

**SECTION 2  
COMMERCIAL ARRANGEMENTS**

**SECTION 2A – DISTRIBUTOR TO SUPPLIER/GENERATOR  
RELATIONSHIPS**

## **SCOPE OF SECTION 2A**

This Section 2A and the Schedules referred to in it set out the terms and conditions under which a DNO Party or an IDNO Party shall provide Use of Distribution System to a Supplier Party or a CVA Registrant.

## 15. INTERPRETATION OF SECTION 2A

### Party Obligations

- 15.1 In this Section 2A, in the Schedules when applied pursuant to this Section 2A, and in the terms defined in Clause 1 when used in this Section 2A or those Schedules, a reference to a **Company** is a reference to each Party that is either a DNO Party or an IDNO Party separately and individually and, where an obligation is imposed on, or a right granted to, a Company, that obligation is imposed on, and that right is granted to, each such Party separately and independently.
- 15.2 In this Section 2A, in the Schedules when applied pursuant to this Section 2A, and in the terms defined in Clause 1 when used in this Section 2A or those Schedules, a reference to a **User** is:
- 15.2.1 a reference to each Party that is either, or both of, a Supplier Party or a CVA Registrant separately and individually and, where an obligation is imposed on, or a right is granted to, a User, that obligation is imposed on, and that right is granted to, each such Party separately and independently; and
- 15.2.2 when made in relation to a Company and any period of time, a reference to each User (separately, individually and to the relevant extent) who is (or was), during that period, Registered in respect of a Metering Point or Metering System relating to an Entry Point or an Exit Point on that Company's Distribution System (provided that, in the case of Clauses 15, 16, 17 and 24, it shall include those Users who are taking steps to be so Registered, and that, in the case of Clauses 15, 24, 34 and 35, it shall include those Users who were once so Registered).
- 15.3 This Section 2A, and the Schedules when applied pursuant to it, shall:
- 15.3.1 only create rights and obligations between DNO/IDNO Parties (on the one hand) and Supplier Parties/CVA Registrants (on the other), and shall not create rights or obligations between DNO/IDNO Parties and other DNO/IDNO Parties or between Supplier/CVA Registrants and other Supplier/CVA Registrants;

- 15.3.2 not apply to the OTSO Party;
- 15.3.3 only create obligations between a Company and a User to the extent that, and in relation to those periods for which, that User is (or was) or is seeking to be Registered in respect of a Metering Point or Metering System relating to an Entry Point or an Exit Point on that Company's Distribution System; and
- 15.3.4 not impose any obligations between a Company and a User in relation to periods for which that User is (or was) not, and is not seeking to be, Registered in respect of any Metering Points or Metering Systems relating to Entry Points or Exit Points on that Company's Distribution System.

### **References in Relation to Companies and Users**

- 15.4 In this Section 2A, in the Schedules when applied pursuant to this Section 2A, and in the terms defined in Clause 1 when used in this Section 2A or those Schedules, references to:
  - 15.4.1 a Metering Point or Metering System are, when made in relation to a User and any period of time, references to a Metering Point or Metering System Registered to that User during that period;
  - 15.4.2 an Entry Point or Exit Point are, when made in relation to a Company, references to an Entry Point or Exit Point on that Company's Distribution System;
  - 15.4.3 an Entry Point or Exit Point are, when made in relation to a User and any period of time, references to an Entry Point or Exit Point relating to a Metering Point or Metering System Registered to that User during that period;
  - 15.4.4 a Connectee, Connected Installation, Connection Agreement, Contract, Metering Point, Metering System or Charge are, when made in relation to a Company, references to a Connectee, Connected Installation, Connection Agreement, Contract, Metering Point, Metering System or Charge relating to an Entry Point or Exit Point on such Company's Distribution System; and

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

#### **Use of the Same Market Domain I.D.**

15.5 Where, in relation to any period of time, more than one User is using the same Market Domain I.D. and where it is not reasonably practicable for a Company to identify which of those Users is Registered in respect of a particular Metering Point or Metering System, the Users shall be deemed, as against that Company, to be jointly and severally liable in respect of that Metering Point or Metering System.

#### **Additional Interpretation**

15.6 In this Section 2A, in the Schedules when applied pursuant to this Section 2A, and in the terms defined in Clause 1 when used in this Section 2A or those Schedules, any reference to a “charging period” is, subject to any contrary indication, a reference to the period specified in the Relevant Charging Statement (or, if no period is specified therein, a calendar month).

#### **Distribution Code, Distribution Licence and Distribution Business**

15.7 In this Section 2A, in the Schedules when applied pursuant to this Section 2A, and in the terms defined in Clause 1 when used in this Section 2A or those Schedules, any reference to “Distribution Code”, “Distribution Licence” and “Distribution Business” are references to the Company’s Distribution Code, the Company’s Distribution Licence and the Company’s Distribution Business.

## 16. CONDITIONS PRECEDENT

- 16.1 The rights and obligations of each Company as against each User (and of each User as against each Company) under Clauses 18 to 25 (inclusive) and 29 to 33 (inclusive) are conditional upon each of the following conditions precedent being fulfilled:
- 16.1.1 where the User has not previously been Registered in respect of any Metering System or Metering Point relating to an Entry Point or an Exit Point on the Company's Distribution System, that the User has notified the Company that the User intends to become so Registered and that the User and the Company have exchanged such contact, invoicing and other similar information as the other reasonably requests;
  - 16.1.2 where the User is a Supplier Party, that the User holds a Supply Licence;
  - 16.1.3 where the User is a CVA Registrant, that the User is a BSC Party and is Registered in respect of one or more CVA Metering Systems that are connected directly to a Distribution System;
  - 16.1.4 that the Company holds a Distribution Licence;
  - 16.1.5 that both the User and the Company are party to the Connection and Use of System Code and any necessary supplemental agreement pursuant to it (to the extent that the User or the Company is required to do so by its Licence, and/or the Company is required by the CUSC not to provide Use of Distribution System unless the User does so);
  - 16.1.6 that both the User and the Company are party to the Balancing and Settlement Code;
  - 16.1.7 where the User is a Supplier Party, that the Retail Energy Code and the Data Transfer Service Agreement are in full force and effect between the User and the Company, and that such agreements are unconditional save for any conditions that this Agreement becomes unconditional; and
  - 16.1.8 that both the User and the Company are (if required to be by their licence under the Act) party to the Smart Energy Code.

- 16.2 If the conditions precedent set out in Clause 16.1.2 to 16.1.7 (inclusive) are not fulfilled as between a Company and a User at the date this Agreement becomes effective between those Parties, that Company and that User shall each take all appropriate steps within its power to procure the fulfilment of those conditions relating to it which have not already been fulfilled.
- 16.3 Once each of the conditions precedent in Clause 16.1 has been fulfilled as between a Company and a User, the Company and the User shall each take all appropriate steps within its power to keep such conditions precedent relating to it fulfilled.

## 17. CONTRACTS

### **Appointment as Agent**

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

### **Obligation to Include Wording in Contracts**

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

### **Nature of Agency**

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



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

#### **Non-standard Connection Terms**

- 17.10 Where the Company enters into a Connection Agreement (not acting via an agent pursuant to Clause 17.3) that includes Bespoke Connection Terms, the Company shall (save in the case of Domestic Premises or an Unmetered Supply) ensure that the Connection Agreement includes the following wording (with those words shown in

square brackets amended to reflect the defined terms applying in the Connection Agreement):

17.10.1 The [Connectee] agrees that the [Distributor] shall, on the application of any person purporting to be an owner and/or occupier (or prospective owner and/or occupier) of the [Connected Premises], be entitled to disclose to such person the fact that this [Agreement] contains terms which differ from the terms set out in the National Terms of Connection ([www.connectionterms.co.uk](http://www.connectionterms.co.uk)).

17.10.2 The [Connectee] shall, prior to selling or leasing its interest in the [Connected Premises] (or otherwise permitting a third party to occupy the [Connected Premises]), ensure that the existence and provisions of this [Agreement] are brought to the attention of such third party. For information, any such third party should note that it may automatically be bound by the provisions of this [Agreement] in accordance with the National Terms of Connection ([www.connectionterms.co.uk](http://www.connectionterms.co.uk)).

17.10A Where the User, or any Relevant Exempt Supplier, has procured an agreement on behalf of the Company in accordance with this Clause 17 and the Company intends to negotiate non-standard connection terms to apply in addition to or in substitution for the terms of such agreement, the Company shall notify the User of any of those non-standard terms which affect the Use of System Charges payable in respect of the Customer or Generator in question. The Company shall use reasonable endeavours to notify the User, by a method agreed between the Company and the User, of such non-standard terms within 10 Working Days after the later of their being entered into and any conditions therein being satisfied. Such notification shall specify, as a minimum, the relevant Metering Point(s) or Metering System(s), the relevant Maximum Import Capacity and / or Maximum Export Capacity and the effective date for such non-standard terms.

## Transition

17.11 In Clause 17.12, **Old Terms of Connection** means provisions that have the same or a similar effect to the National Terms of Connection and which the User was obliged to include in Contracts in accordance with any use of distribution system agreement

existing between the User and the Company immediately before this Agreement became effective.

- 17.12 During the period of three months following the date upon which this Agreement became effective, the User shall be entitled to comply with its obligations under Clause 17.3 by ensuring that, on each occasion on which the User or any Relevant Exempt Supplier enters into a Contract (whether written, oral, or deemed), the Old Terms of Connection are presented within the Contract.
- 17.13 The User is hereby appointed by the Company as the Company's agent (and in that capacity has power to appoint any Relevant Exempt Supplier as its sub-agent) for the purpose (subject to Clauses 17.5 to 17.9) of procuring agreements in accordance with Clause 17.12. On the expiry of the period referred to in Clause 17.12, the User's appointment under this Clause 17.13 shall cease.
- 17.14 Each DNO/IDNO Party shall, on the application of any person purporting to be an owner and/or occupier (or prospective owner and/or occupier) of a Connected Installation, disclose to such person whether or not Bespoke Connection Terms apply to the Connected Installation. For the avoidance of doubt, this Clause 17.14 does not oblige or permit the DNO/IDNO Party to disclose the content of the Bespoke Connection Terms.

## **18. USE OF SYSTEM**

### **Provision of Use of System**

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

### **Prior Requirements: General**

- 18.2 The obligation of the Company to convey electricity to a particular Exit Point or from a particular Entry Point pursuant to Clause 18.1 is, in each case, subject to:
- 18.2.1 there being a Connection Agreement in full force and effect relating to the connection of the relevant Connected Installation (whether such Connection Agreement was entered into in accordance with Clause 17 or otherwise);
  - 18.2.2 the Company receiving confirmation that a Qualified Meter Operator Agent, Qualified Data Collector and Qualified Data Aggregator have been appointed in relation to that Exit Point or Entry Point (except that no Meter Operator Agent is required to be appointed in relation to an Unmetered Supply);
  - 18.2.3 subject to Clause 29.10, the Company receiving confirmation that metering equipment has been installed in accordance with Clause 29;
  - 18.2.4 where applicable, the Company receiving confirmation that the User has given notice of that Exit Point or Entry Point (as the case may be) to the National

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

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

**Prior Requirements: Exit Points**

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

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

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

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

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

18.3.5 the User being party to an agreement with the Company or a third party for provision of the services of meter asset provision in relation to that Exit Point. In the event that the User is not a party to such an agreement, the Company shall be entitled to provide such services, and to pass on to and recover from the User the costs of so doing (as Transactional Charges in accordance with Clause 22).

18.3A Where the Company provides the User with meter asset provision services pursuant to Clause 18.3.5 (and subject to any contrary agreement between the Company and the User to the contrary), the Company hereby authorises the User to permit third parties to work on and otherwise interfere with such meters provided that such persons do so in accordance with the requirements of this Agreement in respect of such work and other interference and provided that the User shall be liable to the Company for the acts or omissions of such persons as if they were the User's own.

**Prior Requirements: Entry Points**

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

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

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

## 19. CHARGES

### Charges

19.1 The User shall pay to the Company in respect of services provided under this Agreement (and under the agreements referred to in Clause 19.2) the Charges set out in the Relevant Charging Statement (save where the Company is the Payor, in which case the Company shall pay such charges to the User).

### Use of System Charges

19.1A The Company may vary the Use of System Charges at any time by giving the requisite period of written notice to the User. The requisite period of notice is (subject to Clause 19.1B):

19.1.1 where the Company is a DNO Party acting within that DNO Party's Distribution Services Area:

(A) in the case of the charges to apply from 1 April 2016 only, 3 months; or

(B) in the case of the charges to apply on or after 1 April 2017, 15 months; or

19.1.2 where the Company is an IDNO Party or a DNO Party acting outside of that DNO Party's Distribution Services Area:

(A) in the case of the charges to apply from 1 April 2016 only, 2 months;

(B) in the case of the charges to apply on or after 1 April 2017, 14 months.

19.1B The periods of notice described in Clause 19.1A shall apply unless the Authority directs the Company that those periods of notice need not apply. Where the Authority directs the Company that those periods of notice need not apply, the notice period shall be 40 days (without prejudice to any longer notice requirements prescribed by the Distribution Licence).

19.1C The "Use of System Charges" shall be the charges contained or referred to in the

Company's Relevant Charging Statement for the time being in force pursuant to Condition 14 of its Distribution Licence, which Use of System Charges may either be stated in the Relevant Charging Statement as:

19.1C.1 a positive value, in which case they shall be payable by the User to the Company; or

19.1C.2 a negative value, in which case they shall be payable by the Company to the User.

### **Other Charges**

19.1D The Company may vary the Other Charges at any time by giving the requisite period of written notice to the User (where the requisite period of notice is the period specified in the Company's Relevant Charging Statement or, where no such period is specified, 40 days). Notwithstanding that the Company may vary such charges at any time the Company shall use reasonable endeavours to: (1) vary such charges no more than two times per year: and (2) vary such charges with effect from 1st April or 1st October. Such charges and any variations are and will be calculated in accordance with the provisions of the Relevant Charging Statement.

19.2 The "Other **Charges**" shall be:

19.2.1 the charges for (i) the provision of MPAS, and (ii) (where applicable) the provision of Legacy Meter Asset Provision and of Data Services (all pursuant to the Company's obligations under, respectively, Condition 18 and Condition 36 of its Distribution Licence);

19.2.2 (to the extent not captured within Clause 19.1C) the charges for certain services ancillary to those for which Use of System Charges are levied and which are provided by the Company to the User pursuant to any of:

(A) the BSC and the CUSC; or

(B) the Retail Energy Code; and

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



- (A) a provision of this Section 2A; or
- (B) any other agreement between the Company and the User for the provision of such services which provides for payment pursuant to this Agreement.

### **Adjustment of Charges**

19.3 On any occasion upon which the Charges payable by or to the User under Clause 19.1 have not been calculated strictly in accordance with the provisions of the Relevant Charging Statement, an appropriate adjustment shall be made by the Company and submitted to the User.

19.4 Where an adjustment in accordance with Clause 19.3:

19.4.1 discloses an overcharge, the Payee shall repay to the Payor the amount by which the Payor has been overcharged together with interest thereon from the due date of the invoice containing the overcharge until the date of repayment; or

19.4.2 discloses an undercharge, the Payor shall pay to the Payee the amount by which the Payor has been undercharged together with interest thereon from the due date of the invoice which should have included the amount of the undercharge until the date of payment,

and (in either case) such interest shall accrue from day to day at the base lending rate during such period of Barclays Bank plc, compounded annually. Where the User disputes the adjustment, the User and the Company shall attempt to resolve the dispute in good faith. Where the dispute remains unresolved after 20 Working Days, either of them may refer the dispute to arbitration in accordance with Clause 58 and the User or the Company (as applicable) shall pay the amount payable or repayable (if any) as so determined.

19.4A Notwithstanding Clauses 15.2.2, 15.3.2 and 15.4, where the Company is a UMSO for an EDNO, the provisions of this Clause 19 and of Clauses 20 and 21 shall be interpreted as follows:

- 19.4A.1 references to a User and a period of time shall include a Supplier Party Registered during that period in respect of the Metering Points on the EDNO's Distribution System covered by the inventory for which the Company is the UMSO;
- 19.4A.2 references to Entry Points and/or Exit Points on the Company's Distribution System shall include references to Entry Points and/or Exit Points on the EDNO's Distribution System associated with the Metering Points covered by the inventory for which the Company is the UMSO; and
- 19.4A.3 references to Use of System Charges shall include the Use of System Charges relating to the Metering Points covered by the inventory for which the Company is the UMSO, which charges shall be calculated on the basis of the Company's relevant all-the-way tariff(s) (as determined in accordance with the CDCM) and payable by the User to the Company.
- 19.4B As a result of Clause 19.4A, where the Company is an EDNO which has appointed a DNO Party as the Company's UMSO, the provisions of this Clause 19 and of Clauses 20 and 21 shall be interpreted such that no Use of System Charges shall be payable by the User to the Company in respect of the Metering Points covered by the inventory for which the DNO Party is the UMSO (on the basis that those charges are instead payable to the DNO Party as the UMSO).

### **Invoicing of Charges**

- 19.5 Subject to Clauses 19.4A and 19.4B, the Company shall invoice Use of System Charges (but excluding any Transactional Charges) payable by or to the User by reference to Settlement Class using aggregated data obtained from the Supercustomer DUoS Report, except in relation to Metering Points or Metering Systems where:
- 19.5.1 the electricity imported via an Exit Point or exported via an Entry Point is not reported in the Supercustomer DUoS Report; and/or
- 19.5.2 the Use of System Charge is not comprised solely of one or more standing charges and/or one or more Unit Rates; and/or

- 19.5.3 the Use of System Charge is specified in the Relevant Charging Statement as not being billed by Settlement Class; and/or
- 19.5.4 Use of System Charges are to be determined as a result of an Extra-Settlement Determination.
- 19.6 All charges payable by or to the User pursuant to this Clause 19 and Clauses 20, 21 or 22:
- 19.6.1 are exclusive of Value Added Tax and the Company shall include with such Charges (and the Payor shall, subject to a valid invoice having been issued, pay) Value Added Tax (if any) at the rate applicable thereto from time to time, and any such Value Added Tax shall be payable at the same time and in the same manner as the amounts to which it relates;
- 19.6.2 shall be without prejudice to any claims or rights which the Payor may have against the Payee and except as expressly permitted by Clause 19.6.3 or Schedule 4 shall be made without any set-off or deduction in respect of any claims or disputes or otherwise; and
- 19.6.3 shall, only where the Company submits on the same day one or more accounts for which the User is Payor and one or more accounts for which the User is Payee, be set-off against one another so that the User or the Company (as applicable) shall make a payment of the net value of those accounts.
- 19.7 The Company may calculate the Use of System Charges by reference to electricity discovered or reasonably and properly assessed to have been exported onto, or imported from, the Distribution System at an Entry Point or Exit Point relating to a Metering Point or a Metering System for which the User is Registered but not recorded at the time of such export or import (for whatever reason) by the metering equipment installed pursuant to Clause 29.1. At any time when the Company calculates the Use of System Charges under this Clause 19.7, it shall explain to the User the calculation of those charges and the basis of that calculation.

### **Revision of Charges**

19.8 Without prejudice to Clause 19.1, where the Company is intending to revise any of its Use of System Charges, it shall serve a copy of any notice it sends to the Authority pursuant to Part F of Condition 14 of its Distribution Licence on the User as soon as is reasonably practicable after such notice is sent to the Authority.

### **Other Matters**

19.9 Notwithstanding Clause 15.3, the Company may charge the User Use of System Charges calculated by reference to electricity assessed to have been supplied to a Customer while a customer of the User during a period in which the User was supplying electricity to that Customer in accordance with a last resort supply direction issued by the Authority in accordance with Condition 8 of the User's Supply Licence from the time that the direction takes effect. This right subsists from the date on which the last resort supply direction takes effect, and continues regardless of whether the Metering Point applying to the Customer is registered to the User in accordance with the Retail Energy Code, until such time as the relevant Metering Point is registered to another supplier in accordance with the terms of the Retail Energy Code.

19.10 For the avoidance of doubt, nothing in this Clause 19 precludes the Company and the User, at the request of either of them, from negotiating Use of System Charges arising from or pursuant to an Extra-Settlement Determination.

19.11 Where any dispute arises under Clause 19.10, either of the Company or the User shall be entitled to refer the matter to the Authority as if it were a dispute falling within Condition 7 of the Company's Distribution Licence.

### **Transitional Protection for Customers affected by BSC Modification P272**

19.12 Part 4 of the CDCM contains transitional protection for Customers who may be affected by the implementation of BSC modification P272. All DNO/IDNO Parties shall comply with Part 4 of the CDCM, including a DNO Party operating outside of its Distribution Services Area.

## 20. AGGREGATED BILLING AND PAYMENT

20.1 This Clause 20 applies in respect of those Charges to be levied by reference to the Supercustomer DUoS Report in accordance with Clause 19.5.

### **Initial Account**

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

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

### **Reconciliation Account**

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

20.5 Within 14 days of the date of an Initial Account or Reconciliation Account submitted in accordance with Clause 20.3 or 20.4, the Payor shall (subject to Clause 19.6) pay to the Payee all sums due in respect of such Initial Account or Reconciliation Account in pounds sterling by electronic transfer of funds to such bank account (located in the United Kingdom) as is specified in the Initial Account or Reconciliation Account (or, where the Company is the Payor, such bank account as is notified to the Company by the User from time to time), quoting the Initial Account or Reconciliation Account

number against which payment is made and/or such other details as the Payee may reasonably require.

### **Disputes**

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

### **Unmetered Supplies**

20.7 This Clause 20 is to be interpreted in accordance with Clauses 19.4A and 19.4B.

## 21. SITE-SPECIFIC BILLING AND PAYMENT

21.1 This Clause 21 applies in respect of those Charges that relate to Metering Points or Metering Systems that fall within Clauses 19.5.1 to 19.5.3 (inclusive).

### **Submission of Account**

21.2 As soon as is reasonably practicable after the end of each charging period, the Company shall submit to the User an account specifying the Use of System Charges payable by or to the User for the whole or any part of that charging period. Such account shall be based on:

21.2.1 data from metering equipment or any Equivalent Meter provided by the User in accordance with Clause 29.3 (which data shall not be rounded by the Company in any way); or, where actual data are not available, estimated data prepared in accordance with methods of estimation established under the Balancing and Settlement Code by the relevant Data Collector; and

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

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

21.2A The Company shall use reasonable endeavours to ensure that the accounts created pursuant to this Clause 21 are submitted to the User at no greater frequency than:

- (a) once in the first 7 days of any calendar month; and
- (b) once in the second 7 days of any calendar month.

21.2B Where the Company submits, and the User agrees to receive, accounts by sending an electronic invoice it shall use an electronic invoice for all of that User's accounts (including revised accounts and credit-notes). For the avoidance of doubt, where this

Clause 21.2B applies, Clause 59.4 shall apply to the sending of accounts during any period in which the Data Transfer Network is unavailable.

21.2C Where an adjustment is required to any account for whatever reason (including where replacement data is received from the User), the Company shall issue a credit-note in respect of the original account and shall raise a new account for the new value.

### **Obligation to Pay**

21.3 Within 14 days of the date of an account submitted in accordance with this Clause 21, the Payor shall (subject to Clause 19.6) pay to the Payee all sums due in respect of such account by electronic transfer of cleared funds to such bank account (located in the United Kingdom) as is specified in the account (or, where the Company is the Payor, such bank account as is notified to the Company by the User from time to time), quoting the account number against which payment is made and/or such other details as the Payee may reasonably require.

### **Disputes**

21.4 Where any sum included in an account submitted in accordance with this Clause 21 is disputed by the User, the provisions of Schedule 4 shall apply.

21.5 For the purposes of this Clause 21, the following terms shall have the following meanings:

“electronic invoice” means an account providing the data items set out in data flow D2021 (as amended from time to time) sent using the Data Transfer Network.

### **Unmetered Supplies**

21.6 This Clause 21 is to be interpreted in accordance with Clauses 19.4A and 19.4B.



## **22. TRANSACTIONAL CHARGES**

22.1 This Clause 22 applies in respect of those Charges:

22.1.1 to be calculated by reference to the number or frequency of specific transactions, except where the billing and payment arrangements are otherwise provided for under the Retail Energy Code, the BSC, or the CUSC; or

22.1.2 referred to in Clauses 18.3.5 and 32.1,

(such Charges being **Transactional Charges**).

### **Submission of Account**

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

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

22.2.2 any Value Added Tax payable thereon.

### **Obligation to Pay**

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

### **Disputes**

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

## 23. PAYMENT DEFAULT

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

### **Interest**

- 23.3 The Payee shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not duly made pursuant to the terms of Clause 20.5, Clause 21.3, or Clause 22.3 calculated from day to day at a rate per annum equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment, together with any reasonable administration charge notified by the Payee to the Payor from time to time.

### **Material Breach**

- 23.4 Failure by the User to remedy a Payment Default within four Working Days of receipt of a Late Payment Notice from the Company shall be a material breach of this Agreement by the User for the purposes of Clause 54.1.1, and the Company shall be entitled to take actions to suspend registration services in accordance with the provisions of the Retail Energy Code. Where the Company takes such action, it shall send a copy of any notice that it is required to issue pursuant to those provisions to the User and the Panel (care of the Secretariat).

**24. SECURITY COVER**

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

## **25. ENERGISATION, DE-ENERGISATION AND RE-ENERGISATION**

### **Requirements for Those Undertaking Works**

- 25.1 Energisation Works, De-energisation Works and Re-energisation Works carried out by or on behalf of the User pursuant to this Clause 25 shall be carried out by a person who is either engaged by the Company to carry out such work or who:
- 25.1.1 is an Approved Contractor, in accordance with the procedure set out in Schedule 5;
  - 25.1.2 is a Competent Person to whom a Permission has been issued, in accordance with the procedure set out in Schedule 5, to carry out the particular activities comprising the Energisation Works, De-energisation Works or Re-energisation Works; and
  - 25.1.3 acts in accordance with the requirements set out in Schedule 5.

### **Works Undertaken by the Company**

- 25.2 Where:
- 25.2.1 neither the User nor any of its contractors is an Approved Contractor; or
  - 25.2.2 no employee of the User or any of its contractors (if Approved Contractors) holds a Permission; or
  - 25.2.3 the User does not have the rights of access required to undertake such Energisation Works, De-energisation Works or Re-energisation Works; or
  - 25.2.4 the parties so agree,
- the Company shall, to the extent that it may lawfully do so, at the request of the User, when the User is entitled to have carried out Energisation Works, De-energisation Works and Re-energisation Works, carry out such works at the cost of the User within a reasonable time or, in circumstances of urgency, as soon as is reasonably practicable. The Company shall on request by the User inform the User of its reasonable requirements for the details by reference to which Metering Points or Metering Systems to be Energised, De-energised or Re-energised are to be identified.

### **Good Industry Practice**

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

### **Works Undertaken by the User**

25.4 If circumstances exist which entitle the User or any Relevant Exempt Supplier to Energise, De-energise or Re-energise Metering Point(s) or Metering System(s) pursuant to the Contract or the Act, then, subject to Clause 25.13, the User may Energise, De-energise or Re-energise such Metering Points or Metering Systems provided that the User acts (where applicable and to the extent relevant) in accordance with Condition 27 of its Supply Licence.

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

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

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

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

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

25.6.2 (in respect of Metering Points) when such De-energisation Works are complete, the User shall, in accordance with the Retail Energy Code, instruct

the MPAS Provider to register the relevant Metering Point as De-energised (but only, in the case of an Unmetered Supply, if the De-energisation Works have prevented the flow of electricity through the relevant Exit Point); and

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

### **Duty to Indemnify**

25.7 Where the Company carries out Works on behalf of the User pursuant to Clause 25.2:

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

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

25.7.3 where the User requests the Company to Energise, De-energise or Re-energise a single point of connection that is both an Exit Point and an Entry Point, the User shall also indemnify the Company against all actions, proceedings, costs, demands, claims, expenses, liability, loss or damage made against or incurred or suffered by the Company and resulting directly from such Works howsoever arising (including, where the User is Registered in respect of the Exit Point, any claim by the user Registered in respect of the Entry Point, and vice

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

### **Company's Right to De-energise**

25.8 The Company may, on giving the User two Working Days' prior written notice, De-energise any Metering Point or Metering System if:

25.8.1 the Company is entitled to do so pursuant to the Connection Agreement relating to such Metering Point or Metering System; or

25.8.2 any of the conditions set out in Clause 18.2 and 18.3 in relation to an Exit Point (or, in the case of an Unmetered Supply, any one or more of the relevant Exit Points) or in Clause 18.2 and Clause 18.4 in relation to an Entry Point cease to be fulfilled (or, in the case of Clause 18.2.2, remain unfulfilled 10 Working Days after the service of notice by the Company requiring the User to remedy the situation).

25.9 Notwithstanding the provisions of Clause 25.8, the Company may, at any time with no prior notice to the User, De-energise any Metering Point or Metering System if:

25.9.1 the Company is instructed, pursuant to the terms of the Connection and Use of System Code or the Balancing and Settlement Code to do so;

25.9.2 the Company reasonably considers it necessary to do so for safety or system security reasons;

25.9.3 the Company reasonably considers it necessary to do so to avoid interference with the regularity or efficiency of its Distribution System;

25.9.4 an accident or emergency occurs or threatens to occur which requires the Company to do so to avoid the risk of personal injury to any person or physical

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

- 25.9.5 it is entitled to do so under Schedule 8;
  - 25.9.6 the rights of the User are suspended in accordance with Clause 54.2;
  - 25.9.7 subject to the terms of a replacement agreement, this Agreement is terminated, or the User ceases to be a Party in accordance with the provisions of Clause 54.
- 25.10 In any of the circumstances set out in Clause 25.9, the Company shall inform the User as soon as is reasonably practicable, and in any event by the end of the next Working Day when MPAS is available, of the fact that the Metering Point or Metering System has been De-energised.
- 25.11 If the Company resolves to De-energise a Metering Point or Metering System pursuant to Clause 25.8 or 25.9:
- 25.11.1 the Company shall decide on the extent and nature of the De-energisation Works required to De-energise the relevant Metering Point or Metering System;
  - 25.11.2 the Company shall Re-energise the Metering Point as soon as is reasonably practicable after the circumstance giving rise to such De-energisation has ended; and
  - 25.11.3 except where the Company resolves to De-energise a Metering Point or Metering System pursuant to Clause 25.8.1, 25.9.1, 25.9.2, 25.9.3, 25.9.4 or 25.9.6, the Company shall undertake both the De-energisation Works and the subsequent Re-energisation Works at the cost of the User, and the User shall pay to the Company the relevant Transactional Charges associated with both the De-energisation Works and the subsequent Re-energisation Works.
- 25.12 If the Company De-energises a Metering Point or Metering System pursuant to Clause 25.8 or 25.9 and such Metering Point remains De-energised for a period of three Working Days:



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

### **Disconnection Procedure**

- 25.15 Not used.

25.16 If a third party or a User on behalf of a third party contacts the Company to request directly or indirectly that the Company undertakes Works in relation to a Metering Point or Metering System because there is no reasonably foreseeable future use for that Metering Point or Metering System and the Company is satisfied that the third party is entitled to make such request, then the Company shall (subject to Clause 25.17) Disconnect the Metering Point in accordance with Schedule 33 or shall Disconnect the Metering System (as applicable).

25.17 If, in any case, in the reasonable opinion of the Company there is a reasonably foreseeable future use for the Metering Point or Metering System, then the Company shall not be obliged to Disconnect the Metering Point or Metering System.

25.18 Not used.

25.19 Not used.

25.19A The Company and the User acknowledge that Condition 12.9A of the Distribution Licence prohibits the Company from Disconnecting a Green Deal Premises, unless certain circumstances set out in that Condition apply. Before Disconnecting a Metering Point, the Company shall check whether that Metering Point is identified in MPAS as relating to a Green Deal Premises. If the Metering Point is identified in MPAS as relating to a Green Deal Premises, then the Company shall not Disconnect the Metering Point unless the Company is of the reasonable opinion that it is entitled to do so in accordance with Condition 12.9A of the Distribution Licence.

25.19B The User shall indemnify the Company against all costs, demands, claims, expenses, liability, loss, or damage which the Company incurs in consequence of acting in reliance on whether or not a Metering Point is identified in MPAS as relating to a Green Deal Premises, including where:

25.19B.1 The Company Disconnects a Metering Point relating to a Green Deal Premises that was not identified as such in MPAS; or

25.19B.2 The Company refuses to Disconnect a Metering Point that does not relate to a Green Deal Premises because that Metering Point was incorrectly identified in MPAS as relating to a Green Deal Premises.

- 25.19C The Company shall indemnify the User and each Green Deal Provider against all costs, demands, claims, expenses, liability, loss, or damage which the User or relevant Green Deal Provider(s) incur or incurs (as applicable) in consequence of the Company Disconnecting a Green Deal Premises in breach of Condition 12.9A of the Distribution Licence where the Metering Point relating to that premises was correctly identified in MPAS as relating to a Green Deal Premises.
- 25.20 Subject to Clauses 25.17 and 25.19A, the Company shall carry out the Disconnection of the Metering Point or Metering System, and shall:
- 25.20.1 in respect of a Metering Point, send a Deregistration Notice to the MPAS Provider instructing it to De-register the Metering Point; or
- 25.20.2 in respect of a Metering System, provide a disconnection certificate to the User,
- (in each case) in accordance with the BSC.

### **Other Matters**

- 25.21 If a Metering Point or Metering System has been De-energised by or on behalf of a previous user and the Company receives a request from the User to Re-energise such Metering Point or Metering System:
- 25.21.1 the Company shall Re-energise the Metering Point or Metering System as soon as is reasonably practicable and notify the User of when it expects to carry out the Re-Energisation Works;
- 25.21.2 the Company shall carry out all necessary Re-energisation Works at its own cost and shall then reclaim such costs from the previous user; and
- 25.21.3 the Company shall notify the User as soon as the Re-energisation Works are complete and the User shall, within two Working Days of receiving such notification, send a Registration Notice to the MPAS Provider or the CDCA (as applicable) instructing it to register the relevant Metering Point or Metering System as Energised.

- 25.22 The Company shall notify Connectees of and carry out System Outages in accordance with its statutory rights and obligations and Good Industry Practice.
- 25.23 This Clause 25.23 applies to Metering Points for which the flow of electricity is metered for settlements by putting the full electrical current through the meter (known as ‘whole-current metering’). Where the Company wishes to maintain, modify or replace the Electric Lines and/or Electric Plant which provides the connection to the Metering Point, the User hereby consents to the Company adjusting the terminals of the meter (and, where appropriate, re-making the connections to them to remedy any disturbance of the connections that may have occurred unintentionally).
- 25.24 Where the Company’s work as referred to in Clause 25.23 can only reasonably be undertaken by the temporary removal of the meter, the User hereby consents to the Company temporarily removing the meter and then (as soon as reasonably practicable thereafter) re-installing the meter as close as reasonably practicable to its original position.

**26. COMPLIANCE WITH THE DISTRIBUTION CODE**

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

**27. METER OPERATION CODE OF PRACTICE**

- 27.1 The User shall procure that the Meter Operator Agent appointed for each Metering Point supplied by the User shall be a party to the Retail Energy Code, and shall comply with the Meter Operation Code of Practice in relation to that Metering Point.
- 27.2 The Company shall be party to the Retail Energy Code, and shall comply with, the Meter Operation Code of Practice.

**28. COMPLIANCE WITH RADIO TELESWITCH AGREEMENT**

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

## **29. METERING EQUIPMENT AND METERING DATA**

### **Provision of Metering Equipment**

- 29.1 Subject to Clause 29.10, the User shall (at its own cost) install and maintain, or procure the installation and maintenance of, metering equipment at (or as close as is reasonably practicable to) each Exit Point and Entry Point relating to Metering Systems or Metering Points for which the User is Registered. The User shall ensure that such metering equipment shall:
- 29.1.1 be capable of providing the relevant metering data required by the Company for the calculation of Use of System Charges;
  - 29.1.2 comply with the requirements detailed in the Relevant Charging Statement;
  - 29.1.3 comply with the requirements specified in the BSC; and
  - 29.1.4 comply with Schedule 7 of the Act.
- 29.2 The User shall procure that metering equipment installed and maintained pursuant to Clause 29.1 shall be capable of operating within the accuracy limits specified in Schedule 6.

### **Provision of Metering Data**

- 29.3 The User shall provide to the Company, or shall procure the provision to the Company of (without charge) such Metering Data relating to Metering Points and/or Metering Systems as the Company may reasonably require for:
- 29.3.1 the calculation of Use of System Charges; and
  - 29.3.2 the operation, design and planning of its Distribution System.
- 29.4 For the purposes of Clause 29.3, the Company and the User acknowledge that it shall be reasonable for the Company to require any Metering Data which the User (or its BSC Party Agent) is obliged to provide to the Company and/or the relevant MPAS Provider in accordance with the provisions of, and in the form specified by, the REC and/or the BSC.



29.5 The User shall provide (or procure provision of) the Metering Data that it is required to provide (or procure the provision of) pursuant to Clause 29.3 in accordance with the timescales specified in the relevant provisions of the REC and/or the BSC (or, where none are specified, in accordance with the timescales specified in the Relevant Charging Statement).

### **Rights of Inspection**

29.6 The Company shall be entitled to inspect, test and if necessary require the User to correct any metering equipment installed and maintained pursuant to Clause 29.1. The User shall use its reasonable endeavours, including the inclusion of appropriate terms in its Supply Contract and Power Purchase Contract, to procure that the employees, agents, sub-contractors and invitees of the Company shall at all reasonable times have safe and unobstructed access to such metering equipment. Where the Company exercises its right under this Clause 29.6, the provisions set out in Part 2 of Schedule 6 shall apply.

### **Operational Metering Equipment**

29.7 The Company shall be entitled to install Operational Metering Equipment at or as close as reasonably practicable to any Exit Point or Entry Point in addition to any metering equipment installed and maintained pursuant to Clause 29.1 to collect data for the operation, design and planning of its Distribution System, but if it exercises this right it shall make no additional charge to the User in respect of such Operational Metering Equipment and shall not (except in the case of the failure of metering equipment installed and maintained pursuant to Clause 29.1) use data from the Operational Metering Equipment for the calculation of Use of System Charges. The Operational Metering Equipment need not be certified under paragraph 5 of Schedule 7 of the Act.

29.8 Where the Company installs Operational Metering Equipment in accordance with Clause 29.7:

29.8.1 the User shall (and shall procure that any Relevant Exempt Supplier shall) ensure that the employees, agents and invitees of the User (or Relevant Exempt Supplier) will not interfere with such equipment or the immediate connections to such equipment without the prior written consent of the Company, except

to the extent that emergency action has to be taken to protect the health and safety of persons or to prevent serious damage to property proximate to the Operational Metering Equipment; and

29.8.2 the User shall (and shall procure that any Relevant Exempt Supplier shall) use its reasonable endeavours, including the inclusion of appropriate terms in its Supply Contract and Power Purchase Contract, to procure that the employees, agents, sub-contractors and invitees of the Company shall at all reasonable times have safe and unobstructed access to the Operational Metering Equipment. The Company agrees to procure that any individuals to whom access is given pursuant to this Clause 29.8.2 shall comply with all reasonable directions given by the User or the relevant Connectee and its appropriately authorised employees and agents as to general safety and site security arrangements.

### **Unmetered Supply**

29.9 In relation to each Metering Point receiving an Unmetered Supply, the User and the Company shall comply (and the User shall procure that its BSC Agents comply) with the Unmetered Supplies Procedure (and, in particular, with those provisions requiring the exchange of information).

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

### **Use of Metering Data**

29.11 The User hereby agrees that the Company may aggregate and manipulate the Metering Data provided by the User to the Company under Clauses 29.3 and 29.4, and may share that data with any DNO Party or IDNO Party to whom the Company owes obligations under Section 2B for the purpose of matters provided for or envisaged by Section 2B (including the calculation of any charges payable by the Company under Section 2B).

## **Installation of Relevant Alt HAN Equipment**

29.12 Where the User installs or arranges for the installation of Relevant Alt HAN Equipment in respect of any Premises, the Company agrees that the User may install the equipment such that it is connected to and draws power from the Company's Distribution System; provided that the Relevant Alt HAN Equipment must be installed in such a way as to minimise the risk of illegal abstraction of electricity. The User may keep such Relevant Alt HAN Equipment installed, and may operate, inspect, maintain, repair, renew, reposition, replace and/or remove such Relevant Alt HAN Equipment.

## **30. PROVISION OF INFORMATION**

### **New Contracts**

30.1 The User shall:

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

- (A) where a Notice of Objection (as defined in the Retail Energy Code) is not received in relation to the User's application to become Registered in respect of that Metering Point, the expiry of the Objection Raising Period (as defined in the Retail Energy Code); or
- (B) where a Notice of Objection is received in relation to the User's application for Registration, the withdrawal of that Notice of Objection; or

30.1.2 in the case of Metering Systems, except for the renewal of an existing Contract entered into after 31 August 1998, as soon as is reasonably practicable following the Registration Effective From Date (as defined in the Balancing and Settlement Code, BSCP20) in respect of that Metering System,  
  
(in each case) provide the information set out in Clause 30.2 to the Company in respect of the relevant Exit Point or Entry Point.

- 30.2 The information referred to in Clause 30.1 is:
- 30.2.1 the relevant Supply Number core data (as defined in the Retail Energy Code) or (as applicable) the relevant Metering System Identifier (as referred to in the Balancing and Settlement Code, BSCP20);
  - 30.2.2 the relevant Connectee's name;
  - 30.2.3 the Metering Point or Metering System address;
  - 30.2.4 in respect of an Exit Point, the Customer's Maximum Import Capacity if:
    - (A) the Customer is not a Domestic Customer (as defined in the Supply Licences);
    - (B) the Customer has a maximum power requirement of not less than 20 kVA; and
    - (C) the Customer is a new owner or occupier of the site; and
  - 30.2.5 in respect of an Entry Point, the Maximum Export Capacity.
- 30.3 Where the provisions of Clause 30.1.1 or 30.1.2 are satisfied, the User shall use reasonable endeavours to provide the following information to the Company in respect of the relevant Exit Point or Entry Point:
- 30.3.1 the contact name for the Connectee if different from the Connectee's name; and
  - 30.3.2 the Connectee's postal address if different from the Metering Point or Metering System address.
- 30.4 The User shall use reasonable endeavours to notify the Company of any changes to the details set out in Clause 30.2 and Clause 30.3 as soon as reasonably practicable following that change by reference to the Supply Number or Metering System Identifier (as applicable).

### **Dangerous Incidents and Damage**

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

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

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

the User shall notify the Company of such report or enquiry in a prompt and appropriate manner having regard to the nature of the incident to which the report relates. Where the User does not hold a Supply Licence (or to the extent the User does not discharge its obligation under Condition 20 of its Supply Licence) the User shall notify the Company of reports received from Connectees in accordance with this Clause 30.5. Where the User is a Supplier Party, it shall meet its obligations under this Clause 30.5 (insofar as relating to Category A Situations, Category B Situations and Category C Situations) by complying with Clauses 30.5A to 30.5G below. Such Clauses shall not apply where the User is not a Supplier Party.

30.5A.1 Where the User (or its contractors or agents or any Relevant Exempt Supplier) receives a report or enquiry from any person about any matter or incident that does or is likely to cause danger or require urgent attention in relation to the supply or distribution of electricity through the Distribution System (including a Category A Situation), then the User shall ensure that the Company is notified of such report or enquiry by telephone in a prompt and appropriate manner having regard to the nature of the incident to which the report relates. The User shall ensure that such notification identifies the relevant asset condition code as set out in Part 2 of Schedule 24.

30.5A.2 Subject to Clause 30.5D, on receipt of a telephone call in accordance with Clause 30.5A.1, the Company will send an appropriate person to the affected Premises within the Prescribed Period. If the report is received outside of Working Hours the report will be deemed to have been received at the commencement of the next period of Working Hours.

30.5A.3 Where an appropriate person is unable to attend the affected Premises on behalf of the

Company within the Prescribed Period for a Category A Situation, then (as soon as reasonably practicable after becoming aware that this is the case, and where the Company has contact details) the Company will telephone the User's Meter Operator Agent to inform the agent when an appropriate person will attend the Premises on the Company's behalf.

30.5A.4 Subject to Clause 30.5D, if the Company is unable to remedy the situation during the initial visit to the affected Premises (as described in Clause 30.5A.2), then the Category A Situation will be made Safe, and the Company will:

- (a) within the Prescribed Period, agree an appointment date with the Connectee to re-visit the Premises to remedy the residual situation;
- (b) ensure that the date of such appointment is within the Prescribed Period; and
- (c) attend the Premises on the agreed appointment date and remedy the residual situation (such that no Category A Situation or Category B Situation is affecting the Premises).

30.5B.1 Where the User (or its contractors or agents or any Relevant Exempt Supplier) receives a report or enquiry from any person about any matter or incident that is a Category B Situation, then the User shall ensure that the Company is notified of such report or enquiry using the Data Transfer Network (data flow D0135), or such other means as is agreed between the Company and the User, within 5 Working Days after receipt of such report or enquiry. The User shall ensure that such notification identifies the relevant asset condition code as set out in Part 2 of Schedule 24, and (where the User has the Connectee's permission to do so) contact details for the Connectee.

30.5B.2 Subject to Clause 30.5D, on receipt of a notification in accordance with Clause 30.5B.1, the Company will, where contact details have been provided in the notification:

- (a) within the Prescribed Period, contact the Connectee and agree an appointment date to visit the Connectee to remedy the Category B Situation; and
- (b) ensure that the date of such appointment is within the Prescribed Period; and

- (c) attend the Premises on the agreed appointment date and remedy the Category B Situation (such that no Category A Situation or Category B Situation is affecting the Premises). In the event that the situation cannot be remedied on the first visit a further appointment will be booked to remedy the situation as soon as reasonably practicable.
- 30.5B.3 On receipt of a notification in accordance with Clause 30.5B.1, where contact details have not been provided in the notification and the Connectee's contact details are not listed in the Company's Priority Services Register (as defined in the Distribution Licences), the Company may reject the notification. If the notification is not so rejected the Company shall be deemed to have met the Service Level for Clause 30.5B.2.
- 30.5C.1 Where the User (or its contractors or agents or any Relevant Exempt Supplier) receives a report or enquiry from any person about any matter or incident that is a Category C Situation, then the User shall ensure that the Company is notified of such report or enquiry using the Data Transfer Network (data flow D0135) within 10 Working Days after receipt of such report or enquiry. The User shall ensure that such notification identifies the relevant asset condition code as set out in Part 2 of Schedule 24.
- 30.5D.1 The obligations of the Company that are subject to the Service Levels shall only apply with effect from the date 12 months after the date referred to in Section 30.5F.2.
- 30.5D.2 The obligations of the Company that are subject to the Service Levels shall be construed as obligations to use reasonable endeavours to comply with each Service Level on 90% of occasions within each Quarter; provided that (where the Company is a DNO Party) if the sum of the notified Category A Situations and Category B Situations during that Quarter across all Supplier Parties in respect of the Company's Distribution Services Area, exceeds 2% of the aggregate Smart Meter Installation Forecasts across all Supplier Parties in respect of that Quarter and the Company's Distribution Services Area, then the Company shall be released from its obligation to use reasonable endeavours to meet the Service Levels for obligations beyond that 2% level.
- 30.5D.3 Where the Company has visited the affected Premises on the date agreed with the

Connectee (pursuant to Clause 30.5A.4 or 30.5B.2), but has been unable to gain access to the Premises, the Company will:

- (a) be deemed to have met the Service Level for Clause 30.5A.4(c) or 30.5B.2(c) (as applicable);
- (b) (only where this is the first agreed appointment) contact the Connectee and agree an alternative appointment to visit the Connectee, and Clause 30.5A.4 or 30.5B.2 (as applicable) will apply as if the telephone call or the notification (as applicable) referred to in those Clauses had been received on the date of the Company's visit to the affected Premises; and.
- (c) (where this is the second agreed appointment) notify the User and the Meter Operator Agent via the Data Transfer Network (data flow D0126).

30.5D.4 Where the Company and the Connectee are unable to agree an appointment date that falls within the Prescribed Period for Clauses 30.5A.4(b) or 30.5B.2(b), but they are able to agree one outside of that period, then the Company will be deemed to have met the Service Level.

30.5D.5 Where the Company has used reasonable endeavours to agree an appointment for a Category B Situation and has been unable to agree one, then the Company will be deemed to have met the Service Level for Clause 30.5B.2(a). In such circumstances, the Company shall notify the User and the Meter Operator Agent via the Data Transfer Network (data flow D0126).

30.5D.6 Where the Company is an IDNO Party, it shall be released from its obligation to meet the Service Levels within a Distribution Service Area if the DNO Party for that Distribution Services Area has been released from its obligation under Clause 30.5D.2.

30.5D.7 For the avoidance of doubt, the Company will be deemed to have met the obligations that are subject to the Service Levels where it meets its obligations under 30.5D.2 (or where it is deemed to have met a Service Level, or is released from its obligations, under this Clause 30.5D).

30.5E.1 Where the Company has not met the Service Level for a Category A Situation or



Category B Situation, the Company shall give priority to the resolution of this situation over others notified under Clause 30.5B.

30.5E.2 On completion of work to remedy a Category A Situation or a Category B Situation, the Company shall notify the User and the User's Meter Operator Agent using the Data Transfer Network (data flow D0126), and shall specify in such notification the Company's view of the correct asset condition code (as set out in Part 2 of Schedule 24).

30.5E.3 Where the Company believes that the User or the User's Meter Operator Agent has misreported an asset condition code (as set out in Part 2 of Schedule 24) the Company shall notify the User and the Meter Operator Agent.

30.5E.4 On or after 1 April 2015, where situations reported by the User (or its Meter Operator Agent) to the Company specify an asset condition code (as set out in Part 2 of Schedule 24) which indicates a more serious situation than is actually the case, then the Company shall be entitled to levy Transactional Charges in accordance with the Relevant Charging Statement.

30.5E.5 With effect from 27 February 2015 (or, where that is not reasonably practicable, as soon as reasonably practicable thereafter, and in any event from 1 June 2015), the Company will notify the User and the Meter Operator Agent of the appointment date agreed with each Connectee pursuant to Clause 30.5A.4 or 30.5B.2 within 5 Working Days after its agreement (such notification to be provided via the relevant Data Transfer Network flow). Any cancellation and or subsequent re-booking of an appointment date shall be notified by the same means and in the same timescales.

30.5F.1 Starting with the Quarter commencing on 1 April 2015, the Company will produce a report in accordance with Part 3 of Schedule 24 for its Distribution Services Area, and in respect of each Quarter. The Company will send that report to the User within 55 Working Days after the end of that Quarter.

30.5F.2 For the Quarter commencing on 1 July 2015 and each subsequent quarter, the User will produce and send to the Company a report in accordance with Part 4 of Schedule 24 for that Quarter and the subsequent periods required in accordance with the specified template. The User must send the report for each such Quarter to the

Company by the last Working Day of the first month of the Quarter.

30.5G.1 In performing its obligations under Clauses 30.5 to 30.5E (inclusive), the Company may need to contact the User or may leave the Connectee in a situation where they need to contact the User. In order to facilitate this contact, the User shall provide to the Secretariat details of the User's emergency metering and follow-up points of contact, for publication pursuant to paragraph 8 of Schedule 14. The User shall ensure that the Secretariat is notified of any changes to such details within 10 Working Days, and shall confirm existing details on an annual basis during September of each year. The Company shall use these contact details to contact the User, and shall provide the relevant contact details to Connectees.

### **Advance Notice of Interruptions**

30.6 Where the User holds a Supply Licence and a Connectee is a Customer, the User shall, with the consent of the relevant Customer, provide the Company with details of any Customer who may be expected (by virtue of being of pensionable age or disabled or chronically sick) to require advance notice of interruptions to the supply of electricity and his requirement within three Working Days of receiving such details and requirements pursuant to the User's obligations under Condition 26 of its Supply Licence.

30.7 The User shall, with the consent of any Customer who has agreed a password with the User or any Relevant Exempt Supplier for access to the Customer's premises, provide the Company with appropriate details concerning that Customer and his password within two Working Days of notification of such password by the Customer.

30.8 The User shall use reasonable endeavours to ensure that all the facts, information and other details provided pursuant to Clause 30.6 and 30.7 remain true, accurate and complete in all respects.

### **Interference**

30.9 Where the User holds a Supply Licence, the User shall (and shall ensure that its contractors and agents shall) in a prompt and appropriate manner having regard to the nature of the incident, inform the Company where the User has (or in the case of the

User's contractors and agents, such contractors and agents have) reason to believe that there has been interference with any metering equipment at an Entry Point or an Exit Point on the Company's Distribution System that has prevented such metering equipment from correctly registering the quantity of electricity supplied, unless the User believes that the interference was caused by the Company.

30.10 Where the User has reason to believe that any interference reported by it (or by its contractors or agents) under Clause 30.9, or any incident reported to the User by the Company in accordance with paragraph 2 of Condition 27 of the Distribution Licence, has been caused by a criminal act it shall provide the Company with such information as is reasonably required for investigating the incident and resolving any safety concerns arising out of it.

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

30.11.1 the substitution of alternative meters;

30.11.2 the provision of prepayment meters; or

30.11.3 De-energisation Works.

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

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

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

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

### **Incident Management**

30.13 Subject to Clauses 30.15 and 30.16, where the Company becomes aware of a single incident affecting Electric Lines with a nominal voltage of more than 1,000 volts that interrupts the supply of electricity to more than 5,000 Customers connected to the Company's Distribution System, the Company shall use reasonable endeavours to

notify the User (within a reasonable period of time after the occurrence of the incident) by email of the following information:

30.13.1 the approximate number of such Customers whose supply has been interrupted as a result of such incident;

30.13.2 the postcodes or areas affected by such incident;

30.13.3 the nature of such incident if known; and

30.13.4 the time by which it is anticipated that the supply of electricity interrupted by such incident will be restored.

30.13A The User shall provide one or more contact email address(es) to the Secretariat for receipt of information under Clause 30.13, and shall ensure that this remains up to date, confirming this by 30 September in each calendar year. The Secretariat shall publish such contact information on the DCUSA Website, and where changes are notified update this as soon as reasonably practicable.

30.14 Subject to Clause 30.16, where the Company has notified the User of an incident pursuant to Clause 30.13, the Company shall use reasonable endeavours to notify the User by email (within a reasonable period of time after the supply of electricity interrupted by such incident has been restored) that such supply has been restored.

30.15 The Company shall not be obliged to comply with Clause 30.14 where the gravity of the incident, either alone or in combination with other incidents affecting the Company's Distribution System, makes it impractical for the Company to do so. Where this Clause 30.15 applies, the Company shall (subject to Clause 30.16) use reasonable endeavours to notify the User (within a reasonable period of time after the occurrence of such incident or incidents) by email of:

30.15.1 the fact that such incident or incidents have occurred; and

30.15.2 the location of such incident or incidents,

and the Company shall use reasonable endeavours to notify the User by email (within a reasonable period of time after the supply of electricity interrupted by such incident or incidents has been restored) that such supply has been restored.

- 30.16 The Company shall only be obliged to comply with Clauses 30.13, 30.14 and 30.15 where the User is a Supplier Party, and where the User has provided the Company with an email address for the purpose of receiving notifications pursuant to Clauses 30.13, 30.14 and 13.15. The Company may either include the information required by Clause 30.13, 30.14 or 13.15 within the email sent pursuant to those Clauses, or at a website address set out in the email.
- 30.17 Where the User is a Supplier Party, and where the User communicates with its Customers in relation to any of the incidents notified by the Company to the User pursuant to Clause 30.13 or 30.15, the User shall inform those Customers that they should contact the Company regarding the incident.
- 30.18 Where an incident arises in the course of the User (or its BSC Party Agent) or the Company undertaking work on (or in the immediate vicinity of) a Metering Point, and to the extent that it is reasonably necessary for the User and the Company to exchange information in order to resolve the incident, then the User and the Company shall exchange such information.

**31. DEMAND CONTROL**

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

## **32. REVENUE PROTECTION**

32.1 Where the Company provides a Revenue Protection Service to the User under this Agreement, it shall do so in accordance with the obligations of the 'Supplier' under the Revenue Protection Code of Practice. Charges for the services so provided shall be calculated in accordance with those specified as applicable to such services in the Relevant Charging Statement and shall be paid for as Transactional Charges in accordance with Clause 22. The Company may cease providing the Revenue Protection Service to the User under this Agreement, provided that the Company gives the User at least three months' advance notice of the date on which the Company will cease providing the Revenue Protection Service. The User may terminate a Revenue Protection Service that is provided by the Company under this Agreement, provided that the User gives the Company at least three months' advance notice of the date on which the User is to cease taking the Revenue Protection Service from the Company.

### **32B. ENERGY THEFT CONSOLIDATION**

32B.1 The Panel shall make any and all arrangements necessary for, arising as a result of, or reasonably incidental to: (a) the deletion from this Agreement of Schedule 25 (Theft Risk Assessment Service), Schedule 26 (Energy Theft Tip-Off Service) and Schedule 30 (The Electricity Theft Detection Incentive Scheme); (b) Energy Theft Consolidation and the transfer of the Consolidated Theft Processes to the Retail Energy Code; and/or (c) Retail Code Consolidation and the transfer of the Revenue Protection Code of Practice to the Retail Energy Code. Such arrangements shall include the termination, novation, sale, transfer or other disposal of the contracts, data and other assets of DCUSA Ltd relating to the same.

32B.2 With effect from immediately prior to Energy Theft Consolidation, the following Schedules of this Agreement shall be deleted from this Agreement: Schedule 25 (Theft Risk Assessment Service), Schedule 26 (Energy Theft Tip-Off Service) and Schedule 30 (The Electricity Theft Detection Incentive Scheme). The ongoing rights and obligations of the Parties under those Schedules shall end on such deletion, but without prejudice to the rights and liabilities of each Party that accrued prior to such deletion (subject to Clause 32B.3).

- 32B.3 With effect from Energy Theft Consolidation, the following provisions shall apply:
- 32B.3.1 all accrued rights and liabilities of each Supplier Party and DNO/IDNO Party in connection with the Consolidated Theft Processes shall cease to be subject to this Agreement, and shall instead be treated as rights and liabilities under and subject to the Retail Energy Code (as described in the Retail Energy Code);
  - 32B.3.2 DCUSA Ltd is released from all its outstanding obligations in respect of the Consolidated Theft Processes, and releases all its outstanding rights in respect of the Consolidated Theft Processes;
  - 32B.3.3 notwithstanding Clause 32B.3.2, DCUSA Ltd shall provide all reasonable co-operation and assistance requested by the Retail Energy Code Company concerning the Consolidated Theft Processes; and
  - 32B.3.4 notwithstanding Clause 32B.3.2, DCUSA Ltd (and the Secretariat) shall, under Schedule 30 (The Electricity Theft Detection Incentive Scheme) and in respect of the scheme year last ending prior to Energy Theft Consolidation, remain responsible for producing the scheme year summary report and for calculating and processing the incentive scheme debits and credits.
- 32B.4 With effect from immediately prior to Retail Code Consolidation, the following Schedules of this Agreement shall be deleted from this Agreement: Schedule 23 (Theft of Electricity Code of Practice) and Schedule 27 (Resolving Unregistered Consumers Code of Practice). The ongoing rights and obligations of the Parties under those Schedules shall end on such deletion, but without prejudice to the rights and liabilities of each Party that accrued prior to such deletion (subject to Clause 32B.5).
- 32B.5 With effect from Retail Code Consolidation, all accrued rights and liabilities of each Supplier Party and DNO/IDNO Party in connection with Schedules 23 (Theft of Electricity Code of Practice) and 27 (Resolving Unregistered Consumers Code of Practice) shall cease to be subject to this Agreement, and shall instead be treated as rights and liabilities under and subject to the Retail Energy Code (as described in the Retail Energy Code).



### **33. GUARANTEED PERFORMANCE STANDARDS**

#### **Compensation**

- 33.1 To the extent that, due to an act or omission on the part of the Company, compensation would be payable by the User pursuant to the ESPR to a Customer, the Company shall make an equivalent compensation payment to the User for the benefit of the Customer in accordance with the provisions of this Clause 33.
- 33.2 Where electricity flows from the Company's Distribution System into the Distribution System of another DNO Party or IDNO Party and, due to an act or omission on the part of the Company, compensation would be payable by the User pursuant to the ESPR to a Customer connected to that other Party's Distribution System, the Company undertakes either to make an equivalent compensation payment directly to the User for the benefit of the Customer, or to arrange for that other Party to make such payment. The Company's liability under this Clause 33.2 shall be subject to such apportionment of responsibilities as is agreed between the Company and that other Party pursuant to Section 2B.
- 33.3 To the extent that, due to circumstances other than those described in Clause 33.1 or 33.2, compensation pursuant to the ESPR would be payable to the Customer by the Company, the Company shall not be liable to make any payment to the User for the benefit of the Customer.

#### **Terms and Procedures of ESPR**

- 33.4 In the circumstances described in Clause 33.1 or 33.2, the Company will comply with the terms and procedures of the ESPR provided that:
- 33.4.1 the User shall be deemed to be a "person having apparent authority to represent the Customer" for the purposes of ESPR regulation 3(2)(d) if the Customer independently contacts the User in relation to a matter which forms the basis of the Customer's claim under the ESPR; and
- 33.4.2 where the ESPR require the Company to "pay to the customer the Prescribed Sum", the Company shall pay the User the Prescribed Sum for the benefit of

the Customer and the User shall pass the payment on to the Customer as soon as is reasonably practicable.

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

#### **Other Matters**

- 33.8 Neither the Company nor the User shall lead a Customer to believe that he has a valid claim for a guaranteed standard payment by reason of the action or default of the other. Where, however, a Customer does have a valid claim, a breach of the provisions of this

Clause 33.8 shall not excuse the Party against whom the claim lies from making the relevant payment.

33.9 In the event of a dispute between the Company and the User as to which of them is liable to pay compensation pursuant to Clause 33.1 or 33.3, in the first instance the Company shall make the compensation payment for the benefit of the Customer and then the dispute shall be referred to the Authority and shall be deemed to be a dispute which may be referred to the Authority by either the Company or the User in accordance with Section 39B of the Act and ESPR regulation 18, and the provisions as to practice and procedure contained in ESPR schedule 3 shall be deemed to apply to any such dispute.

33.10 The Company shall from time to time provide the User with a report on its performance against the ESPR on the standards of performance.

## 34. CONFIDENTIALITY RESTRICTIONS ON THE COMPANY

### **Confidential Information**

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

34.1.1 receives from the User under this Agreement; or

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

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

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

and the provisions of this Clause 34 shall apply to such Confidential Information, save where the User notifies or otherwise gives prior written agreement to the Company that such Confidential Information need not be treated as confidential.

### **Restrictions on Use and Disclosure**

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

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

34.2.2 without prejudice to Clause 34.2.1, not use the Confidential Information in a manner which may obtain for the Company or any Affiliate or Related Undertaking of the Company (as the case may be) any commercial advantage in the operation of a Supply Business except, in relation to information falling

within Clause 34.1.2, where the Company supplied electricity to the relevant Connectee at the time the information was acquired by the Company;

- 34.2.3 not authorise access to nor disclose any Confidential Information other than:
- (A) to such of the employees of the Company or any Affiliate or Related Undertaking of the Company as require to be informed thereof for the effective performance of the Company's obligations under this Section 2A or any other agreement entered into between the Company and the User for the provision of services by the Distribution Business of the Company or for the effective operation of the Distribution Business;
  - (B) to such agents, consultants, professional or other advisors, and contractors as require to be informed thereof or to provide advice which is in connection with the operation of the Distribution Business;
  - (C) to the Authority;
  - (D) information which the Company or any Affiliate or Related Undertaking of the Company (as the case may be) is required or permitted to make disclosure of:
    - (i) in compliance with the duties of the Company or any Affiliate or Related Undertaking of the Company (as the case may be) under the Act or any other requirement of a Competent Authority;
    - (ii) in compliance with the provisions of any Relevant Instruments;
    - (iii) in compliance with any other requirement of law;
    - (iv) in response to a requirement of any Stock Exchange or the Panel on Takeovers and Mergers or any other regulatory authority (whether or not similar to those bodies); or

- (v) pursuant to the arbitration rules of the Electricity Arbitration Association or pursuant to any judicial or other arbitral process or tribunal of competent jurisdiction;
  - (E) in the case of information falling within Clause 34.1.2, to the person who supplied electricity to the relevant Customer or purchased electricity from the relevant Generator at the time at which such information was acquired by the Company; or
  - (F) for the purposes of providing to a Connectee (or, with the Connectee's permission, its contractor or agent) details of the Use of System Charges (and/or the related tariffs, estimated charges or elements from which the charges are constructed) which are or may be applicable to that Connectee's Metering Points and/or Metering Systems; and
- 34.2.4 take all reasonable steps to ensure that any such person as is referred to in sub-clauses 34.2.3(A), (B) and (E) to whom the Company or any Affiliate or Related Undertaking of the Company (as the case may be) discloses Confidential Information does not use that Confidential Information for any purpose other than that for which it was provided and does not disclose that Confidential Information otherwise than in accordance with the provisions of this Clause 34.

### **Other Matters**

- 34.3 Not Used.
- 34.4 The User agrees that where the Company uses or discloses Confidential Information in accordance with this Clause 34, such Confidential Information need not be treated as confidential for the purposes of Condition 42 of the Distribution Licence to the extent of such use or disclosure.
- 34.5 The Company undertakes that, in any case where information to be disclosed by it under this Agreement may lawfully be disclosed only with the prior consent of the person to whom the information relates, it will use its reasonable endeavours to obtain such prior

consent so as to enable it, or the User as the case may be, promptly to perform its obligations under this Section 2A, provided that where the consent of the Connectee is required to be obtained for the purposes of this Section 2A, the User (and not the Company) shall have the obligation to obtain such consent under Clause 35.6.

## **35. CONFIDENTIALITY RESTRICTIONS ON THE USER**

### **Confidential Information**

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

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

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

and, to the extent that any Affiliate or Related Undertaking of the User is in possession of Confidential Information, the User shall procure that such Affiliate or Related Undertaking observes the restrictions in Clauses 35.2 to 35.4 (inclusive) as if in each such Clause there was substituted for the User the name of the Affiliate or Related Undertaking.

### **Restrictions on Use and Disclosure**

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

35.2.1 in the circumstances set out in Clause 35.3;

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

35.2.3 with the prior consent in writing of the Company.

35.3 The circumstances set out in this Clause 35.3 are:

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



35.3.2 where the Confidential Information:

- (A) is acquired by the User in circumstances in which this Clause 35 does not apply;
- (B) is acquired by the User in circumstances in which this Clause 35 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 35; or
- (C) (after it is furnished to the User) enters the public domain,

otherwise (in any such case) than as a result of (i) a breach by the User of its obligations in this Clause 35; or (ii) a breach by the person who disclosed that Confidential Information of that person's confidentiality obligation, and the User is aware of such breach;

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

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

35.3.4 the disclosure of Confidential Information to any Affiliate or Related Undertaking of the User, to the employees, directors, agents, consultants and professional advisers of the User or any Affiliate or Related Undertaking of

the User, and to any Relevant Exempt Supplier, in each case on the basis set out in Clause 35.4; or

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

35.4 The User shall take all reasonable steps to ensure that any such person as is referred to in Clause 35.3.4 to whom the User discloses confidential information does not use that confidential information for any purpose other than that for which it is provided and does not disclose that confidential information otherwise than in accordance with this Clause 35.

#### **Other Matters**

35.5 Not Used.

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

**35A. PROVISION OF COST INFORMATION**

- 35A.1 This Clause 35A shall only apply where the Company is a DNO Party.
- 35A.2 By the fifth Working Day of May, August, November and February in each year, the Company shall complete a copy of table 1 in Schedule 15 and send the completed table to the Secretariat.
- 35A.3 By the fifth Working Day of May, August, November and February in each year, the Company shall complete a copy of table 2 in Schedule 15 and send the completed table to the Secretariat.
- 35A.4 By the fifth Working Day of May, August, November and February in each year, the Company shall complete a copy of table 3 in Schedule 15 and send the completed table to the Secretariat.
- 35A.5 On each occasion that the Company sends a completed table to the Secretariat pursuant to Clause 35A.2, the Company shall also send an accompanying written commentary to assist in the understanding of the data presented within the table (including an explanation of the reasons behind any changes made to estimates since the last such table was prepared).
- 35A.6 The Secretariat shall, within three Working Days of receiving each table and commentary provided pursuant to this Clause 35A, publish such table and commentary on the Website.
- 35A.7 The Company shall ensure that, within 20 Working Days of sending a table 2 to the Secretariat in accordance with Clause 35A.3, a meeting is convened (which may be held by telephone conference) to which all Supplier Parties and IDNO Parties are invited. At such meeting, the Company shall provide an oral commentary to assist those attending to understand the data presented within the most recently submitted tables 1, 2 and 3 (including an explanation of the reasons behind any changes made to estimates since the last such tables were prepared). The Company shall ensure that the Supplier Parties and the IDNO Parties attending the meeting are given the opportunity to ask questions regarding the tables, and the Company shall use reasonable endeavours to provide a response to those questions.

**35B. PRODUCTION OF THE ANNUAL REVIEW PACK**

- 35B.1 This Clause 35B shall only apply where the Company is a DNO Party.
- 35B.2 The Annual Review Pack (or ARP) is to be published on behalf of each DNO Party, and refreshed where necessary, in accordance with this Clause 35B.
- 35B.3 By 31 December of each year, the Company shall complete the ARP and send the completed ARP to the Secretariat.
- 35B.4 By the third Working Day of January in each year, the Secretariat shall publish on the Website the completed ARP most recently received from each DNO Party.
- 35B.5 Where the Use of System Charges to be charged by the Company from April in any year differ from the indicative charges set out in the Company's ARP published pursuant to Clause 35B.4 in January of that year, then the Company shall (at least 40 days prior to the date from which such charges are to have effect) resubmit an updated ARP to the Secretariat.
- 35B.6 The Secretariat shall, within 5 days of receiving any updated ARP pursuant to Clause 35B.5, publish the updated ARP on the Website.

**35C. PROVISION OF AN EMBEDDED CAPACITY REGISTER**

- 35C.1 This Clause 35C shall apply whether the Company is a DNO Party or an IDNO Party.
- 35C.2 The Company shall create, maintain and publish on its website an Embedded Capacity Register for its Distribution System, as further described in this Clause 35C and Schedule 31 (Embedded Capacity Register).
- 35C.3 Within 10 Working Days following the end of each month, the Company shall, publish an updated Embedded Capacity Register using the latest available information it holds as at the end of that month.
- 35C.4 For the purposes of Clause 35C.3, the latest available information with respect to sites shall include:
- (a) accepted applications pertaining to a request to (i) alter the characteristics of the physical assets at the site; and/or (ii) alter any of the contractual terms and conditions that apply to the site;
  - (b) accepted connection offers for new connections to the Company's Distribution System; and
  - (c) any necessary changes as a result of the Company (i) being notified that previously held information pertaining to a site was incorrect; and/or (ii) having been notified of the correct information.
- 35C.5 Where, in accordance with the provisions of Schedule 31, the Company has been notified that the required format and/or data items of the Embedded Capacity Register have been altered, then the Company shall ensure that it makes such alterations with effect from the next version of its Embedded Capacity Register that it publishes (or, if applicable, with effect from such later date from which such alteration is specified pursuant to Schedule 31 to have effect).