

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

**" 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;

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

**"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 between the



Distribution System and to the Customer's Installation at the Connection 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;

**"Disconnection Notice"** means a notice sent by the Supplier to the Company to Disconnect a Metering Point;

**"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 between the Distribution System and the Customer's Installation at the Connection Point and "Energised" shall be construed accordingly;

**"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;

**"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 a Connection Point and any group of Connection Points providing connection to a premises, the maximum amount of electricity expressed in kW or kVA which is permitted to flow **into** the Distribution System through the Connection Point and the maximum amount of

electricity expressed in kW or kVA which is permitted to flow **into** the Distribution System concurrently through a group of Connection Points providing the connection to a premises;

**"Maximum Import Capacity"** means in respect of a Connection Point and any group of Connection Points providing connection to a premises, the maximum amount of electricity expressed in kW or kVA which is permitted to flow **from** the Distribution System through the Connection Point and the maximum amount of electricity expressed in kW or kVA which is permitted to flow **from** the Distribution System concurrently through a group of Connection Points providing the connection to a premises; **"Meter"** a device that measures the electricity that flows through the Connection 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 Connection 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 14 of terms for connection in relation to any proposed Modification at or affecting the Connection 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;

**"Property Documents"** means the documents specified in an Agreement between the Company and the Customer.

**"Re-energisation"** the movement of any switch or the installation of any fuse or the taking of any other step whereby electrical current can flow between the Distribution System and to the Customer's Installation at the Connection Point and "Re-energise(d)" shall be construed accordingly;

**"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;

**"System Outage"** means the deliberate act by the Company, by whatever means it determines, to interrupt the flow of electrical current to a part or parts of its Distribution System, for the purposes of carrying on its activities;

**"Working Day(s)"** has the meaning given to that term in Section 64 of the Act;

1.2 In this Agreement any reference to:

- (i) "a clause" is a reference to a clause hereof;
- (ii) "the Customer" is a reference to you;
- (iii) "the Company" is a reference to the electricity network operator to whose Distribution System your premises are connected;
- (iv) 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 or supplemented.

1.5 Any reference on 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 case of reference only.

## **2. CONNECTION**

2.1 This Agreement shall govern the terms upon which the Customer's Installation shall be entitled to be Connected to and remain Connected to the Distribution System.

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

3.1 The Customer's Installation will remain connected to the Company's 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.

3.2 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.

3.3 The Customer warrants to the Company that in relation to any electricity exported through the Connection Point by the Generating Plant in accordance with the Agreement that either:

3.3.1 it will trade electricity through a licenced electricity supplier in SVA and that

- (A) it is not required to enter into the CUSC or any supplemental agreement thereto
- (B) it is exempted from the requirements to obtain a generation licence pursuant to Section 5 of the Act; and
- (C) it is not required to be a party to the Balancing and Settlement Code: OR

3.3.2 it will trade independently the electricity in CVA and that

- (A) it has entered into the CUSC and supplemental agreements thereto;
- (B) it holds a generation licence under Section 6 of the Act; and
- (C) it has become a party to the Balancing and Settlement Code: OR

3.3.3 it will trade the electricity generated through a consolidator in CVA an that:

- (A) it has entered into the CUSC and supplemental agreements thereto or it is not required to enter into the CUSC or any supplemental agreement thereto;
- (B) 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
- (C) 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.

3.4 The Customer shall notify the Company as soon as reasonably practicable

if either Clause 3.2 or Clause 3.3 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 Clause 3.2 or Clause 3.3.

3.5 The Company shall at all times be entitled without cost to it to:

- (A) occupy the Premises; and
- (B) exercise the rights created by any Property Documents and upon the expiry or termination of the rights created thereby for so long thereafter upon the same terms as are contained in the Property Documents as Connection of the Customer's Installation (to whomsoever the same may from time to time belong) to the Distribution System may be required and lawfully continued.

3.6 Subject to the provisions of this Agreement, and where appropriate the relevant Bilateral Connection Agreement, the Company shall use reasonable endeavours to:

3.6.1 ensure the Maximum Import Capacity and the Maximum Export Capacity is available to you at all times; and

3.6.2 maintain the connection characteristics at the Connection Point.

3.7 The right to be (and remain) Connected does not include the right to be (and remain) Energised.

#### **4. THE CUSTOMER'S RIGHT TO BE (AND REMAIN) ENERGISED**

4.1 The Customer's right to be (and remain) Energised is subject to and conditional upon the Customer having:

- (A) a Party appointed and responsible for flows of electricity pursuant

to Settlement under the BSC; and

(B) a supply contract and/or power purchase contract where applicable;  
and

(C) metering equipment installed; and

(D) any necessary agreements in place with GBSO.

4.2 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.

4.3 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.

4.4 When the Customer's Connection Point is Energised in accordance with the terms of this Agreement, the characteristics of the supply of electricity delivered shall be subject to such variations as may be permitted by the Regulations. The Company does not guarantee that the supply of electricity will be free from the transient variations in voltage and frequency or voltage pulses or harmonic frequencies and the Customer must take its own protective measures if it requires a higher standard of supply.

4.5 Without prejudice to Clause [4.2], 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 from time to time and shall comply with its obligations under the Electricity Act to give notice.



## 5. **DE-ENERGISATION**

### 5.1 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 Connection 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 with the prior agreement of the Company 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 Connection Point as quickly as practicable after the circumstances leading to any De-energisation under this Clause 5.1.

### 5.2 De-energisation

- 5.2.1 The Company shall De-energise your Connection Point within a reasonable time or, in circumstances of urgency as soon as is reasonably practicable after being instructed to do so either by the Customer or by the Customer's electricity supplier under the terms of the Customer's Supply Contract.

- 5.2.2 Where the instruction has been given by the Customer's electricity supplier, the Company need not give the Customer notice of its intention to De-energise.
- 5.2.3 The Company may 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 reasonable endeavours to provide as long a notice as practicable).
- 5.2.4 The Company may, on giving you two Working Days' prior written notice, De-energise your Connection Point if any of the conditions set out in Clause 3 and Clause 4 cease to be fulfilled 10 Working Days after the service of notice by the Company requiring you to remedy the situation.
- 5.2.5 Notwithstanding the provisions of Clause [5.3], the Company may, at any time with no prior notice to the Customer, De-energise the Customers Connection Point if:
- (A) the Company is instructed, pursuant to the terms of the Connection and Use of System Code or the Balancing and Settlement Code to do so; or
  - (B) the Company reasonably considers it necessary to do so for safety or systems security reasons; 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 Clause 3.5 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;
- (H) the Customer breaches this Agreement; or
- (I) the Customer's rights under this Agreement have been lawfully suspended; or
- (J) the Customer's actions cause the Company to breach this Agreement; or
- (K) the Company reasonably considers it necessary to do so to avoid interference with the regularity or efficiency of its Distribution System; or
- (L) an accident or emergency occurs or threatens to occur which requires the Company to do so to avoid the risk of personal injury to any person or physical damage to the property of the Company, its officers, employees or agents, or the property of any other person; or
- (M) it is entitled to do so where the capacity and other technical parameters of the constituent elements which make up the Distribution System provide operational constraints on the use of the system and the coincidence of the use of the system; or

(N) subject to the terms of a replacement agreement, this Agreement is terminated in accordance with the provisions of Clause [termination clause].

(O) it is entitled to do so under DCUSA.

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.

5.3 Notwithstanding the provisions of Clause [5.1], the Company may, at any time with no prior notice to the Customer, De-energise the Connection Point if:

5.3.1 the Company is required to do so as part of a System Outage carried out in accordance with its statutory rights and obligations and Good Industry Practice.

5.4 If the Customer's Connection Point 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 and any subsequent Re-energisation.

5.5 Where the Company De-energised the Customer's Connection Point as requested in Clause [5.4], the Company shall Re-energise the Customer's Connection Point, as soon as is reasonably practicable after being instructed to do so by the Customer or the Customer's electricity supplier.

5.6 Save as provided for under Clause 5.1.B, where the instruction has been given by the Customer's electricity supplier to Re-energise the Connection Point, the Company will give the Customer and/or the Customer's electricity supplier notice of its intention to Re-energise.

5.7 The Company may De-energise the Connection 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.

5.8 The Company shall act in accordance with Good Industry Practice when undertaking work relating De-energisation and any subsequent Re-energisation.

5.9 If the Company resolves to De-energise the Customer's Premises pursuant to Clause [5];

5.9.1 The Company shall decide on the extent and nature of the work required to De-energise the Customer's Connection Point; and

5.9.2 The Company shall Re-energise the Connection Point as soon as is reasonably practicable after the circumstance giving rise to such De-energisation has ended.

5.10 If at any time when the Customer does not have a right got a relevant Connection Point to be (and remain) Energised but nevertheless takes a supply of electricity through the relevant Connection Point the Customer shall pay to the Company forthwith upon demand such sum as the Company may require for such supply of electricity in accordance with the Company's then charges, together with such other reasonable and proper Costs, losses and expenses as the Company has incurred as a result thereof.

5.11 If at any time when the Customer does not have a right for a relevant Connection Point to be (and remain) Energised but nevertheless takes a supply of electricity through the relevant Connection Point the Customer shall pay to the Company forthwith upon demand such sum as the

Company may require for such supply of electricity calculated in accordance with the Company's then charges, together with such other reasonable and proper Costs, losses and expenses as the Company has incurred as a result thereof.

**6. DISCONNECTION**

- 6.1 The Customer or the Customer's electricity supplier where applicable, shall be entitled to send to the Company a notice requesting the Company to Disconnect the Customer's Connection Point after providing an explanation for why there is no reasonably foreseeable future use for the Connection Point. In respect of any notice sent to the Company pursuant to this Clause 6.1, the Customer shall specify the date on which the Disconnection is required.
- 6.2 Unless agreed otherwise following the receipt of a notice under Clause 4.n the Company shall remove its Connection Equipment from the Customer's premises at the Customer's or Customer's electricity supplier's cost where applicable

**7. THE CUSTOMER'S INSTALLATION AND EQUIPMENT**

- 7.1 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.
- 7.2 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.
- 7.3 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.

- 7.4 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 Connection 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.
- 7.5 If the Customer installs 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 the Customer must inform the Company of its intention to use the source of energy in parallel with the Company's distribution system no later than 28 days (inclusive of the day of commissioning) after commissioning the equipment. So long as the Customer does this, it does not need consent from the Company.
- 7.6 Where the Customer is provided with an alternative connection to a Connection Point from the Company's Distribution System the alternative connection may be Energised only after first De-energising the previous connection by a method agreed with the Company. Where the Customer's Installation is permanently connected to more than one Connection Point,

the Customer shall at its expense ensure that there does not exist within the Customer's Installation the facility to parallel across more than one Connection Point unless expressly agreed by the Company.

7.7 The Customer shall not connect any other electricity generating plant to the Distribution System directly or indirectly without the prior written consent of the Company.

7.8 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.

7.9 .

7.10 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.

## **8. THE COMPANY'S INSTALLATION AND EQUIPMENT**

8.1 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 to any Metering at the Metering Point.

## **9. PLANT AND APPARATUS**

9.1 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 without the consent of the other and neither Party shall knowingly do anything which would place the other in breach of the Regulations, except, and subject to Clause 6.2, where emergency actions has to be taken to



protect the health and safety of persons or to protect the Company's Distribution System

9.2 If either Party breaches sub-clause 1 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.

9.3 Where emergency action pursuant to [sub-clause 1] includes De-energisation, the Company, subject to Clause [6.2], shall Re-energise the Customer's Installation as quickly as practicable after the circumstances leading to any De-energisation have ceased to exist.

## **10. ACCOMODATION FOR THE COMPANY'S EQUIPMENT**

10.1 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, Metering Equipment 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.

10.2 Where applicable 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.

10.3 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.

10.4 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.

10.5 The Customer will allow the Company (at the Company's expense) to install monitoring equipment on the Connection Point if the Company considers it necessary to do so. Such monitoring equipment will be independent of and additional to the Metering, and shall remain the Company's property.

## **11. RIGHTS OF ACCESS**

11.1 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 Connection 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.

## **12. LIMITATION OF CAPACITY**

12.1 The Customer shall not be entitled to exceed the Maximum Import Capacity and the Maximum Export Capacity (respectively).

12.2 The Company shall only be obliged to export or import electricity up to the Maximum Import Capacity and Maximum Export Capacity.

12.3 On each occasion where the Customer's import of electricity exceeds the Maximum Import Capacity or the Customer's export of electricity exceeds the Maximum Export Capacity it shall be a breach of this Agreement and the Customer shall:

12.3.1 upon written notification by the Company, take reasonable actions to reduce the import or export of electricity to within the specified limits by a specified time or such longer period as may be agreed; and

12.3.2 if appropriate, propose a variation to the Company in accordance with the provisions of Clause 12.5; and/or

12.4 if appropriate, submit a Modification Application to the Company in accordance with the provisions of Clause 14.

12.5 Following an occurrence of a breach (as defined in Clause 12.3), the Company shall be entitled to:

12.5.1 charge additional Use of System Charges for Use of Distribution System that is in excess of the Maximum Import Capacity or Maximum Export Capacity in accordance with the Company's Relevant Charging Statement; and

12.5.2 exercise its rights under Clause [4].

12.6 Except where a variation requires a Modification, either party may propose a variation to the Maximum Import Capacity and/or Maximum Export Capacity by notice in writing to the other party. The Company and the Customer shall negotiate in good faith such a variation, but if it has not been agreed and put into effect within 20 Working Days after it has been proposed, either party shall be entitled to refer the matter to the Authority. The parties shall give effect to the determination of the Authority.

12.7 A notice served pursuant to Clause 12.6 to reduce the Maximum Import Capacity or the Maximum Export Capacity shall only take effect twelve months from the last variation, unless otherwise agreed by the Company.

### **13. POWER FACTOR AND PHASE BALANCE**

13.1 Subject to Clause 13.2 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.

13.2 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.

13.3 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.

13.4 If the Customer fails to comply with Clause 13.1, 13.2 or 13.3 the Company may in its reasonable discretion and having given such notice as it considers reasonable in the circumstances De-energise the Connection 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.

#### **14. MODIFICATIONS**

- 14.1 No Modification may be made by or on behalf of either Party otherwise than in accordance with the provisions of this Clause 14.
- 14.2 Where the Customer wishes to make a Modification it shall complete and submit to the Company an Application for a Modification.
- 14.3 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. During such period the Parties shall discuss in good faith the implications of the proposed Modification(s).
- 14.4 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.
- 14.5 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.

14.6 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.

14.7 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.

14.8 Once an Application for a Modification has been made by the Customer pursuant to Clause 14.7 the provisions of Clauses 14.3 and 14.4 shall thereafter apply.

14.9 Subject to the payment of its reasonable charges, if any, as provided in this Clause 14.9 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),

14.9.1 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,

14.9.2 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.

14.10 The provisions of such advice and assistance shall be subject to any confidentiality obligations binding on the Parties.

14.11 The Company shall have no obligation to compensate the Customer for the cost and expenses incurred by the Customer as a result of any Modification by the Company.

## **15. LIMITATION OF LIABILITY**

15.1 Neither Party shall be liable for any breach of this Agreement directly or indirectly caused by Force Majeure.

15.2 Subject to Clause 15.5 and save as provided in this Clause 15.2 and Clause 15.3 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.

15.3 Provided that:-

(A) 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

- (B) 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
- (C) 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 3.6(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.

15.4 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.

15.5 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.

15.6 Subject to Clause 15.5 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 15.3. 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.

15.7 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 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.

15.8 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.

15.9 Each of the Clauses of this Clause 15 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.

15.10 Each of the Parties agrees that the other Party holds the benefit of Clauses 15.2 and 15.3 for itself and as trustee and agent for its officers, employees and agents.

15.11 Nothing in this Clause 15 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.

15.12 Each Party hereby acknowledges and agrees that the provisions of this Clause 15 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof.

## **16. COMPLIANCE WITH DISTRIBUTION CODE**

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

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

## **17. ASSIGNMENT AND SUB-CONTRACTING**

### **17.1**

(A) Subject to Clause 17.1(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.

17.2 Notwithstanding Clause 17.1, 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.

17.3 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.

## **18. TERM, EVENTS OF DEFAULT AND TERMINATION**

18.1 This Agreement shall continue until terminated in accordance with this Clause 18 or it is replaced with a later Agreement.

18.2 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 Connection Point.

18.3 In the event that:

18.3.1 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

18.3.2

- (A) 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
- (B) an order of the Court is made or an effective resolution passed for the insolvent winding up or dissolution of the Customer; or
  - (i) 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
  - (ii) 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
  - (iii) the Customer enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation); or

- (iv) the Customer is unable to pay its debts (within the meaning of Section 123(1) or (2) of the Insolvency Act 1986

- 18.4 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;
- 18.5 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.
- 18.6 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 Connection Point.
- 18.7 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 Connection Point and removing the Company's Equipment.

## **19. FORCE MAJEURE**

- 19.1 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:

- (i) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (ii) 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
- (iii) the non-performing Party uses all reasonable efforts to remedy its inability to perform.

## **20. NON-WAIVER**

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

20.2 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.

## **21. GOVERNING LAW**

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

## **22. DISPUTES RESOLUTION**

22.1 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.

## **23. VARIATIONS**

23.1 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 [www.connectionterms.co.uk](http://www.connectionterms.co.uk) and in the national press.

23.2 Either Party may ask the other to enter into an alternative agreement if at any time either believes the change is needed because of the nature because of the nature of the connection or because this Agreement is no longer appropriate.

## **24. SAVINGS CLAUSE**

24.1 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.

## **25. NOTICES**

25.1 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.

25.2 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.

25.3 A notice or other form of communication shall be deemed to have been served as follows:

- (i) if given or delivered personally at the time when given or delivered;
- (ii) if sent by pre-paid first class post at the expiration of two Working Days after the document was delivered into the custody of the postal authorities.

25.4 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.

## **26. CONTRACTS (Rights of Third Parties) ACT 1999**

26.1 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.





**Section 3– Your Terms and Conditions if your electricity network operator has agreed that your connection be Unmetered.**

**1. DEFINITIONS**

1.1 In this Section 3 except where the context otherwise requires the following expressions shall have the meanings set opposite them and cognate expressions shall be construed accordingly:

<b>“Act”</b>	means the Electricity Act 1989;
<b>“Agreed Codes”</b>	the Standard Apparatus Classification Codes and the Switch Regime Codes set out in the Unmetered Supplies Procedure;
<b>“Agreement”</b>	means this agreement and any documents referred to and expressly incorporated therein;
<b>“Apparatus”</b>	means all equipment in which electrical conductors are used, supported or of which they may form part;
<b>“Approved Software”</b>	means the computer programmes known as LAMP and FLARE and such other software as may be approved under the Unmetered Supplies Procedure for the purpose of producing half-hourly consumption figures from the information specified in <b>the Summary Inventory</b> ;
<b>“Array”</b>	means a photo-electric control unit array;
<b>“Authority”</b>	means the Gas and Electricity Markets Authority established by Section 1 of the Utilities Act 2000;
<b>“Balancing and Settlement Code” or “BSC”</b>	means the Balancing and Settlement Code dated 14 <sup>th</sup> August 2000, including all Service Lines and BSC Procedures (as therein defined) made under it;
<b>“Certificate”</b>	means an Unmetered Supplies Certificate issued under the Unmetered Supplies Procedure;

<b>“Company's Equipment”</b>	means the switchgear, metering or other equipment, lines or other parts of the Distribution System and/or any other property or rights of the Company;
<b>“Company's Premises”</b>	means any premises owned, occupied or controlled by the Company to which the Customer may require access for any purpose in connection with this Agreement;
<b>“Competent Authority”</b>	means the Secretary of State, the Authority and any local or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or of the European Union;
<b>“Connection and Use of System Code”</b>	means the agreement envisaged in condition 10B of NGC's Transmission Licence and/or any Connection and Use of System Code established pursuant to NGC's Transmission Licence which replaces such agreement in whole or part;
<b>“Control Equipment”</b>	means:- <ul style="list-style-type: none"> <li>(i) the control equipment owned by the Customer or the Company, as applicable;</li> <li>(ii) installed on the Company's side of the supply terminals; and</li> <li>(iii) used for the purposes of controlling the actual pattern of consumption of electricity at the Customer's Connection Point or group of Connection Points <i>in lieu</i> of the Customer providing its own control equipment within the Customer's Installation;</li> </ul>
<b>“Costs”</b>	means all expenses and costs incurred including overhead and financing charges properly allocated thereto and a reasonable rate of return on the capital represented by such costs;
<b>“DCUSA”</b>	means the Distribution Connection and Use Of System Agreement between the Company and any other person for the use of its Distribution System;

<b>“De-energise”</b>	means, in relation to any Connection Point, the deliberate operation of any switch or the removal of any Electric line and/or Electrical Plant or any fuse or the taking of any other step whereby no electrical current can flow through an Connection Point between the Distribution System and the Customer’s Installation and cognate expressions shall be construed accordingly;
<b>“De-energisation Works”</b>	means the movement of any switch, the removal of any fuse or meter, or the taking of any other step to De-energise a Metering Point;
<b>“Detailed Inventory”</b>	means a record of the Customer’s Installation which contains in relation to each Item the information specified in <b>Schedule 1</b> ;
<b>“Directive”</b>	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;
<b>“Disconnect”</b>	means to permanently De-energise a Connection Point by the removal of all or part of the Company’s Equipment and / or to end date the relevant Metering Point
<b>“Disconnection Notice”</b>	means a notice sent by the Supplier to the Company to Disconnect a Metering Point/s
<b>“Distribution Code”</b>	means the distribution code referred to in the Licence;
<b>“Distribution System”</b>	has the same meaning as that term as it is defined in the licence;

<b>“Energise”</b>	means, in relation to any Connection Point, the deliberate operation of any switch or the insertion of any Electric line and/or Electrical Plant or any fuse or the taking of any other step whereby electrical current can flow through an Connection Point between the Distribution System and the Customer’s Installation and cognate expressions shall be construed accordingly;
<b>“Energisation Works”</b>	means the movement of any switch or the addition of any fuse or meter to Energise a Metering Point;
<b>“Equivalent Meter”</b>	means an equivalent half hourly meter;
<b>“Estimated Annual Consumption (EAC)”</b>	means for each Metering Point a weather-normalised estimate of consumption over a calendar year;
<b>"Connection Point(s) ”</b>	means the point(s) of connection at which upon Energisation a supply of electricity may flow between the Distribution System and the Customer’s Installation;

**“Force Majeure”**

means 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, explosion, fault or failure of plant or which (in each case) could not have been prevented by Good Industry Practice, on the part of the party seeking to be relieved of its obligations under this Agreement, 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) or the failure of any generator or NGC to deliver electricity to the Company or any deficiency in such delivery to the extent that such failure or deficiency or the consequences thereof could not have been prevented by Good Industry Practice on the part of the Party seeking to be relieved of its obligations under this Agreement, provided that lack of funds shall not be interpreted as a cause beyond that Party’s reasonable control;

**“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;

**“Half Hourly Trading” (HH)**

means the trading for settlement purposes of Unmetered Supplies using an Equivalent Meter in accordance with the BSC;

**“Installation”**

means the electric lines and electric plant situated on the Customer’s side of the supply terminals together with any equipment permanently connected or intended to be permanently connected there to on that side;

<b>“Item”</b>	means each piece of equipment, appliance or device which forms part of the Customer’s Installation;
<b>“Licence”</b>	means the Company's Electricity Distribution licence granted to it pursuant to Section 6(1)(c) of the Act;
<b>"Maximum Export Capacity"</b>	means in respect of a Connection Point and any group of Connection Points providing connection to a premises, the maximum amount of electricity expressed in kW or kVA which is permitted to flow <b>into</b> the Distribution System through the Connection Point and the maximum amount of electricity expressed in kW or kVA which is permitted to flow <b>into</b> the Distribution System concurrently through a group of Connection Points providing the connection to a premises;
<b>"Maximum Import Capacity"</b>	means in respect of a Connection Point and any group of Connection Points providing connection to a premises, the maximum amount of electricity expressed in kW or kVA which is permitted to flow <b>from</b> the Distribution System through the Connection Point and the maximum amount of electricity expressed in kW or kVA which is permitted to flow <b>from</b> the Distribution System concurrently through a group of Connection Points providing the connection to a premises;
<b>“Measuring and Monitoring equipment”</b>	means equipment that may be used for the purposes of measuring or checking consumption for the purposes other than settlement in relation to an Unmetered Supply;

<b>“Meter Administrator”</b>	means a duly Accredited person appointed to administer an Equivalent Meter;
<b>“Metering Point”</b>	means in relation to an Unmetered Supply, the notional point at which electricity is treated as being supplied to the Customer’s Installation for the settlement purposes of estimating the volume of the electricity consumed;
<b>“Metering Equipment”</b>	means metering equipment that may be used for the purposes of measuring or checking consumption for the purposes of settlement in relation to an Unmetered Supply, the notional point at which electricity is treated as being supplied to the Customer’s Installation for the purposes of estimating the volume of the electricity consumed;
<b>“Modification”</b>	means any actual or proposed replacement, renovation, modification, alteration or construction by or on behalf of a Party of that Party's Plant or Apparatus or the manner of its operation at an Connection Point which has or will have an effect on the other Party at an Connection Point;
<b>“Monitoring Equipment”</b>	means equipment used for determining the characteristics of supply taken through the Customer’s Installation;
<b>“NGC”</b>	means the National Grid Company plc;
<b>“Non-Geographic Inventory”</b>	means a Detailed Inventory of the Customer’s Installation which does not contain the geographic information specified in <b>Schedule 1</b> ;
<b>“Party”</b>	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;
<b>“PECU”</b>	Means photo-electric cell unit;
<b>“Plant”</b>	means fixed and movable items other than Apparatus;



<b>“Premises”</b>	means any premises owned, occupied or controlled by the Customer to which the Company may require access for any purpose in connection with this Agreement;
<b>“Profile”</b>	means a pattern of consumption of electricity that is established and approved by the Profile Administrator that is described by daily consumption in half hour periods commencing on the hour and half-hour throughout the period of a day, such pattern of daily consumption capable of being different for each day within a Calendar Year within the Profile;
<b>“Profile Class”</b>	has the meaning given to that term in the Balancing and Settlement Code;
<b>“Profiled Trading”</b>	means trading for settlement purposes of Unmetered Supplies using an Estimated Annual Consumption and a Profile from a relevant Profile Class;
<b>“Regulations”</b>	means the Electricity Safety, Quality and Continuity Regulations 2002 and/or the Electricity (Unmetered Supply) Regulations 2001(as the case may be);
<b>“Summary Inventory”</b>	means a statement of the total numbers, type and rating of lamps or other Apparatus extracted from the Inventory or otherwise provided by the Customer as amended from time to time;
<b>“Supplier”</b>	means a person who is the holder of a licence to supply electricity under the Act or is exempt under the Act from the requirement to hold such a licence;
<b>“System Outage”</b>	means the deliberate act by the Company, by whatever means it; determines, to interrupt the flows of electrical current to a part or parts of its Distribution System, for the purposes of carrying on its activities.
<b>“Unmetered Supplies”</b>	means a supply of electricity the quantity of which the Company has authorised not to be measured by physical metering equipment by the issue of a relevant Unmetered Supplies Certificate and cognate expressions shall be construed accordingly;

<b>“Unmetered Supplies Certificate”</b>	means a certificate issued by the Company under the Unmetered Supplies Procedure stating, among other things, the Supply Number(s) allocated to the Inventory;
<b>“Unmetered Supplies Procedure”</b>	Section S of the Balancing and Settlement Code and BSC Procedure BSCP 520 established under the Balancing and Settlement Code and any replacement or substitute BSC Procedure from time to time, as appropriate;
<b>"Working Day"</b>	has the meaning given to that term in Section 64 of the Act.

1.2 In this Agreement any reference to:

- (i) "a Clause" "sub-Clause" or "Schedule" is a reference to a clause, sub-clause or schedule hereof;
- (ii) "the Customer" is a reference to you;
- (iii) "the Company" is a reference to the electricity network operator to whose Distribution System your unmetered Installations are connected;
- (iv) the word "including" is to be construed without limitation;
- (v) a "Schedule" is, subject to any contradictory indications, a reference to a schedule hereto.

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 or supplemented.

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

2.1 The Agreement shall govern the terms upon which the Company shall permit the Customer's Installation to be connected to the Distribution System at a Connection Point to receive Unmetered Supplies.

2.2 .

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

3.1 The Customer's Installation will remain connected to the Company's 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.

3.2 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.

3.3 The Customer's right to remain connected is conditional on the Company at all times being entitled without cost to it to:

(A) occupy the Premises; and

(B) exercise the rights created by any Property Documents

3.4 and upon the expiry or termination of the rights created thereby for so long

thereafter upon the same terms as are contained in the Property Documents as Connection of the Customers Installation (to whomsoever the same may from time to time belong) to the Distribution System may be required and lawfully continued.

3.5

3.6 Subject to the provisions of this Agreement and where appropriate the relevant Bilateral Connection Agreement, the Company shall use its reasonable endeavours to:

3.6.1 ensure the Maximum Import Capacity and the Maximum Export Capacity is available to you at all times; and

3.6.2 maintain the connection characteristics at the Connection Point.

3.7 The Company and the Customer shall at all times comply with the Unmetered Supplies Procedure as if they were incorporated in this Agreement.

3.8 The right to be (and remain) Connected does not include the right to be (and remain) Energised.

#### 4. THE CUSTOMER'S RIGHT TO BE (AND REMAIN ENERGISED)

4.1 The Customers right to be (and remain) Energised is subject to and conditional upon:

(i) in respect of Unmetered Supplies to be the subject of Half-Hourly Trading, a Meter Administrator having been appointed in relation to the Metering Point;

(ii) the Customer and the Company having agreed the

information required to be included in the **Summary Inventory** in respect of each Item of the Customer's Installation for each Metering Point;

- (iii) the Company having issued a Certificate to the Customer;
- (iv) the Certificate continuing in full force and effect;
- (v) the Customer having a supply contract;
- (vi) the Supplier being registered in accordance with the MRA;  
and
- (vii) the terms of this Agreement.

4.2 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.

4.3 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.

4.4 When the Connection Point is Energised in accordance with the terms of this Agreement, the characteristics of the supply of electricity delivered shall be subject to such variations as may be permitted by the Regulations. The Company does not guarantee that the supply of electricity will be free from transient variances in voltage and frequency or voltage pulses or harmonic frequencies and the Customer must take its own protective measures if it requires a higher standard of supply.

4.5 Without prejudice to Clause 4.2, 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 from time to time and shall comply with its obligations under the Electricity Act to give notice.

## 5. DE-ENERGISATION

### 5.1 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 Connection 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 with the prior agreement of the Company 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 Connection Point as quickly as practicable after the circumstances leading to any De-energisation under this Clause 5.1 have ceased to exist.

### 5.2 De-energisation

- 5.2.1 Except where the Company determines it is not appropriate to do so, the Company shall De-energise your Connection Point within a reasonable time or, in circumstances of urgency as soon as is reasonably practicable after being instructed to do so either by the Customer or by the Customer's electricity supplier under the terms of the Customer's Supply Contract.
- 5.2.2 Where the instruction has been given by the Customer's electricity supplier, the Company will give the Customer or the Customer's electricity supplier notice of its intention to De-energise, and any grounds stated in the instruction.
- 5.2.3 The Company may 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 reasonable endeavours to provide as long a notice as practicable).
- 5.2.4 The Company may, on giving you two Working Days' prior written notice, De-energise your premises if any of the conditions set out in Clause 3 and Clause 4 cease to be fulfilled 10 Working Days after the service of notice by the Company requiring you to remedy the situation.
- 5.2.5 Notwithstanding the provisions of Clause 5.3, except where it determines that it is not appropriate to do so the Company may, at any time with no prior notice to the Customer, De-energise the Connection Point if:

- (A) the Company is instructed to, or is otherwise required to, pursuant to the terms of the Connection and Use of System Code or the Balancing and Settlement Code to do so; or
- (B) the Company reasonably considers it necessary to do so for safety or systems security reasons; 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 Clause [3.1] 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;
- (H) the Customer breaches this Agreement; or
- (I) the Customers rights under this Agreement have been lawfully suspended; or
- (J) the Customers actions cause the Company to breach this Agreement; or
- (K) The Company reasonably considers it necessary to do so to avoid interference with the regularity or efficiency of its Distribution System; or
- (L) an accident or emergency occurs or threatens to occur which requires the Company to do so to avoid the risk of personal injury



to any person or physical damage to the property of the Company, its officers, employees or agents, or the property of any other person; or

- (M) it is entitled to do so where the capacity and other technical parameters of the constituent elements which make up the Distribution System provide operational constraints on the use of the system and the coincidence of the use of the system; or
- (N) subject to the terms of a replacement agreement, this Agreement is terminated in accordance with the provisions of Clause [termination clause]; or
- (O) it is entitled to do so under DCUSA.

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), (G) or (O) above, it shall forthwith notify the Customer.

5.3 Notwithstanding the provisions of Clause 4.1, the Company may, at any time with no prior notice to the Customer, De-energise the Customer's Connection Point if:

5.3.1 the Company is required to do so as part of a System Outage carried out in accordance with its statutory rights and obligations and Good Industry Practice.

5.4 If the Connection Point is De-energised 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 and any subsequent Re-energisation.

- 5.5 Where the Company De-energised the Connection Point as requested in Clause [5.4], the Company shall Re-energise the Connection Point, as soon as is reasonably practicable after being instructed to do so by the Customer or the Customer's electricity supplier.
- 5.6 Save as provided for under Clause 5.1.B, where the instruction has been given by the Customer's electricity supplier to Re-energise the Connection Point, the Company will give the Customer and/or the Customer's electricity supplier notice of its intention to Re-energise.
- 5.7 The Company may De-energise the Connection 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.
- 5.8 The Company shall act in accordance with Good Industry Practice when undertaking work relating to De-energisation and any subsequent Re-energisation.
- 5.9 If the Company resolves to De-energise the Connection Point pursuant to Clause 4:
- 5.9.1 The Company shall decide on the extent and nature of the work required to De-energise the Connection Point; and
- 5.9.2 The Company shall Re-energise the Connection Point as soon as is reasonably practicable after the circumstance giving rise to such De-energisation has ended.
- 5.10 If at any time when the Customer does not have a right for a relevant Connection Point to be (and remain) Energised but nevertheless takes a supply of electricity through the relevant Connection Point the Customer shall pay to the Company forthwith upon demand such sum as the Company may require for such supply of electricity calculated in

accordance with the Company's then charges, together with such other reasonable and proper Costs, losses and expenses as the Company has incurred as a result thereof.

## **6. DISCONNECTION**

- 6.1 The Customer or the Customer's electricity supplier where applicable, shall be entitled to send to the Company a notice requesting the Company to Disconnect the Connection Point after providing an explanation for why there is no reasonably foreseeable future use for the Connection Point. In respect of any notice sent to the Company pursuant to this Clause 6.1, the Customer shall specify the date on which the Disconnection is required.
- 6.2 Unless agreed otherwise following the receipt of a notice under Clause 6.1 the Company shall remove its Connection Equipment from the Connection Point at the Customer's or Customer's electricity supplier's cost where applicable.

## **7. PAYMENT OF CHARGES**

- 7.1 Unless otherwise stated, the Customer shall pay all charges due to the Company under this Agreement within 14 days of the date of the Company's invoice.
- 7.2 If any amount owing by one Party to the other under the terms of this Agreement remains unpaid after the due date for payment the Party to whom the amount is owed shall be paid interest thereon at the rate of 4% per annum above the base rate from time to time of Barclays Bank plc until that Party has received cleared funds.
- 7.3 Where the Company is requested by the Customer or is required to effect a Disconnection of an Connection Point, the Customer shall pay on demand the Costs incurred by the Company in Disconnecting the Connection Point

and removing the Company's Equipment in accordance with its then current Statement of Connection Charges (as published pursuant to its Licence).

- 7.4 All amounts payable under this Agreement are exclusive of Value Added Tax and the Company may add Value Added Tax at the applicable rate.
- 7.5 If at any time, (whether before or after termination of this Agreement) it is discovered, that there has been any overpayment or underpayment of money due under the terms of this Agreement, either Party may give notice to the other of the error in question and the necessary adjustment shall be made as soon as reasonably practical after the date of notice. If the Parties shall have failed to agree upon what adjustment, if any, shall be required (including interest) at the rate of 4% per annum above the base rate from time to time of Barclays Bank plc within 30 days of the date of the first Party's notice then either Party shall be entitled by way of written application to refer the matter to arbitration pursuant to Clause 24. This provision, together with those provisions of Clause 24 necessary to give effect to it, shall survive termination of this Agreement.
- 7.6 If at any time any Item shall be re-rated such that the characteristics of its consumption of electricity are different than they were before such re-rating the Company may adjust the Summary Inventory by an amount equal to the difference between the electricity consumed by that Item as if no re-rating had taken place and the electricity deemed consumed as a result of the re-rating from the date on which the Item first was registered in the Inventory.

## **8. LIMITATION OF DEMAND**

- 8.1 The Customer shall not be entitled to take a supply of electricity through a Connection Point that exceeds the Maximum Import Capacity of that Connection Point. If the Maximum Import Capacity of the Connection

Point is exceeded, the Company may give written notice to the Customer setting out details of the steps that the Company requires it to take to remedy the situation. If the Customer has not remedied the situation within three days of receipt of such written notice, the Company shall be entitled to De-energise the Connection Point until such time as the Customer is able to satisfy the Company that the Maximum Import Capacity will not be exceeded upon and subsequent to the Connection Point being Re-energised.

8.2 Where the Maximum Import Capacity is exceeded the Customer shall pay to the Company the reasonable additional Costs incurred by the Company as a result thereof, including the Costs of De-Energising the Connection Point pursuant to Clause 5.1 and any subsequent Re-energisation.

8.3 Except where such variation amounts to a Modification, the Customer may, subject to Clause 25 vary the Maximum Import Capacity of a Connection Point by giving 28 days written notice of its intention to do so to the Company. Where the variation amounts to a Modification, the Parties will proceed in accordance with the provisions of Clause 14.

8.4 The Company shall not be obliged to provide capacity at a Connection Point in excess of the Maximum Import Capacity of that Connection Point.

## **9. COMPLIANCE WITH DISTRIBUTION CODE**

9.1 The Parties shall comply with all of the provisions of the Distribution Code that are applicable to them.

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

## **10. PLANT AND APPARATUS**

10.1 Each Party shall ensure that its agents, employees and invitees shall not

interfere with any of the Plant and/or Apparatus of the other Party save as expressly as otherwise permitted under this Agreement without the prior written consent of the other Party except or where 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.

- 10.2 The Customer shall at all times take any precautions required to protect the Company's Equipment from damage and for that purpose shall comply with any reasonable requirements made by the Company from time to time.
- 10.3 Upon the failure or malfunctioning of Control Equipment owned by the Company, the Company will remove such equipment and replace with simple unswitched electrical connections of its choosing such that the associated electrical circuits will be permanently Energised. The Company will notify the Customer of the removal of such control equipment from within the Company's Distribution Systems. The Customer shall thereafter be responsible for implementing substitute control equipment within the Customer's Installations at its cost. At any time the Customer shall be responsible for re-declaring the consumption pattern of the associated Connection Points to reflect any changed pattern of operation in accordance with this Agreement..
- 10.4 Upon the failure or malfunctioning of Control Equipment owned by the Customer, the Company is permitted to remove such Control Equipment and make simple unswitched electrical connections of its choosing in place of such Control Equipment such that any previously switched electrical circuits will be permanently Energised. The Company will notify the Customer of the removal of such Control Equipment. The Customer shall thereafter be responsible for implementing substitute control equipment within the Customer's Installations at its cost. At any

time the Customer shall be responsible for re-declaring the consumption pattern of the associated Connection Points to reflect any changed pattern of operation.

- 10.5 The Company will retain control equipment removed under Clause 10.4 for a period of up to six months from date of its removal. After expiry of this period the Company may at any time and in its sole discretion choose to dispose of any such control equipment.
- 10.6 Any control equipment still in the possession of the Company in accordance with Clause 10.5 may be collected by the Customer or, if requested to do so by the Customer, sent to the Customer at its cost provided that if the Customer fails to pay in advance the cost of its delivery, the Company may dispose of it.
- 10.7 If the Company disposes of any control equipment under Clauses 10.5 or 10.6, the Company will retain any proceeds of sale for its own use absolutely and if the proceeds of sale are insufficient to cover the costs of disposal any amount not so covered shall be a debt due from the Customer and payable upon demand.
- 10.8 Where the Meter Administrator requires the removal of a photo electric cell unit from a Customer Installation for use in a PECU array, the Customer shall at their own expense replace such a photo electric cell unit.

## **11. INFORMATION**

- 11.1 The Customer shall provide a Detailed Inventory. The information required to be provided by the Customer in respect of each Item of the Customer's Installation is set out in **Schedule 1**. The Customer shall inform the Company in writing which method of trading (Half-Hourly or Profiled) is required for each Item at the time the Detailed Inventory is first provided and on all successive times that Items are added to, replaced or removed from the Detailed Inventory.

11.2 Where the Customer is only able to provide a Non-Geographic Inventory of the Customer's Installation the Customer shall not be entitled to receive Unmetered Supplies unless it was receiving Unmetered Supplies on 1 April 1998 *via* the Distribution System. The Customer shall remain obliged to obtain and present to the Company all the information specified in **Schedule 1** in relation to each Item, subject to [Clause 3].

11.3 The Customer shall on such dates and at such frequency as reasonably is specified and varied from time to time by the Company:

(A) provide to the Company the Detailed Inventory for Profile Traded Items including additions, deletions or amendments to the Detailed Inventory not less than once per [Calendar Year] due on the anniversary date of this Agreement unless such other submission dates and frequency of submission are specified by the Company; and/or

(B) provide to the Company the Detailed Inventory for Half-Hourly Traded Items including additions, deletions or amendments to the Inventory not less than once per Calendar Month due on the earliest day date closest to the day date of this Agreement unless such other submission dates and frequency of submission are specified by the Company.

11.4 Where Unmetered Supplies are to be subject to Half-Hourly Trading:

(A) where the Company agrees to any addition, deletion or amendment, the Summary Inventory shall be deemed to be amended accordingly from the date the Company notifies the Customer that such additions, deletions and amendments are agreed; and

(B) the Company shall provide the Meter Administrator with a copy of the Summary Inventory within 14 days of the commencement of



this Agreement or such later date of receipt of a copy of the Summary Inventory from the Customer. The Company shall notify the Meter Administrator of any revision to the Summary Inventory as soon as reasonably practicable following any change to the Summary Inventory.

11.5 Where Unmetered Supplies are subject to Profiled Trading:

- (A) and the Company agrees to any addition, deletion or amendment, the Summary Inventory shall be deemed to be amended accordingly from the date the Company notifies the Customer that such additions, deletions and amendments are agreed; and
- (B) if the Customer request a copy of the revised Summary Inventory, the Company will, following payment of its Costs for its provision provide a copy of it within 14 days.
- (C) the Company shall comply with the Unmetered Supplies Procedure, regarding any change to the Estimated Annual Consumption of each Connection Point.

11.6 The Company may refuse to connect in accordance with the Regulations the Customer's Installation where it is not appropriate for that Item or that type of Item to receive Unmetered Supplies and the Company may require the Customer to remove the Item or that type of Item from the Customer's Installation so that it does not receive Unmetered Supplies.

11.7 The Company shall give the Customer notice as soon as possible after receipt of any notice given under Clause 11.3 if it will give rise to a Modification.

11.8 All information provided under this Clause shall be in such form (including computer readable form) as the Company reasonably may specify from time to time after consultation with the Customer. Where the

information provided does not refer to the Agreed Codes, the Company will convert the information received as soon as reasonably practicable so that the information can be put into the Equivalent Meter and the Customer shall pay upon demand the Company's Costs of doing so.

11.9 The Parties shall comply with the provisions for audit as set out in this Clause 11.9:

11.9.1 Subject to sub-Clause [8.9.4] the Company shall be entitled at all times on giving no less than forty-eight hours notice to carry out an audit of the Inventory, provided that the Company may not carry out more than one audit in any six month period unless the previous audit has disclosed any material discrepancy that arises from the Customer's breach of this Agreement, breach of statutory duty and/or tortious (including negligent) act or omission.

11.9.2 If the audit reveals irregularities or material discrepancies in the Inventory, the Customer shall reimburse the Company the Cost incurred by it in carrying out the initial audit and the Customer shall also bear the Cost of all additional audits required to confirm the accuracy of the new Inventory.

11.9.3 .The Customer shall give the Company access to any Plant and/or Apparatus as it requires to carry out any audit and provide access to any information requested in respect of such audit.

11.9.4 In addition to the rights and remedies which the Company has under any other provision of this Agreement, following a failure to confirm the accuracy of the information contained or referred to in **the Summary Inventory** the Company shall make such adjustment to the information contained in **the Summary Inventory** or to the Estimated Annual Consumption or require the Meter Administrator to make such adjustments to the consumption

figures produced by the Approved Software of each Connection Point to which the audited inventory relates as may be required in order to ensure the accuracy (within the margins of accuracy laid under the BSC) of the settlement data on which the related supply and distribution use of system charges are calculated in respect of the Unmetered Supplies.

- 11.10 Each Party shall provide as soon as reasonably possible such further information as the other Party's auditors reasonably may require.
- 11.11 Where Items on the Detailed Inventory are subject to a change of ownership then such Items will remain on the Detailed Inventory until the Company has been notified by the new owner that such Items have been added to their Detailed Inventory.
- 11.12 The Customer shall not permit any Plant or Apparatus of a third party to be connected to the Customer's Installation without the prior written permission of the Company.
- 11.13 The Customer grants or shall procure the grant (to the extent the Customer is able to do so) to the Company free and unrestricted access to and use of any information or data concerning electricity taken through any Connection Point available under this Agreement, the Unmetered Supplies Procedures or the BSC for use in the Company's business whether that information or data is held by the Customer or another person on its behalf. Where the Meter Administrator is not the Company, the Customer shall procure that the Meter Administrator shall comply with the provisions of this Clause.
- 11.14 Where any additions or amendments to the Customer's Installation are made pursuant to this Clause 11 or a Modification to the Customer's Installation is made pursuant to Clause 14 the Customer shall ensure that any charges which the Company requires to be paid in accordance with the

statement of charges made by the Company from time to time under Condition 14 of the Licence are paid for any such addition, amendment or Modification including those relevant to the addition of a new Connection Point and that any works which the Company requires to be effected are carried out such that they are fit for purpose.

11.15 In the case of Half-Hourly Traded Unmetered Supplies where the Company has determined, in accordance with the Unmetered Supplies Procedures, that PECU arrays are required, the requisite number, locations and changes of the PECU arrays will be notified to the Customer.

## **12. THE CUSTOMER'S INSTALLATION**

12.1 The Customer shall ensure that the Customer's Installation complies at all times with the Regulations and any statutes, statutory instruments, regulations or orders which are binding on the Customer.

12.2 Except where expressly provided in writing by the Company to the contrary, neither by inspection, if any, or failure to reject, 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.

12.3 The Customer hereby acknowledges that because the Company may use switchgear with auto-reclosing facilities, the Customer's Installation will be designed and constructed so as not to suffer damage through the operation of such facilities and otherwise in accordance with Good Industry Practice and that the Company accepts no liability for such damage to the extent (if any) such damage is attributable to the Customer's failure to so design and construct the Customer's Installation.

12.4 If the Customer takes a supply of electricity from the Distribution System for the operation of any equipment which during the normal operation of the Distribution System adversely affects or impairs voltage regulation or

impairs the supply of electricity to the Customer or other persons supplied from the Distribution System (or in the reasonable opinion of the Company is likely so to do), the Customer shall at the Customer's own expense take such steps as, in the reasonable opinion of the Company, are necessary to prevent such consequences and if such consequences are not remedied within a reasonable time of the Company giving notice to the Customer the Company may at any time thereafter De-energise the relevant Connection Point) and the Customer shall pay to the Company on demand all Costs and losses suffered by the Company.

- 12.5 If the Customer installs 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 the Customer must inform the Company of its intention to use the source of energy in parallel with the Company's distribution system no later than 28 days (inclusive of the day of commissioning) after commissioning the equipment. So long as the Customer does this, it does not need consent from the Company.
- 12.6 Where the Customer is provided with an alternative connection to a Connection Point from the Company's Distribution System the alternative connection may be Energised only after first De-energising the previous connection by a method agreed with the Company. Where the Customer's Installation is permanently connected to more than one Connection Point, the Customer shall at its expense ensure that there does not exist within the Customer's Installation the facility to parallel across more than one Connection Point.
- 12.7 To the extent that any items of the Customer's Installation fail to comply with the hours of operation or Profile assigned to them under the Summary Inventory, the Customer shall remedy such failure within five Working Days of the day it becomes or ought to have become aware of such failure.

- 12.8 If, in relation to any Connection Point, the Customer fails to comply with Clauses 11.4, 11.5, 11.6 and 11.7 the Company may De-energise the relevant Connection Point until the failure has been 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.
- 12.9 Each Party shall as soon as it becomes aware of the same notify the other Party in writing of any damage to any part of the other Party's equipment (being the Customer's Installation or the Company's Equipment) and shall provide in writing to the other Party (as soon as reasonably possible after the other Party has requested the same) such information relating to the incident giving rise to such damage as the first Party has in its possession, under its control or can obtain on exercising reasonable efforts.
- 12.10 Where the Company's Equipment is contained within, or adjacent to and directly associated with the Customer's Installation, the Customer shall be liable for the replacement of any Company's Equipment which has been damaged which arises from damage to the Customer's Installation provided that the Customer's liability in respect of the Company's Equipment pursuant to this Clause 9.10 shall not exceed £1,000,000 per event.

### **13. POWER FACTOR AND PHASE BALANCE**

- 13.1 Where required by the Company, the Customer shall at all times maintain the power factor of any supply of electricity at or as near to unity as practicable but not less than 0.95 leading and 0.85 lagging and the Customer shall comply at its own expense with such requirements as the Company may make as to the installation by the Customer of such Plant and Apparatus as may be necessary to ensure that the power factor of such

supply is not less than 0.85.

- 13.2 Where a supply of electricity is provided in two or more phases, the Customer shall ensure as far as it is reasonably practicable to do so that the demand is at all time balanced between the phases.
- 13.3 If the Customer fails to comply with Clause 10.1 or 10.2 the Company may in its reasonable discretion De-energise the relevant Connection Point until the causes of the failure are remedied, and the Customer shall pay to the Company on demand the Cost 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.

#### **14. MODIFICATIONS**

- 14.1 Subject to this Clause 11, no Modification may be made by or on behalf of either Party otherwise than in accordance with the provisions of this Clause 14.
- 14.2 Where the Customer wishes to make a Modification the Customer shall complete and submit to the Company an application for a modification in such form and with such content as the Company reasonably may require from time to time. The Company will respond to the Customer's application for a Modification in accordance with the statement issued by it under Condition 12 of its licence.
- 14.3 The Company shall have no obligation to compensate the Customer for the cost and expense of any Modification required to be made by the Customer to its Plant and/or Apparatus as a result of any Modification by the Company.
- 14.4 Each Party may apply to the Authority if the Customer and the Company

cannot agree terms for a Modification. In such an event, the Party applying to the Authority shall give prior written notice to the other Party.

## **15. RIGHTS OF ACCESS**

15.1 Each Party shall procure that the employees and/or agents and/or sub-contractors and/or invitees of the other Party for whom such access is necessary in the normal course shall at all times be entitled to gain access to the Customer's Installation either through the Customer's or the Company's Premises (as the case may be) at convenient times (except in the case of emergency) where reasonably necessary for the purpose of carrying out modification works under Clause 14 and inspecting, testing, repairing, renewing, maintaining, isolating, protecting or removing the Company's Equipment, Monitoring Equipment or the Customer's Installation or any part thereof, reading of meters, interrogating Monitoring Equipment and Arrays and lawfully Disconnecting or De-Energising the relevant Connection 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 5, 6, 7 and 8 of Schedule 6 to the Act shall apply to this Agreement in so far as access is required by the Company. Any individuals to whom access is given pursuant to this Clause 15 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.

15.2 The Customer grants the Company unrestricted access to and use of the Customer's Installation, without charge, to supply such third parties as the Customer has agreed or may agree in writing to connect to the Customer's Installation.



## **16. METERING AND OTHER EQUIPMENT**

- 16.1 The Company may make such arrangements as it considers appropriate for the metering or measuring or calculating the amount of any supply of electricity which passes through any Connection Point.
- 16.2 The Customer shall at all times permit the Company to install such metering equipment or other measuring and monitoring equipment as the Company reasonably may require from time to time on the Customer's Installation or the Customer's Premises and shall allow the Company access to such equipment in accordance with the provisions of Clause 15 and shall refrain from interfering with such equipment and the immediate connections to such equipment in accordance with the provisions of Clause 10.
- 16.3 In the case of Unmetered Supplies which are subject to Half-Hourly Trading, the Customer shall at all times permit the Company free and unrestricted access to and use of any information or data relating to the calculation of the consumption of electricity by the Customer's Installation. The Customer shall procure that the Meter Administrator, if it is not the Company, shall comply with the provisions of this Clause as if it were the Customer.
- 16.4 The Parties acknowledge that any measuring or monitoring equipment installed pursuant to this Agreement, the Unmetered Supplies Procedure or the BSC may not constitute or comprise a meter as defined in the Act or other relevant legislation.

## **17. ASSIGNMENT AND SUB-CONTRACTING**

- 17.1 Subject to Clauses 17.1(A) and (B), neither Party shall assign any of its rights under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld.

(A) Either Party may assign or charge its benefit under this Agreement in whole or in part by way of security.

(B) The Company may assign any of its rights and/or obligations under this Agreement to any member of its group (as defined in section 53 of the Companies Act 1989) without the consent of the Customer.

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

## **18. TERM, EVENTS OF DEFAULT AND TERMINATION**

18.1 This Agreement shall continue in force until terminated in accordance with this Clause 18 or it is replaced with a later Agreement.

18.2 The Customer may terminate this Agreement by giving the Company not less than 28 days notice in writing expiring at any time.

18.3 The Company may terminate this Agreement at any time by giving not less than 28 days' written notice to the Customer if in its opinion the Customer's Installation is no longer appropriate for Unmetered Supplies and it withdraws the Customer's Unmetered Supplies Certificate.

18.4 If:-

(A) the Customer shall fail to pay (other than by inadvertent error in funds transmission which is discovered by the Company, notified to the Customer and corrected within **two** Working Days thereafter) any amount properly due or owing from it pursuant to the terms of this Agreement and such default is unremedied at the expiry of the period of **seven** Working Days immediately

following the Customer being given written notice by the Company of such non-payment; or

- (B) 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 and (if it is capable of remedy) it is not remedied to the reasonable satisfaction of the Company within 30 days of the Company having given notice to the Customer of the occurrence thereof and requiring the same to be remedied;
- (C) the Customer shall in the reasonable belief of the Company have made unauthorised use of electricity or committed theft of electricity; or
  - (i) 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 the Customer; or
  - (ii) an order of the High Court is made or an effective resolution passed for the insolvent winding up or dissolution of the Customer's undertaking; or
  - (iii) 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
  - (iv) 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
  - (v) the Customer enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have

been approved in writing by the Company); or

- (vi) the Customer's Supplier issues a Disconnection Notice (as defined by the DCUSA) in relation to the Connection Points relating to the Customer's Installation; or
- (vii) the Customer is unable to pay its debts within the meaning of Section 123(1) or (2) of the Insolvency Act 1986,

and in such case within 28 days of his appointment the trustee in bankruptcy, liquidation, 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;

18.5 any such event in this sub-clause 18.4 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.

18.6 Once the Company has given notice of an event of default pursuant to Clause 18.4 this Agreement shall terminate and, without prejudice to the other rights and remedies of the Company, the Company may, in its absolute discretion, De-energise or Disconnect the Connection Point(s).

18.7 If a Connection Point is De-energised for a continuous period of three months the Company may give the Customer **28** days notice in writing to Disconnect that Connection Point.

18.8 Upon termination of this Agreement:

- (A) the Customer shall allow the Company at its sole option access to the Customer's Installation in order to remove the Company's Equipment; and

- (B) the Customer shall pay to the Company all sums then due and payable or accrued under this Agreement and any reasonable costs incurred by the Company in Disconnecting the Connection Point and removing the Company's Equipment.

## 19. **FORCE MAJEURE**

19.1 If either 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 both Parties' obligations shall be suspended without liability for the period during which the circumstance of Force Majeure prevails provided that:

- (A) the Affected Party promptly gives the other Party written 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;
- (B) the suspension of performance is of no greater scope and of no longer duration than is required by the circumstance of Force Majeure;
- (C) no obligations of either Party that arose before the circumstance of Force Majeure causing the suspension of performance are excused as a result of the Force Majeure;
- (D) the Affected Party uses all reasonable efforts to mitigate the impact of the circumstances of Force Majeure and to remedy its inability to perform as quickly as possible; and
- (E) immediately after the end of the circumstances of Force Majeure the Affected Party notifies the other Party in writing of the same

and each Party resumes performance of its obligations under this Agreement.

## **20. LIMITATION OF LIABILITY**

20.1 Neither Party shall be liable for any breach of this Agreement directly or indirectly caused by Force Majeure.

20.2 Subject to Clause 20.5 and save as provided in this Clause 20.2 and Clause 20.3 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 any loss or damage arising from any breach of this Agreement, breach of statutory duty, any tortious (including negligent) act or omission other than the loss that directly results from such a breach and/or any tortious (including negligent) act or omission which at the date hereof was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such a breach and/or tortious (including negligent) act or omission in respect of:

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

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

20.3 Provided that the liability of either Party in respect of all claims for loss shall in no circumstances exceed £1 million per incident or series of related incidents and 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 agreement for use of the Distribution System referred to in [Clause 3.3(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.

20.4 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.

20.5 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.

20.6 Save as otherwise expressly provided in this Agreement, this Clause 20 insofar as it excludes or limits liability shall override any other provision of this Agreement, provided that nothing in this Clause 20 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 Director or the Secretary of State under the Act, the Licence or otherwise howsoever.

20.7 Each of the Clauses of this Clause 20 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.

20.8 Each of the Parties agrees that the other Party holds the benefit of Clauses 20.2 and 20.3 for itself and as trustee and agent for its officers, employees and agents.

20.9 Nothing in this Clause 20 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.

20.10 Each Party hereby acknowledges and agrees that the provisions of this Clause 20 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof.

## **21. WAIVER**

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

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



partial exercise of any such right, power, privilege or remedy shall preclude any future exercise thereof or the exercise of any other right, power, privilege or remedy.

**22. ENTIRE AGREEMENT**

22.1 This Agreement, including the Schedules and the Unmetered Supplies Procedure, 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.

22.2 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.

**23. GOVERNING LAW**

23.1 This Agreement is governed by, and shall be construed in accordance with English law under the jurisdiction of the English and Scottish courts.

23.2 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 under Clause 23 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.

## **24. DISPUTES RESOLUTION**

- 24.1 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 Authority 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.
- 24.2 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.
- 24.3 Subject always to Clause 24.5, if any third party brings any legal proceedings in any court (as defined in the Rules of the Supreme Court and in the County Court Rules) against any Party, (the "**defendant Party**") and the defendant Party wishes to make a third party claim (as defined in Clause 24.4) against the other Party which would but for this Clause 24.3 have been a dispute or difference referred to arbitration by virtue of Clause 24.1 then, notwithstanding the provisions of Clause 24.1 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 third party and the defendant Party but also between

either or both of them and the other Party whether by way of third party proceedings (pursuant to the Rules of the Supreme Court or the County Court Rules) or otherwise as may be ordered by the Court.

24.4 For the purpose of this Clause 24 "third party claim" shall mean:

- (A) any claim by a defendant Party against the other Party (whether or not already a party to the legal proceedings) for any contribution or indemnity, or
- (B) any claim by a defendant Party 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 third party, or
- (C) 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 third party and the defendant Party but also as between either or both of them and the other Party (whether or not already a party to the legal proceedings).

24.5 Clause 24.3 above shall apply only if at the time the legal proceedings are commenced no arbitration has been commenced between the defendant Party 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.

## **25. VARIATIONS**

25.1 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 [www.connectionterms.co.uk](http://www.connectionterms.co.uk) and in the National Press.

- 25.2 Either Party may ask the other to enter into an alternative agreement at any time if either believes the change is needed because of the nature of the connection or because the Agreement is no longer appropriate.

## **26. NOTICES**

- 26.1 Any notice, request or other communication to be made by one Party to the other under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first class post, courier, or facsimile to that other Party (marked for the attention of the Company at its registered address) or to any such other persons, addresses or facsimile numbers as may from time to time be notified by one Party to the other.

- 26.2 Unless otherwise stated in this Agreement, a notice, request or other communication sent in accordance with Clause 23.1 shall be deemed received:

26.2.1 if delivered personally, when left at the address referred to above;

26.2.2 if sent by post, 2 Working Days after the date of posting; and

26.2.3 if sent by facsimile, upon production by the sender's equipment of a transmission report indicating that the facsimile was sent to the facsimile number of the recipient in full without error.

## **27. SAVINGS CLAUSE**

- 27.1 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 Communities or by order of the Secretary of State or by Authority 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.

## **SCHEDULE 1**

### **DETAILED INVENTORY – COMPANY REQUIREMENTS**

#### **Information required from the Customer**

The Customer shall provide to the Company the following information, in an electronic format specified by the Company or in such other format as may be agreed between the Parties, in respect of each Item of the Customer's Installation.

#### **1. Location**

The grid reference to seven digits easting and seven digits northing (0.1m resolution) using the current edition from time to time of Ordnance Survey scale 1:500 for each Item and the address or adjacent address for each Item of the Customer's Installation such as x metres north, south, east, west from firm map detail outside or opposite a house number, and where available a number displayed on the Item. The address to include road/street name, parish or village name and post code.

#### **2. Detail of each item of the Customer's Installation**

This shall include:

- (i) the type, description and wattage of each Item;
- (ii) the type of control gear installed (if appropriate) (e.g., autoleak, low loss, optimal or high frequency as used in street lighting). Where appropriate, it is preferable that the Agreed Codes should be used to provide this information; and
- (iii) the type of switch control, if applicable, e.g. PECU, timeswitch, etc., and the associated settings e.g., dusk to dawn. If the switch control is remote from the Item, the location of the remote switch control must be specified.
- (iv) details of daily periods of operation
- (v) which method of trading (Half-Hourly or Profiled) is required for each Item.

In all cases the detail should be sufficient to allow the calculation of the annual energy consumption and pattern of usage.

**3. Connection Points**

The Maximum Import Capacity of the Connection Point should be provided if greater than 3 kVA.

The Maximum Export Capacity of the Connection Point shall be 0kVA unless otherwise agreed.

If the Connection Point is remote from the Item or groups of Items connected to the Connection Point, the Connection Point location must be provided in a form specified in 1 above.

**4. Amendments to Inventory**

The date and type of change to Inventory shall be recorded on an Item by Item basis and shall include additions, deletions and changes of equipment specified above.