



# Standard Electricity Terms & Conditions for Industrial and Commercial Business Customers

British Energy Direct Ltd 3.0 05/12/11

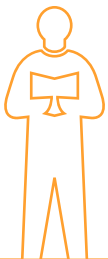
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# Standard Electricity Terms & Conditions for Industrial and Commercial Business Customers

British Energy Direct Limited Terms for the supply of electricity



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## 1 Definitions

- 1.1 In these Conditions except where the context requires otherwise capitalised phrases and expressions shall have the meanings set out in Schedule 1.
- 1.2 The schedules hereto form part of the Agreement and will have the same effect as if in the body of the Agreement, and references to the Agreement shall include all schedules hereto.
- 1.3 References to any statute, statutory instrument, regulation or code shall be deemed to include reference to the same as amended or re-enacted from time to time.
- 1.4 Clause headings are for reference only.
- 1.5 References to persons will be construed so as to include bodies corporate, unincorporated associations and partnerships.
- 1.6 Words in the singular may be interpreted as using the plural, and vice versa.
- 1.7 The expression “including” is to be construed without limitation.

## 2 BE's Undertakings

BE undertakes to the Customer that throughout the Term it shall:

- 2.1 have an appropriate licence to supply electricity to each Supply Point; and
- 2.2 be a party to the DCUSA;

and BE shall notify the Customer immediately should BE become aware that the undertakings set out above have ceased to be complied with.

## 3 The Customer's Warranties and Representations

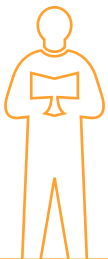
- 3.1 The Customer represents and warrants and undertakes to BE, at the date of the Agreement and throughout the Term, that:
  - 3.1.1 the Sites are only used for business purposes and that the Customer shall notify BE as soon as it becomes aware that any Site shall be used as Domestic Premises (as defined in the Supply Licence) and the Customer shall ensure that all necessary arrangements are made to Register an alternative supplier in respect of such Sites in substitution for BE with effect from the date when such Sites shall become Domestic Premises;
  - 3.1.2 it will satisfy such other conditions as may, in the reasonable opinion of BE, be necessary to permit BE to provide the Supply at each Supply Point in accordance with the Supply Licence, the Act, the BSC, the DCUSA, the Regulations and any other relevant standard electricity supply industry documents or agreements as a result of changes to such documents after the date of the Agreement;
  - 3.1.3 it will comply with the relevant Distribution Code and the Grid Code to the extent that such codes are applicable to it;
  - 3.1.4 it has the right power and authority and has taken all action necessary to execute and deliver, and to exercise its rights and perform its obligations under, the Agreement and the relevant Connection Agreements;
  - 3.1.5 it will at all times be a party to and duly comply with its obligations under the Connection Agreement and any other agreement required by the terms of the

Agreement to be entered into by the Customer with an Agent in respect of the Supply;

- 3.1.6 if requested, it has provided to BE a parent company guarantee, letter of credit, or such other Credit Support in form and substance reasonably acceptable to BE or has agreed prepayment arrangements with BE;
  - 3.1.7 it is not a party to an existing agreement with a third party for the supply of electricity to the Sites; and
  - 3.1.8 from the Commencement Date it will not be party to an agreement with a third party for provision of Balancing Services at the Sites without BE's written agreement.
- 3.2 The Customer shall notify BE as soon as reasonably practicable if it becomes aware that any provision in this clause 3 has ceased or, in the Customer's reasonable opinion, is likely to cease to be satisfied.
  - 3.3 The Customer shall indemnify BE in respect of any loss, damage, costs and liability suffered or incurred by BE as a result of breach by the Customer of any representation, warranty or undertaking contained in clause 3.1.

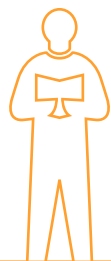
## 4 Supply of Electricity and Connection

- 4.1 BE will provide the Supply to the Customer from the Commencement Date for the Term providing that all the conditions in clause 4.2 have been satisfied and continue to be satisfied and none of the conditions in clause 4.3 apply.
- 4.2 If, on the day after the date of this Agreement (the “**Relevant Date**”), any of the Sites is being supplied by another electricity supplier (the “**Previous Supplier**”), the Commencement Date will be within 21 days of the Relevant Date unless:
  - 4.2.1 the Customer requests that the Commencement Date is a later date;
  - 4.2.2 the Customer notifies the Supplier that it does not wish the Supplier Transfer to take place (in which case an Early Termination Fee may be charged in accordance with clause 15); or
  - 4.2.3 one or more of the conditions in clause 4.3 applies (in which case an Early Termination Fee may be charged in accordance with clause 15).
- 4.3 The conditions in this clause are that, on or after the Relevant Date:
  - 4.3.1 the Previous Supplier has prevented the Supplier from completing the Supplier transfer because it has raised an objection to the Supplier Transfer;
  - 4.3.2 the Supplier does not have all the information it requires in order to complete the Supplier Transfer, despite having taken all reasonable steps to obtain the missing information from the Customer; and the Supplier cannot readily obtain that information from another source; or
  - 4.3.3 the Customer is taking a supply of electricity through an Exempt Distribution System and the Supplier is unable to start supplying the Sites because:
    - (a) a connection between the Sites and the Exempt Distribution System, or the Exempt Distribution System and another relevant distribution system has not yet been made; or





- (b) a metering arrangement which is required in order for the Supplier to access the Exempt Distribution System is not in place; or
- 4.3.4 the Supplier is prevented from completing the Supplier Transfer due to any other circumstance which is outside of the Supplier's control and which it has taken all reasonable practicable steps to resolve.
- 4.4 Subject to clause 4.2, where a condition in clause 4.3 applies, the Supplier will complete the Supplier Transfer as soon as is reasonably practicable and in any event within 21 days following the date on which the relevant condition ceases to apply (or if more than one condition applies, when all relevant conditions cease to apply).
- 4.5 BE's obligation to provide the Supply is conditional on the following conditions being satisfied at all times in relation to each Site:
- 4.5.1 BE having Registered the Supply Point(s) in accordance with the BSC and the MRA;
- 4.5.2 there being appointed in accordance with the BSC and the MRA and remaining throughout the Term a Meter Operator or Meter Administrator and/or Unmetered Supplies Operator Agent, a Data Aggregator and a Data Collector in respect of the Supply Point(s);
- 4.5.3 there being a Meter Operator Agreement, Data Aggregator Agreement and Data Collector Agreement in force in relation to each Supply Point;
- 4.5.4 in respect of an Unmetered Supply, the issue by an Unmetered Supplies Operator Agent of an Unmetered Supplies Certificate;
- 4.5.5 save where the Sites are directly connected to the GB Transmission System, there being a Use of System Agreement in force in relation to each Site; and
- 4.5.6 there being a Meter installed, satisfactorily commissioned, registered and operating at each Supply Point and such Meter meeting the requirements of clause 7.1, and the Customer shall accept electricity at each Supply Point at the Sites up to but not exceeding the Maximum Capacity or where the Sites are directly connected to the GB Transmission System, the Connection Site Demand Capability.
- 4.6 Where the Customer has contracted directly with the relevant Agent the Customer will ensure that clauses 4.5.3, 4.5.4 and the installation, commissioning and operating requirements in clause 4.5.6 are satisfied as at the Commencement Date and remain satisfied until the Agreement ends. The Customer shall provide BE with such information as BE reasonably requires to enable BE to satisfy clauses 4.5.1, 4.5.2, and the registration requirement in clause 4.5.6.
- 4.7 All electricity discovered or reasonably and properly assessed to have been consumed (whether recorded or not recorded by the Meter for whatever reason) by the Customer at a Supply Point during the Term shall be deemed to be supplied under the terms of this Agreement.
- 4.8 Without prejudice to BE's right under clause 4.11 to agree (or not agree) to add sites to the Agreement, where a new Supply Point is to be Registered in respect of any Site, or a new MPAN is to be allocated to a Supply Point at any Site, the Customer shall notify BE of such new Supply Point or new MPAN (as applicable) as soon as practicable and, in any event, a minimum of twenty (20) Business Days prior to the date of such proposed Registration of such new Supply Point or allocation of new MPAN. BE shall Register new Supply Point(s) and MPAN(s) notified to BE in accordance with this clause 4.8.
- 4.9 The Customer shall ensure that demand at any Supply Point shall not at any time exceed the Maximum Capacity or where the Sites are directly connected to the GB Transmission System, the Connection Site Demand Capability of that Supply Point. If demand does at any time exceed the Maximum Capacity or the Connection Site Demand Capability of that Supply Point, then, without prejudice to any other rights of BE, the Customer shall indemnify BE for all costs, losses or liabilities incurred by BE as a consequence of the Customer's demand exceeding the Maximum Capacity or the Connection Site Demand Capability (as applicable) of that Supply Point, including any costs BE incurs from the LDSO as a result.
- 4.10 The Customer will use all reasonable endeavours to notify BE at least seven (7) Business Days in advance of (a) any material change in the patterns of consumption of electricity at the Site(s) and/or (b) any arrangements relevant to levels of consumption which the Customer may have entered into, or is proposing to enter into from time to time (including shutdowns, holidays or changes to working patterns) and at least one (1) Business Day in advance of any such change provide, where appropriate, an additional notice setting out any further changes since the notification provided at least seven (7) Business Days in advance of such changes. Without prejudice to clauses 8.15 and 8.17, the Customer shall pay upon demand any reasonable costs or charges occasioned by BE as a result of any failure by the Customer to comply with this clause 4.10.
- 4.11 Additional site(s), Supply Point(s) and/or MPAN(s) may be added to the Agreement only with the prior written agreement of BE and the Customer.
- 4.12 Except where BE has Disconnected or De-energised any Supply Point under clause 13, the Customer agrees to notify BE immediately upon the De-energisation or Disconnection of any Supply Point.
- 4.13 BE does not give any warranty or guarantee whatsoever as to the adequacy or safety of the Customer's electrical system and this shall be, and shall remain, at all times at the sole risk of the Customer.
- 4.14 Save where the Sites are directly connected to the GB Transmission System or where the Supply is an Unmetered Supply, the Customer shall enter into a Connection Agreement with the relevant LDSO.
- 4.15 Save where the Sites are directly connected to the GB Transmission System or where the Supply is an Unmetered Supply, BE shall enter into a Connection Agreement with the Customer on behalf of the Customer's Local Network Operator in which the Customer and its LDSO shall accept the National Terms of Connection (NTC) and agree to keep to its conditions. This Connection Agreement will have legal effect from the time that the Customer enters into the Agreement and sets out the rights and duties in relation to the connection to which the Customer's LDSO delivers electricity, or accepts electricity from, the Customer's business and the Customer shall, at all times during the Term, comply with and perform its obligations under the NTC. Copies of the NTC are available from and any questions about it should be directed to: Energy Networks Association, 6th Floor, Dean Bradley House, 52 Horseferry Road, London SW1P 2AF: phone 0207 706 65137, or see the website at [www.connectionterms.co.uk](http://www.connectionterms.co.uk). The Customer agrees that, where this clause 4.12 applies, the LDSO has the benefit of, and is entitled to enforce, the provisions of the Connection Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.



- 4.16 Where the Sites are directly connected to the GB Transmission System, the Customer shall be registered with CUSC and the Customer shall at all times during the Term, comply with and perform its obligations under the Connection Agreement set out in Schedule 2, Exhibit 1 of the CUSC.
- 4.17 Where the Supply is an Unmetered Supply, the Customer shall be a party to a UMS Connection Agreement and shall, at all times during the Term, comply with and perform its obligations under such UMS Connection Agreement. The Customer shall update the inventory to be provided under such UMS Connection Agreement at least once in any twelve (12) month period.
- 4.18 The Customer consents to any previous electricity supplier disclosing to BE any information relating to the Customer which it has in its possession in respect of any Meters at the Sites to enable BE to take over the Supply.
- 4.19 If, at 00:00 hours on the date set out in the Applicable Term Sheet to the Agreement as the commencement date, the Customer is party to a supply agreement with another supplier which grants to the other supplier the right to enter an objection under the customer transfer processes contained or referred to in the MRA to the Registration by BE of any Supply Point, and if the other supplier raises an objection to the Customer transferring supply to BE, the Customer shall indemnify BE for all costs, losses or liabilities reasonably incurred by BE as a result of the other supplier raising such objection.

## 5 CCL, CHP, Renewable and Nuclear Source Electricity

### 5.1 Climate Change Levy

In order for BE to apply to the Customer's invoice any reductions or exemptions from the Climate Change Levy ("CCL") for which the Customer may qualify other than under clause 5.2, the Customer must supply BE with the Customer's completed relief or supplier certificate ("PP11") available from HM Revenue and Customs. BE can only apply the PP11 retrospectively to the most recent of three years from presentation or 1st November 2007.

### 5.2 Renewable and Good Quality Combined Heat and Power Source Electricity

If the Customer's Term Sheet specifies CCL exempt sources then (subject to clauses 5.7 and 5.8) BE shall apply the Agreed CCL Exempt Percentage to either the Customer's Total Forecasted Consumption or Supplied Electricity (at BE's discretion) as follows:

- 5.2.1 If the Customer's Term Sheet specifies Pure Green Energy then the supplied CCL exempt power will be backed by Renewable Source Electricity exclusively from onshore wind, offshore wind and/or CCL exempt small hydro-electric generation.
- 5.2.2 If the Customer's Term Sheet specifies Renewable Energy then the supplied CCL exempt power will be backed by Renewable Source Electricity.
- 5.2.3 If the Customer's Term Sheet specifies Good Quality CHP Energy then the supplied CCL exempt power will be backed by Good Quality CHP Source Electricity.
- 5.2.4 If the Customer's Term Sheet specifies Any LEC Energy then the supplied CCL exempt power will be backed, at BE's discretion, by either Good Quality CHP Source Electricity or Renewable Source Electricity or a combination of both.

Unless BE notifies the Customer otherwise, BE shall apply the Agreed CCL Exempt Percentage to the Customer's Supplied Electricity (subject to clauses 5.7 and 5.8). BE shall

be entitled to notify the Customer at any time during the Term that it will apply the Agreed CCL Exempt Percentage to the Total Forecasted Consumption or Supplied Electricity (as relevant) and BE shall apply the Agreed CCL Exempt Percentage accordingly from the date of such notification until the date of any further notification. Where BE applies the Agreed CCL Exempt Percentage to the Total Forecasted Consumption, in each month, BE will apply the Agreed CCL Exempt Percentage to BE's reasonable estimate of the proportion of the Total Forecasted Consumption attributable to that month.

- 5.3 BE shall (at its sole discretion) be entitled to supply the Customer with more CCL exempt power than the Agreed CCL Exempt Percentage or, if the Customer's Term Sheet does not specify CCL exempt sources, to supply the Customer with any amount of CCL exempt power. That CCL exempt power shall be backed by either Renewable Source Electricity or Good Quality CHP Source Electricity, or a combination of both. Where BE exercises its discretion to supply CCL exempt power under this clause 5.3, the Customer will not be charged CCL on that CCL exempt power, however an amount forecast by BE to be equal to the CCL which would have been charged had that power not been CCL exempt (the "CCL Exempt Charge") shall be applied.

### 5.4 Renewable Source Declaration

If clause 5.2.1 or clause 5.2.2 applies then, for the purposes of, and in accordance with, paragraph 19(2) of Schedule 6 to the Finance Act 2000, the amount of Renewable Source Electricity supplied by BE in each Averaging Period shall not exceed the difference between:

- 5.4.1 the total amount of Renewable Source Electricity acquired or generated by BE during that period; and
- 5.4.2 so much of that total amount as is allocated by BE otherwise than to Renewable Source Electricity supplies made by BE in that period.

### 5.5 Good Quality Combined Heat and Power Source Declaration

If clause 5.2.3 applies then, for the purposes of, and in accordance with, paragraph 20A of Schedule 6 to the Finance Act 2000, the amount of Good Quality CHP Source Electricity supplied by BE in each Averaging Period shall not exceed the difference between:

- 5.5.1 the total amount of Good Quality CHP Source Electricity acquired or generated by BE during that period; and
- 5.5.2 so much of that total amount as is allocated by BE otherwise than to Good Quality CHP Source Electricity supplies made by BE in that period.

### 5.6 Renewable or Good Quality Combined Heat and Power Source Declaration

If clause 5.2.4 or clause 5.3 applies then, for the purposes of, and in accordance with, paragraph 19(2) and 20A of Schedule 6 to the Finance Act 2000, the amount of Renewable Source Electricity or Good Quality CHP Source Electricity supplied by BE in each Averaging Period shall not exceed the difference between:

- 5.6.1 the total amount of Renewable Source Electricity and Good Quality CHP Source Electricity acquired or generated by BE during that period; and
- 5.6.2 so much of that total amount as is allocated by BE otherwise than to Renewable Source Electricity and Good Quality CHP Source Electricity supplies made by BE in that period.



- 5.7 BE will not supply the Customer with the Agreed CCL Exempt Percentage of the Customer's Supplied Electricity or Total Forecasted Consumption (as relevant) from Renewable Source Electricity or Good Quality CHP Source Electricity as applicable if continuation of such a supply would result in BE being in breach of its obligations under the Finance Act 2000.
- 5.8 If clause 5.2 applies, any failure by BE to supply the Customer with the Agreed CCL Exempt Percentage of the Customer's Supplied Electricity or Total Forecasted Consumption (as relevant) from Renewable Source Electricity or Good Quality CHP Source Electricity as applicable shall not, in relation to Supply during the Transfer Period, constitute a breach by BE of this Agreement.
- 5.9 Where any statutory provision allows BE to, BE may disapply clause 5.4, 5.5 and/or 5.6 and supply the Customer with electricity which is not Renewable Source Electricity or Good Quality CHP Source Electricity but which benefits from being a CCL exempt source.
- 5.10 Nuclear Source Electricity  
If the Customer's Term Sheet specifies Pure Nuclear then (subject to clauses 5.11 and 5.12) BE shall apply the Agreed Nuclear Percentage to either the Customer's Supplied Electricity or Total Forecasted Consumption (at BE's discretion) and the Agreed Nuclear Percentage will be backed by Nuclear Source Electricity (subject to clauses 5.11 and 5.12). Unless BE notifies the Customer otherwise, BE shall apply the Agreed Nuclear Percentage to the Customer's Supplied Electricity. BE shall be entitled to notify the Customer at any time during the Term that it will apply the Agreed Nuclear Percentage to the Total Forecasted Consumption or Supplied Electricity (as relevant) and BE shall apply the Agreed Nuclear Percentage accordingly from the date of such notification until the date of any further notification. Where BE applies the Agreed Nuclear Percentage to the Total Forecasted Consumption, in each month, BE will apply the Agreed Nuclear Percentage to BE's reasonable estimate of the proportion of the Total Forecasted Consumption attributable to that month.
- 5.11 Pure Nuclear Declaration  
If clause 5.10 applies then for each disclosure period (as defined in the Electricity (Fuel Mix Disclosure) Regulations 2005) that corresponds (in part or in whole) with the period of the Supply under this Agreement the amount of electricity generated from a nuclear source supplied by BE will not exceed the amount for which BE holds or will hold Generator Declarations for electricity generated from a nuclear energy source for the relevant disclosure period.
- 5.12 If clause 5.10 applies, any failure by BE to supply the Customer with the Agreed Nuclear Percentage of the Customer's Supplied Electricity or Total Forecasted Consumption (as relevant) from Nuclear Source Electricity shall not, in relation to Supply during the Transfer Period, constitute a breach by BE of this Agreement.

## 6 Term Extension

- 6.1 Subject to clause 6.3, in the event of consumption by the Customer at the Supply Points at the Site(s) after any date from which termination under the Agreement takes effect ("Termination Effective Date"), the Term Sheet (including these Conditions and any other document referred to in the Term Sheet as forming part of the Agreement) in force between the Customer and BE prior to the Termination Effective Date shall be deemed to:
- 6.1.1 be extended from the Termination Effective Date until the expiry of the Transfer Period; and

- 6.1.2 form a legally binding agreement between the parties until the expiry of the Transfer Period,  
and the parties hereby agree that such Term Sheet shall, subject to clauses 5.7 and 5.11, take effect as described in clauses 6.1.1 and 6.1.2 above, save that the Default Rate shall apply in place of the Energy Charge set out in such Term Sheet as if the Default Rate were specified in such Term Sheet as the Energy Charge and the Customer shall pay for such consumption at the Default Rate in respect of the Transfer Period. In addition, the Customer shall pay for the following charges which shall be passed through to the Customer at cost during the Transfer Period:
- 6.1.3 Transmission Charges;  
6.1.4 Distribution Losses;  
6.1.5 Distribution Charges;  
6.1.6 Reactive Power Charges;  
6.1.7 Meter Operator, Data Services & Settlement Charges;  
6.1.8 Additional Charges;  
6.1.9 Climate Change Levy;  
6.1.10 Hydro Benefit Replacement Charge;  
6.1.11 Tax,  
each such term as defined in the Applicable Term Sheet.
- 6.2 At any time prior to the End Date, BE may submit one or more new Term Sheets proposed to be executed by the parties in each Offer Period.
- 6.3 A Term Sheet executed by the Customer and BE within the relevant Offer Period pursuant to clause 6.2 will, with effect from the Commencement Date specified in such Term Sheet, supersede and replace any previous Term Sheet, except that nothing in this clause 6 shall operate so as to waive, release, diminish or discharge all or any of the payment obligations of a party accrued at the Commencement Date specified in any previous Term Sheet, which shall remain in place until discharged in full in accordance with the terms of the Agreement which includes such previous Term Sheet.
- 6.4 If at the End Date a new Term Sheet has not been executed by both the Customer and BE in accordance with clause 6.2, the Agreement shall immediately terminate and the provisions of clauses 6.1 and 13.4 shall apply during the Transfer Period.

## 7 Metering and Other Equipment

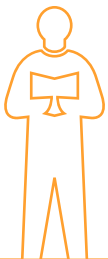
- 7.1 The Customer represents, warrants and undertakes to BE that the Supply at each Supply Point will be measured by a Meter, which must be:
- 7.1.1 installed at the Supply Point (unless BE agrees for it to be installed elsewhere);  
7.1.2 operated and maintained by a Meter Operator;  
7.1.3 in proper working order and suitable for measuring the Supply at the appropriate Measurement Class;  
7.1.4 suitable for use in connection with the charging structure applicable to the Supply;  
and



- 7.1.5 subject to clause 7.2, compliant with all legislation, regulation and codes of practice applicable from time to time.
- The Customer shall be responsible for all costs related to its compliance with this clause 7.1.
- 7.2 For the purposes of clause 7.1 and in accordance with paragraph 2(2) of Schedule 7 of the Act, the parties agree that a non-certified Meter may be installed and used.
- 7.3 Subject to clause 7.4, the Customer shall nominate and contract directly with a Meter Operator, Data Collector and Data Aggregator (such Agents to be reasonably acceptable to BE) in respect of each Supply Point and the Customer shall notify BE of such nomination in writing at least one (1) month before the Commencement Date. If the Customer fails to nominate and contract with any or all of the Agents reasonably acceptable to BE, or fails to notify BE of any or all of the Customer's nominated Agents within the required period, or having notified BE of any or all of the Customer's nominated Agents the Customer's contract with any such Agent terminates then:
- 7.3.1 BE may nominate and contract directly with any or all of the Agents (as applicable) on the Customer's behalf;
- 7.3.2 the Customer shall indemnify BE upon demand for any costs or charges BE incurs as a result of (i) BE contracting directly with an Agent under clause 7.3.1 above and (ii) any failure or delay by the Customer to nominate and contract directly with all or any of the Agents or to notify BE of such nomination;
- 7.3.3 BE shall not be liable to the Customer in respect of any loss of the Customer's data or costs or charges incurred by the Customer as a result of any failure or delay by the Customer in nominating and contracting with any Agent in respect of a Supply Point or the failure by the Customer to notify BE of the Customer's nomination and contracting with any Agent within the required period.
- 7.4 If prior to the Commencement Date or after the Commencement Date, the Customer wishes to instruct BE to contract with Agent(s) nominated by the Customer on the Customer's behalf:
- 7.4.1 in the case of appointments of Agent(s) to take effect on the Commencement Date, the Customer shall notify BE of the name and contact details for the Customer's nominated Agent(s) at least one (1) month before the Commencement Date; or
- 7.4.2 in the case of appointments of Agent(s) to take effect after the Commencement Date, the Customer shall notify BE of the name and contact details of the Customer's nominated Agent(s) at least one (1) month prior to the proposed date of the appointment of the Agents,  
and, subject to BE agreeing to contract with the Customer's nominated Agents (which BE shall not be obliged to do) the Customer shall:
- 7.4.3 pay to BE any additional costs or charges BE may incur as a result of such arrangement;
- 7.4.4 procure the compliance by such Agent(s) with any standards, conditions and times required by BE in respect of the provision of the Agent Services as may be notified by BE to the Customer in writing (including relevant terms of the Agreement);
- 7.4.5 indemnify BE for all costs, losses and liabilities reasonably or directly incurred by BE as a result of BE contracting with the Customer's nominated Agent(s) and subsequent registration of the Customer's nominated Agent(s); and
- 7.4.6 undertake not to contract with any additional Meter Operator, Data Aggregator or Data Collector to perform such Agent Services.
- 7.5 If either party reasonably believes that a Meter is registering inaccurately, such party (the "notifying party") shall notify the other party and BE will arrange for it to be inspected and tested in accordance with any relevant statutory or electricity industry requirements (including the requirements of the BSC) by a person who, in BE's opinion, is an appropriate person to test the Meter in question. BE may request that the Customer pays for the inspection of the Meter prior to such inspection occurring, however the final allocation of the cost of inspecting the Meter shall be determined as follows:
- 7.5.1 if the Meter is found to be operating within the relevant limits of accuracy the cost of inspection and testing will be borne by the notifying party; or
- 7.5.2 if the Meter is found to be operating outside the relevant limits of accuracy, the Meter shall be replaced or recalibrated as soon as practicable and the costs of such testing, replacement or recalibration shall be borne by the party that contracted with the Meter Operator for the relevant Meter. For the purposes of the Agreement, the inaccuracy of the relevant Meter shall be deemed to have arisen after the date of the Meter reading included in the invoice for the month immediately prior to the month in which the notifying party gave notice of the inaccuracy.
- 7.6 Notwithstanding any right BE has to terminate the Agreement, where, in respect of any Supply Point, the Customer is in breach of a representation and warranty contained in clause 7.1 BE shall estimate the amount of the Supply to the relevant Supply Point in accordance with clause 7.7.
- 7.7 For the period during which either a Meter is out of service or operating outside the limits of accuracy referred to in clauses 7.1 or 7.6, BE shall estimate the amount of the Supply to the relevant Supply Point(s) after taking all relevant information into account, including historical data relating to the Customer and any information available from any of the Meters, and BE may revise such estimate from time to time (and adjust the account between BE and the Customer accordingly) to take into account the availability of additional or revised data which (in BE's reasonable opinion) is more accurate than the data on which the estimate was originally based.
- 7.8 If a Meter has to be changed or modified (whether before the Commencement Date or later) because it cannot provide the consumption data BE needs to apply BE's Charges, the Customer will pay BE all reasonable costs or charges which BE may incur in respect of the relevant changes or modifications.
- 7.9 After BE is Registered, if a Meter is to be read on a non-half hourly basis, BE may ask the Customer to read such Meter and send BE the reading so that BE has an up to date reading as close as possible to the Commencement Date ("Supply Start Reading").
- 7.10 If clause 7.9 applies, the Supply Start Reading must be taken by the Customer no later than seven (7) days after the Commencement Date and must be provided to BE no later than fourteen (14) days after the Commencement Date.
- 7.11 If the Customer does not send BE the Supply Start Reading in accordance with clause 7.9



- and 7.10, or if the Supply Start Reading taken by the Customer is disputed by the Customer's former energy supplier or his agent, BE reserves the right to use a reasonable estimate of the Customer's consumption and/or arrange for the Meter(s) to be read by BE's representative or agent, in which case BE will be entitled to recover from the Customer all reasonable costs BE incurs in doing so. The Customer may dispute a Supply Start Reading prepared by BE in accordance with this clause 7.11 by giving BE notice at any time up to one (1) month after the date of the invoice which includes the Supply Start Reading or the date the Customer is reasonably aware of the Supply Start Reading which BE will use to prepare the Customer's invoices under the Agreement, whichever occurs earlier. If the Supply Start Reading submitted by the Customer is validated by the relevant Agent(s), then BE will recalculate the Customer's invoice and credit or debit the Customer the amount of any overpayment or underpayment by the Customer in the next invoice issued after the date BE receives notice of the dispute.
- 7.12 If a Meter is to be read on a non-half hourly basis, BE will arrange for such Meter to be read or, if the Customer has contracted with the Customer's own Agents, they may send BE readings at appropriate intervals. Where they provide BE with Meter readings, they must do so in such timeframe as BE notifies them is necessary to allow BE to prepare the Customer's invoices under clause 8. If they do not provide BE with readings within the required timeframe, BE reserves the right to prepare an invoice based on BE's reasonable estimate of the electricity supplied to the Customer in accordance with clause 7.7.
- 7.13 If BE arrange for a Meter to be read outside the normal meter reading cycle applicable to a Site because the Customer asks BE to do so or as a result of some fault or failure by the Customer or any Agent contracted by the Customer under the Agreement, the Customer shall pay BE any reasonable costs BE incurs.
- 7.14 If and to the extent that a Meter is owned or controlled by the Customer, or by a third party contracted by the Customer, the Customer shall, or shall procure that the relevant third party shall, at all times during the Term maintain such Meter (including the surrounding location of such Meter) in good and substantial repair and in good working order and the Customer shall indemnify BE in respect of any loss of any nature incurred by BE as a result of a breach of this clause 7.14.
- 7.15 BE may agree to receive and pay invoices on the Customer's behalf from Agents nominated by the Customer. If BE agrees to do so then, in addition to the Charges, the Customer shall pay BE the amount specified in the Term Sheet for such Agent(s) charges (or such charges as BE otherwise notifies the Customer) which shall include:
- 7.15.1 where the Customer's Supply is metered on a non-half hourly or half hourly basis, the charges imposed on BE by each Agent for Agent Services provided to the type of non-half hourly or half hourly Meter(s) the Customer has; or
- 7.15.2 where the Customer's Supply is metered using AMR, the charges imposed on BE by each Agent for Agent Services provided to the type of AMR Meter the Customer has, plus
- 7.15.3 any administration fee BE charges the Customer.
- 7.16 Subject to clauses 20.11, 20.12 and 20.13, BE, BE's invitees, contractors, agents or representatives shall have the right to enter the Site(s) (or where a Meter is installed in any other location, that location) for any purpose connected with the Agreement, including inspecting, reading, testing, (and, where BE agrees to do so, installing, maintaining, repairing and replacing) the Meter(s). The customer shall not unreasonably hinder or prevent the installation of a Meter at the Sites for the Supply Point(s) and the Customer shall not damage or interfere with or cause or permit any damage or interference with all or any part of a Meter. The Customer shall indemnify BE for all costs, losses or liabilities reasonably or directly incurred by BE as a result of the Customer's failure to comply with this clause 7.16.
- 7.17 If a maximum demand of 100kW is recorded at any time in relation to the Supply, the Customer must have half hourly metering (and the associated communication links) installed at the Supply Point(s) at the Customer's cost to measure the Supply in accordance with clause 7.19.
- 7.18 If:
- 7.18.1 the profile of an MPAN is within Profile Class 5 to 8;
- 7.18.2 a Meter needs to be re-certified; or
- 7.18.3 a Meter needs to be replaced because it is registering inaccurately, or not functioning in accordance with the requirements specified in clause 7.1.3 to 7.1.5,
- then the Customer must have AMR Meter(s) installed at the Supply Point(s) at the Customer's cost to measure the Supply in accordance with clause 7.19.
- 7.19 If clause 7.17 or 7.18 applies the Customer must:
- 7.19.1 at the Customer's cost, arrange for half hourly Meters (and the associated communication links) or AMR capability (as applicable) to be installed at the relevant Supply Point(s) by the Customer's preferred Meter Operator (if possible), the identity of such Meter Operator to be notified to BE; or
- 7.19.2 at the Customer's cost, arrange for the Customer's preferred Meter Operator to replace the relevant Meter(s) with half hourly Meters (and the associated communication links) or AMR Meter(s) (as applicable), the identity of such Meter Operator to be notified to BE; and
- 7.19.3 at the Customer's cost, nominate and contract with the Customer's preferred Data Collector and Data Aggregator in relation to the relevant Supply Point(s) and notify BE of the Customer's nomination and contracting with such Agents; and
- 7.19.4 agree with BE such variation of BE's Charges as is necessary to reflect half hourly metering or AMR (as applicable),
- within the period specified in clause 7.20.
- 7.20 BE will tell the Customer when the Customer is required to have half hourly metering in accordance with clause 7.17 or AMR metering in accordance with clause 7.18 and the Customer must comply with clauses 7.19.1 or 7.19.2 (as applicable) and clauses 7.19.3 and 7.19.4 as soon as possible and in any event within three (3) months of being so told by BE.
- 7.21 If the Customer does not comply with clause 7.19 in the period specified in clause 7.20, BE may arrange for half hourly metering or AMR metering (as applicable) to be installed by BE's preferred Agents and for such preferred Agents to be appointed as the Agents in respect of the relevant Supply Point(s) and the Customer shall pay BE:
- 7.21.1 immediately upon receiving an invoice from BE for the relevant amount, the capital



cost of the half hourly Meter(s) or AMR Meter(s) installed (as applicable), the costs in each case of installing such Meter(s) and the cost of any and all associated telecommunication links; and

- 7.21.2 for the remainder of the Term, the ongoing monthly or quarterly charges associated with the installation of such half hourly metering or AMR metering (as applicable), including associated Meter Operator, Data Collector, Data Aggregator charges and the cost of any and all associated telecommunication links. BE may pay these charges to the relevant Agent(s) or other third party on the Customer's behalf, but where BE does so BE shall be entitled to charge the Customer an additional charge to recover these charges and BE's costs.
- 7.22 If at any time during the Term any of the Agents contracted by the Customer cease to be Qualified or do not provide the Agent Services required of such Agent by the BSC to the standard and at the times required by the BSC and/or (where applicable) to the standard and at the times BE requires, then BE shall contract with and register in accordance with the BSC a replacement Agent and the Customer shall indemnify BE in respect of any loss, damage, costs or liability BE suffers or incurs as a result of BE contracting with and registering such replacement Agent.
- 7.23 Except as is otherwise provided in this clause 7, the Customer shall be responsible for, and shall bear all costs associated with, all Meters and the Customer shall indemnify BE in respect of all costs, charges, expenses, claims, proceedings, losses, demands or liability of any nature (including any liquidated damages BE has to pay under the BSC) which BE may suffer or incur as a result of any fault or failure in a Meter, or any act or omission of the Customer, the Customer's Agents or the Local Network Operator, or any delay in the Customer, the Customer's Agents or the Local Network Operator performing any obligation under the BSC to the standard BE reasonably requires, or any Meter not complying with any relevant statutory or electricity industry requirements (including, without limitation, Schedule 7 of the Act, the BSC and/or the CUSC).
- 7.24 Where the Customer has contracted with an Agent, then the Customer shall provide or procure that such Agent shall provide to BE any information regarding the Supply which BE requires to discharge BE's obligations under any relevant statutory or electricity industry requirements (including the BSC, the DCUSA and/or the MRA) within such timescales as BE may require.
- 7.25 If the Customer's Meter is being read on a non-half hourly basis, as soon as possible after the Customer gives or receives notice of termination of the Agreement, the Customer must provide, or procure that a third party provides, BE with a closing Meter reading for each Meter. If the Customer does not provide BE with a closing Meter reading, or the closing Meter reading the Customer provides to BE is not validated by the Agents which either the Customer or BE have contracted with to provide the Agent Services, BE may estimate the Customer's closing Meter reading in accordance with clause 7.7. BE will use the closing Meter reading provided by the Customer or estimated by BE (and validated by the appointed Agents) to prepare the final invoice issued to the Customer in accordance with clause 13.3.

## 8 Charges and Terms of Payment

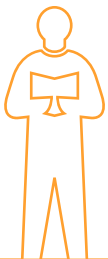
- 8.1 BE shall, by the twelfth (12th) Business Day of each calendar month (or as soon as practicable after that date), send the Customer an invoice showing the amount (calculated

in accordance with the Charges) due for the Supply for the previous calendar month, and any other charges or costs that BE is entitled to charge or pass through to the Customer under the Agreement or otherwise.

- 8.2 The Customer shall pay all invoices in cleared funds on the day and by the method detailed in the Payment Provisions. Except where expressly provided otherwise, all payments made under the Agreement by the Customer shall be made in accordance with the Payment Provisions and free of any restriction or condition and without deduction or withholding (except to the extent required by law) on account of any other amount, whether by way of set-off or otherwise.
- 8.3 All Charges and other amounts expressed to be payable by the Customer to BE under this Agreement, other than the sum payable under paragraph 1.3 of Schedule 2, are exclusive of value added tax. The Customer shall pay any value added tax (or any replacement tax of a similar nature) applicable to any amounts due under the Agreement. Any account rendered by BE in respect of the Supply which includes value added tax shall be a value added tax invoice.
- 8.4 If sums properly due under the Agreement from the Customer remain unpaid, interest shall accrue on the unpaid sums at the Interest Rate as compounded annually from the date such sums became due until the date payment of such sums is received by BE in cleared funds. The Customer shall also pay BE:
- 8.4.1 any debt recovery costs and expenses BE incurs as a result of the Customer's late payment;
- 8.4.2 any compensatory payment(s) BE is entitled to recover from the Customer under section 5A of the Late Payment of Commercial Debts (Interest) Act 1998 (the "Interest Act"); and
- 8.4.3 where BE requests the Customer to do so, an administration fee of up to one hundred pounds (£100).

For the purposes of this clause 8.4 and the Interest Act each amount of unpaid Charges for each month of the Agreement shall constitute a separate debt, and BE shall be entitled to recover a compensatory payment in respect of each such debt.

- 8.5 All invoices must be paid in full, even if part of an invoice is in dispute. The Customer may dispute all or any part of an invoice within ninety (90) days of the date of the invoice. If it is subsequently agreed or determined that part or all of a disputed amount was not properly payable by the Customer then the Customer shall receive a credit in the next invoice issued in accordance with this clause 8 for the agreed amount.
- 8.6 Notwithstanding the foregoing provisions of this clause 8, the following Charges (if payable separately to the Energy Charge) shall be submitted in the invoice of Charges (in accordance with clause 8.1) for the month in which BE is able to calculate the relevant Charge:
- 8.6.1 Triad Charges, which shall be calculated in accordance with clause 8.8;
- 8.6.2 AMR Tolerance Charge and/or HH Tolerance Charge, which shall be calculated in accordance with clauses 8.15 to 8.21; and
- 8.6.3 any other Charges, other than the Fixed Charges or Pass Through Charges, which BE is entitled to charge the Customer under the Agreement.
- 8.7 If and to the extent that, for the purposes of calculating the charges referred to in clause 8.6.1, BE prepares an invoice using estimated data, BE shall reconcile such estimate against



- actual data once this is available and credit or debit the Customer (as applicable) the amount of any underpayment or overpayment by the Customer as soon as is reasonably practicable.
- 8.8 In respect of a twelve (12) month period from the Commencement Date or any anniversary of such date, or where the Term is for a period of less than twelve (12) months, where a Triad Period falls within the Term, the Customer shall make such prepayments in respect of a Triad Period falling in such 12 month period or, where the Term is for a period of less than twelve (12) months in respect of a Triad Period falling in the Term, as may have been agreed between the Customer and BE in accordance with the Payment Provisions in respect of BE's estimate of the sum of the Customer's actual average half hourly electricity demand during the relevant Triad Period (or, where the Customer is not metered on a half hourly basis, BE's estimate of the Customer's average half hourly electricity demand) multiplied by the Triad Demand Tariff in respect of the relevant Zone Area. BE's estimate shall be based on the Estimated Triad Consumption and/or the sum of the Customer's actual average half hourly electricity demand during any previous Triad Period.
- 8.9 Any prepayment(s) of the Triad Charges made by a Customer as described in clause 8.8 shall be repaid to the Customer within forty five (45) Business Days of the later of:
- 8.9.1 the Agreement terminating in accordance with its terms; and
- 8.9.2 the end of any Transfer Period,
- ("the long-stop date") insofar as such long-stop date falls prior to the Triad Period to which the prepayment relates. Notwithstanding the foregoing provisions of this clause 8.9, if the long-stop date falls during a Triad Period, BE shall repay to the Customer the prepayment of Triad Charges relating to the remainder of such Triad Period as soon as is reasonably practicable after the end of such Triad Period. BE shall be entitled to set off any such repayment against any monies in respect of the Agreement not yet paid by the Customer at that time.
- 8.10 The Customer shall provide to BE its estimate of the consumption of electricity at the Sites, which estimate shall be genuine and provided in good faith and (save where the Supply to the relevant Supply Point is metered on a non-half hourly basis) provided on a half hourly basis.
- 8.11 Except where the Sites are directly connected to the GB Transmission System, the Customer's Maximum Capacity at the Supply Points, as agreed between the Customer and the LDSO, is required for quoting and billing purposes. Where the Maximum Capacity has not been provided, it will be estimated until such time as the actual Maximum Capacity is provided. Once the actual Maximum Capacity has been provided then BE may adjust the Charges retrospectively to reflect any differences between the estimated Maximum Capacity and the actual Maximum Capacity and the Customer shall be liable to pay the Charges as adjusted.
- 8.12 The Customer agrees to pay an administration charge if the Customer asks BE to supply duplicate invoices where original invoices have already been sent to the Customer.
- 8.13 BE shall not pay the Customer or any other person any fees relating to any agent's or consultant's arrangement, organisation fees, costs or expenses unless prior written agreement is given by BE. If the Customer uses a third party intermediary (including a consultant or broker) to negotiate the Charges, their fees may be built into the Charges BE charges the Customer under the Agreement. It is the Customer's responsibility to make enquiries with such third party intermediary to ensure that the Customer fully understands the nature of such third party intermediary's fees. If the Customer disputes any such third party intermediary's fees then the Customer should seek to resolve such dispute with that third party intermediary, which may involve the Customer seeking to recover any disputed fees from them. BE shall not be obliged to reimburse any proportion of the Charges which the Customer has paid BE (whether or not such proportion relates to a third party intermediary's fees) in the event of any such dispute.
- 8.14 If BE receives revised data from any Agent in respect of the Supply at any Site in any month, BE reserves the right to recalculate amounts due under the Agreement and submit to the Customer an invoice indicating any payments to be made by the Customer to BE as a result. The Customer must pay any such revised invoice within the payment period set out on the revised invoice. For the avoidance of doubt, this clause 8.14 shall survive the termination or expiry of the Agreement.
- 8.15 Notwithstanding any other provision in the Agreement if the Customer's aggregate actual consumption in a Relevant Period at the Customer's HH Sites (if any and subject to clauses 8.20.1 and 8.20.2) falls above or below the Estimated Annual Consumption for those HH Sites by the Tolerance or more the Customer shall pay to BE a charge (the "HH Tolerance Charge") which shall be calculated as follows.
- 8.15.1 where the Customer's aggregate actual consumption in a Relevant Period at such HH Sites is less than or equal to the Estimated Annual Consumption for such HH Sites minus the Tolerance the Customer shall pay to BE the HH Tolerance Charge in relation to such HH Sites calculated in accordance with this clause 8.15.1 as follows:
- $$\text{HH Tolerance Charge} = ((\text{EC} - (\text{EC} \times \text{T})) - \text{AC}) \times (\text{ER} - \text{SSP})$$
- 8.15.2 where the Customer's aggregate actual consumption in a Relevant Period at such HH Sites is greater than or equal to the Estimated Annual Consumption for such HH Sites plus the Tolerance the Customer shall pay to BE the HH Tolerance Charge in relation to such HH Sites calculated in accordance with this clause 8.15.2 as follows:
- $$\text{HH Tolerance Charge} = (\text{AC} - (\text{EC} + (\text{EC} \times \text{T}))) \times (\text{SBP} - \text{ER})$$
- 8.16 For the purposes of clause 8.15 the below terms have the following meanings:
- "AC" means the aggregate of the Customer's actual energy consumption in each half hourly period at such HH Sites for the Relevant Period (in kWh);
- "EC" means the Estimated Annual Consumption of all such HH Sites;
- "T" means the Tolerance;
- "SSP" the time weighted average of the System Sell Price (as defined in the BSC) for each half hourly period during the Relevant Period (in £/MWh), divided by 1000;
- "SBP" means the time weighted average of the System Buy Price (as defined in the BSC), for each half hourly period during the Relevant Period (in £/MWh), divided by 1000;
- "ER" means the time weighted average of the Energy Rate for such HH Sites for each half hourly period during the Relevant Period (in £/MWh), divided by 1000.



- 8.17 Notwithstanding any other provision in the Agreement if the Customer's aggregate actual consumption in a Relevant Period at the Customer's AMR Sites (if any and subject to clauses 8.20.1 and 8.20.2) falls above or below the Estimated Annual Consumption for those AMR Sites by the Tolerance or more the Customer shall pay to BE a charge (the "AMR Tolerance Charge") which shall be calculated as follows:
- 8.17.1 where the Customer's aggregate actual consumption in a Relevant Period at such AMR Sites is less than or equal to the Estimated Annual Consumption for such AMR Sites minus the Tolerance the Customer shall pay to BE the AMR Tolerance Charge in relation to such AMR Sites calculated in accordance with this clause 8.17.1 as follows:
- $$\text{AMR Tolerance Charge} = ((\text{EC} - (\text{EC} \times \text{T})) - \text{AC}) \times (\text{ER} - \text{SSP})$$
- 8.17.2 where the Customer's aggregate actual consumption in a Relevant Period at such AMR Sites is greater than or equal to the Estimated Annual Consumption for such AMR Sites plus the Tolerance the Customer shall pay to BE the AMR Tolerance Charge in relation to such AMR Sites calculated in accordance with this clause 8.17.2 as follows:
- $$\text{AMR Tolerance Charge} = (\text{AC} - (\text{EC} + (\text{EC} \times \text{T}))) \times (\text{SBP} - \text{ER})$$
- 8.18 For the purposes of clause 8.17 the below terms have the following meanings:
- "AC" means the aggregate of the Customer's actual energy consumption in each half hourly period at such AMR Sites for the Relevant Period (in kWh);
- "EC" means the Estimated Annual Consumption of all such AMR Sites;
- "T" means the Tolerance;
- "SSP" the time weighted average of the System Sell Price (as defined in the BSC) for each half hourly period during the Relevant Period (in £/MWh), divided by 1000;
- "SBP" means the time weighted average of the System Buy Price (as defined in the BSC), for each half hourly period during the Relevant Period (in £/MWh), divided by 1000;
- "ER" means the time weighted average of the Energy Rate for such AMR Sites for each half hourly period during the Relevant Period (in £/MWh), divided by 1000.
- 8.19 If the Term ends before a Relevant Period is completed then the provisions of clauses 8.15 to 8.18 shall be applied on a pro rata basis in calculating any HH Tolerance Charge and/or AMR Tolerance Charge payable for that proportion of the Relevant Period that has been completed.
- 8.20 If in any Relevant Period a Site becomes an HH Site or an AMR Site or an HH Site or an AMR Site is added to the Agreement then:
- 8.20.1 BE may include such Site in the calculation of the HH Tolerance Charge or AMR Tolerance Charge in clauses 8.15 to 8.18 (as applicable) for that Relevant Period in which case the Estimated Annual Consumption and the aggregate actual consumption for such Site shall be calculated on a pro rata basis from the date on which such Site becomes an HH Site or an AMR Site or on which the HH Site or AMR Site is added to the Agreement to the end of that Relevant Period; and
- 8.20.2 BE may include such Site in the calculation of the HH Tolerance Charge or AMR Tolerance Charge in clauses 8.15 to 8.18 (as applicable) for any subsequent Relevant Period.
- 8.21 If in any Relevant Period BE has agreed to supply multiple HH Sites and/or multiple AMR Sites, subsequently ceases to supply any HH Site and/or AMR Site and imposes a Site Removal Fee in relation to such HH Site and/or AMR Site then BE may recalculate the Estimated Annual Consumption for that and any subsequent Relevant Period.
- 8.22 BE shall be entitled to recover any HH Tolerance Charge and/or AMR Tolerance Charge by including it in any invoice issued to the Customer.
- 8.23 The Customer agrees that the HH Tolerance Charge and the AMR Tolerance Charge represent, in each case, a genuine pre-estimate of the losses, costs and expenses that BE would otherwise suffer.
- 8.24 In addition to BE's right to apply the Default Rate under clause 6.1 and without prejudice to any other rights BE has under the Agreement or otherwise, BE may vary or add to all or any of the Charges (including by adding a new charge) at any time by giving notice in writing to the Customer, if:
- 8.24.1 any information the Customer or an Agent has provided to BE, or BE's interpretation of that information, is incorrect;
- 8.24.2 any direction is given by the Secretary of State under the Act, but only by such amount(s) as will enable BE to recover from the Customer a fair proportion of the additional costs directly or indirectly suffered by BE as a result of such direction;
- 8.24.3 any change is made after the date of the Agreement to:
- any communications link, Meter Operator services, Data Collector services, or Data Aggregator services associated with the Supply, in each case by such amounts as will enable BE to recover its costs relating to the change;
  - any statutory levy (including the rate of the fossil fuel levy referred to in Section 33 of the Act), charge, tax, tariff or similar or if any new statutory levy, charge, tax, tariff or similar is introduced;
  - any obligation or cost imposed on BE which change directly affects BE's costs of complying with its obligations under the Agreement and which arises out of any change in law (including the introduction of new laws), the Supply Licence, the relevant Transmission Licence, the Act, the BSC, the Regulations, the DCUSA, the Statement of the Use of System Charging Methodology and/or any other relevant standard electricity supply industry documents or agreements or any change is made after the date of the Agreement in the methodology used for calculating any charges or amounts which are incurred by BE in respect of and/or associated with the Supply or otherwise, howsoever incurred by or due from BE;
  - (i) the voltage, measurement class or profile class of the Supply at any Supply Point, or (ii) the number or identity of the Supply Points or MPANs supplied under this Agreement.
- 8.24.4 there is any change in the methodology the LDSO, or the operator of any Transmission System, uses to calculate its charges and/or the LDSO and/or the operator of any relevant Transmission System increases its charges;



- 8.24.5 any of BE's electricity purchase agreements are suspended or terminated in whole or in part due to Circumstances Beyond BE's Control, by such amount as will enable BE to recover from the Customer a fair proportion of the additional costs directly or indirectly suffered by BE as a result of such suspension or termination;
- 8.24.6 the Commencement Date is delayed due to any act or omission of the Customer;
- 8.24.7 BE Re-energises or Re-connects Supply under clause 13.9;
- 8.24.8 any Supply Number that the Customer has asked BE to Register fails the Registration process;
- 8.24.9 BE Registers a new Supply Point in accordance with clause 4.8; and/or
- 8.24.10 at any time during the Term:
  - (a) BE supplies multiple Sites;
  - (b) BE has determined the price(s) the Customer pays for the Supply by using an average price across some/all of the Sites (i.e. where the Customer does not have a different price for energy supplied to each Site); and
  - (c) BE ceases to supply any of the Sites.

For the avoidance of doubt BE's right to vary the Charges under clause 8.24.10 shall be without prejudice (and may be exercised in addition to) BE's right to charge any Site Removal Fee.

- 8.25 If BE gives the Customer notice under this clause 8 amending the Charges, the amended Charges specified in that notice shall take effect on the date specified in that notice.

## 9 Liability

- 9.1 BE does not give any warranty or guarantees whatsoever as to the reliability or quality of the Supply.
- 9.2 BE has no obligation to provide the Supply if the Supply is shut down, interrupted, reduced or impaired as a result of De-energisation of or reduction in availability of or capability of any Supply Point or the exercise of demand control by the LDSO or the Transmission Licensees.
- 9.3 Subject to clauses 9.4, 9.6 and 9.7, BE shall only be liable to the Customer for a breach by BE of this Agreement to the extent that such breach directly results in physical damage to the property of the Customer, its officers, employees or agents, and such physical damage was reasonably foreseeable at the date of the Agreement.
- 9.4 Subject to clauses 9.6 and 9.7, BE's total liability to the Customer whether in contract, tort (including negligence and breach of statutory duty), statute, or otherwise in relation to an incident or series of related incidents in any one twelve (12) month period shall not exceed one million pounds (£1,000,000) in aggregate.
- 9.5 Subject to clauses 9.6 and 9.7, neither BE, nor BE's officers, employees or agents, shall be liable to the Customer in contract, tort (including negligence and breach of statutory duty), statute or otherwise for any indirect, consequential, economic or financial loss, loss of revenue, profit, use, business opportunity, contract or goodwill, or any loss resulting from the Customer's liability to any third party, or any loss resulting from loss, corruption or damage to any computer or electronically stored data or any operating systems, computer programs, interfaces or other software.

- 9.6 Notwithstanding any other provisions of the Agreement, nothing in the Agreement shall exclude or limit BE's liability to the Customer where such exclusion or limitation is not permitted by law.
- 9.7 Nothing in the Agreement shall exclude, restrict, prejudice or affect any of the rights, powers, duties and obligations of either party or the Authority or the Secretary of State conferred or created by the Act, or any subordinate legislation made from time to time under the Act, or any licence granted to BE under the Act.
- 9.8 Subject to clauses 9.6 and 9.7, the rights and remedies provided by the Agreement to each party are exclusive and exhaustive and replace all substantive rights or remedies, express or implied, and provided by common law or statute in respect of the subject matter of the Agreement, including any rights either party might otherwise have in tort.
- 9.9 So far as it excludes liability, this clause 9 overrides any other provision in the Agreement except where otherwise expressly provided, and each clause of this clause 9 shall survive termination of the Agreement.

## 10 Credit Support and advance payments

- 10.1 BE may request Credit Support from the Customer at any time during the Term if:
  - 10.1.1 the Customer fails to pay any amount due from the Customer under the Agreement by the due date for such payment on two (2) or more consecutive occasions (except in relation to payments which BE has agreed in writing are the subject of a bona fide dispute);
  - 10.1.2 the Payment Provisions do not require payment by direct debit and the Customer fails to pay any amount due from the Customer under the Agreement within fourteen (14) days of the due date for such payment on one (1) occasion (except in relation to payments which BE has agreed in writing are the subject of a bona fide dispute);
  - 10.1.3 the Payment Provisions require payment by direct debit and the Customer fails to pay any amount due from the Customer under the Agreement on the due date for such payment on one (1) occasion and the Customer subsequently fails to pay such amount by CHAPS within two (2) days of that due date (except in relation to payments which BE has agreed in writing are the subject of a bona fide dispute); or
  - 10.1.4 a Material Adverse Change occurs.
- 10.2 The amount of any Credit Support that BE may request and/or hold under clause 10.1 shall not exceed the amount which is the sum of three (3) months of the Charges.
- 10.3 The Customer must provide any Credit Support BE requests under clause 10.1 to BE within seven (7) working days of the date of BE's request.
- 10.4 Any failure by the Customer to provide Credit Support in accordance with this clause 10 shall be treated as a material breach of the Agreement and, without prejudice to any other rights BE has, BE may immediately terminate the Agreement. If BE terminates the Agreement pursuant to this clause 10.4, BE may require the Customer to pay an Early Termination Fee under clause 15.
- 10.5 Subject to clause 10.6, any Credit Support BE holds under the Agreement (including Credit Support BE requests that the Customer provide to BE as a condition of the Customer's entry



into the Agreement) shall be returned to the Customer as soon as is reasonably practicable after the date that all amounts owed by the Customer under the Agreement have been paid to BE following:

- 10.5.1 the date of termination of the Agreement;
- 10.5.2 the End Date; or
- 10.5.3 the end of the Transfer Period (if any), whichever is later.

10.6 If:

- 10.6.1 Credit Support has been provided by the Customer solely as a result of a Material Adverse Change; and
  - 10.6.2 the Material Adverse Change is no longer continuing; and
  - 10.6.3 in BE's reasonable opinion, a Material Adverse Change is unlikely to reoccur before the end of the Agreement,
- then the Credit Support shall be returned to the Customer as soon as is reasonably practicable.

10.7 If the Credit Support (including Credit Support BE requests that the Customer provide to BE as a condition of the Customer's entry into the Agreement) includes cash, when the Credit Support is repaid in accordance with clauses 10.5 or 10.6, the following shall be paid:

- 10.7.1 the amount of Credit Support that was provided as cash; plus
- 10.7.2 interest on any Credit Support provided as cash calculated at the annual rate of the base lending rate of the Bank of England from time to time, to accrue daily from the date such Credit Support is provided to the date it is repaid; less
- 10.7.3 any amounts the Customer owes BE under the Agreement; less
- 10.7.4 any amounts required to be withheld and paid to the HM Revenue and Customs in relation to the Credit Support in accordance with any applicable tax law.

10.8 BE may use all or part of any Credit Support (including Credit Support BE requests that the Customer provide to BE as a condition of the Customer's entry into the Agreement) as a credit towards amounts due and payable by the Customer under the Agreement if payment of such amounts is overdue by fourteen (14) working days or more. If BE does so, the Customer must top-up the Credit Support by paying to BE in cash the amount of the Credit Support that BE used as a credit in accordance with this clause 10.8 and clause 10.4 shall apply if the Customer fails to do so.

10.9 In addition to BE's right to require Credit Support and without prejudice to any other rights BE may have under the Agreement, BE may, upon written notice to the Customer, vary the Customer's payment terms from those set out in the Payment Provisions if at any time BE has a concern about the Customer's ability to pay, or if the Customer fails to make any payment within the required period. BE may require the Customer to pay the Charges in advance of the actual Supply to which those Charges relate as opposed to in arrears of the actual Supply. Unless agreed otherwise, all Charges that are required to be paid in advance shall become due and payable within a period of fourteen (14) days from the date of the relevant invoice. BE will explain the specific procedure when BE requests the Customer to pay in advance, and the Customer must comply with such procedure when making advance payments. If BE does vary the Customer's payment terms in accordance

with this clause 10.9, BE will calculate the Charges on BE's estimated forecast of the Customer's consumption, which BE will then reconcile against the Customer's actual consumption once this data is available.

## 11 Circumstances Beyond Their Control

- 11.1 If a party's performance of an obligation under the Agreement is impaired or prevented by Circumstances Beyond Their Control (the "Affected Party") the Affected Party shall immediately give the other party written notice specifying the nature and extent of the Circumstances Beyond Their Control, and shall take all reasonable steps to alleviate the effect of the Circumstances Beyond Their Control and resume performance of their obligations under the Agreement as soon as practicable.
- 11.2 Provided that the Affected Party complies with clause 11.1, the Affected Party's obligations under the Agreement shall be suspended without liability to the extent that performance of them is hindered or prevented, whilst the Circumstances Beyond Their Control continue.
- 11.3 The Agreement shall continue in effect for the duration of the Circumstances Beyond Their Control and no obligations accruing before the Circumstances Beyond Their Control occurred shall be excused.

## 12 Recovery of Other Sums

- 12.1 Subject to clause 12.2, if and to the extent that BE is able to recover, and does recover, in respect of matters forming the subject of the Agreement, from a LDSO, the Transmission Licensees or any third party, monies in respect of loss suffered by the Customer, BE shall account to the Customer for the amount so recovered, less any reasonable costs and expenses (including professional fees and expenses) incurred by BE in effecting the recovery.
- 12.2 If the Customer becomes entitled to recover compensation under a Connection Agreement, BE will deduct a sum equal to the amount of that compensation from any sum BE has to pay under clause 9 in respect of that incident.

## 13 Termination and Suspension

- 13.1 BE may terminate the Agreement immediately at any time by giving the Customer written notice if:
  - 13.1.1 the Customer fails to pay any amount properly due or owing to BE under the Agreement within the timeframe specified in the Payment Provisions;
  - 13.1.2 any of the representations, warranties and undertakings in clause 3 cease to be true or are breached by the Customer at any time;
  - 13.1.3 any parent company guarantee, letter of credit or such other Credit Support or prepayment arrangement provided by the Customer pursuant to the Agreement has terminated or been withdrawn, and the Customer has failed to either provide a replacement parent company guarantee, letter of credit or such other Credit Support inform and substance reasonably acceptable to BE or agree alternative prepayment arrangements with BE;
  - 13.1.4 the Customer is in material breach of the CUSC, the BSC, the MRA, the Grid Code or the Regulations or causes the relevant Transmission Licence or Supply Licence to be revoked or withdrawn;



- 13.1.5 the Customer is in material breach of any provision of the Agreement and (if it is capable of remedy) the breach is not remedied to the reasonable satisfaction of BE within fourteen (14) days of serving notice to the Customer requiring the same to be remedied;
- 13.1.6 the Customer persistently fails to comply with one or more of its obligations under the Agreement and such failure amounts to an intentional or reckless breach or disregard by the Customer of its obligations under the Agreement;
- 13.1.7 the Customer ceases to be a party to, or is in material breach of, its obligations under the Connection Agreement for the Sites;
- 13.1.8 an administrator, provisional administrator, receiver, administrative receiver, liquidator, bankruptcy trustee or supervisor is appointed in respect of all or part of the Customer's undertaking or assets or a petition is filed, a notice is given, a resolution is passed or an order or application to Court is made or proposed in order to effect any of the same or to commence any process which could lead to the same;
- 13.1.9 the Customer enters into an arrangement or composition with or for the benefit of the Customer's creditors generally or such arrangement or composition is proposed by the Customer or in relation to the Customer or the Customer makes a proposal for a voluntary arrangement under Part 1 of the Insolvency Act 1986;
- 13.1.10 a moratorium order comes into force in relation to the Customer;
- 13.1.11 the Customer is unable to pay its debts (within the meaning of the Insolvency Act 1986) or the Customer ceases or threatens to cease to pay its debts as they fall due;
- 13.1.12 the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- 13.1.13 a creditor or encumbrance attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within fourteen (14) days;
- 13.1.14 the Customer ceases to occupy all of the Sites being supplied under this Agreement;
- 13.1.15 the Customer accepts Supply at the Sites from a third party in breach of the Agreement;
- 13.1.16 Circumstances Beyond Their Control interrupt Supply for a continuous period of twenty eight (28) days; or
- 13.1.17 BE has a right to do so under any other provision in the Agreement.
- 13.2 The Agreement shall terminate immediately:
- 13.2.1 if the Supply Licence is revoked; or
- 13.2.2 when a last resort supply direction comes into effect in relation to the Sites, being a last resort supply direction given to a supplier other than BE in pursuance of standard condition 29 of the standard conditions of the supply licence incorporated into the licence granted under section 6(1)(d) of the Act.
- 13.3 In the event of the termination of the Agreement in accordance with this clause 13, BE shall issue an invoice to the Customer showing all outstanding monies (including the Charges due from the date of the previous invoice up to and including the date termination takes effect under the Agreement, any AMR Tolerance Charge and/or HH Tolerance Charge and any amounts under the Agreement due and payable by the Customer up to and including the date termination of the Agreement takes effect) and such invoice shall be paid by the Customer in accordance with clause 8.
- 13.4 Notwithstanding the termination of the Agreement or the expiry of the Transfer Period any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement or the expiry of the Transfer Period including clauses 1, 6, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20 and Schedule 1 shall remain in full force and effect.
- 13.5 Termination of the Agreement shall not affect the rights and liabilities of either party accrued as at the date of termination or at the expiry of the Term.
- 13.6 BE has the right to arrange for the Supply to be De-energised or Disconnected at the Sites if any of the circumstances in clause 13.1 apply, or for Supply to be De-energised or Disconnected at the relevant Site(s) if clause 14.1 or 14.3 applies, and the exercise of BE's rights under this clause 13.6 shall be without prejudice, and may be exercised in addition to BE exercising its rights under clauses 13.1, 14.1 and 14.3.
- 13.7 BE may arrange to Disconnect the Supply if BE has De-energised under clause 13.6 and the Supply has remained De-energised for a period of three (3) calendar months or longer.
- 13.8 Before arranging any De-energisation or Disconnection BE will give the Customer written notice.
- 13.9 If the Supply has been De-energised or Disconnected under this Agreement, BE will not arrange Re-energisation or Re-connection until:
- 13.9.1 the circumstances giving rise to such De-energisation or Disconnection have been remedied to BE's satisfaction;
- 13.9.2 the Customer has paid such reasonable amount as BE may require to cover the cost to BE of the De-energisation and Re-energisation and (where applicable) the Disconnection and Reconnection (including any payment BE has to make to the LDSO) together with any ongoing Charges incurred during the period of De-energisation or Disconnection; and
- 13.9.3 the Customer has paid such performance bond, bank guarantee, security deposit or advance payment as BE may require for the Charges which may become due in future from the Customer under this Agreement.
- 13.10 For the avoidance of doubt, if the Customer does not satisfy the requirements of clause 13.9 within the time specified in the relevant notice of De-energisation or Disconnection and BE terminates the Agreement in respect of the relevant Site or terminates this Agreement in its entirety, the Customer must still pay any costs BE incurred in relation to De-energisation and Disconnection including any fees, expenses, costs or charges incurred or committed to be incurred in respect of the Supply under any agreement entered into with an Agent, the DCUSA, the MRA or the BSC and (unless termination is due to an act or omission of BE) any other costs in De-energising or Disconnecting the Supply.



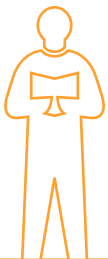
## 14 Site removals and changes of tenancy

- 14.1 If:
- 14.1.1 any changes are made to any Meter, Supply Point, or connection which the Customer has to any Distribution System or the GB Transmission System at a Site, including any new or upgraded connection; or
  - 14.1.2 any Supply Number that the Customer has asked BE to Register fails the Registration process,
- BE may terminate the Agreement and/or Disconnect or De-energise Supply in respect of such Site.
- 14.2 If at any time the Customer is to cease to be the owner or occupier of any Site(s) and wishes to discontinue the Supply with respect to the relevant Site(s), then the Customer must terminate the Agreement with respect to such Site(s) by giving at least twenty eight (28) days prior written notice to BE, such notice to specify the date of termination (being not earlier than the date of cessation of ownership or occupation) and the name and address of the new owner or occupier (if any). Without prejudice to any other rights BE has under the Agreement, if, prior to the End Date, the Customer gives BE notice that the Customer will cease to be the owner or occupier of any Site under this clause 14.2, BE may terminate the Agreement.
- 14.3 If the Customer ceases to own or occupy a Site and does not give BE notice in accordance with clause 14.2 then, without prejudice to any other rights BE may have under the Agreement, BE may:
- 14.3.1 require the Customer to continue to be liable to BE for the Charges in relation to that Site until such time as BE:
    - (a) is notified that the Customer is not in occupation of (or does not own) that Site; and
    - (b) if such Site is metered on a non-half hourly basis, can arrange to have a meter reading taken in relation to such Site;
  - 14.3.2 require the Customer to procure that any new owner/occupier of the Site agrees to be liable to BE for any Charges in relation to the Site until the events described in clause 14.2.1.(a) and, if applicable, clause 14.2.1.(b) occur; and/or
  - 14.3.3 terminate the Agreement in respect of such Site(s) or Disconnect or De-energise Supply to such Site by immediate notice in writing to the Customer.
- 14.4 If the Customer does give BE notice in accordance with clause 14.2, any termination notice given by the Customer shall only take effect in relation to the relevant Site when:
- 14.4.1 someone else has entered into an agreement with BE for a supply of electricity at the relevant Site;
  - 14.4.2 another supplier has Registered and started supplying electricity to the relevant Site; or
  - 14.4.3 the relevant Site is Disconnected because no supply of electricity is required at the relevant Site,  
and the Customer shall continue to be liable for all Charges until such time as the termination notice takes effect.

- 14.5 In the event of the termination of the Agreement in respect of a Site in accordance with this clause 14, BE shall issue an invoice to the Customer showing all outstanding monies (including the Charges due from the date of the previous invoice up to and including the date termination of the Agreement in respect of such Site takes effect, any AMR Tolerance Charge and/or HH Tolerance Charge and Site Removal Fee and any amounts under the Agreement due and payable by the Customer up to and including the date termination of the Agreement in respect of such Site takes effect) and such invoice shall be paid by the Customer in accordance with clause 8.2.
- 14.6 Without prejudice to the foregoing provisions of this clause 14, if at any time the details of the owner and/or occupier of a Site (including any change in the legal identity of the owner or occupier) change during the Term, the Customer must notify BE of such change as soon as possible and in any event fourteen (14) days prior to the change.

## 15 Early Termination and Site Removal Fees

- 15.1 If, prior to the End Date and other than during a Transfer Period, either the Customer terminates the Agreement in respect of a Site under clause 14.2, or BE terminates the Agreement in respect of a Site under clause 14.1 or 14.3 or terminates the Agreement as a whole under clauses 10.4, 13.1, 14.2 or 14.3 then, without prejudice to any other rights BE has under the Agreement, BE may:
- 15.1.1 if BE terminates the Agreement as a whole, charge the Customer a termination fee ("Early Termination Fee"); or
  - 15.1.2 if either the Customer or BE terminates the Agreement in respect of the relevant Site, charge the Customer a fee for the removal of such Site ("Site Removal Fee").
- 15.2 If clause 15.1.1 applies, BE shall be entitled to charge, and the Customer must pay, the Early Termination Fee. BE shall calculate the Early Termination Fee in accordance with clauses 15.3, 15.4 and 15.9. For the avoidance of doubt the Agreement may be terminated only in accordance with its terms, and the Customer cannot elect to terminate the Agreement by paying an Early Termination Fee otherwise than in accordance with the terms of the Agreement.
- 15.3 The Early Termination Fee shall be the sum of the following components as calculated by BE at or after the date of termination:
- 15.3.1 the "Energy Component" (if any); plus
  - 15.3.2 the "Seasonal Difference Component" (if any); plus
  - 15.3.3 the "Termination Administration Charge Component".
- 15.4 For the purposes of clause 15.3:
- 15.4.1 the "Energy Component" is an amount (in £) determined as follows:  
Energy Component = (ER-MR)x USV  
where:  
"USV" or "Unsupplied Volume" means an amount (in kWh), which is the Total Forecasted Consumption applied on a pro rata basis for the Remainder Period;  
"ER" means the volume weighted average of the Energy Rate for all of the Customer's Sites for the Remainder Period (in £/MWh), divided by 1000;



- “MR” means the Market Rate for the Unsupplied Volume determined in accordance with clause 15.9,  
provided that where the result of the calculation in clause 15.4.1 is negative or zero there shall be no Energy Component;
- 15.4.2 the “Seasonal Difference Component” is an amount (in £) determined by subtracting:
- (a) the amount of the Charges (in £) that the Customer has actually paid for the Supply as invoiced to it under clause 8; from
  - (b) the amount (in £) that the Customer would have paid for the Supply had the Charges been calculated on the basis of a volume weighted price (in £/MWh) for each month of the Agreement for the period between the Commencement Date and the End Date,
- provided that there shall be no Seasonal Difference Component if the result of the calculation in clause 15.4.2 is zero or negative;
- 15.4.3 the “Termination Administration Charge Component” is an amount (in £) determined by adding:
- (a) an amount (in £) which is equal to three and half per cent (3.5%) of the Charges which BE would have charged the Customer had BE supplied to the Customer the Total Forecasted Consumption applied on a pro rata basis for the Remainder Period; and
  - (b) an administration charge of two hundred and twenty pounds (£220).
- 15.5 Where clause 15.1.2 applies BE may charge, and the Customer shall pay, the Site Removal Fee in respect of the relevant Site. BE shall calculate the Site Removal Fee in accordance with clauses 15.6 to 15.9 below.
- 15.6 The Site Removal Fee for each Site shall be the sum of the following components as calculated by BE at or after the date BE ceases to supply the relevant Site:
- 15.6.1 the “Site Energy Component” (if any); plus
  - 15.6.2 the “Site Seasonal Difference Component” (if any); plus
  - 15.6.3 the “Site Removal Administration Charge Component”; plus
  - 15.6.4 the “Group Average Price Revision Component” (if any).
- 15.7 For the purposes of clause 15.6:
- 15.7.1 the “Site Energy Component” is an amount (in £) determined as follows:  
Site Energy Component = (SER-SMR) x SUSV  
where:
- “SUSV” or “Site Unsupplied Volume” means an amount (in kWh), which is the Site Total Forecasted Consumption applied on a pro rata basis for the Site Remainder Period at the relevant Site;
- “SER” means the volume weighted average of the Energy Rate for the relevant Site for the Site Remainder Period (in £/MWh), divided by 1000 ;
- “SMR” means the Site Market Rate for the Site Unsupplied Volume determined in accordance with clause 15.9,

provided that where the result of the calculation in clause 15.7.1 is negative or zero there shall be no Site Energy Component;

- 15.7.2 the “Site Seasonal Difference Component” is an amount (in £) determined by subtracting:
- (a) the amount (in £) of the Charges which the Customer has actually paid for the Supply to the relevant Site under the Agreement as invoiced to the Customer under clause 8; from
  - (b) the amount (in £) that the Customer would have paid for such Supply had BE calculated the Charges on the basis of a volume weighted price (in £/MWh) for each month of the Agreement for the period between the Commencement Date and the End Date,
  - (c) provided that there shall be no Site Seasonal Difference Component if the result of the calculation in clause 15.7.2 is zero or negative;
- 15.7.3 the “Site Removal Administration Charge Component” is an amount (in £) determined by adding:
- (a) an amount (in £) which is equal to three and half per cent (3.5%) of the Charges which BE would have charged the Customer had BE supplied to the Customer the Site Total Forecasted Consumption applied on a pro rata basis for the Site Remainder Period at the relevant Site; and
  - (b) an administration charge of two hundred and twenty pounds (£220);
- 15.7.4 the “Group Average Price Revision Component” is an amount (in £) determined as follows:  
Group Average Price Revision Component = (USV-SUSV) x (RC – OC)  
where:
- “SUSV” means the Site Unsupplied Volume (in kWh) as determined in accordance with clause 15.7.1;
- “USV” or “Unsupplied Volume” means the amount (in kWh) which is the result of subtracting the Total Forecasted Consumption applied on a pro rata basis for the period between the start of the Agreement and the date BE ceases to supply the relevant Site, from the Customer’s Total Forecasted Consumption;
- “RC” or “Revised Charges” means the price per unit of energy (in £/kWh) which BE would have charged the Customer had BE determined the Charges on the basis of the number of Sites remaining after the removal of the relevant Site, rather than the original number of Sites in respect of which BE agreed to supply the Customer at the start of the Agreement (but in all other respects, using the same calculation methodology as BE used to determine the original Charges);
- “OC” or “Original Charges” means the price per unit of energy (in £/kWh) which BE charged the Customer for the Supply immediately prior to the removal of the relevant Site,
- provided that there shall be no Group Average Price Revision Component if:
- (a) the sum of (RC – OC) is negative or zero; and/or





- (b) clause 15.8 does not apply.
- 15.8 The Site Removal Fee shall only include a Group Average Price Revision Component if:
  - 15.8.1 BE supplies multiple Sites under the Agreement; and
  - 15.8.2 the price per unit of energy applying to the Site being removed was determined on the basis of it being part of a group of sites to which the same price per unit of energy applies.
- 15.9 For the purposes of clauses 15.4.1 and 15.7.1, the Market Rate and Site Market Rate shall be a rate per unit of energy (in £/kWh) determined as follows:
  - 15.9.1 using information which BE holds concerning current and expected market prices for the Unsupplied Volume or Site Unsupplied Volume (as appropriate);
  - 15.9.2 taking into account any loss, costs, damages or expenses BE may incur as a result of trading the Unsupplied Volume or Site Unsupplied Volume (as appropriate), or using the same volume to supply any other customer instead of purchasing energy on the market for such other customer; and
  - 15.9.3 on the basis that:
    - (a) the volume of energy BE will be seeking to determine a price for shall be the Unsupplied Volume or Site Unsupplied Volume (as appropriate);
    - (b) BE will seek to sell the Unsupplied Volume or Site Unsupplied Volume (as appropriate) over a period which is equal to or shorter than the Remainder Period or Site Remainder Period (as appropriate);
    - (c) BE may be exposed to greater risks (including, without limitation, the risk of not being able to sell the Unsupplied Volume or Site Unsupplied Volume (as appropriate) to any third party) as a result of the Customer's early termination or Site removal (as appropriate), which BE shall not be obliged to take any steps to mitigate.
- 15.10 BE shall be entitled to recover any Early Termination Fee or Site Removal Fee by including it within any invoice issued to the Customer.
- 15.11 The Customer agrees that the Early Termination Fee and Site Removal Fees represent, in each case, a genuine pre-estimate of the losses, costs and expenses that BE would otherwise suffer.

## 16 Objections to transfer

- 16.1 Without prejudice to BE's other rights and remedies, BE may (but shall not be obliged to) enter an objection under the customer transfer processes contained or referred to in the MRA and the Supply Licence and prevent an alternative supplier (the "New Supplier") from Registering one or more Supply Points at any of the Sites if:
  - 16.1.1 the Customer arranges to transfer to an alternative supplier before the End Date, in breach of the Agreement, or prior to the expiry of a valid notice of termination given by the Customer;
  - 16.1.2 the Customer has any outstanding or overdue debt with BE (including any Early Termination Fee or Site Removal Fee) which is not subject to any bona fide dispute;
  - 16.1.3 the New Supplier attempts to Register a Supply Point in error;

- 16.1.4 where BE has reasonable grounds on which to object to such transfer;
- 16.1.5 the New Supplier's application only relates to one of the Supply Point(s) at a Site and the New Supplier has not applied to Register all other Supply Point(s) for the Site on the same date for the same start date;
- 16.1.6 the Customer is otherwise in breach of any of its obligations under this Agreement.
- 16.2 If clause 16.1 applies then the Customer:
  - 16.2.1 irrevocably authorises BE to raise an objection with the relevant Local Metering Point Administration Service to prevent the New Supplier taking over the Supply to the Supply Point(s);
  - 16.2.2 undertakes not to dispute, challenge or take any steps to prevent any objection properly raised in accordance with this clause 16;
  - 16.2.3 if BE requests the Customer to do so, agrees to provide to the New Supplier, within three (3) Business Days of BE's request, written confirmation (in a format agreed by BE) that the Customer:
    - (a) does not wish them to proceed with their application to supply the supplied Supply Point(s) and requires them to withdraw all existing or pending Registration applications for the Supply Point(s); and/or
    - (b) requires them to confirm to BE in writing that they will not make any further applications in respect of the Supply Point(s) until they have obtained confirmation from BE that the Customer has given BE proper notice to terminate this Agreement in respect of such Supply Point(s); and
    - (c) agree to take any other necessary action to ensure that BE continues to remain Registered with the Local Metering Point Administration Service as the electricity supplier responsible for supplying the relevant Supply Point(s).
- 16.3 If:
  - 16.3.1 BE has raised an objection because of an outstanding debt only;
  - 16.3.2 within five (5) days of raising such an objection BE subsequently receives full payment of all outstanding debts; and
  - 16.3.3 within ten (10) days of BE confirming to the Customer it has received payment, the New Supplier reapplies to supply the relevant Supply Point(s),BE will not object to the New Supplier's reapplication. If the New Supplier has not reapplied within the period referred to in clause 16.3.3, the Agreement will remain in force and any subsequent application by any New Supplier will once again be subject to clause 16.1.

## 17 Dispute Resolution and Governing Law

- 17.1 BE and the Customer shall use reasonable endeavours to resolve a dispute arising out of, under or in connection with the Agreement at a senior management level. In the event the dispute is not resolved at the senior management level within seven (7) days of a dispute being referred to the senior management, either party may refer the dispute to the courts of England and Wales or for disputes arising out of the BSC only, the parties may refer a dispute to arbitration pursuant to the arbitration rules of the Electricity Arbitration Association.



- 17.2 The Agreement, and any issues or disputes arising out of or in connection with it (whether such disputes are contractual or non-contractual in nature, such as claims for tort, for breach of statute or regulation, or otherwise) shall be governed by and construed in accordance with English law and, subject to clause 17.1, the parties agree that the courts of England and Wales shall have exclusive jurisdiction.
- 17.3 If the Customer is not satisfied with the service it has received from BE, it should refer to the complaints handling procedure set out on [edfenergy.com/largebusiness](https://www.edfenergy.com/largebusiness), which details all relevant contacts and BE's complaint escalation process. If after following BE's complaint escalation process, the Customer is still not satisfied and the Customer's business qualifies for its services, the Customer can contact Ombudsman Services: Energy. If the Customer is a Micro Business it can also contact Consumer Direct for advice.

## 18 Assignment

- 18.1 BE shall have the right to assign this Agreement without the Customer's prior consent.
- 18.2 The Customer shall not assign this Agreement without:
- 18.2.1 the prior written consent of BE, not to be unreasonably withheld or delayed; and
- 18.2.2 the Customer and transferee entering into a deed of novation or assignment (as appropriate) with BE in the form prescribed by BE which contains an undertaking by the transferee to comply with the conditions set out in the Agreement, and it shall be reasonable for BE to withhold consent on the grounds of the financial standing of the proposed transferee.

## 19 Confidentiality

- 19.1 Subject to clause 19.2, neither party shall disclose Confidential Information without the prior written consent of the other party, at any time after the date of this Agreement and for a period of five (5) years after the Agreement has come to an end.
- 19.2 Notwithstanding clause 19.1:
- 19.2.1 BE may disclose Confidential Information:
- (a) in order for BE to fulfil its obligations under this Agreement; or
- (b) to enable BE to share information about the Customer's account with its Affiliates and with debt collection agencies, credit insurers and credit reference agencies (who may use this information for credit scoring purposes);
- 19.2.2 either party may disclose Confidential Information:
- (a) in compliance with and to the extent of any requirement of law, any Competent Authority or any agreement, licence, code, authorisation or consent necessary to permit the Supply or to enable either party to comply with its obligations under any agreement relevant to the Supply;
- (b) to the extent that such information is required to be furnished to any employee, officer, agent, consultant or professional adviser of a party for their proper consideration, or to any bank, other financial institution or rating agency in respect of the financing or credit support of that party's business activities, such persons having first been made fully aware of

- and agreed to comply with these obligations of confidence set out in clauses 19.1 and 19.2 in relation to such information;
- (c) to the extent required to be published or otherwise disclosed pursuant to or in respect of a regulatory requirement of a regulatory body (including the London Stock Exchange plc, the Authority and the Financial Services Authority) applicable to a party or an Affiliate of a party;
- (d) to the extent that it is in, or lawfully comes into, the public domain other than by breach of this clause 19, and the party seeking to rely on this clause 19 can show that this is the case; or
- (e) to the extent that disclosure is required for the operation of or, is allowed pursuant to, clause 4.18 or an equivalent clause in any subsequent agreement which the Customer may enter into with another electricity supplier (and BE shall be entitled to rely on a written statement of the existence of a clause of the same type as clause 4.18 from any person claiming to be a subsequent electricity supplier without need for further investigation or verification of or by the Customer).

## 20 Miscellaneous

- 20.1 No delay or omission by either party in exercising any right, power or remedy shall impair or be construed as a waiver of such (or any other) right, power or remedy, and any single or partial exercise of a right, power or remedy shall not preclude any future or other exercise of such (or any other) right, power or remedy.
- 20.2 The Agreement except where otherwise expressly specified and agreed by both parties in writing contains the entire agreement between the parties and supersedes all prior negotiations, representations, proposals, understandings or agreements, whether written or oral, relating to the Supply. Each party acknowledges and agrees that it does not enter into the Agreement in reliance on any representations, warranties or other undertakings not set out in the Agreement. The parties acknowledge that they have each entered into the Agreement in reliance only on the representations, warranties or other undertakings promised and terms contained or expressly referred to in the Agreement and, save as expressly set out in this Agreement, neither party shall have any liability in respect of warranties, representations or undertakings made prior to the date of the Agreement unless such warranty, representation or undertaking was made fraudulently.
- 20.3 Without prejudice to clause 8.24, no variation to the Agreement shall have effect unless agreed by the parties in writing except that BE may at any time vary any of the terms of the Agreement (including by adding new terms) by giving the Customer notice in writing in the event of:
- 20.3.1 any change to, or introduction of, the Licence, the Transmission Licence, the BSC, the CUSC, the Regulations, the DCUSA, the Statement of the Use of System Charging Methodology and/or any other legislation or law, regulation, or industry codes of practice, agreements or arrangements with which BE is required to comply;
- 20.3.2 any order or direction being made by the Authority or any Secretary of State which is relevant to the Agreement and/or its subject matter; or
- 20.3.3 any change to standard industry practices.





- 20.4 BE may subcontract or delegate the performance of its obligations or duties under the Agreement without the prior consent of the Customer provided that such subcontracting or delegation shall not relieve BE from liability for such obligations or duties.
- 20.5 Any notice under the Agreement shall be in writing and shall be properly given if served by delivery by hand, or by sending it by first class pre-paid post, recorded delivery post or facsimile or email to, the address of the party specified in the Applicable Term Sheet or such other address notified from time to time in accordance with this clause 20.5. Notices sent by post shall be deemed to be received two (2) Business Days following the date posted. Notices sent by facsimile or email will be deemed to be received at the time of the transmission unless after 1800 hours on a Business Day in which case receipt will be deemed to be 1000 hours on the following Business Day. Notices delivered by hand will be deemed to be received on the day so delivered or, where this is not a Business Day, on the first (1st) Business Day following such delivery.
- 20.6 Nothing in the Agreement shall operate to prevent or restrict BE enforcing an obligation (including suing for a debt or other payment) owed to it pursuant to the Agreement.
- 20.7 BE may set off any amounts received from the Customer, or owed to the Customer, against any other amounts due and owing by the Customer or by BE under this Agreement or any other agreement between the parties, or which is otherwise owed to BE by the Customer.
- 20.8 The parties contract both for themselves and as trustees for their officers, employees and/or agents.
- 20.9 Each of the clauses in the Agreement shall be construed as a separate and severable term. If one or more clause is held to be invalid, unlawful or otherwise unenforceable, the other clauses shall remain in full force and effect.
- 20.10 Except as otherwise expressly provided, the parties do not intend that any term of the Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it, or their permitted assigns.
- 20.11 The Customer shall provide, or procure, for BE, its invitees, contractors, agents or representatives all safe, reasonable and unrestricted access to each of the Sites for all purposes connected with the exercise by BE of its rights and obligations under the Agreement. The Customer's obligations under this clause shall apply to any location which BE may have to enter for the purpose of exercising its rights under the Agreement even if BE is not supplying electricity to that location under the Agreement.
- 20.12 If BE exercises its rights of entry under clause 20.11, BE and its agents, contractors or representatives shall comply with any reasonable requirements the Customer may specify in relation to Site security and health and safety.
- 20.13 If BE's invitees, contractors, agents or representatives visit a Site by prior appointment and they are unable to gain access, or if they visit a Site without prior appointment during working hours and they are unreasonably denied access, BE reserves the right to recover from the Customer all reasonable charges associated with that visit.
- 20.14 If BE has to take legal action to enforce its rights under the Agreement, the Customer agrees to pay BE's costs, which will not be limited to the fixed fees or costs recoverable under the court rules.
- 20.15 For the purposes of the Agreement time shall be of the essence.

- 20.16 A Term Sheet may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original but all the counterparts shall together constitute one and the same Term Sheet. For the purposes of this clause 20.16, the delivery of a facsimile copy of a signed counterpart of any Term Sheet shall be deemed to be valid signature thereof provided that the party so delivering a facsimile delivers an original copy of the Term Sheet forthwith following transmission by facsimile.

## Schedule 1

### Definitions

**Act** means the Electricity Act 1989 as amended from time to time.

**Affiliates** means those companies which control, are controlled by or which are under common control with a party and "control" has the meaning given to the term in Section 840 of the Income and Corporation Taxes Act 1988.

**Agent** means a Data Aggregator, Data Collector, Meter Operator, Meter Administrator and/or Unmetered Supplies Operator Agent (as applicable).

**Agent Services** means the services provided by a Qualified Agent.

**Agreed CCL Exempt Percentage** means the percentage of electricity set out on the Term Sheet as supplied by Pure Green Energy, Renewable Energy, Good Quality CHP Energy or Any LEC Energy and is applied to either the Supplied Electricity or Total Forecasted Consumption (at BE's discretion).

**Agreed Nuclear Percentage** means the percentage of electricity set out on the Term Sheet as supplied by Pure Nuclear Energy and is applied to either the Supplied Electricity or Total Forecasted Consumption (at BE's discretion).

**Agreement** means the Applicable Term Sheet executed by BE and the Customer which incorporates these Conditions and any other document referred to in the Applicable Term Sheet as forming part of the Agreement.

**AMR** means an automatic meter reading from a non half hourly meter which can be read remotely.

**AMR Meter** means a Meter with AMR.

**AMR Site** means a Site at which the energy consumption is recorded using an AMR Meter.

**AMR Tolerance Charge** has the meaning given in clause 8.17.

**Applicable Term Sheet** means, at the relevant time, the Term Sheet which has been executed by the parties with the latest Commencement Date.

**Authority** means the Gas and Electricity Markets Authority established pursuant to section 1(1) of the Utilities Act 2000.

**Averaging Period** has the meaning given to the term "averaging period" in paragraph 20 or 20B of Schedule 6 of the Finance Act 2000 (as amended) as appropriate.

**Balancing and Settlement Code or BSC** means the document of that name as modified from time to time, setting out electricity balancing and settlement arrangements and established by National Grid under its Transmission Licence.

**Balancing Services** means Balancing Services as used in Special Condition C16 of a Transmission License granted under the Electricity Act 1989.



**BE or British Energy** means British Energy Direct Limited a company registered in England under number 4935015.

**Business Day** means any day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.

**Charges** means, subject to clause 8.24, the Fixed Charges set out in the Applicable Term Sheet together with the Pass-Through Charges specified in Schedule 2 to the Agreement and any other costs or charges BE is entitled to charge the Customer under the Agreement from time to time.

**Circumstances Beyond Their Control** means any event or circumstance which is beyond the reasonable control of a party and prevents that party from performing any of its obligations under the Agreement, including, without limitation, act of God, strike, lockout or other industrial disturbance, act of war, insurrection, rebellion, terrorism, civil commotion, vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, other inclement weather, failure of any plant or apparatus which could not have been prevented by Good Industry Practice, suspension, interruption or termination of transmission through any transmission or distribution network, any exercise of demand control pursuant to a Grid Code, any Act of Parliament or governmental restraint including a direction of the Secretary of State under sections 34(4) or 96 of the Act. Lack of funds shall not be treated as an event or circumstance beyond the reasonable control of that party and "Circumstances Beyond BE's Control" shall have the same meaning except that the reference to "party" in this definition shall be replaced with "BE";

**Climate Change Levy or CCL** means the tax referred to in Schedule 6 of the Finance Act 2000.

**CCL Exempt Charge** has the meaning given in clause 5.3.

**Commencement Date** means the later of:

- (a) 00:00 hours on the date set out in a Term Sheet to the Agreement which has been executed by the parties; or
- (b) the date with effect from which BE has Registered the Supply Point(s) in accordance with the MRA or Section K of the BSC;

provided always that in each case there has been appointed a Meter Operator or Meter Administrator and/or Unmetered Supplies Operator Agent, (if required by BE or the BSC) a Data Collector and a Data Aggregator, in respect of the Supply Point.

**Competent Authority** means the Secretary of State, the Authority and any local or national agency, authority, department, inspectorate, minister, ministry, official or public, judicial regulatory or statutory body or person (whether autonomous or not) of, or of the government of, the United Kingdom or the European Community.

**Conditions** means these terms (titled "Standard Electricity Terms & Conditions for Industrial and Commercial Business Customers British Energy Direct Ltd 1.0 15/03/10) and any schedules, appendices and annexes hereto.

**Confidential Information** means the existence and terms of this Agreement, any information relating to this Agreement, and any information relating to the affairs of the other party which is disclosed pursuant to this Agreement.

**Connection Agreement** means either:

- (a) the agreement between the Customer and the LDSO for the provision of the connection through which the Supply is to be delivered to each of the Supply Points at the Sites which incorporates (inter alia) the NTC; or

(b) where the Customer's Sites are directly connected to the Transmission System, the connection agreement between the Customer, National Grid and the CUSC; or

(c) the UMS Connection Agreement.

**Connection and Use of System Code or CUSC** means the document of that name as modified from time to time, setting out terms for the connection to and use of the GB Transmission System and established by National Grid under its Transmission Licence.

**Connection Site Demand Capability** has, in respect of any Supply Point at Sites which are directly connected to the GB Transmission System, the meaning given to that term in the CUSC.

**Consumer Direct** is the Government funded telephone and online service offering advice to consumers, including Micro Businesses (website: <http://www.consumerdirect.gov.uk>, telephone number: 08454 04 05 06).

**Credit Support** means any cash (in Sterling) provided by the Customer pursuant to clause 10.1 or any other form of security BE agrees that the Customer may provide to BE whether before or after the commencement of this Agreement.

**Customer** means the person defined as Customer in the Applicable Term Sheet to the Agreement.

**D&B** means Dun & Bradstreet Limited registered in England and Wales and its successors.

**D&B Risk Rating** means the risk indicator maintained by D&B which, in general terms, is a summary of how likely it is for a business to fail or experience a failure triggering event in a future twelve (12) month period. This rating generally ranges from one (1) through to (4), with one (1) indicating the lowest risk of those events occurring and four (4) indicating the highest risk of those events occurring.

**D&B Score** means the "D&B UK Failure Score" maintained by D&B which, in general terms, predicts the likelihood that a corporate entity will obtain legal relief from its creditors (if it became insolvent) or cease operations over a future twelve (12) month period.

**Data Aggregator** means a Qualified person appointed to carry out the aggregation of data from Meter for the purposes of the BSC.

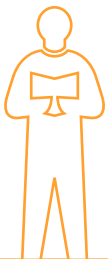
**Data Aggregator Agreement** means in respect of a Supply Point an agreement between the Customer (or BE if BE so agrees) and a Data Aggregator for the provision of data aggregation services.

**Data Collector** means a Qualified person appointed to retrieve, validate and process data from Meter for the purposes of the BSC.

**Data Collector Agreement** means in respect of a Supply Point an agreement between the Customer (or BE if BE so agrees) and a Data Collector for the provision of data collection services.

**De-energise** means the movement of any switch or the removal of any fuse or the taking of any other step (including such steps that are taken without requiring physical access to the relevant Site) which has the effect of no electrical current being able to flow from the Distribution System (or the GB Transmission System where applicable) to the electrical installation in the Site, and the expressions "De-energised" and "De-energisation" shall be interpreted accordingly.

**Default Rate** means such costs and charges from time to time in respect of the supply of electricity after the End Date or any date from which termination of the Agreement takes effect, and which are available to the Customer on request to BE.



**Disconnection** means the removal of any cable or other equipment such that a Site is no longer connected to the Distribution System (or the GB Transmission System where applicable) and the expressions “Disconnect” and “Disconnected” shall be interpreted accordingly.

**Distribution Charge** has the meaning given in the Applicable Term Sheet.

**Distribution Code** means the distribution code as defined in the Supply Licence.

**Distribution Connection and Use of System Agreement or DCUSA** means the agreement of that name as modified from time to time which permits inter alia the use by BE of the system of a Licensed Distribution System Operator through which the Supply is delivered to a Supply Point.

**Distribution Exemption Holder** means a person who is distributing electricity for the purpose of giving a supply of electricity or enabling a supply to be given, and who is authorised to do so by an exemption from the requirement to hold a distribution licence.

**Distribution System** means the LDSO’s system for distributing electricity to a Site.

**Early Termination Fee** has the meaning given in clause 15.1.1.

**Electricity Arbitration Association** means the unincorporated members’ club known as the Electricity Supply Industry Arbitration Association formed inter alia to promote the efficient and economic operation of the procedure for the resolution of disputes within the electricity supply industry by means of arbitration or otherwise in accordance with its arbitration rules.

**End Date** means 23:59 hours on the date specified as such in the Applicable Term Sheet to the Agreement.

**Energy Charge** means the charge for the supply of electricity as specified in the Applicable Term Sheet to the Agreement.

**Energy Rate** means the energy rate set out in the Applicable Term Sheet.

**Estimated Annual Consumption** means the total estimated annual consumption figure for a Site as set out in the relevant Applicable Term Sheet, save that where the period between the Commencement Date and the End Date in the relevant Applicable Term Sheet is less than 12 months the Estimated Annual Consumption for such Site for the first Relevant Period only shall mean the total estimated annual consumption figure for that Site divided by twelve and multiplied by the number of months in the period between the relevant Commencement Date and End Date.

**Estimated Triad Consumption** means the amount specified as such in the Applicable Term Sheet to the Agreement.

**Experian** means Experian Limited registered in England and Wales and its successors.

**Exempt Distribution System** means a distribution system operated or controlled by a distribution exemption holder who is covered by an exemption granted to it in relation to that system.

**Experian Score** means the “Experian Commercial Delphi Score” maintained by Experian which, in general terms, predicts the likelihood of a limited company failing or a non-limited business falling into default within a twelve (12) month period.

**Financial Year** means the period of 12 months ending on 31 March in each calendar year

**Fixed Charges** the charges of that name specified in Schedule 2 as being applicable to the Supply.

**Fossil Fuel Levy** means the fossil fuel levy described in section 33 of the Act.

**GB Transmission System** means a system consisting (wholly or mainly) of high voltage electric lines owned and/or operated by Transmission Licensees (as defined in the Transmission Licence) within Great Britain and used wholly for the transmission of electricity.

**Generator Declarations** has the meaning given to the term “generator declaration” in the Electricity (Fuel Mix Disclosure) Regulations 2005.

**Good Industry Practice** means, in relation to any operator engaged in an undertaking under particular circumstances, the exercise of that degree of skill diligence prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances.

**Good Quality CHP Source Electricity** has the meaning given to the term “CHP electricity” in paragraph 20A of Schedule 6 to the Finance Act 2000 (as amended).

**Grid Code** means the grid code as defined in the Supply Licence.

**HH Site** means a Site at which the energy consumption is recorded using half hourly metering.

**HH Tolerance Charge** has the meaning given in clause 8.15

**Interest Rate** means the interest rate that the Supplier is statutorily entitled to charge according to the Late Payment of Commercial Debts (Interest) Act 1998.

**kWh** means kilowatt hour.

**LEC** means a Levy Exemption Certificate providing proof of Renewable Source Electricity or Good Quality CHP Source Electricity.

**Local Metering Point Administration Service** means the service that maintains an electronic register of Sites connected to the Distribution System and/or the suppliers responsible for supplying such Sites.

**Licensed Distribution System Operator or LDSO** has the meaning given to that term in the BSC.

**Management Charge** means the amount specified as such in the Applicable Term Sheet to the Agreement.

**Master Registration Agreement (or MRA)** means the agreement of that name as modified from time to time which provides inter alia the procedure for the registration of BE as supplier in respect of any Supply Point.

**Material Adverse Change** means any one or more of the following events:

- (a) the Customer’s Rating is revised downward below BBB by S&P or Baa2 by Moody’s;
- (b) the Customer’s Rating is withdrawn by both S&P and Moody’s for any reason;
- (c) the Customer’s D&B Score is revised downward below thirty (30) or is withdrawn by D&B for any reason;
- (d) the Customer’s D&B Risk Rating increases to four (4) or is changed to “-” (indicating that a D&B Risk Rating cannot be assigned) by D&B;
- (e) the Customer’s Experian Score is revised downward below thirty (30) or is withdrawn by Experian for any reason;
- (f) publication of information which in BE’s reasonable opinion indicates a material deterioration in the Customer’s business, assets or financial condition;
- (g) the suspension or cancellation of admission and/or trading of the Customer’s equity or debt securities from any investment exchange on which they are admitted and/or traded;
- (h) the withdrawal of any credit insurance taken out by us in respect of the Agreement;

for the purposes of this definition of Material Adverse Change the words “the Customer” means the Customer and/or the Customer’s parent undertaking as such is defined in section 1162 of the Companies Act 2006.



**Maximum Capacity** means, in respect of each Supply Point other than a Supply Point at Sites which are directly connected to the GB Transmission System, the maximum capacity specified for that Supply Point in the Applicable Term Sheet to the Agreement or such other capacity as may be specified from time to time in the relevant Connection Agreement (and notified to BE) in writing by the Customer.

**Meter Administrator** has the meaning given to that term in the BSC.

**Meter** means a meter and associated equipment (including any telecommunications link) installed at or associated with a Supply Point for recording the amount of electricity supplied to it.

**Meter Operator** means a Qualified person who has been appointed as a Meter Operator Agent for the purposes of the BSC (which, for the avoidance of doubt, may include a LDSO acting as a legacy meter asset provider).

**Meter Operator Agreement** means in respect of a Supply Point an agreement between the Customer (or BE if it so agrees) and a Meter Operator for the provision of meter operator services.

**Micro Business** means a company which either:

- (i) consumes less than 200,000 kWh of gas a year; or
- (ii) consumes less than 55,000 kWh of electricity a year; or
- (iii) has fewer than ten employees (or their full-time equivalent) and an annual turnover or annual balance sheet total not exceeding €2,000,000.

**Month** means a period commencing at 00:00 on the first day of a calendar month of the Gregorian calendar and ending at 23:59 on the final day of that calendar month of the Gregorian calendar.

**Moody's** means Moody's Investors Services, Inc. incorporated in the United States of America and its successors.

**MPAN** means the unique meter point administration number associated with a Supply Point.

**National Grid** means National Grid Electricity Transmission plc, a company registered in England under number 2366977.

**National Terms of Connection or NTC** has the meaning given to that term in the BSC.

**Nuclear Source Electricity** has the meaning given to "nuclear" in the definition of "energy source" in Paragraph 1 of the Schedule to the Electricity (Fuel Mix Disclosure) Regulations 2005.

**Ombudsman Services: Energy** means the independent body approved by Ofgem (the Office of the Gas and Electricity Markets), under the Consumers, Estate Agents and Redress Act 2007 (website: [www.ombudsman-services.org](http://www.ombudsman-services.org), telephone number: 0330 440 1624).

**Offer Period** means the period starting at deemed receipt (in accordance with clause 20.5 of this Agreement) of any new Term Sheet proposed to be executed by the parties and ending on the date and time specified in the said new Term Sheet proposed to be executed by the parties, or such later date as BE may agree with the Customer.

**Pass-Through Charges** the charges of that name specified in Schedule 2 as being applicable to the Supply.

**Payment Provisions** means the provisions specified as such in the Applicable Term Sheet to the Agreement.

**Qualified** has, in relation to an Agent, the meaning given to that term in the BSC.

**Rating** means any rating issued or maintained by either S&P or Moody's with respect to the Customer's long-term, unsecured, senior, unsubordinated debt securities ("Debt Securities"), or, in the case of more than one rating by the same rating agency, any rating of such Debt Securities.

**Reactive Power Charge** means an amount equivalent to all sums (if any) payable by BE in respect of reactive power delivered to the Sites.

**Reconnection** means, where a Site has been Disconnected, the connection of any cable or other equipment such that a Site is connected to the Distribution System (or the GB Transmission System where applicable), and the expression "Reconnect" and "Reconnected" shall be interpreted accordingly.

**Re-energisation** means, where a Site has been De-energised, the movement of any switch or the connection of any fuse or the taking of any other step (including such steps that are taken without requiring physical access to the relevant Site) which has the effect of electrical current being able to flow from the Distribution System (or the GB Transmission System where applicable) to the electrical installation in the Site.

**Registered** means, except where otherwise provided, in respect of any particular electricity supplier (which for the avoidance of doubt includes BE) and in respect of any particular Supply Point, the date on which that supplier is deemed to be the supplier for that Supply Point under the rules of the relevant Registration System and the expression "Register" shall mean to become registered.

**Registration System** means the "Public Registration System" or any other registration system which may replace it.

**Regulations** means the Electricity Safety, Quality and Continuity Regulations 2002 or any amendment or re-enactment thereof or any other regulations under section 29 of the Act.

**Relevant Period** means:

- (a) where the period between the Commencement Date and the End Date as set out in the relevant Applicable Term Sheet is less than 12 months, the period from the Commencement Date to the End Date or any subsequent 12 month period during the Term as applicable; or
- (b) where the period between the Commencement Date and the End Date as set out in the relevant Applicable Term Sheet is 12 months or more, the 12 month period from the Commencement Date or any subsequent 12 month period during the Term as applicable.

**Remainder Period** means the period between the date on which early termination of the Agreement takes effect and the End Date

**Renewable Source Electricity** has the meaning given to that term in paragraph 19 of Schedule 6 to the Finance Act 2000 (as amended).

**S&P** means Standard & Poor's Ratings Group (a division of The McGraw Hill Companies Inc.) incorporated in the United States of America and its successors.

**Secretary of State** means one of Her Majesty's Principal Secretaries of State as defined in the Interpretation Act 1978.

**Sites** means the sites referred to in the Applicable Term Sheet to the Agreement, as amended by way of addition or removal under the terms of this Agreement, each such site being owned or occupied by the Customer.

**Sites and Charges Schedule** means the schedule headed "Sites and Charges Schedule" attached to the Term Sheet setting out the details of each of the Sites under the Agreement.





**Site Remainder Period** means the period between the date on which early termination of the Site takes effect and the End Date.

**Site Removal Fee** has the meaning given in clause 15.1.2.

**Site Total Forecasted Consumption** means the Estimated Annual Consumption for the relevant Site divided by twelve and multiplied by the number of months in the period between the Commencement Date and the End Date set out in the Applicable Term Sheet for the relevant Site.

**Statement of Use of System Charges** means the statement of charges issued by National Grid from time to time determined in accordance with the Statement of the Use of System Charging Methodology.

**Statement of the Use of System Charging Methodology** means the charging methodology produced by National Grid from time to time in accordance with its Transmission Licence.

**Supplied Electricity** means electricity supplied to the Customer under this Agreement.

**Supplier Transfer** means, in relation to any of the Sites at which another electricity supplier is supplying electricity, the transfer of responsibility for that supply from that electricity supplier to the Supplier.

**Supply** means the supply of electricity to be provided by BE to the Customer pursuant to the Agreement.

**Supply Licence** means the licence granted to BE under section 6(1)(d) of the Act.

**Supply Number** means the discrete number attributed to a particular meter point under whichever Registration System applies to the Supply.

**Supply Point** means each Boundary Point Metering System (as defined in the BSC) for the Sites.

**System Buy Price** has the meaning given to that term in the BSC.

**System Sell Price** has the meaning given to that term in the BSC.

**Tax** or **Taxation** includes, without limitation, all forms of taxation and statutory, governmental, supra-governmental, state, provincial, local governmental or municipal impositions, duties, contributions, levies (including withholdings and deductions), whether domestic or foreign, whenever imposed.

**Term** means the period commencing on the Commencement Date and ending on the later of the End Date and the date being the last day of the Transfer Period (if any).

**Termination Effective Date** has the meaning given in clause 6.1.

**Term Sheet** means the latest of the two or more pages headed "Electricity Supply Agreement" with the "Sites and Charges Schedule" attached thereto, executed or proposed to be executed by the parties from time to time.

**Tolerance** means the tolerance specified in the Applicable Term Sheet to the Agreement

**Total Forecasted Consumption** means, where there is one Site, the Site Total Forecasted Consumption figure for that Site or, where there is more than one Site, the sum of the Site Total Forecasted Consumption figures for all those Sites.

**Transfer Period** means the period, if any, from the Termination Effective Date or the End Date (as applicable) to either (i) the date on which BE receives evidence (in a form satisfactory to it) of either the Registration of a New Supplier in respect of the relevant Supply Points or the Disconnection of the relevant Site(s) or (ii) the date on which BE enters into a new Agreement with the Customer.

**Transmission Charges** has the meaning given in the Applicable Term Sheet.

**Transmission Licence** means a licence granted under section 6(1)(b) of the Act.

**Triad Charges** means a sum equal to the Customer's average half hourly electricity demand during the Triad Period in question (or, where the Customer is not metered on a half hourly basis, BE's estimate of the Customer's average half hourly electricity demand) multiplied by the Triad Demand Tariff in respect of the relevant Zone Area minus the amounts, if any, already paid to BE prior to the Triad Period in question as prepayment(s) as described in clause 8.8 of the Agreement.

**Triad Demand Tariff** means each of the tariffs at the relevant time set out in the column headed "Demand Tariff" in the Statement of Use of System Charges and levied by National Grid for services which National Grid provides in respect of use of the GB Transmission System, as more fully described at standard conditions C4 and C5 to the Transmission Licence.

**Triad Period** means the half hour settlement period of highest transmission system demand of a Financial Year and each of the two half hour settlement periods of next highest demand, separated by at least ten (10) days occurring annually between November and February (inclusive) as identified by National Grid and more fully described in the Statement of the Use of System Charging Methodology.

**UMS Connection Agreement** means the agreement of that title entered into between the Customer and the Unmetered Supplies Operator Agent as more particularly described in BSC Procedure BSCP520.

**Unmetered Supplies Operator Agent** has the meaning given to that term in the BSC.

**Unmetered Supply** has the meaning given to that term in the BSC.

**Unmetered Supply Certificate** has the meaning given to that term in the BSC.

**Use of System Agreement** means an agreement or arrangement between BE and the LDSO (or the Transmission Licensees, where applicable) governing BE's use of the Distribution System (or the GB Transmission System, where applicable) to provide the Supply.

**Zone Area** means each of the areas set out at the relevant time in the column headed "Zone Areas" in the Statement of Use of System Charges.

## Schedule 2

### The Charges

1. The Charges are the following amounts payable by the Customer to BE:
  - 1.1 the amounts given in paragraphs 2, 3 or 4 below, as appropriate;
  - 1.2 the amounts given in paragraph 5 below; and
  - 1.3 value added tax or any equivalent (if applicable) in accordance with clause 8.3.Capitalised terms used in this Schedule 2 shall have the meaning given to them in the Applicable Term Sheet unless otherwise specified.

### 'Fully Delivered' Terms

2. The amounts applicable only to Agreements with an Applicable Term Sheet specifying 'Fully Delivered' are:
  - 2.1 Fixed Charges for the Supply (including the Energy Charge, Balancing Charges, Transmission Losses, Transmission Charges, Distribution Losses, Distribution



- Charges, Meter Operator Charges (where indicated as being part of the Fixed Charges in the Applicable Term Sheet), Data Services and Settlement Charges (where indicated as being part of the Fixed Charges in the Applicable Term Sheet ), Commission (where applicable), Renewables Obligation Charge, Feed in Tariff Charge, Hydro Benefit Replacement Charge (where the Supply is metered on a non-half hourly basis) and a Management Charge) determined in accordance with the various Energy Charges set out in the Applicable Term Sheet;
- 2.2 the following Pass-Through Charges which will be passed through to the Customer at cost where indicated in the Applicable Term Sheet as being passed through by BE to the Customer at cost:
- 2.2.1 Reactive Power Charges;
  - 2.2.2 Meter Operator Charges;
  - 2.2.3 Data Services and Settlement Charges;
  - 2.2.4 Climate Change Levy;
  - 2.2.5 Hydro Benefit Replacement Charge (to be passed through by BE to the Customer at cost where the Supply is metered on a half hourly basis);
  - 2.2.6 a tax charge equivalent to the Fossil Fuel Levy and other taxes (other than Climate Change Levy, corporation tax and any other tax on the profits or gains of BE) imposed from time to time on the generation, transmission, distribution or supply of electricity to which BE may be liable in respect of the Supply to be passed through by BE to the Customer at cost; and
  - 2.2.7 save as expressed in this Agreement to be borne by BE, an amount equal to any other third party costs or charges from time to time in respect of the transmission, distribution or supply of electricity.

#### **'Energy Only at Customer's Meter' Terms**

3. The amounts applicable only to Agreements with an Applicable Term Sheet specifying 'Energy Only at Customer's Meter' are:
- 3.1 Fixed Charges for the Supply (including the Energy Charge, Balancing Charges, Transmission Losses, Commission (where applicable), Renewables Obligation Charge, Feed in Tariff Charge, Distribution Losses and a Management Charge determined in accordance with the various Energy Charges set out in the Applicable Term Sheet);
  - 3.2 the following Pass-Through Charges to be passed through by BE to the Customer at cost:
    - 3.2.1 Transmission Charges;
    - 3.2.2 Distribution Charges;
    - 3.2.3 Reactive Power Charges;
    - 3.2.4 Meter Operator Charges;
    - 3.2.5 Data Services and Settlement Charges;
    - 3.2.6 Climate Change Levy;
    - 3.2.7 Hydro Benefit Replacement Charge;

- 3.2.8 a tax charge equivalent to the Fossil Fuel Levy, value added tax and any other applicable taxes (other than Climate Change Levy, corporation tax and any other tax on the profits or gains of BE) imposed from time to time on the generation, transmission, distribution or supply of electricity to which BE may be liable in respect of the Supply to be passed through by BE to the Customer at cost; and
- 3.2.9 save as expressed in this Agreement to be borne by BE, an amount equal to any other third party costs or charges from time to time in respect of the transmission, distribution or supply of electricity.

#### **'Energy Only at Grid Supply Point' Terms**

4. The amounts applicable only to Agreements with an Applicable Term Sheet specifying 'Energy Only at Grid Supply Points' are:
- 4.1 Fixed Charges for the Supply (including but not limited to the Energy Charge, Balancing Charges, Transmission Losses, Commission (where applicable), Renewables Obligation Charge, Feed in Tariff Charge (where applicable) and a Management Charge) determined in accordance with the various Energy Charges set out in the Applicable Term Sheet;
  - 4.2 the following Pass-Through Charges to be passed through by BE to the Customer at cost:
    - 4.2.1 Transmission Charges;
    - 4.2.2 Distribution Losses;
    - 4.2.3 Distribution Charges;
    - 4.2.4 Reactive Power Charges;
    - 4.2.5 Meter Operator Charges;
    - 4.2.6 Data Services and Settlement Charges;
    - 4.2.7 Climate Change Levy;
    - 4.2.8 Hydro Benefit Replacement Charge;
    - 4.2.9 a tax charge equivalent to the Fossil Fuel Levy, value added tax and any other applicable taxes (other than Climate Change Levy, corporation tax and any other tax on the profits or gains of BE) imposed from time to time on the generation, transmission, distribution or supply of electricity to which BE may be liable in respect of the Supply to be passed through by BE to the Customer at cost; and
    - 4.2.10 save as expressed in this Agreement to be borne by BE, an amount equal to any other third party costs or charges from time to time in respect of the transmission, distribution or supply of electricity.





### Charges Applying to all Versions of the Agreement

5. The amounts given by this paragraph are:
  - 5.1 any other amounts which BE is entitled to charge the Customer under the Agreement from time to time, including the AMR Tolerance Charge and/or the HH Tolerance Charge, the CCL Exempt Charge and the Triad Charge;
  - 5.2 an amount (to be passed through by BE to the Customer at cost) equal to all sums payable by BE under the terms of the BSC in consequence of the Meter Operator, the Meter Administrator, the Data Collector or the Data Aggregator appointed by the Customer in respect of any Supply Point failing to meet the performance standards set out in the BSC in connection with any Supply Point; and  
an amount equivalent to the costs, if any, in connection with the Supply arising from a direction of the Authority or the Secretary of State, including without prejudice to the generality of the foregoing any higher or additional costs which arise as a result of any direction by the Secretary of State under sections 34(4) or 96 of the Act, section 2 of the Energy Act 1972 or sections 1 to 4 of the Energy Act 1976.





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