

AGREEMENT
and
GENERAL CONDITIONS OF CONTRACT
for
ABOVE 7 BAR TRANSACTIONAL METER WORKS

between
NATIONAL GRID GAS PLC
and
[]

SUBJECT TO CONTRACT
Updated June 2018 to reflect Mod 62

THIS AGREEMENT is made the _____ day of _____

BETWEEN:

- (1) **National Grid Gas plc** (registered number 2006000) whose registered office is at 1-3 Strand, London WC2N 5EH ("**National Grid**") which expression shall include its successors and/or permitted assigns; and
- (2) [REDACTED] (registered number [REDACTED] and market participant identity [REDACTED]) whose registered office is at [REDACTED] (the "**Customer**") which expression shall include its successors and/or permitted assigns.

WHEREAS:

- (A) The Customer may request National Grid to undertake Works (not being Adversarial Meter Works) to Metering Equipment with an inlet pressure of above 7 Bar, which is connected or is to be connected to the National Grid System.
- (B) National Grid and the Customer have agreed to enter into this Agreement whereby the Customer may request such Works from time to time in accordance with the Conditions and National Grid will respond to such requests in accordance with the Conditions.

NOW IT IS HEREBY AGREED as follows:

- 1 Unless the context otherwise requires or is inconsistent herewith, terms and expressions defined in Condition 1 of the Conditions shall have the same meanings respectively when used herein.
- 2 The Customer agrees that it may only request Works or a budget indication, unless otherwise agreed by National Grid in writing, pursuant to the Conditions in respect of:
 - (a) Metering Equipment which National Grid has been Appointed to provide and maintain pursuant to the Provision and Maintenance Agreement or the Network Metering Equipment Agreement (as applicable) and in the circumstances therein set out; and
 - (b) the installation of Metering Equipment which National Grid shall subsequently be Appointed to provide and maintain upon the terms of Condition 17.
- 3 During the term of this Agreement, if the Customer wishes to request Works or a budget indication it shall:
 - (a) in the case of Works, submit a Quotation Request for Non Standard Work; or
 - (b) in the case of a budget indication submit a request for such budget indication,in either case in accordance with and subject to the Conditions.
- 4 Upon receipt of a request for a budget indication or a Quotation Request for Non Standard Work, National Grid shall respond in accordance with the Conditions.
- 5 The Parties agree that upon each Acceptance a separate Contract will be formed and that each such Contract shall be subject to the Conditions.
- 6 This Agreement and the Conditions shall be read and construed as one document.
- 7 This Agreement shall come into force on the date hereof and shall remain in force until terminated by either Party in accordance with Condition 16.

IN WITNESS WHEREOF the Parties by their duly authorised representatives have this day set their hand.

SIGNED for and on behalf of
National Grid Gas plc

Signature:

Name:

Position:

SIGNED for and on behalf of
[REDACTED]

Signature:.....

Name:

Position:.....

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

For the purposes of this Agreement and any Contract made pursuant hereto, except as is otherwise expressly provided herein or unless the context otherwise requires, the terms defined in this Condition 1.1 shall have the following meanings and derivative expressions shall be construed accordingly:

"Acceptance": shall have the meaning ascribed thereto in Condition 2.7;

"Acceptance Form": shall mean a copy of the proforma provided by National Grid to the Customer from time to time which proforma shall be (a) substantially in the form set out in the Rainbow MAM Manual or (b) any electronic replacement or alternative thereto set out in the Rainbow MAM Manual;

"Additional Emergency Control Valve": shall mean a valve (not being the Emergency Control Valve) for shutting off the supply of gas in an emergency, intended for use by a Customer, which may be located within either the Metering Equipment or Installation Pipework and, as such, may not isolate all of the Installation Pipework or Metering Equipment;

"Adversarial Meter Works": shall mean Meter Works requested by the Customer pursuant to the Adversarial Meter Works Conditions in respect of activities associated with Meters connected to the National Grid System where a National Grid Operative is accompanied by the Customer's Representative due to the potentially adversarial nature of the activities;

"Adversarial Meter Works Conditions": shall mean the document entitled "Agreement and General Conditions of Contract for Adversarial Meter Works", as amended or novated from time to time;

"Affected Party": shall have the meaning ascribed thereto in Condition 15.1.1;

"Affiliate": shall mean in relation to a body corporate:

- (a) another body corporate which holds not less than $33\frac{1}{3}$ (thirty three and one third) percent of the voting rights of the first body corporate; or
- (b) a subsidiary of the first body corporate or of such a body corporate as is referred to in paragraph (a),

and for these purposes 'voting rights', 'holding' and 'subsidiary' are to be construed in accordance with Section 736 of the Companies Act 1985;

"Aggregate Relevant Meter Indebtedness": shall have the meaning ascribed thereto in paragraph 2.1(c) of Schedule Five;

"Agreement": shall mean this Agreement and General Conditions of Contract for Above 7 Bar Transactional Meter Works (including the Schedules) as amended from time to time;

"Alternative Contract Conditions": shall mean a contract or contracts (if any) to which National Grid and the Customer are a party providing (inter alia) for rental and replacement terms with respect to Metering Equipment or any category or categories thereof to apply in substitution to those set out in the Provision and Maintenance Agreement or the Network Metering Equipment Agreement;

"Ancillary Equipment": shall mean:

- (a) any Meter Regulator;

- (b) associated pre heaters connected to the Meter together with any associated valves, filters, flexible connectors, seals, meter by pass, interconnecting pipework, cables, fittings brackets and supports; and
- (c) any Meter Housing owned by National Grid,

but it shall not include any associated fittings or pipework, installation(s) or Meter Housing owned by the Customer or a Consumer or any third party;

"Applicable Interest Rate": shall have the meaning ascribed thereto in paragraph 3.6.3 of Schedule Four;

"Appointment": shall mean the appointment of National Grid to provide (including, where appropriate, to install) and maintain Metering Equipment as described in the Provision and Maintenance Agreement or the Network Metering Equipment Agreement (as applicable) and **"Appoint"** and **"Appointed"** shall be construed accordingly;

"Arbitration Acts": shall mean the Arbitration Act 1950 and the Arbitration Act 1996;

"Asset Works Ad-Hoc Invoice": shall have the meaning ascribed thereto in paragraph 2.4 of Schedule Four;

"Asset Works Invoice": shall have the meaning ascribed thereto in paragraph 2.2 of Schedule Four;

"Authority": shall mean the Gas and Electricity Markets Authority;

"Bar": shall mean bar gauge which, for the avoidance of doubt, means pressure measured relative to atmospheric pressure;

"Batch Transfer Communications": shall mean a data file transmitted by National Grid or by the Rainbow Customer in accordance with the requirements of the Rainbow System User Agreement by means of the Rainbow Network as described in the Rainbow MAM Manual;

"Below 7 Bar Meter Works Conditions": shall mean the document entitled "Agreement and General Conditions of Contract for Transactional Meter Works Not Exceeding 7 Bar," as amended or novated from time to time, in accordance with which the Customer can request that National Grid undertakes certain non Adversarial Meter Works in respect of Metering Equipment with an inlet pressure not exceeding 7 Bar;

"Billing Day": shall have the meaning ascribed thereto in paragraph 1.1.3(b) of Schedule Four;

"Billing Period": shall have the meaning ascribed thereto in paragraph 1.1.3(a) of Schedule Four;

"Business Hours": shall mean the hours between 9 a.m. and 5 p.m. on each Working Day provided always that any request, information or notice received after 5 p.m. on a Working Day will be deemed to have been received at 9 a.m. on the next Working Day;

"CDM Regulations": shall mean the Construction (Design and Management) Regulations 1994;

"Commissioning": shall mean the Purging of that element of the Metering Equipment that is designed to measure the volumetric flow of natural gas through the termination point of the National Grid System together with the Meter Reading of such Metering Equipment and for

the avoidance of doubt shall not (save where expressly set out in the Quotation) include the Purging of any element of the Installation Pipework;

"Competent Authority": shall mean the Authority, or any local, national or supra-national agency, authority, department, inspectorate, minister, official, court, tribunal or public or statutory person (whether autonomous or not) of the United Kingdom (or the government thereof) or the member states of the European Union which has jurisdiction over National Grid or the Customer or the subject matter of this Agreement or any Contract made hereunder;

"Conceptual Study": shall mean a study to investigate a number of solutions to the requested Works and select the most practical ideas and working principles for the project, which process will define the minimum level of detail needed to develop the preferred solution to the problem, and as appropriate should consider hazard identification and other safety assessments;

"Conceptual Study Report": shall mean a report prepared pursuant to a Conceptual Study;

"Conditions": shall mean these Conditions 1 to 26 of this Agreement and **"Condition"** shall be construed accordingly;

"Consumer": shall mean any person supplied or requiring to be supplied with natural gas at any premises by a Supplier and **"Consumer Premises"** shall be construed accordingly;

"Contingency Procedures": shall mean the document so entitled (which has been agreed by National Grid and National Grid Customers) published by National Grid which sets out those procedures which provide for the alternative means of communication for National Grid and Rainbow Customers to communicate with each other in the event of a Metering Contingency;

"Contract": shall mean these Conditions and (subject to the provisions of Condition 2) the Acceptance and the Quotation to which such Acceptance relates, together with such drawings (where appropriate) as are annexed to the Quotation;

"Contracts Act": shall mean the Contracts (Rights of Third Parties) Act 1999;

"Contract Sum": shall mean the contract sum specified as such in the Quotation as such sum or charge may be varied in accordance with this Agreement;

"Convertor": shall have the same meaning as "conversion device" (as such term is defined in the Institution of Gas Engineers and Managers publication: IGE/GM/5 Edition 2) being an instrument for calculating the volume of gas at a pre-defined standard temperature and pressure which is equivalent to the volume of gas at actual temperature and pressures recorded as passing through a Meter;

"Convertor Removal Date": shall mean:

- (a) the date of removal of the Convertor as stated in a notice by National Grid in accordance with the Rainbow MAM Manual, provided:
 - (i) such notice informs National Grid that the Convertor has been removed from the Meter Point and that it is available for collection by National Grid, together with the location for such collection;
 - (ii) if such date of removal as stated in such notice is earlier than 15 Working Days before the date upon which the notice is received, the date of removal

shall be deemed to be 15 Working Days before the date upon which such notice is received; or

- (b) the date upon which National Grid has removed the Convertor from the Meter Point in accordance with a request by the Customer to do so (in accordance with a Contract made under this Agreement) or any entitlement of the Relevant Gas Transporter (acting in any capacity) to do so;

"Customer Accession Date": shall have the meaning ascribed thereto in the Provision and Maintenance Agreement or the Network Metering Equipment Agreement;

"Customer Agent": shall have the meaning ascribed thereto in Condition 19.1.1;

"Daily Liquidated Damages": shall mean the sum(s) calculated in accordance with Schedule Three;

"Daily Read Equipment": shall mean equipment of a design and manufacture specified by National Grid which enables Meter Readings to be obtained by the Relevant Gas Transporter remotely at set intervals, such equipment comprising:

- (a) a device for capturing from the Meter, and/or (where installed) a Convertor, data which constitutes or permits the derivation of a Meter Reading; and
- (b) a telephone line or radio transmitter and/or such other equipment as shall be required for transmitting such data to the Relevant Gas Transporter;

"Day": shall mean a calendar day;

"Decommissioning": shall mean preparation for removal and Purging in accordance with industry standards and guidelines;

"Design Works": shall mean the production of a functional specification and Detailed Design for the requested works or the preferred solution set out in the Conceptual Study Report;

"Detailed Design": shall mean a design of the preferred solution such as to enable an RPO to perform the Physical Works, which shall *inter alia* set out:

- (a) performance;
- (b) standards and specification to be used;
- (c) control method;
- (d) stream configuration;
- (e) site facilities;
- (f) site constraints, etc;
- (g) any assumptions on which the design was based;
- (h) any exclusions reflected in the design;

"Directive": shall mean any present or future directive, request, requirement, instruction, code of practice, direction or rule of any Competent Authority and any modification, extension or replacement thereof;

"Distribution Network": shall mean:

- (1) such part or parts of the National Grid System the ownership of which has at any time after 1st April 2005 been transferred by National Grid (Gas Transporter); or
- (2) a local gas distribution network owned and operated by an IGT;

"Effective Date": shall have the meaning ascribed thereto in Condition 26.14;

"Emergency Control Valve": shall mean a valve (not being an Additional Emergency Control Valve) for shutting off the supply of gas in an emergency, intended for use by a Consumer and being located at the end of the service or distribution main;

"Enhanced IX Operational Guidelines for Use with Rainbow": shall mean the document so entitled published by National Grid, as amended or replaced from time to time, which contains information to enable Rainbow Customers to understand how to exchange files using the Enhanced Information 'Xchange Network (EIXN) batch communication system, and which defines the rules and best practices to be followed by Rainbow Customers when using the Rainbow System;

"Expert": shall have the meaning ascribed thereto in Condition 25.9.1;

"Final Completion": shall:

- (a) in respect of a Conceptual Study, mean Substantial Completion; and
- (b) in respect of Design Works, mean Substantial Completion; and
- (c) in respect of Physical Works, mean the completion of all Works including where necessary clearance of all Surplus National Grid Material from the Site following Substantial Completion PROVIDED ALWAYS that National Grid shall undertake a further visit to Site to undertake Commissioning where appropriate and after being advised by the Customer that the downstream Installation Pipework is complete such as enable Commissioning to be undertaken;

"Fit for Purpose": shall have the meaning ascribed thereto in Condition 5.5;

"Force Majeure": shall have the meaning ascribed thereto in Condition 15.1.1;

"Gas Act": shall mean the Gas Act 1986;

"Gas Safe": means Gas Safe Register the gas registration body for Great Britain and Isle of Man appointed by the Health and Safety Executive for Great Britain and the Health and Safety at Work Inspectorate for Isle of Man;

"Gas Transporter Licence": shall mean a licence granted under Section 7(2) of the Gas Act (including standard and special conditions thereto) as modified from time to time;

"Geographic Zone": shall have the meaning ascribed thereto in paragraph 1.1.3(g) of Schedule Four;

"Granting Party": shall have the meaning ascribed thereto in Condition 21.3;

"IGT": shall mean an independent gas transporter operating under Licence and being the owner of a local gas transportation network acting in its capacity as a transporter of gas, its successors and permitted assigns;

"Implementation Costs": shall have the meaning ascribed thereto in Condition 24.7;

"Implementation Date": shall have the meaning ascribed thereto in Condition 26.14;

"Implementation Options": shall have the meaning ascribed thereto in Condition 24.4;

"Indemnified Costs": shall have the meaning ascribed thereto in Condition 24.8;

"Installation Pipework": shall mean all pipe and gas consuming facilities installed or to be installed downstream of the Metering Equipment;

"Invoice Amount": shall have the meaning ascribed thereto in paragraph 1.1.3(e) of Schedule Four;

"Invoice Credit": shall have the meaning ascribed thereto in paragraph 1.1.5 of Schedule Four;

"Invoice Document": shall have the meaning ascribed thereto in paragraph 1.1.3(c) of Schedule Four;

"Invoice Due Date": shall have the meaning ascribed thereto in paragraph 3.1.2 of Schedule Four;

"Invoice Item": shall have the meaning ascribed thereto in paragraph 1.1.3(d) of Schedule Four;

"Invoice Query": shall have the meaning ascribed thereto in paragraph 4.1.1 of Schedule Four;

"Invoice Remittance Advice": shall have the meaning ascribed thereto in paragraph 1.3.3 of Schedule Four;

"Invoice Submission Date": shall have the meaning ascribed thereto in paragraph 1.4.1 of Schedule Four;

"Invoice Type": shall have the meaning ascribed thereto in paragraph 1.2.2 of Schedule Four;

"Latest Date for Permission": shall mean:

- (a) a date 180 Days after the date of issue of the Quotation; or
- (b) such other date as may set out in the Quotation;

"Legal Requirement": shall mean any Act of Parliament, regulation, licence, or Directive of a Competent Authority;

"Liquidated Damages Cap": shall mean the maximum sum payable in respect of liquidated damages as calculated in accordance with Schedule Three or as otherwise agreed between the Parties in writing;

"Long Stop Date": shall have the meaning ascribed to it in Condition 8.4(b);

"LTS": shall mean that part of the National Grid System used for the transmission of gas within local areas also known as the 'Local Transmission System';

"Management of External Access to Rainbow": shall mean the document so entitled published by National Grid, as amended or replaced from time to time, which contains information to enable the administration of Supplier access to Rainbow;

"Meter": shall mean a measuring instrument that measures the volume of natural gas passing through it, with a specific badged capacity that is in accordance with Schedule 2B of the Gas Act;

"Meter Base": shall mean an unobstructed level area constructed of concrete or other suitable material on which the Meter, Ancillary Equipment and (where appropriate) Meter Housing are to be installed;

"Meter Credit Limit": shall have the meaning ascribed thereto paragraph 2.1 of Schedule Five;

"Meter Credit Rules": shall have the meaning ascribed thereto in paragraph 1.2 of Schedule Five;

"Meter Housing": shall mean such protective housing and/or compound designed to accommodate the Metering Equipment to IGE/GM1, Edition 2 and/or IGE/GM6 (where applicable) or such other superseding specifications as may be determined from time to time by the Institution of Gas Engineers and Managers for the Metering Equipment;

"Meter Installation Works": shall mean the installation of a Meter by National Grid on the LTS as specified in the Quotation and may include any and all of the activities set out in paragraph 4 of Schedule Two;

"Meter Point": shall mean (1) a point at which gas may, by a single pipe, be offtaken from the National Grid System for the purpose of conveyance directly to one Consumer Premises connected to the National Grid System and, in the case of a Sub-deduct Arrangement, also indirectly from such Consumer Premises to one or more Consumer Premises not connected to the National Grid System but forming part of that Sub-deduct Arrangement or (2) in the case of a Sub-deduct Arrangement, each point at which gas may, by a single pipe, be offtaken for the purpose of conveyance directly to such Consumer Premises not connected to the National Grid System but forming part of that Sub-deduct Arrangement provided always that in the case of a Meter Point located on a Distribution Network owned and operated by an IGT there is or will be installed at such point of offtake a Meter with a badged capacity of not less than 11 SCMh;

"Meter Point Reference Number": shall mean the reference number generated by the Relevant Gas Transporter and allocated to the Meter Point at which the Meter is (or is to be) installed and **"MPRN"** shall be construed accordingly;

"Meter Pulse Utilisation Equipment": shall mean equipment capable of automatically recording the electrical pulse output of a Meter and transmitting such information by electronic means to an identified recipient (such equipments also known as 'Automatic Meter Reading Equipment' or 'AMR Equipment') and **"MPU Equipment"** shall be construed accordingly;

"Meter Reading": shall mean:

- (a) the reading of the index of the Meter; and
- (b) where a Convertor is installed, the corrected and uncorrected readings of the Convertor;

except that where Daily Read Equipment and a Convertor are installed a Meter Reading need not include both the reading under paragraph (a) and the uncorrected reading under paragraph (b);

"Meter Regulator": shall mean a device located in close proximity to a Meter which is used for the sole purpose of controlling the pressure of gas within the Meter and/or the Installation Pipework and which is not separated from the Meter by buried pipework, except for short lengths of pipework specifically included in the installation design for access purposes;

"Meter Removal Date": shall mean:

- (a) the date of removal of the Meter as stated in a notice received by National Grid in accordance with the Rainbow MAM Manual, provided:
- (i) such notice informs National Grid that the Meter has been removed from the Meter Point and that it is available for collection by National Grid, together with the location for such collection;
 - (ii) if such date of removal as stated in such notice is earlier than 15 Working Days before the date upon which the notice is received, the date of removal shall be deemed to be 15 Working Days before the date upon which such notice is received; or
- (b) the date upon which National Grid has removed the Meter from the Meter Point in accordance with a request by the Customer to do so (in accordance with a Contract made under this Agreement) or any entitlement of the Relevant Gas Transporter (acting in any capacity) to do so;

"Meter Works Conditions": shall mean this Agreement and/or the Below 7 Bar Meter Works Conditions and/or the Adversarial Meter Works Conditions;

"Metering Agreements": shall mean the Meter Works Conditions, the Provision and Maintenance Agreement, the Network Metering Equipment Agreement, the Rainbow System User Agreement and the Metering Agreements Modification Provisions together with the documents listed in Condition 26.5;

"Metering Agreements Modification Provisions": shall mean the document so entitled which contains the provisions by which changes may be made to certain of the Metering Agreements (including without limitation to this Agreement) as amended from time to time;

"Metering Communication": shall mean any communication to be given by the Customer or National Grid (including any notice, application, request, approval, acceptance, invoice or other notice to be given, made or submitted) under this Agreement or any Contract made hereunder;

"Metering Contingency": shall mean an event or circumstance affecting Rainbow, with the exception of Planned Rainbow Downtime which affects the ability of National Grid or Rainbow Customers to give or receive Batch Transfer Communications;

"Metering Equipment": shall mean the Meter and Ancillary Equipment and/or where appropriate the Convertor installed or to be installed at a Consumer Premises;

"Metering Services": shall mean the provision, installation, exchange, commissioning inspection, repairing, alteration, re-positioning, removal, renewal and maintenance of Metering Equipment together with related services and activities;

"National Grid": shall mean National Grid Gas plc acting in its capacity as provider of Metering Services, its successors and permitted assigns;

"National Grid Customers": shall have the meaning ascribed thereto in the Provision and Maintenance Agreement or the Network Metering Equipment Agreement (as applicable);

"National Grid (Gas Transporter)": shall mean National Grid Gas plc, acting in its capacity as a transporter of gas and not as a provider of Metering Services, its successors and permitted assigns;

"National Grid GT Licence": shall mean the Gas Transporter Licence treated as granted to National Grid Gas plc and as modified from time to time;

"National Grid Metering Charges": shall mean the document containing inter alia, those charges for the provision of Metering Services which is prepared and issued from time to time by National Grid pursuant to standard special condition B7 (Provision of Meters) of the National Grid GT Licence;

"National Grid Network": shall mean the National Grid System but excluding any Distribution Network;

"National Grid Operative": shall mean the operative engaged by National Grid for the performance of the Works and **"TO"** shall be construed accordingly;

"National Grid System": shall mean the gas transportation pipeline system which at the 1st April 2005 is owned and operated by National Grid Gas plc for the conveyance of gas which is authorised by the National Grid GT Licence which for the purposes of this Agreement shall include all and any Distribution Networks;

"Network Code": shall mean the document so entitled prepared by National Grid Gas plc pursuant to the National Grid GT Licence as modified from time to time and in force and effect prior to 1st May 2005;

"Network Metering Equipment Agreement": shall mean the document entitled "Network Metering Equipment Agreement and General Conditions of Contract for The Provision and Maintenance of Metering Equipment Not Connected to the National Grid System", as amended (or novated) from time to time, in accordance with which the Parties are required to comply in respect of the provision and maintenance by National Grid of Metering Equipment located at points of connection to any Distribution Network;

"Ofgem Approved Meter Installer": shall mean any such organisation as is registered by the Authority as an approved Meter installer for the purposes of standard condition 34(5) of the Supplier Licence;

"Other Party": shall have the meaning ascribed thereto in Condition 15.1.1;

"PALD Invoice": shall have the meaning ascribed thereto in paragraph 2.5 of Schedule Four;

"Party": shall mean either National Grid of the one part or the Customer of the other part, or their successors or permitted assigns and **"Parties"** shall be construed accordingly;

"Paying Party": shall have the meaning ascribed thereto in paragraph 3.3.1(b)(ii) of Schedule Four;

"Physical Commencement": shall mean the commencement of the Physical Works by National Grid on Site in accordance with the Contract;

"Physical Commencement Target Date": shall mean the date that National Grid intends to commence Physical Works on the Site as advised by National Grid to the Customer in the notice pursuant to Condition 2 or calculated in accordance therewith;

"Physical Works": shall mean the physical undertaking of the Works on Site;

"Planned Rainbow Downtime": shall have the meaning ascribed thereto in Clause 1.9.1 of the Rainbow System User Agreement;

"Post Code Out-Code": shall have the meaning ascribed thereto in paragraph 1.1.3(f) of Schedule Four;

“Pre Appointment Liquidated Damages”: shall mean liquidated damages payable by the Customer in accordance with Condition 17 and **“PALD”** shall be construed accordingly;

“Provision and Maintenance Agreement”: shall mean the document entitled "Agreement and General Conditions of Contract for the Provision and Maintenance of Metering Equipment", as amended or novated from time to time, in accordance with which the Parties are required to comply in respect of the provision and maintenance by National Grid of Metering Equipment located at points of connection to the National Grid Network;

“Purging”: shall mean the displacement of natural gas by air or inert gas or the displacement of air or inert gas by natural gas and **“Purge”** and **“Purged”** shall be construed accordingly;

“Queries”: shall mean “Metering Queries” as defined in the Standards of Service Query Management Operational Guidelines and **“Query”** shall be construed accordingly;

“Quotation”: shall mean the form referring to this Agreement addressed to the Customer containing inter alia details of the Works and the Contract Sum, together with any other documents expressly incorporated therein;

“Quotation Meter Works”: shall mean Works that are the subject of a Quotation;

“Quotation Request for Non Standard Work”: shall mean the request submitted by the Customer for the undertaking of Quotation Meter Works (being in a form substantially as set out in the Rainbow MAM Manual);

“Rainbow”: shall mean the Rainbow Network and, to the extent to which Rainbow Customers have access to and use of it, the Rainbow System;

“Rainbow Customer”: shall have the meaning ascribed thereto in the Provision and Maintenance Agreement or the Network Metering Equipment Agreement (as applicable);

“Rainbow Customer Agent”: shall have the meaning ascribed thereto in Condition 19.2.1;

“Rainbow MAM Manual”: shall mean the document so entitled and issued by National Grid, as amended or replaced from time to time;

“Rainbow Network”: shall mean an information exchange system, which runs on a wide area network, allowing the electronic transfer of information between National Grid and Rainbow Customers and certain access by Rainbow Customers to the Rainbow System more particularly described in the Enhanced IX Operational Guidelines For Use with Rainbow;

“Rainbow System”: shall mean the computer systems operated by National Grid to support implementation of certain provisions of the Metering Agreements and the giving of certain communications by National Grid and Rainbow Customers;

“Rainbow System User Agreement”: shall mean the document so entitled in accordance with which the Customer is required to comply in respect of access to and use of Rainbow as amended from time to time;

“Rainbow System Validation Document”: shall mean the document so entitled, published by National Grid which describes the rules for the validation of electronic files submitted by Rainbow Customers to the Rainbow System and/or by National Grid to Rainbow Customers (indicating the circumstances in which a transaction would be rejected as invalid) as amended or replaced from time to time;

“Reasonable and Prudent Operator” and **“RPO”**: shall mean a person seeking in good faith to perform its contractual obligations, and in so doing and in the general conduct of its

undertaking exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person complying with applicable law engaged in the same type of undertaking in the same or similar circumstances and conditions, and any reference to the standard of a Reasonable and Prudent Operator or RPO shall be construed accordingly;

"Receiving Party": shall have the meaning ascribed thereto in Condition 21.3;

"Relevant Consumers": shall have the meaning ascribed thereto in Condition 24.1;

"Relevant Consumer Data Date": shall have the meaning ascribed thereto in Condition 24.3;

"Relevant Gas Transporter": shall mean, with respect to a Meter Point, either National Grid (Gas Transporter) or the owner at the relevant time of a Distribution Network, in each case acting in its capacity as a transporter of gas, its successors and permitted assigns;

"Relevant Meter Indebtedness": shall have the meaning ascribed thereto in paragraph 2.1(b) of Schedule Five;

"Rental Charge": shall mean the appropriate charges as set out in the National Grid Metering Charges for the provision and maintenance of a Meter (and/or where applicable Ancillary Equipment and/or Converter) which is provided in accordance with the Provision and Maintenance Agreement or the Network Metering Equipment Agreement (as applicable) and (where appropriate) annualised installation charges;

"Schedules": shall mean Schedules One through to Five of this Agreement;

"SCMH": shall mean the flow rate of a standard cubic metre of gas per hour, a standard cubic metre of gas being that amount of gas which at a temperature of 15°C and an absolute pressure of 1.01325 bar and being free of water vapour occupies one cubic metre;

"Self-Bill Amount": shall have the meaning ascribed thereto in paragraph 1.1.4 of Schedule Four;

"Site": shall mean such premises or land owned or occupied by the Customer and/or the Consumer to which National Grid reasonably requires access in connection with the Works;

"Standards of Service Query Management Operational Guidelines": shall mean the document so entitled and published by National Grid (as amended or replaced from time to time) that sets out the detailed rules of operation for the management of Queries, including details of how Query resolution performance is calculated against relevant standards, and associated payments for failure to meet the specified standards;

"Substantial Completion": shall mean:

- (a) in respect of a Conceptual Study, the production of a Conceptual Study Report by National Grid and the delivery of the same to the Customer; and
- (b) in respect of Design Works, the production of a Detailed Design by National Grid and the delivery of the same to the Customer; and
- (c) in respect of Physical Works:
 - (i) where the Installation Pipework enables Commissioning to be undertaken, the completion of the Physical Works together with Commissioning (where appropriate) necessary to permit the safe flow of gas; or

- (ii) the completion of such Physical Works necessary to permit the safe flow of gas through the Metering Equipment;

"Substantial Completion Target Date": shall mean the date by which National Grid intends to achieve Substantial Completion as advised by National Grid to the Customer in the notice pursuant to Condition 2 or calculated in accordance therewith as may be adjusted by agreed variations or as may be extended in accordance with Condition 10;

"Supplier": shall mean in relation to any premises, a gas supplier licensed under Section 7(A)(1) of the Gas Act (and acting in such capacity) supplying gas to such premises;

"Supplier Licence": shall mean a licence granted or treated as granted under Section 7(A)(1) of the Gas Act (including standard and special conditions thereto) as modified from time to time;

"Surplus National Grid Material": shall mean material taken on to Site (including barriers and any hazardous substances) and/or material created on Site by National Grid in the conduct of the Physical Works but not incorporated into the Metering Equipment;

"Target Due Date": shall have the meaning ascribed thereto in paragraph 3.1.2(b) of Schedule Four;

"UMS": shall mean Utility Metering Services Limited registered number 3705740 whose registered office is at 1-3 Strand, London, WC2N 5EH;

"Warranty Period": shall have the meaning ascribed thereto in Condition 5.1(b);

"Web Communication": shall mean a data file transmitted by National Grid or by a Rainbow Customer by means of the internet as described in the Rainbow MAM Manual and the Web Portal User Guidelines;

"Web Portal": shall mean such computer system as may be made available by National Grid for access by the Customer via the internet for the performance of certain functions of the Rainbow System;

"Web Portal User Guidelines": shall mean the document so entitled and published by National Grid which contains training and instructions on the use of Web Communications, as amended or replaced from time to time;

"Working Day": shall mean a Day other than a Saturday, a Sunday, Christmas Day, Good Friday, or a Day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971;

"Working Hours": shall mean the hours between 8 a.m. and 5 p.m. on each Working Day provided always that for the purposes of receiving requests pursuant to Condition 2.3 any request received after 5 p.m. on a Working Day will be deemed to have been received at 9 a.m. on the next Working Day;

"Works": shall mean:

- (a) a Conceptual Study;
- (b) Design Works; or
- (c) Physical Works,

such Works to be as requested by the Customer in accordance with this Agreement and may be for the purpose of:

- (i) Metering Equipment installation on the LTS;
- (ii) Metering Equipment exchange;
- (iii) Metering Equipment removal;
- (iv) Metering Equipment alterations;
- (v) Meter accuracy testing being:
 - (1) an Ofgem meter accuracy test where the Meter has a badged capacity of less than 1600 SCMH); or
 - (2) such testing as may be appropriate for the type and capacity of the Meter as agreed with the Customer.

1.2 Interpretation

In this Agreement and any Contract unless the context otherwise requires:

1.2.1 headings and sub-headings are for convenience only and shall not affect the interpretation of this Agreement and any Contract;

1.2.2 all references to any:

- (a) statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto; and
- (b) technical procedure, technical standard and technical specification shall be deemed to include references to any technical procedure, technical standard and technical specification which amends, extends, consolidates or replaces the same;

1.2.3 reference to contractors shall be interpreted as referring to contractors and subcontractors of any tier;

1.2.4 reference to the word “includes” or “including” are to be construed without limitation;

1.2.5 where general words are followed by specific examples, the nature of the specific examples shall not restrict or qualify the natural meaning of the general words and the rule that where particular words are followed by general words the general words are limited to the same kind as the particular words shall not apply;

1.2.6 reference to times of the Day in this Agreement and any Contract are to official time in the United Kingdom, and except where otherwise provided:

- (a) where anything is to be done under this Agreement or any Contract by or not later than a Day or any period under this Agreement or any Contract is to run to a Day such thing may be done or such period shall run up to the end of such Day; and
- (b) where anything is to be done under this Agreement or any Contract from or not earlier than a Day or any period under this Agreement or any Contract made pursuant hereto is to run from a Day, such thing may be done or such period shall run from the start of such Day.

- 1.3 In the event of any conflict between these Conditions and the Schedules these Conditions shall prevail.
- 1.4 Unless the context otherwise requires, references to a Condition or Schedule are to a Condition or Schedule in this Agreement, and references in a Schedule or part of a Schedule to a paragraph or sub-paragraph are to a paragraph or sub-paragraph of that Schedule or that part of that Schedule.

2. PROJECT PROCESS AND CONTRACT FORMATION

2.1 Project Process

- 2.1.1 The Parties acknowledge and agree that a project for above 7 Bar Works may include some or all of the following:
- (a) budget indication;
 - (b) Conceptual Study;
 - (c) Design Works;
 - (d) Physical Works.
- 2.1.2 The Parties further acknowledge that National Grid may not be able to provide a single fixed Quotation for all stages of the project but may instead produce a series of Quotations with each subsequent Quotation relying on the information provided by the previous stage in the process (an explanatory note and process flow diagram is set out in Schedule One).

2.2 Initial Enquiry

- 2.2.1 The Customer may request either:
- (a) that National Grid produce a budget indication for the project where a Conceptual Study and/or Design Works has not been undertaken by National Grid for a project (unless a Detailed Design has been provided by the Customer); or
 - (b) that National Grid produce a Quotation, by sending National Grid a completed Quotation Request for Non Standard Work together with such additional information as necessary and such other information as National Grid may request.
- 2.2.2 National Grid shall:
- (a) acknowledge receipt of a request pursuant to Condition 2.2.1 within 1 Working Day; and
 - (b) where the Customer has requested a budget indication in accordance with Condition 2.2.1(a), National Grid shall use all reasonable endeavours to provide such budget indication within 10 Working Days (or sooner if reasonably practicable) PROVIDED ALWAYS that:
 - (i) National Grid shall be entitled to seek additional information and/or clarification from the Customer prior to production of such budget indication and the Customer shall provide such additional information in good faith;

- (ii) where there is more than one option for satisfying the Customer's project requirements, National Grid shall discuss the options in good faith with the Customer and shall, unless otherwise agreed, provide to the Customer a Quotation for a Conceptual Study instead of a budget indication,

and provided further than National Grid notifies the Customer of such options and/or requirement for additional information within 5 Working Days of receipt of the Customer's request.

2.3 Budget Indication

2.3.1 The budget indication:

- (a) shall describe the Works that National Grid reasonably considers will be required to complete the project;
- (b) where reasonably practicable (with regard to the complexities of the project and the anticipated cost of preparing the budget indication) shall indicate the estimated costs and time required to complete the project (and where such estimate is not provided National Grid shall give reasons);
- (c) subject to the provisos set out above and with due regard to the complexity of the project, shall be completed to the standard of an RPO;
- (d) shall be accurate to within +/- 30% of the value of any subsequent Quotation that is based on such budget indication;
- (e) shall be valid for a period of 6 months; and
- (f) save as set out above, shall not be binding on either Party.

2.3.2 Upon receipt of the budget indication the Customer may notify National Grid whether it requires a Quotation to be produced by submitting a completed Quotation Request for Non Standard Work to National Grid for Works materially consistent with those identified pursuant to Condition 2.3.1 whereupon National Grid shall produce the Quotation in accordance with Condition 2.6.

2.4 Conceptual Study Report

The Parties acknowledge and agree that:

- (a) a Conceptual Study Report is only required where the work is of a complex nature or where there is not one clearly identifiable solution to enable National Grid to offer a budget indication or Quotation, and Conceptual Study Reports are prepared by National Grid for the benefit of the Customer to allow the assessment of whether to proceed to Design Works;
- (b) where the Customer requests that the Design Works do not comprise all elements of works detailed in the Conceptual Study Report, National Grid shall not be liable for any loss or damage sustained or incurred by the Customer or any third party to whom the Customer discloses all or part of such Conceptual Study Report as a result of the Customer or such third party relying on that part of the Conceptual Study Report (as

- the case may be) that is not comprised in the Design Works other than (and subject to the provisions of Condition 14) where such loss or damage arises from National Grid's failure to act as an RPO in the preparation of the Conceptual Study Report;
- (c) subject always to National Grid's compliance with (d) below, the Customer shall hold harmless and indemnify National Grid in respect of any claim made against National Grid by any third party to whom the Customer discloses all or part of the Conceptual Study Report in circumstances where the Conceptual Study Report is used for a purpose (including for another site) otherwise than that for which it was prepared by National Grid or in any other circumstances where the Customer does or omits to do any act or thing which prejudices the effectiveness of the disclaimer referred to in (d) below;
 - (d) National Grid will include on the face of the Conceptual Study Report a disclaimer which purports to exclude liability of National Grid to the fullest extent permitted by law in respect of use of the contents of the report by any person other than the Customer.

2.5 Detailed Design

The Parties acknowledge and agree that Detailed Designs:

- (a) shall be prepared by National Grid for the benefit of the Customer for the purpose of Physical Works being undertaken at the Site (whether or not by National Grid);
- (b) shall be prepared to the standard of an RPO; and
- (c) are provided by National Grid subject to the provisions of Condition 21.

2.6 Quotation

The Quotation:

- (a) will only be issued by National Grid upon receipt from the Customer of a completed Quotation Request for Non Standard Work pursuant to Condition 2.2.1(b) and after having taken into account all and any Site rules provided by the Customer and/or made known to National Grid during the course of a Site visit;
- (b) will be issued in accordance with Conditions 2.2.2 and 2.3.2;
- (c) is issued subject to the provisions of this Condition 2.6 and Schedule Five; and
- (d) is personal to the Customer and may not be assigned without the written consent of National Grid (such consent not to be unreasonably withheld).

2.7 Acceptance

2.7.1 Formation of the Contract ("Acceptance") will take effect:

- (a) on the receipt by National Grid within Working Hours of the Acceptance Form duly completed by the Customer including a certification by the Customer that no further terms or conditions are required other than those set out in this Agreement and the relevant Quotation; or
- (b) in the event that the Customer specifies in the Acceptance Form that it requires terms and conditions in addition to those set out in this Agreement

and the Quotation or specifies variations to such Agreement or Quotation, upon written acceptance (where applicable) of such additional terms or varied terms and conditions by National Grid (notification of acceptance or non-acceptance of such terms and conditions as the case may be to be given by National Grid as soon as reasonably practicable),

PROVIDED ALWAYS that Acceptance occurs within 90 Days of the date of issue of the Quotation, or prior to the expiry of such other period as may be agreed in writing between the Parties and PROVIDED FURTHER THAT no acceptance of an offer made by National Grid in respect of the conduct of works of substantially the same nature at the same location has been received from a third party prior to the receipt by National Grid of such completed Acceptance Form.

2.7.2 Unless otherwise set out in the Quotation or agreed by the Parties in writing, National Grid will notify the Customer (in accordance with the Rainbow MAM Manual) of:

- (a) the date of Acceptance; and
- (b) either:
 - (i) where the Quotation is in respect of a Conceptual Study or Design Works, the Substantial Completion Target Date; or
 - (ii) where the Quotation is in respect of Physical Works, a schedule of works incorporating either:
 - (1) the Latest Date for Permission (if the requirement for such permissions has been set out in such Quotation); or
 - (2) the Physical Commencement Target Date, the Substantial Completion Target Date and (where applicable) the target date for Final Completion.

2.7.3 In the event that Acceptance takes place 90 Days or more after the issue of the Quotation, the first proviso set out in Condition 2.7.1 shall not apply and the dates set out in Condition 2.7.2(b) shall be the dates specified as such in the Quotation extended by the number of Days in excess of 90 that have elapsed since the date of issue of the Quotation, save as may otherwise be agreed with the Customer.

2.7.4 In the event that permissions, consents, licences or authorisations are required as set out in Condition 4.1.(c)(ii) National Grid will notify the Customer of the Physical Commencement Target Date, the Substantial Completion Target Date and the target date for Final Completion (where applicable) as soon as reasonably practicable after such permission, consent, licence or authorisation is received by National Grid.

2.8 General

The Customer shall not:

- (a) request that National Grid produce a budget indication pursuant to Condition 2.2.1(a) or submit a Quotation Request for Non Standard Work other than in respect of Metering Equipment situated at a Meter Point with an inlet pressure exceeding 7 Bar; or

- (b) request that National Grid produce a budget indication pursuant to Condition 2.2.1(a) or submit an Acceptance Form other than in respect of Metering Equipment which at the time of Acceptance is or is to be attached to the National Grid System.

3. CUSTOMER'S WARRANTY

- 3.1 The Customer warrants that it has entered into this Agreement on its own behalf, and not as an agent for a third party.
- 3.2 The Customer acknowledges and agrees that in respect of any Conceptual Study or Design Works:
 - (a) the Contract Sum and the scope of work set out in any Quotation will be specified on the basis of the information provided by the Customer to National Grid as at the date of the relevant Quotation PROVIDED ALWAYS that in respect of Design Works the Customer shall be entitled to rely on any information provided to it by National Grid in a related Conceptual Study Report;
 - (b) any information provided to National Grid after the date of the Quotation will not, be considered by National Grid in determining the Contract Sum or the scope of work set out in the Quotation in respect of such Conceptual Study or Design Works;
 - (c) any Quotation for Physical Works (as the case may be) will be specified on the basis of the information provided by the Customer to National Grid as at the date of issue of the relevant Detailed Design;
 - (d) any information (of a material nature relating to the scope, content or timing of the Works) provided to National Grid by the Customer after the date of issue of the relevant Quotation shall be a change request pursuant to Condition 10.2.
- 3.3 The Customer will not be in breach of any provision of this Condition 3 in circumstances where and to the extent that such breach would not have occurred but for a failure by National Grid to comply with any provision of this Agreement.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer will in accordance with the terms and conditions of the Contract:
 - (a) make all payments due from it under the Contract;
 - (b) notwithstanding Condition 6.2(f), in respect of Physical Works, as soon as reasonably practicable and in any event so as not to delay the Works obtain all necessary access rights, planning permissions, consents and licences for the siting, construction, operation and maintenance of any element of the Metering Equipment which is to be constructed or installed on the Site as part of the Physical Works or in connection therewith.
 - (c) to the standard of an RPO:
 - (i) provide such information, drawings and specifications within the possession or reasonable control of the Customer as National Grid may reasonably request;

- (ii) by the Latest Date for Permission obtain such permissions, consents, licences or authorisations as may be specified in the Quotation;
- (iii) subject to any reasonable Site rules and regulations notified to National Grid at the time of the Quotation Request for Non Standard Work, facilitate free and unrestricted access for National Grid and its contractors to the Site during Working Hours or at such other times as may be agreed between the Parties to the extent reasonably necessary to enable them to carry out the Works;
- (iv) in respect of Meter Installation Works taking place during the period from the date of Substantial Completion to Appointment:
 - (1) take all reasonable precautions to keep the Metering Equipment secure and free of interference and/or damage;
 - (2) not interfere with or permit interference with the Metering Equipment or materials on the Consumer's Premises where the same are owned by National Grid or its contractors without obtaining National Grid's prior consent in writing PROVIDED ALWAYS that the following shall not be deemed to be interference:
 - (aa) installation of MPU Equipment with the consent or prior agreement of National Grid ; and
 - (bb) removal or disconnection of the Metering Equipment;
- (v) in respect of Meter Installation Works and so as not to delay the Physical Works:
 - (1) where National Grid is required to provide and construct the Meter Base as additional activities for which a price is specified in a Quotation, provide or procure the provision and construction to the finished level of the areas of the Site on which such Meter Base is to be constructed; or
 - (2) where National Grid is not required to provide and construct the Meter Base, provide and construct or procure the provision and construction of a suitable Meter Base at the Site in accordance with the physical parameters of the Meter Base specified in the Quotation;
- (vi) in respect of Meter Installation Works and so as not to delay the Physical Works and in any event so that any Metering Equipment may be left secure prior to Appointment:
 - (1) (unless National Grid is required to provide and construct such Meter Housing as additional activities for which a price is specified in a Quotation), facilitate the provision and construction of a suitable Meter Housing at the Site in accordance with the specifications for Meter Housing contained in the Detailed Design;
 - (2) where National Grid is required to provide and construct such Meter Housing as additional activities for which a price is specified in a Quotation the Customer acknowledges and agrees that ownership of

and risk in such Meter Housing shall pass to the Customer at Final Completion;

- (vii) so as not to delay the Physical Works undertake and perform or procure the undertaking and performance of those works specified in the Quotation as being the responsibility of the Customer;
- (viii) use all reasonable endeavours to ensure that any Meter Housing constructed in accordance with the Physical Works is properly maintained from the date of Final Completion.

4.2 The Customer will not be in breach of any provision of Condition 4.1 in circumstances where and to the extent that such breach would not have occurred but for a failure by National Grid to comply with any provision of this Agreement.

5. NATIONAL GRID'S WARRANTIES

5.1 National Grid warrants that:

- (a) it shall perform the Works in the manner provided for in the Contract to the standard of an RPO; and
- (b) Metering Equipment shall be free from defects until the date of Appointment or such date as is 12 calendar months after Final Completion (whichever shall be the sooner) (the "Warranty Period").

5.2 In the event that National Grid is in breach of the warranty in Condition 5.1(a) or 5.1(b) then, as soon as reasonably practicable after written notification National Grid will, at its own cost:

- (a) reperform the Works (in the case of Condition 5.1(a)); or
- (b) rectify the defect in the Metering Equipment or, at National Grid's option, replace the affected Metering Equipment (in the case of Condition 5.1(b)),

PROVIDED THAT such notification:

- (i) includes such details as the Customer is able to give relating to the nature of the defect causing National Grid to be so in breach; and
- (ii) is given by the Customer no later than 14 Days after becoming aware of the breach and, in any event, within 12 calendar months after Final Completion (in the case of Condition 5.1(a)) or no later than the expiry of the Warranty Period (in the case of 5.1(b))

and in either case PROVIDED FURTHER THAT the Customer facilitates such access to the Site as National Grid reasonably requires in order to conduct such rectification and in the event that, notwithstanding the Customer attempting to facilitate such access, National Grid (acting as an RPO) is unable to access the Site then National Grid shall reperform the Works or rectify such defect or replace Metering Equipment (as the case may be) as soon as reasonably practicable after suitable access is provided.

5.3 National Grid warrants that the Metering Equipment installed by National Grid shall be Fit For Purpose PROVIDED THAT the Parties acknowledge and agree that nothing in this Condition 5.3 shall oblige (a) the Customer to undertake an inspection of such Metering Equipment or (b) National Grid to make good any item of Metering Equipment in respect of which a remedy

is available at such time under the Provision and Maintenance Agreement or the Network Metering Equipment Agreement (as applicable), however if such action is taken then Condition 5.7 shall apply.

- 5.4 Where the Customer provides reasonable evidence to National Grid that National Grid has installed Metering Equipment that is not Fit For Purpose as a result of National Grid's failure to act as an RPO then, subject to the provisos in Condition 5.2 and PROVIDED FURTHER THAT the Customer provides National Grid by written notice with such reasonable evidence as soon as practicable upon becoming aware of such circumstances and in any event not later than 14 Days after the expiry of the period of 36 months following Final Completion, National Grid shall, at its cost, repair or replace such Metering Equipment or part thereof.
- 5.5 For the purposes of Conditions 5.3 and 5.4 "Fit For Purpose" means Metering Equipment of a suitable capacity for the pressure and rate of flow of gas set out in the Quotation Request for Non Standard Works and conforming with the specification set out in the accompanying documents (if any) which have been provided by the Customer.
- 5.6 Without prejudice to Condition 14:
- (a) Condition 5.2 sets out National Grid's entire liability to the Customer for breach of the warranties set out in Condition 5.1; and
 - (b) Condition 5.4 sets out National Grid's entire liability to the Customer for breach of the warranties set out in Condition 5.3,
- and National Grid shall not have any further or additional liability to the Customer whatsoever and howsoever arising (including in negligence) in relation to the matters referred to in Conditions 5.1, 5.2, 5.3 and 5.4.
- 5.7 Where in respect of National Grid's breach of any warranty under this Condition 5 the Customer also has a remedy under the Provision and Maintenance Agreement or the Network Metering Equipment Agreement (as applicable), any action undertaken by National Grid in satisfaction of this Condition 5 shall also be deemed to be an action undertaken in response to the Customer's remedy under the Provision and Maintenance Agreement or the Network Metering Equipment Agreement (as applicable).
- 5.8 For the avoidance of doubt National Grid 's warranties under this Condition 5 will not extend to any items supplied by the Customer except in so far as the defects in such items arise as a result of a failure by National Grid to act as an RPO in conducting the Meter Works.
- 5.9 National Grid will not be in breach of any provision of this Condition 5 in circumstances where and to the extent that such breach would not have occurred but for a failure by the Customer to comply with any provision of this Agreement.

6. NATIONAL GRID'S OBLIGATIONS

- 6.1 National Grid will to the standards of an RPO and in accordance with the terms and conditions of the Contract (including, for the avoidance of doubt, the standards set out in paragraph 1.1 of Schedule Two) and subject to Condition 6.4:
- (a) make all payments due from it under the Contract;

- (b) without additional cost to the Customer and as soon as reasonably practicable provide such information within the possession or control of National Grid as is reasonably required by the Customer for the performance of its obligations under Condition 4;
- (c) carry out the Works in accordance with the Contract including for the avoidance of doubt the obligations set out in Schedule Two (where applicable);
- (d) in the course of the Works, and subject to the provisions of the Contract, perform changes to the Works agreed with the Customer pursuant to Condition 10.

6.2 National Grid will in the course of the Physical Works, to the standards of an RPO and in accordance with the terms and conditions of the Contract (including, for the avoidance of doubt, the standards set out in paragraph 1.1 of Schedule Two) and subject to Condition 6.4:

- (a) comply with Site rules reasonably imposed in the course of the Physical Works or agreed by the Parties prior to Acceptance (and for the avoidance of doubt Site rules imposed to comply with statute, regulation, Directive or order of a Competent Authority shall be deemed to be reasonably imposed);
- (b) comply with the CDM Regulations (where applicable);
- (c) not cause a breach of any permission, licence, consent or authorisation obtained by the Customer pursuant to Condition 4.1(c)(ii), PROVIDED ALWAYS that National Grid has been provided with material details of such permission, licence, consent or authorisation prior to such conduct;
- (d) take reasonable steps to secure that in performing any activities on Metering Equipment to which Daily Read Equipment and/or MPU Equipment is attached it does not damage or otherwise mistreat such Daily Read Equipment and/or MPU Equipment;
- (e) where at any time upon National Grid becoming aware that a disconnection of the Daily Read Equipment and/or MPU Equipment from its Metering Equipment has occurred, promptly notify such event to:
 - (i) either:
 - (1) the party responsible for such Daily Read Equipment and/or MPU Equipment (where known or where such party can be identified further to reasonable enquiry of the Relevant Gas Transporter); or
 - (2) where the party referred to in (i)(1) is not known, the Customer; and
 - (ii) any other Supplier who has Appointed National Grid in respect of such Metering Equipment;
- (f) without prejudice to Condition 4.1(b), provide all reasonable advice and assistance to the Customer in the obtaining of all necessary access rights, planning permissions, consents and licences for the siting, construction, operation and maintenance of any element of the Metering Equipment which is to be constructed or installed on the Site as part of the Works or in connection therewith.

6.3 Where:

- (a) without prejudice to Condition 2.8(b), the Customer has requested that National Grid produce a budget indication, Conceptual Study Report or Design Works pursuant to Condition 2.2.1(a) or 2.2.1(b) (as the case may be) or submitted an Acceptance Form in accordance with this Agreement; and
- (b) at the time of the Physical Works the Customer is not entitled to request such Works in accordance with this Agreement,

then National Grid and the Customer shall nevertheless carry out their respective obligations under the relevant Contract in respect of such Metering Equipment which shall be deemed to be in accordance with this Agreement. This Condition 6.3 shall survive termination of this Agreement in respect of any Contract in force at the date of such termination.

- 6.4 National Grid will not be in breach of any provision of this Condition 6 in circumstances where and to the extent that such breach would not have occurred but for a failure by the Customer to comply with any provision of this Agreement.

7. THE WORKS

- 7.1 The Works shall (subject to Condition 10) comprise those activities specified in the Quotation and Accepted in accordance with Condition 2.7 and subject to the standards, activities and exclusions set out in Schedule Two.

- 7.2 National Grid will commence the conduct of the Works:

- (a) in respect of Physical Works, on or (subject to the Customer's approval) before the Physical Commencement Target Date unless any permissions and/or rights of access necessary for the commencement of the Physical Works have not been secured or granted in which case National Grid will commence the Physical Works as soon as reasonably practicable (subject to the Customer's approval) after the grant of such permissions and/or rights of access. National Grid will (other than where the Customer has cancelled the Physical Works) seek to agree with the Customer the revised Physical Commencement Target Date, and/or Substantial Completion Target Date; or
- (b) as soon as practicable after Acceptance.

8. COMPLETION

- 8.1 National Grid shall (subject to the provisions of this Agreement) use its best endeavours to achieve Substantial Completion by the Substantial Completion Target Date (as such date may be amended pursuant to Conditions 2.7.3, 2.7.4 and 9).

- 8.2 National Grid will issue to the Customer a notification stating the date upon which Substantial Completion was achieved for Physical Works within 48 hours of Substantial Completion.

- 8.3 If National Grid shall fail to achieve Substantial Completion of the Physical Works by the Substantial Completion Target Date, as the same may be extended pursuant to Condition 9, National Grid shall pay Daily Liquidated Damages to the Customer in respect of each Day or part thereof of actual delay in accordance with the provisions of Schedule Three PROVIDED THAT:

- (a) in respect of any such Day, National Grid and its contractors are permitted access to the Site at all reasonable times to perform the Physical Works; and
- (b) National Grid's liability under this Condition 8.3 shall not under any circumstances exceed the Liquidated Damages Cap.

8.4 If Physical Works:

- (a) in respect of which the Customer has become entitled to the maximum amount provided for under Condition 8.3 remain uncompleted the Customer may by notice to National Grid require National Grid to complete such Physical Works. Such notice shall fix a final date for Substantial Completion which shall be reasonable having regard to such delay as has already occurred and to the extent of the Works required for completion. If for any reason, other than one for which the Customer, contractor of the Customer or Consumer is responsible or for which an extension of time is permitted pursuant to Condition 9.1, National Grid fails to complete within such time the Customer may by further notice to National Grid elect either to require National Grid to complete or terminate the Contract in respect of such Physical Works in accordance with Conditions 16.3(e).
- (b) are, compared to the schedule of works notified in accordance with Condition 2.7.2(b)(ii), delayed to such an extent that the reasonable expectation is that the Customer shall become entitled to the maximum amount provided for under Condition 8.3 before Substantial Completion is achieved the Customer may by notice require National Grid to provide in a reasonable time period a revised schedule of works setting out how National Grid shall achieve Substantial Completion on or before the date upon which the Customer shall become entitled to the maximum amount provided for under Condition 8.3 (the "Long Stop Date"). In the event that National Grid does not so provide such a revised schedule of works or subsequent progress of the Physical Works compared to such revised schedule of works is such that Substantial Completion cannot reasonably be expected to be achieved by the Long Stop Date, the Customer may by further notice to National Grid terminate the contract in respect of such Physical Works in accordance with Condition 16.3(e).

8.5 Final Completion shall occur on the same date as Substantial Completion (and no additional notification shall be required in respect of Final Completion) unless the Quotation or the planning letter sent by National Grid following Acceptance states that Final Completion shall occur on a different date to Substantial Completion or unless National Grid so notifies the Customer during the course of the Works in which case Condition 8.6 shall apply.

8.6 Where Final Completion does not occur on the same date as Substantial Completion National Grid will issue to the Customer a notification stating the date upon which Final Completion was achieved within 1 Working Day of such Final Completion.

9. EXTENSIONS OF TIME

9.1 The Substantial Completion Target Date will be extended in the event of any delay to the Works including, for the avoidance of doubt, where the delay occurs after the Substantial Completion Target Date (thereby effectively negating any liability on National Grid to pay

liquidated damages in relation to the period of such delay, even if this occurs after the original Substantial Completion Target Date) to the extent that such delay is caused by:

- (a) (i) the Customer's failure or delay in performing its obligations as set out in Condition 4 (other than Condition 4.1(a)); and/or
- (ii) any other delay, impediment or prevention of whatever nature caused by the Customer, or for which it is responsible (including without limitation the circumstances set out in Conditions 7.2);
- (b) the Physical Commencement Target Date being revised as set out in Condition 7.2;
- (c) weather conditions that the Customer agrees are exceptional and adverse (such agreement not to be unreasonably withheld or delayed);
- (d) any event or circumstance of Force Majeure;
- (e) any labour dispute or work stoppage or slow-down involving the Customer, the Customer's contractors, or any other person (other than National Grid or its contractors or suppliers) which affects the Works;
- (f) the imposition of Site rules other than those agreed pursuant to Condition 6.1(c) or the interference of the owners or occupiers of the land to which National Grid reasonably requires access for the purpose of the Physical Works;
- (g) a suspension of the Works by National Grid pursuant to Condition 16.9;
- (h) the Customer providing new or additional information to National Grid after the date of Acceptance or amending, correcting or replacing any information or specifications previously provided by it to National Grid in accordance with the Contract;
- (i) any action or restraint taken or issued by a Competent Authority or by any person with an interest in land pursuant to occurrences of any agricultural disease which prevents National Grid (acting as an RPO) from, or causes hindrance, delay or impediment to National Grid in, fulfilling all or any of its obligations under the Contract.

9.2 Where the Substantial Completion Target Date is extended as set out in Condition 9.1, National Grid will:

- (a) use reasonable endeavours to overcome or minimise any actual or anticipated delay;
- (b) as soon as reasonably practicable, notify the Customer of the anticipated delay; and
- (c) comply with all reasonable instructions that the Customer shall give in writing in order to overcome or minimise any actual or anticipated delay. If compliance with any such instruction shall cause National Grid to incur extra costs the amount thereof will be reimbursed to it provided that National Grid has provided and the Customer has accepted a variation to the Works in accordance with Condition 10 as to the cost of complying with such instructions. If the Customer does not agree to National Grid's extra costs of complying with such instruction then National Grid will only be obliged to carry out the relevant Works that does not incur extra costs. In the event that National Grid notifies the Customer in writing that additional works other than those set out in such variation are required, National Grid will be under no obligation to undertake such additional works without the Customer's further written instruction to that effect.

9.3 Without prejudice to Condition 9.1, in the event that a change to the Works is agreed pursuant to Condition 10, the Substantial Completion Target Date will be adjusted by the extension of time agreed in relation thereto.

10. CHANGES TO THE WORKS

10.1 Subject to Condition 10.8, National Grid shall make such changes to the Works whether by additions, modifications or omissions thereto as are from time to time agreed with the Customer, subject to the agreement of any variation including any changes to the Contract Sum or the timing thereof, required by the Customer and any extensions or reduction of time required by National Grid, in accordance with the provisions set out below.

10.2 In the event that the Customer wishes to request changes to the Works, it will notify National Grid in writing of the requested change.

10.3 Subject to Condition 10.8, as soon as reasonably practicable following receipt of a request from the Customer under Condition 10.2, National Grid will notify the Customer as to whether or not it is prepared to agree to the request (such agreement not to be unreasonably withheld) and:

(a) in the event that National Grid agrees to the request it will provide details of any additions to or reductions in the Contract Sum and any extension or reduction of time required in respect of such change; and

(b) in the event that National Grid does not agree to the request, National Grid shall notify the Customer of such changes to the Works as it is prepared to make in accordance with Condition 10.4 and the Customer shall be entitled to terminate the Contract in accordance with Condition 16.3(f).

10.4 If National Grid wishes to propose a change to the Works it shall notify the Customer of the proposed change, the reason for the change (including, where appropriate, an explanation as to why any additional Works were not provided for in the original Quotation), and provide the Customer with details of any additions to or reductions in the Contract Sum and any extension or reduction of time required in respect of such change.

10.5 The Customer will, acting reasonably and subject to Condition 10.8, notify National Grid as soon as reasonably practicable and in any event within 10 Working Days as to whether or not the Customer agrees to any change to the Works together with any additional payment and any extension of time proposed by National Grid in accordance with Condition 10.4 and whether in respect of a change proposed by the Customer pursuant to Condition 10.2 it agrees to the proposed change with the additional payments (if any) and extension of time (if any) required by National Grid in respect of such change.

10.6 In the event that the Customer does not notify its agreement to such proposed change and/or any additional payment or reduction in any payment due and/or any extension or reduction of time required by National Grid in respect thereof, neither Party shall be under further obligation in respect of such proposed change to the Works and the Works shall (where practicable) proceed without such proposed change.

- 10.7 The Customer shall have the right to appoint the Consumer as its agent for the purpose of agreeing variations to the Works as set out in this Condition 10 and where National Grid is notified of such appointment in writing (including without limitation where such notification is included in the Quotation Request for Non Standard Work):
- (a) National Grid shall accept the written instructions of the Consumer as though they were the instructions of the Customer;
 - (b) National Grid shall notify the Customer of the Consumer's written instruction, including any increase or reduction to the Contract Sum as notified and agreed by the Consumer, as soon as reasonably practicable; and
 - (c) the Customer shall pay any additions to the Contract Sum agreed by the Consumer.
- 10.8 Where Physical Works have commenced and any change to the Works would require change to the Detailed Design any proposed variation shall take place in stages including as required a new Conceptual Study and/or Design Works prior to the variation to the Physical Works. Any extensions of time and/or adjustments to the Contract Sum shall apply in respect of each such stage.

11. OWNERSHIP

Subject to Condition 24:

- (a) ownership of the Meter and/or the Ancillary Equipment and/or Convertor (where it has been provided and installed by National Grid) shall remain with National Grid (or any person to whom National Grid may transfer ownership) at all times; and
- (b) the Customer shall take all reasonable steps to ensure (by making suitable arrangements with the Consumer) that any notice of ownership affixed by National Grid to the Meter and/or Ancillary Equipment and/or Convertor will not be removed or defaced.

12. METER CREDIT LIMITS

The provisions relating to Meter Credit Limits of the Customer are set out in Schedule Five.

13. CHARGES, PAYMENT AND INVOICING

13.1 The Customer shall pay to National Grid:

- (a) the charges set out in the Quotation;
- (b) any PALD due in accordance with Condition 17 (charges prior to Appointment);
- (c) any other charges payable by the Customer to National Grid pursuant to this Agreement.

13.2 National Grid shall pay to the Customer:

- (a) any Daily Liquidated Damages due in accordance with Condition 8;
- (b) any other charges payable by National Grid to the Customer pursuant to this Agreement.

13.3 Unless otherwise expressly set out in the Quotation:

- (a) where the Contract Sum is less than or equal to ten thousand pounds (£10,000) National Grid shall submit an invoice for the Works on or after Final Completion;
- (b) where the Contract Sum is greater than ten thousand pounds (£10,000) National Grid shall submit invoices for the Works of the following amounts and on the following events:
 - (i) upon Acceptance: 10% of the Contract Sum;
 - (ii) upon Substantial Completion: 80% of the Contract Sum;
 - (iii) upon Final Completion: 10% of the Contract Sum.

13.4 The amounts payable by the Customer to National Grid in accordance with this Agreement and any Contract made thereunder will be invoiced and payable in accordance with Schedule Four.

14. LIABILITY AND RELATED ISSUES

14.1 Limitation of Liability

14.1.1 Subject to the further provisions of this Condition 14, each Party agrees and acknowledges that:

- (a) neither Party shall be liable to the other Party for loss arising from any breach of this Agreement (or any Contract made hereunder) other than (but without prejudice to any other provision of this Agreement or any Contract which excludes or limits liability in respect of any breach) for loss directly resulting from such breach and which at the relevant date was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:
 - (i) physical damage to the property of the other Party, and/or
 - (ii) the liability (in law) of the other Party to any other person for loss in respect of physical damage to the property of such other person;
- (b) neither Party shall in any circumstances be liable in respect of any breach of this Agreement (or of any Contract made hereunder) to the other Party for any one or more of the following:
 - (i) any loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill, or increased cost of working; or
 - (ii) any other loss which is an indirect or consequential loss; or
 - (iii) loss resulting from the liability of the other Party to any other person howsoever and whensoever arising, except as provided in Conditions 14.1.1(a)(ii) and 14.1.5; or
 - (iv) loss in respect of Condition 14.1.1(a) to the extent that it results from the breach or negligent act or omission of the other Party.

14.1.2 For the purposes of Condition 14.1.1(a) the “relevant date” is the date of this Agreement or, in the case of a Contract, the date of Acceptance of the Contract, except that where the breach in question would not have been a breach of the Contract but for a modification of the Contract, the relevant date shall be the date of

such modification.

14.1.3 Subject to Condition 14.1.6, the amount or amounts for which either Party may be liable to the other Party pursuant to Condition 14.1.1(a) in respect of any one event or circumstance constituting or resulting in the first Party's breach of a provision of this Agreement or any Contract made hereunder shall not exceed as respects the liability of National Grid to the Customer or of the Customer to National Grid:

- (a) £5,000,000 (five million pounds sterling) in respect of any Meter Point at which a Meter is situated with a badged capacity of less than 11 SCMH;
- (b) £10,000,000 (ten million pounds sterling) in respect of any Meter Point at which a Meter is situated with a badged capacity of 11 SCMH or above.

14.1.4 Condition 14.1.1 is without prejudice to any provision of this Agreement or any Contract which provides for an indemnity, or which provides for any Party to make a payment to another.

14.1.5 Nothing in this Agreement or any Contract shall exclude or limit the liability of either Party for death or personal injury resulting from the negligence of such Party.

14.1.6 The limitation of liability under Condition 14.1.3 in respect of Condition 14.1.1(a)(ii) shall not apply where, by virtue of the lack (as at the date of this Agreement) of a contractual relationship with such other person referred to in Condition 14.1.1(a)(ii) the other Party has been unable to limit its liability.

14.2 Exclusions of certain rights and remedies:

14.2.1 The rights and remedies of the Parties pursuant to this Agreement or any Contract exclude and are in place of any rights or remedies of any Party in tort (including negligence and nuisance) or misrepresentation (but not fraudulent misrepresentation) in respect of the subject matter of this Agreement or any Contract, and accordingly, but without prejudice to Conditions 14.1.5 and 14.2.4, each Party (to the fullest extent permitted by law):

- (a) waives any such other rights or remedies (other than those provided pursuant to this Agreement or any Contract), and
- (b) releases the other Party from any duties or liabilities arising in tort or misrepresentation (but not fraudulent misrepresentation) in respect of the subject matter of this Agreement or any Contract.

14.2.2 Without prejudice to Condition 14.2.1 and notwithstanding standard special condition B7 (Provision of Meters) of National Grid GT's Licence, which stipulates time shall be of the essence, where any provision of this Agreement or any Contract provides for any amount to be payable by a Party upon or in respect of that Party's breach of any provision of this Agreement or any Contract each Party agrees and acknowledges that such provisions have been the subject of discussion and negotiation and that the remedy conferred by such provision is the exclusive remedy for, and is in substitution for any remedy in damages in respect of such breach or the event or circumstance giving rise thereto.

14.2.3 For the avoidance of doubt, nothing in this Condition 14 shall prevent or restrict either

Party enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Agreement.

14.2.4 Nothing in this Condition 14 shall constitute a waiver by either Party of any right or remedy it may have (other than pursuant to this Agreement or any Contract) in respect of a breach by the other Party of any Legal Requirement.

14.3 Effect of this Condition

14.3.1 Each provision of this Condition 14 shall be construed as a separate and severable contract term, and shall survive termination of this Agreement or any Contract made hereunder.

14.3.2 Each Party acknowledges and agrees that the provisions of this Condition 14 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date of this Agreement.

14.4 Indemnities

14.4.1 Subject to Condition 14.4.2, the amount or amounts for which a Party may be liable to the other Party pursuant to any indemnity provided for in this Agreement in respect of any one event or circumstance giving rise to liability under such indemnity shall not exceed, as respects the liability of National Grid to the Customer or of the Customer to National Grid, £1,000,000 (one million pounds sterling).

14.4.2 The provisions of Condition 14.4.1 shall not apply to the indemnity set out in Condition 24.8. The amount or amounts for which the Customer may be liable to National Grid pursuant to such indemnity in respect of any one event or circumstance giving rise to liability under such indemnity shall not exceed:

(a) £5,000,000 (five million pounds sterling) in respect of any Meter Point at which a Meter is situated with a badged capacity less than 11 SCMH;

(b) £10,000,000 (ten million pounds sterling) in respect of any Meter Point at which a Meter is situated with a badged capacity of 11 SCMH and above,

and consequently, any payments made pursuant to such indemnity shall be ignored in any calculation for the purposes of Condition 14.4.1.

15. FORCE MAJEURE

15.1 Meaning of Force Majeure

15.1.1 For the purposes of this Agreement or any Contract subject to Conditions 15.1.3 and 15.1.4, "Force Majeure" means any event or circumstance, or combination of events and/or circumstances, the occurrence of which is beyond the reasonable control of, and could not have been avoided by steps which might reasonably be expected to have been taken by, a Party (the "Affected Party") and which causes or results in the failure of the Affected Party acting as a Reasonable and Prudent Operator to perform or its delay in performing any of its obligations owed to the other Party (the "Other Party") under this Agreement or any Contract including but not limited to:

(a) war declared or undeclared, threat of war, act of public enemy, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism;

- (b) act of God;
- (c) strike, lockout or other industrial disturbance;
- (d) explosion, fault or failure of plant, equipment or other installation which the Affected Party could not prevent or overcome by the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same kind of undertaking under the same or similar circumstances;
- (e) governmental restraint or the coming into force of any Legal Requirement.

15.1.2 Without prejudice to the generality of Condition 15.1.1 either Party will be entitled to claim relief through Force Majeure in the event of a major gas emergency incident requiring the attendance of the Relevant Gas Transporter's personnel in support of the emergency service obligation set out in the Relevant Gas Transporter's Licence.

15.1.3 Lack of funds (howsoever caused) of a Party shall not be Force Majeure.

15.1.4 The act or omission of:

- (a) any agent or contractor of a Party; and/or
- (b) any Supplier or Consumer,

shall not be Force Majeure unless such act or omission is caused by or results from events and/or circumstances which would be Force Majeure within the meaning of Condition 15.1.1 if such person were the Affected Party.

15.2 Effect of Force Majeure

15.2.1 Subject to Condition 15.2.2, the Affected Party (from the time of occurrence of the Force Majeure) shall be relieved from liability (including any requirement under this Agreement or any Contract to make payment of any sum or to take any other action) for any delay or failure in the performance of any obligation under this Agreement or any Contract which is caused by or results from Force Majeure.

15.2.2 The Affected Party shall be relieved from liability under Condition 15.2.1 only for so long as and to the extent that the occurrence of Force Majeure and/or the effects of such occurrence could not be overcome by measures which the Affected Party might reasonably be expected to take with a view to resuming performance of its obligations.

15.3 Information

Following any occurrence of Force Majeure the Affected Party shall:

- (a) as soon as reasonably practicable notify the Other Party of the occurrence and nature of the Force Majeure, the expected duration thereof (insofar as the same can reasonably be assessed) and the obligations of the Affected Party performance of which is affected thereby;
- (b) from time to time thereafter (and in a timely manner) provide to the Other Party reasonable details of:
 - (i) developments in the matters notified under Condition 15.3(a); and
 - (ii) the steps being taken by the Affected Party to overcome the Force Majeure occurrence or its effects and to resume performance of its relevant obligations; and

- (c) as soon as reasonably practicable notify the Other Party of the date upon which performance resumed and such date shall be the date of cessation of the Force Majeure.

16. TERMINATION AND SUSPENSION OF TERMS

Termination

- 16.1 Either Party may terminate this Agreement by giving to the other Party not less than 90 Days written notice where standard condition 23 of the National Grid GT Licence is revised or revoked such that National Grid's obligation pursuant to such condition in respect of Metering Services ceases or no longer applies.
- 16.2 Without prejudice to any of its antecedent rights or remedies, National Grid may terminate:
 - (a) this Agreement and/or any Contract made hereunder forthwith on written notice if the Customer goes into liquidation (either voluntary or compulsory) other than for the purposes of a solvent amalgamation or re-organisation; or if an administrative receiver or receiver shall be appointed in respect of the whole or any material part of its assets; or if an administrator shall be appointed of the Customer; or it shall make or offer to make any arrangement or composition for the benefit of creditors generally; or
 - (b) any Contract made hereunder by giving 5 Working Days prior notice in writing if either Party is prevented by reason of Force Majeure from performing any of its obligations under the Contract for a period exceeding 60 days; or
 - (c) this Agreement and/or any Contract made hereunder by giving 20 Working Days notice in writing of a material breach of this Agreement and/or the Contract by the Customer, provided that the Customer fails to take substantial steps to remedy the breach within that 20 Working Day period of notice; or
 - (d) any Contract made hereunder by giving 40 Days notice in writing in the event that any permission, rights or interest necessary for the conduct of the Works have not been secured in accordance with Condition 4.1; or
 - (e) any Contract made hereunder in the event that the Customer has required a delay in the Physical Commencement Target Date and the Parties (acting reasonably) have not agreed a Physical Commencement Target Date that is within 180 Days of the Latest Date for Permission; or
 - (f) this Agreement and/or any Contract made hereunder forthwith on written notice in accordance with paragraph 3.3 of Schedule Five (Aggregate Relevant Meter Indebtedness of the Customer exceeding 100% of the Customer's Meter Credit Limit).
- 16.3 Without prejudice to any of its antecedent rights or remedies, the Customer may terminate:
 - (a) this Agreement and/or any Contract made hereunder forthwith on written notice if National Grid goes into liquidation (either voluntary or compulsory) other than for the purposes of a solvent amalgamation or re-organisation or if an administrative receiver or receiver shall be appointed in respect of the whole or any material part of its assets; or if an administrator shall be appointed of National Grid; or it shall make or offer to make any arrangement or composition for the benefit of creditors generally; or

- (b) any Contract made hereunder by giving 5 Working Days prior notice in writing if either Party is prevented by reason of Force Majeure from performing any of its obligations under the Contract for a period exceeding 60 Days; or
 - (c) any Contract made hereunder by giving 20 Working Days notice in writing of a material breach of the Contract by National Grid, provided that National Grid fails to take substantial steps to remedy the breach within the 20 Working Day notice period; or
 - (d) any Contract made hereunder by giving National Grid 2 Working Days notice in writing prior to the Physical Commencement Target Date PROVIDED THAT National Grid shall be entitled to notify its receipt of such notice to the Consumer in response to the Consumer's enquiry (but not otherwise); or
 - (e) any Contract made hereunder by giving National Grid 2 Working Days notice of termination in the circumstances set out in Condition 8.4; or
 - (f) any Contract made hereunder by giving National Grid 2 Working Days notice of termination in the circumstances set out in Conditions 10.3(b) or 26.12.2.
- 16.4 Subject to Condition 16.6, where a Contract is terminated under any provision of this Condition 16 other than Conditions 16.3(a) or 16.3(c), National Grid will be entitled to receive:
- (a) reimbursement for all costs and expenses reasonably incurred by National Grid in respect of all work performed under the Contract at the time of termination;
 - (b) subject to Condition 16.5, any cost or expense reasonably incurred, or for which National Grid is liable and is unable lawfully or contractually to avoid or recover from third parties, in connection with any contracts placed in connection with the Contract (insofar as these have not already been paid by the Customer) including without limitation, forfeited deposits and cancellation fees of National Grid;
 - (c) subject to Condition 16.5, any and all costs reasonably incurred or expended in the restoration and/or reinstatement of land or buildings and removal of plant, apparatus and equipment which to the standard of an RPO is necessary as a result of the termination of the Contract taking into account inter alia environmental and safety considerations and contractual commitments;
- 16.5 In the event that a Contract is terminated pursuant to:
- (a) Condition 16.2(b) or 16.3(b), then Condition 16.4(c) shall be ignored for the purpose of calculating National Grid 's entitlement to payment pursuant to Condition 16.4;
 - (b) Where Condition 8.4 applies:
 - (i) Condition 16.4(b) shall apply only to the extent that such work is not rejected by the Customer (and in the event that it is so rejected National Grid shall remove such work at National Grid 's cost and expense);
 - (ii) Condition 16.4(c) shall be ignored for the purpose of calculating National Grid's entitlement to payment pursuant to Condition 16.4.
- 16.6 National Grid shall use all reasonable endeavours to mitigate and minimise any amount claimed pursuant to Condition 16.4, such amount not to exceed the Contract Sum less any amounts paid by the Customer to National Grid in respect of such Contract.

- 16.7 Subject to Condition 16.8, where the Contract is terminated under Conditions 16.3(a), 16.3(c) or 16.3(e) the Customer will be entitled to receive:
- (a) reimbursement for all costs and expenses reasonably incurred by the Customer in respect of all obligations performed by the Customer under the Contract at the time of termination;
 - (b) any cost or expense reasonably incurred, or for which the Customer is liable and is unable lawfully or contractually to avoid or recover from third parties in connection with any contracts placed in connection with the Contract (insofar as these have not already been paid by National Grid) including without limitation, forfeited deposits and cancellation fees;
 - (c) any and all costs reasonably incurred or expended in the restoration and/or reinstatement of land or buildings and removal of plant, apparatus and equipment which to the standard of an RPO is necessary as a result of the termination of the Contract taking into account inter alia environmental and safety considerations and contractual commitments.
- 16.8 The Customer shall use all reasonable endeavours to mitigate and minimise any amount claimed pursuant to Condition 16.7, such amount not to exceed the Contract Sum less any amounts paid in respect of such Contract pursuant to Schedule Three.

Suspension

- 16.9 In the event that the Customer is in breach of the payment provisions of paragraph 3.2.(a) of Schedule Five (Relevant Meter Indebtedness of the Customer for the time being exceeding 90% of the Customer's Meter Credit Limit), National Grid shall be entitled to suspend all or any part of the Works, where safe to do so, until the Customer has rectified such breach. In the event of such suspension the Customer will in addition to all other amounts due reimburse National Grid on invoice for all reasonable sums paid by National Grid as a direct result of such suspension.

17. PROVISION AND MAINTENANCE APPOINTMENT

- 17.1 The Customer acknowledges and agrees that National Grid undertakes the installation of Metering Equipment in anticipation of being Appointed as provider of the Metering Equipment from the date of Substantial Completion in accordance with the Provision and Maintenance Agreement or the Network Metering Equipment Agreement (as applicable) (or alternatively of being appointed as the provider of Metering Equipment from such date by another National Grid Customer in accordance with the Provision and Maintenance Agreement or the Network Metering Equipment Agreement (as applicable) to which National Grid and that National Grid Customer are party).
- 17.2 If in respect of such Metering Equipment, National Grid has not been Appointed by the date of Substantial Completion then the Customer shall pay PALD to National Grid. Such PALD shall:

- (a) be due and payable for each Day following the date of Substantial Completion in respect of which National Grid has not been so Appointed in accordance with the Provision and Maintenance Agreement or the Network Metering Equipment Agreement (as applicable) (or such other agreement referred to in Condition 17.1 as the case may be);
- (b) be equal to the amount of Rental Charge that would have become due and payable to National Grid, in respect of such Metering Equipment for such Day, had the Customer complied with such obligation such that a contract for the same would have commenced on such date of Appointment in accordance with the Provision and Maintenance Agreement or the Network Metering Equipment Agreement (as applicable) (or such other agreement referred to in Condition 17.1 as the case may be);
- (c) continue to be paid by the Customer from the date of Substantial Completion until either:
 - (i) the date of Appointment in accordance with the Provision and Maintenance Agreement (or such other agreement referred to in Condition 17.1 as the case may be); or
 - (ii) the Meter Removal Date or Converter Removal Date (as the case may be), whichever first occurs.

17.3 Subject to Condition 17.4, upon the date of Final Completion in respect of each such item of Metering Equipment installed, delivery to the Customer shall occur and risk shall pass to the Customer regardless of whether Appointment has occurred on such date.

17.4 From the date of Final Completion until the date of Appointment National Grid shall, to the Standard of an RPO maintain the Metering Equipment in accordance with the manufacturer's recommendations and as necessary as a result of fair wear and tear.

17.5 Payment of PALD shall be levied by way of a PALD Invoice in accordance with Schedule Four.

18. NOTICES AND COMMUNICATIONS

18.1 Subject to Condition 18.3 any notice to be given by one Party to the other under this Agreement or any Contract shall be delivered by first class mail or facsimile to the other Party at such address or (as the case may be) such facsimile transmission number as the Party in question shall from time to time designate by written notice. Notices may be sent in such other manner and may be confirmed in such manner as from time to time may be set out in the Rainbow MAM Manual or as may otherwise be agreed by the Parties for the service of notices pursuant to this Agreement or any Contract.

18.2 Subject to Condition 18.3 all notices delivered or sent in accordance with Condition 18.1 shall be effective:

- (a) in the case of post, when received at the recipient's address as aforesaid; or

- (b) in the case of facsimile, on acknowledgement by the recipient Party's facsimile receiving equipment or as evidenced by the notifying Party's facsimile transmission report,

PROVIDED ALWAYS that a notice received after the expiry of Business Hours shall be effective at 9 a.m. on the following Working Day.

- 18.3 Electronic communications (whether by computer file, internet access or otherwise) shall, subject and without prejudice to the Rainbow System User Agreement, be in the manner specified in the Rainbow MAM Manual and receipt shall be deemed in accordance with the provisions set out in such manual.
- 18.4 For the avoidance of doubt, where a notice is given by facsimile (confirmed by the appropriate answerback) and also confirmed in a notice delivered by first class mail, the date of receipt of the notice shall be the earlier of the dates of valid receipt of the two notices.

19. CUSTOMER AGENT

19.1 General

19.1.1 The Customer may, subject to and in accordance with this Condition 19, appoint another person to be the agent of the Customer (the "Customer Agent") for the purposes of making and receiving Metering Communications or particular Metering Communications on behalf of the Customer.

19.1.2 Subject to Condition 19.4.3, the Customer may appoint more than one person as Customer Agent.

19.1.3 A person may be appointed as Customer Agent by more than one Customer.

19.2 Agent for Batch Transfer Communications

19.2.1 A person who is a Rainbow Customer (in accordance with the Rainbow System User Agreement) may be appointed as Customer Agent (a "Rainbow Customer Agent") for the purposes of making and receiving Metering Communications as Batch Transfer Communications.

19.2.2 A Rainbow Customer Agent will at all times be authorised to make any Metering Communication as Batch Transfer Communications on behalf of the appointing Customer until it ceases to be a Rainbow Customer Agent.

19.2.3 The Customer shall terminate (in accordance with Condition 19.3.3) the appointment of a Rainbow Customer Agent if such Rainbow Customer Agent ceases to be a Rainbow Customer.

19.3 Customer Agent appointment

19.3.1 If the Customer wishes to appoint a Customer Agent it shall give notice to National Grid specifying:

- (a) the identity of the proposed Customer Agent; and
- (b) the types of activities and process it wishes the Customer Agent to perform.

19.3.2 The appointment of the Customer Agent shall be effective from the Day specified by the Customer, and shall continue, until terminated in accordance with Condition 19.3.3.

19.3.3 The appointing Customer may terminate the appointment of a Customer Agent by giving notice to National Grid to that effect specifying the date with effect from which such termination is to take effect.

19.4 Effect of appointment

19.4.1 A Metering Communication given by a Customer Agent shall identify the appointing Customer on whose behalf the Metering Communication is given, and (subject to Condition 19.4.2) shall not be effective unless it does so.

19.4.2 Where a Customer Agent appointed by the Customer who is itself a National Grid Customer gives any Metering Communication which does not state that it is given on behalf of the Customer, such Metering Communication shall be treated as given by the Customer Agent on its own account in its capacity as such National Grid Customer.

19.4.3 Any Metering Communication given by a Customer Agent where the identity of the Customer has been given in accordance with Condition 19.4.1 shall be deemed to have been given by and shall be binding on the Customer, and National Grid shall be entitled without enquiry as to the Customer Agent's authority to rely on such Metering Communication for all purposes of this Agreement and any Contract made hereunder.

19.4.4 A Customer who has appointed a Customer Agent may continue itself to give Metering Communications.

19.4.5 Where the Customer has appointed one or more Customer Agents:

- (a) the Customer shall be responsible for ensuring that the actions of the Customer and each such Customer Agent are not in conflict;
- (b) where any Metering Communication is given by the Customer or any such Customer Agent:
 - (i) to the extent any further Metering Communication is subsequently given by any of them which (in accordance with this Agreement) is effective to modify or revoke the earlier Metering Communication, the earlier Metering Communication shall be so modified or revoked;
 - (ii) except as provided in (i) above, any Metering Communication subsequently given by any of them which conflicts with the earlier Metering Communication will be disregarded.

19.4.6 National Grid shall not be responsible for any unauthorised use or disclosure by a Customer Agent of information relating to the Customer (whether or not obtained, in the case of a Rainbow Customer Agent, in its capacity as Rainbow Customer).

20. CONFIDENTIALITY AND DATA PROTECTION

20.1 Subject to Condition 20.4, the Customer will keep confidential and will not disclose to any third party any information provided by National Grid in connection with the negotiation or performance of this Agreement or any Contract made hereunder, PROVIDED THAT:

- (a) this restriction will not apply to any information which at the time of disclosure is in the public domain or thereafter becomes part of the public domain otherwise than as a

consequence of a breach by the Customer of its obligations under this Condition 20.1 or to any information provided to the Customer by a third party otherwise than as a consequence of a breach by such third party of confidentiality obligations owed to National Grid; and

- (b) nothing in this Condition or any Contract will prevent the disclosure of information:
 - (i) where National Grid has consented in writing to such disclosure;
 - (ii) to any government department or any governmental or regulatory agency having jurisdiction over the Customer, or as required by law or any lawful subpoena or recognised stock exchange or other process in connection with any judicial arbitration or administration proceeding, or where reasonably necessary to effect the purpose of this Agreement or any Contract made hereunder; and
 - (iii) for any purpose contemplated by this Agreement and any Contract made hereunder or where appropriate the Provision and Maintenance Agreement or the Network Metering Equipment Agreement (as applicable) or the appropriate Meter Works Conditions;

- (c) in the event disclosure to any third party is necessary and permissible under this Condition, the Customer will use all reasonable endeavours to ensure that such third party will respect the confidentiality of such information and be bound by the terms of this Condition 20.1 as if a party thereto.

20.2 Subject to Condition 20.4, National Grid will keep confidential and will not disclose to any third party any information provided by the Customer in connection with the negotiation or performance of this Agreement or any Contract made hereunder, PROVIDED THAT:

- (a) this restriction will not apply to any information which at the time of the disclosure is in the public domain or thereafter becomes part of the public domain otherwise than as a consequence of a breach by National Grid of its obligations under this Condition 20.2 or to any information provided to National Grid by a third party otherwise than as a consequence of a breach by such third party of confidentiality obligations owed to the Customer; and
- (b) nothing in this Condition or any Contract will prevent the disclosure of information:
 - (i) where the Customer has consented in writing to such disclosure;
 - (ii) to any government department or any governmental or regulatory agency having jurisdiction over National Grid, or as required by law or any lawful subpoena or recognised stock exchange or other process in connection with any judicial arbitration or administration proceeding, or where reasonably necessary to effect the purpose of this Agreement or any Contract made hereunder; and
 - (iii) for any purpose contemplated by this Agreement and any Contract made hereunder or where appropriate the Provision and Maintenance Agreement or the Network Metering Equipment Agreement (as applicable) or the appropriate Meter Works Conditions;

- (c) in the event disclosure to any third party is necessary and permissible under this Condition, National Grid will use all reasonable endeavours to ensure that such third party will respect the confidentiality of such information and be bound by the terms of this Condition 20.2 as if a party thereto.

20.3 The provisions of Conditions 20.1 and 20.2 shall continue, for a period of 3 years after termination or Final Completion (whichever shall occur later) in respect of information provided under this Agreement and in respect of any Contract, to bind the Parties irrespective of the reason for such termination.

20.4 Data Protection

20.4.1 Definitions

For the purposes of this Condition 20.4, the following terms shall have the following meanings:

- (a) **“Group”** means, in respect of a person:
 - (i). its Parent Undertakings, its Subsidiary Undertakings and the Subsidiary Undertakings of any of its Parent Undertakings from time to time (**“Parent Undertaking”** and **“Subsidiary Undertaking”** having the meaning set out in section 1162 Companies Act 2006); and
 - (ii). any persons that Control, are Controlled by or are under common Control with that person from time to time and for this purpose **“Control”** means the power (whether direct or indirect) to direct or cause the direction of another person’s affairs, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise and **“Controlled”** will be construed accordingly.
- (b) **“Personal Information”** means any information relating to an identified or identifiable natural person, including without limitation all information to the extent that Data Privacy Laws apply to that information or any part of such Personal Information controlled by the Customer and/or its Group, and in relation to which National Grid is providing the Metering Services for or on behalf of the Customer or which will be Processed (subject to the Data Privacy Laws) in connection with this Agreement;
- (c) **“Process”** means any operation or set of operations which is performed upon Personal Information, whether or not by automatic means, including without limitation collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction (and **“Processed”**, **“Processes”** and **“Processing”** shall be construed accordingly).
- (d) **“National Grid Personnel”** means all staff, contractors, employees, agents, subcontractors and sub processor of National Grid; and
- (e) For processing which takes place within the European Economic Area (**“EEA”**) or the United Kingdom the following definitions shall apply:

- (i) **"Data Privacy Laws"** means all laws that relate to data protection, privacy, the use of information relating to individuals, and or the information rights of individuals including, without limitation, the Data Protection Act 1998, the Privacy and Electronic Communication (EC Directive) Regulations 2003, the Regulation of Investigatory Powers Act 2000, the Telecommunications (lawful Business Practice) (Interception of Communications) Regulations 2000, Privacy and Electronic Communications (EC Directive) Regulations 2003, the Consumer Protection from Unfair Trading Regulations 2008, any Laws in force from time to time in any relevant jurisdiction which implements the Data Protection Directive 1995/46/EC on the protection of individuals with regards to the processing of personal data and on the free movement of such data, General Data Protection Regulation ((EU) 2016/679)), and all and any regulations made under those acts or regulations all applicable formal or informal guidance, rules, requirements, directions, guidelines, recommendations, advice, codes of practice, policies, measures or publications of the Information Commissioner's Office, other relevant regulator, and or relevant industry body, in each case in any relevant jurisdiction(s) from time to time and the equivalent in any other relevant jurisdictions all as amended or replaced from time to time;;
- (ii) **"Data Subject"** has (until 24 May 2018) the meaning given under the Directive and (from 25 May 2018) the meaning given under the Regulation;
- (iii) **"Directive"** means the European Commission Directive 95/46/EC with respect to the processing of personal data;
- (iv) **"Personal Data"** has (until 24 May 2018) the meaning given under the Directive and (from 25 May 2018) the meaning given under the Regulation; and
- (v) **"Regulation"** means the General Data Protection Regulation ((EU) 2016/679).

20.4.2 Data Controller

- (a) The Customer will be the Data Controller and National Grid will be the Data Processor when processing Personal Information in the course of National Grid providing the Metering Services to the Customer and its Group and otherwise discharging its obligations and exercising its rights under this Agreement and the other Metering Agreements.
- (b) National Grid acknowledges that the Customer shall solely be responsible for the following decisions and determinations:
 - (i) the purpose(s) for which and the manner in which the Personal Information will be Processed or used;
 - (ii) what Personal Information to collect and the legal basis for doing so;
 - (iii) which items (or content) of Personal Information to collect;
 - (iv) which individuals to collect Personal Information about;

- (v) whether to disclose the Personal Information, and if so, who to;
 - (vi) whether subject access and other individuals' rights apply including the application of any exemptions;
 - (vii) how long to retain the Personal Information (taking into account National Grid's systems and processes); and
 - (viii) whether to make non-routine amendments to the Personal Information.
- (c) The Customer will discharge its obligations as Data Controller in such manner as will enable National Grid to fulfil its obligations under this Condition 20.4.
- (d) Where National Grid requires the Customer to provide information, take steps or carry out acts to enable National Grid to perform its obligations under this Agreement, National Grid shall provide written notice of such requirement(s). Upon receipt of such notice, and without prejudice to any other obligation of the Customer in this Agreement, the Customer shall provide all such information, do all such acts and take all such steps as may be reasonably required in order to comply with National Grid's request.

20.4.3 **Security, technical & organisational measures**

- (a) National Grid shall take all appropriate technical, security, and organisational measures necessary or desirable in relation to the processing of Personal Information which shall as a minimum include the following measures to:
- (i) prevent unauthorized persons from gaining access to data processing systems with which Personal Data are processed or used;
 - (ii) prevent National Grid's systems from being used without authorisation;
 - (iii) ensure that persons entitled to use a data processing system have access only to the Personal Data to which they have a right of access, and that Personal Data cannot be read, copied, modified or removed without authorization during processing or use and after storage;
 - (iv) ensure that Personal Data cannot be read, copied, modified or removed without authorization during electronic transmission or transport;
 - (v) ensure that it is possible to check and establish whether and by whom Personal Data has been input into data processing systems, modified or removed; and
 - (vi) ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage
- (b) National Grid warrants that (to the best of its knowledge and belief, taking into account the nature, scope, context and purpose of Processing the Personal Information) the security measures referred to in this Condition 20.4.3 are appropriate to protect Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the

risks presented by the processing and the nature of the Personal Information to be protected, having regard to the state of the art in accordance with Good Industry Practice including, without limitation and as applicable, as to information and network security, disaster recovery and data backup measures. "**Good Industry Practice**" for this purpose shall mean 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 seeking to meet its obligations to the fullest extent possible.

- (c) National Grid further agrees that the processing of Personal Information has been and will continue to be carried out in accordance with the Data Privacy Laws.

20.4.4 **Processing obligations**

- (a) National Grid shall:
 - (i) comply with appropriate security requirements to ensure that Personal Data is protected against loss, destruction and damage, and against unauthorised access, use, modification, disclosure or other misuse;
 - (ii) use the Personal Information obtained as a result of this Agreement only for the purposes of providing the Metering Services or otherwise discharging its obligations or exercising its rights under this Agreement or the other Metering Agreements;
 - (iii) keep the Personal Information separate from any data it processes on behalf of any other third party (including but not limited to business continuity measures and processes for regularly testing, assessing and evaluating the effectiveness of such security measures);
 - (iv) comply with the express instructions or directions of the Customer from time to time in connection with the use of such Personal Information and the requirements of any Data Protection Laws and such Personal Information shall be treated as Protected Information of the Customer for the purposes of this Agreement;
 - (v) consider all suggestions made by the Customer to ensure that the level of protection provided for Personal Information is in accordance with this Agreement and to make the changes suggested (at National Grid's cost) unless National Grid can prove to the Customer's reasonable satisfaction that they are not necessary or desirable to ensure ongoing compliance with this Agreement;
 - (vi) not disclose Personal Information without the written consent of the Customer;
 - (vii) not do or omit to do anything which causes the Customer and/or its Group to breach any Data Protection Laws or contravene the terms of any registration, notification or authorisation under any Data Protection Laws of the Customer;

- (viii) at the request of the Customer, promptly provide a written description of the technical and organisational methods employed by National Grid for processing Personal Data;
 - (ix) unless otherwise required by Data Protection Laws, return or delete, at the Customer's sole discretion, all Personal Information upon the termination of the processing activities carried out under this Agreement, and promptly provide the Customer with a confirmation in writing that it has done so;
 - (x) at the request of the Customer or any relevant regulator, promptly make available to the Customer and/or any relevant regulator all information necessary to demonstrate compliance with National Grid's obligations and Data Protection Laws;
 - (xi) maintain a record of all categories of processing activities it undertakes under this Agreement and a record of any Data Breach and provide a copy of such record(s) to the Customer for inspection on demand;
 - (xii) provide the Customer with a copy of all Personal Information processed under this Agreement on demand;
 - (xiii) make all reasonable efforts to ensure that the Personal Information is accurate and up-to-date at all times;
 - (xiv) if so requested provide a copy of a Data Subjects Personal Information in a machine readable portable format; and
 - (xv) not keep Personal Information for longer than is necessary for the performance of this Agreement, so as to comply with the principle of data minimisation.
- (b) National Grid shall not dispose, re-assign or re-use any equipment or any electronic, magnetic or other medium which is or has been used to store Personal Information without ensuring that such data has been entirely removed or otherwise obliterated.
- (c) In the event that National Grid believes that the Customer's instructions conflict with the requirements of Data Privacy Laws, National Grid must immediately inform the Customer.
- (d) The Parties acknowledge and agree that Processing of Personal Information shall be conducted and carried out in accordance with the provisions set out in Annex 1.

20.4.5 **National Grid's Personnel**

- (a) In respect of the **National Grid Personnel**, National Grid shall:
 - (i) take all reasonable steps to ensure the reliability and trustworthiness of National Grid Personnel who will have access to any Personal Information and ensure that any National Grid Personnel requiring access to any Personal Data are aware of the confidential nature of the Personal Data; and
 - (ii) ensure that only National Grid Personnel authorised by the Customer to have access to Personal Information do have access to the Personal Information and that no other personnel shall have access to the Personal Information

except those who are required to in order to perform the Metering Services or otherwise discharge National Grid's obligations or exercise National Grid's rights under this Agreement or the other Metering Agreements.

20.4.6 Compliance with Data Protection Laws

- (a) National Grid shall comply with the Data Privacy Laws and without prejudice to the generality of the foregoing shall:
 - (i) not cause the Customer and/or its Group to be in breach of the Data Privacy Laws and shall use all reasonable endeavours to assist the Customer to comply with any obligations imposed on the Customer by the Data Privacy Laws;
 - (ii) provide the Customer and/or its Group with reasonable assistance in complying with any requests by Data Subjects exercising their rights under the Data Privacy Laws (each a "**Data Subject Request**") or communicating with the Information Commissioner's Office ("**ICO**") in relation to the Processing of Personal Data ("**ICO Correspondence**");
 - (iii) promptly, and in any event within forty-eight (48) hours of receipt of any request or correspondence, inform the Customer about the receipt of any Data Subject Requests or ICO Correspondence; and
 - (iv) not disclose any Personal Information in response to any Data Subject Request or ICO Correspondence, or respond in any way to such a request without first consulting with, and obtaining the consent of, the Customer.
- (b) National Grid will (and will ensure that National Grid Personnel and sub processors will) promptly (but in all cases within 48 hours) notify the Customer, if National Grid (or National Grid Personnel or sub processors as the case may be):
 - (i) becomes aware that a disclosure of Personal Information may be required under Data Privacy Laws;
 - (ii) receives a complaint relating to the Customer's obligations under the Data Privacy Laws or a request from an individual to access their Personal Information or to cease or not begin processing, or to rectify, block, erase or destroy Personal Information and/or to ensure that the Personal Information is deleted or corrected if it is incorrect (or, the Customer does not agree that it is incorrect, to have recorded the fact that the relevant person considers the Personal Information to be incorrect); or
 - (iii) becomes aware of a breach of Condition 20.4.4.
- (c) National Grid will cooperate with the Customer (at no additional cost to the Customer), including by supplying such assistance and information as the Customer may reasonably request, in promptly investigating and dealing with any complaint or request under this Condition 20.4.6 in order to ensure that the relevant individual's rights under the Data Privacy Laws are satisfied.
- (d) National Grid shall ensure that:

- (i) encryption and pseudonymisation of Personal Information is employed as appropriate;
- (ii) regular testing and evaluation of the effectiveness of the technical and organisational measures is undertaken; and
- (iii) availability and access to Personal Information can be restored in a timely manner in the event of a physical or technical issue impacting upon the technical and organisational measures in place

20.4.7 Transfers of Personal Data outside of the EEA

- (a) The Customer hereby consents to the transfer by National Grid of Personal Data which has been obtained by or made available to National Grid to any country outside the European Economic Area ("EEA") providing always that National Grid meets the requirements of Condition 20.4.7(b).
- (b) Where National Grid transfers Personal Information to a country outside of the EEA, then National Grid shall comply with the following provisions:
 - (i) at any time upon request in writing from the Customer, National Grid shall confirm in writing:
 - (aa) the Personal Information which has been, or will be, transferred to and/or Processed in outside of the EEA;
 - (bb) any sub processors or other third parties who have been, or will be, processing and/or receiving Personal Information outside of the EEA; and/or
 - (cc) provide any other relevant information reasonably requested by the Customer.
 - (ii) National Grid will ensure to the satisfaction of the Customer (acting reasonably) that there is an adequate level of protection and adequate safeguards in respect of Personal Information that will be processed in and/or transferred outside of the EEA so as to ensure the Customer's compliance with the Data Privacy Laws; and
 - (iii) National Grid shall comply with such other instructions and shall carry out such other actions as the Customer may reasonably request in writing, including without limitation:
 - (aa) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Privacy Laws) into this Agreement or a separate data processing agreement between the Parties; and
 - (bb) procuring that any sub processor or other third party who will be processing and/or receiving or accessing the Personal Information outside of the EEA either enters into:
 - (A) a direct data processing agreement with the Customer on such terms as may be required by the Customer; or

- (B) a data processing agreement with National Grid on terms which are the same as those terms agreed between the Customer and the sub processor relating to the relevant Personal Information transfer; and
- (C) in each case which National Grid acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the Data Privacy Laws) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

20.4.8 **Data Breaches**

- (a) In the case of an unauthorised loss, disclosure, corruption, damage, destruction, corruption, alteration, disclosure or access to any Personal Information, any unauthorised or unlawful processing of Personal Information or any breach of the Data Privacy Laws (each a "**Data Breach**"), or any action that causes or could reasonably be deemed to cause a Data Breach, National Grid shall
 - (i) without undue delay and at the earliest opportunity available to National Grid notify the Customer and in any event no later than 24 hours after the Data Breach; and
 - (ii) promptly provide sufficient information, co-operation, support and analysis to the Customer to ensure the Customer meets its notification and breach reporting obligations to regulators within the required time limits; and
 - (iii) provide the Customer with such co-operation, assistance and information (at no additional cost to the Customer) in relation to the Customer notifying the individual or the Information Commissioner (or relevant regulator) of the Data Breach, including by providing the Customer with a detailed description of the nature of the Data Breach, the likely consequences of such breach and the identity of the affected person(s).
- (b) In addition to the obligations set out in Condition 20.4.8(a) National Grid shall provide full cooperation , assistance information, details of any mitigating and remedial actions to the Customer in respect of the Customer efforts to investigate, remediate, and mitigate the effects of any Data Breach and shall comply with its own notification obligations to individuals or regulatory authorities.

20.4.9 **Audits and Inspections**

- (a) National Grid shall, during the term of this Agreement:
 - (i) promptly complete and return to the Customer on request from time to time any questionnaire designed to evaluate National Grid's compliance with National Grid's obligations in respect of Personal Information; and

- (ii) permit without charge, on an annual basis, and / or where the Customer becomes aware of a Data Breach of alleged breach of Data Privacy Laws by National Grid, reasonable access by the Customer to all records, files, tapes, computer systems, or any other information howsoever held by National Grid in respect of National Grid's activities pursuant to this Agreement, for the purposes of reviewing compliance with the Data Privacy Laws; and
 - (iii) provide without charge all reasonable assistance to the Customer in complying with any direction, requirement or request made by any regulator to do or not to do any act, or to provide any information in respect of any obligation of National Grid under this Agreement, including, where necessary, giving the regulator (including its representatives or appointees) reasonable access to any records, files, tapes, computer systems, or any other information howsoever held.
- (b) For the purpose of this Condition 20.4.9, "reasonable access" shall mean as a minimum, access on not less than 48 hours' notice and during normal working hours and access to all information held by National Grid.
- (c) National Grid agrees that the Customer may appoint a third party independent auditor to audit and conduct inspections in accordance with this Agreement of National Grid's compliance with this Agreement and the Data Privacy Laws and to determine the accuracy and completeness of the statements and records submitted by National Grid under this Agreement.

20.4.10 Appointment of sub-processors

The Customer hereby authorises National Grid to appoint sub-processors of the Personal Information as set out in Annex 2 in connection with the provision of the Metering Services and the discharge of National Grid's obligations or the exercise of National Grid's rights under this Agreement and the other Metering Agreements, and in connection therewith National Grid undertakes to notify the Customer in a timely manner of the identity of all and any new sub-processors who are appointed by National Grid after the date when this Condition 20.4.10 first comes into effect.

20.4.11 Liability and indemnity

- (a) Notwithstanding any other limitations on liability contained in this Agreement, and subject always to Conditions 20.4.11(b) and (c), if the Information Commissioner imposes a fine or penalty on either Party and/or a Data Subject claims compensation from the either Party pursuant to the Data Privacy Laws ("Data Protection Liability"), such Party in either case being the "Affected Party", and such Data Protection Liability is wholly or partly the direct result of a breach by the other Party of this Condition 20.4 or the Data Privacy Laws, then such other Party shall indemnify the Affected Party for the amount of the Data Protection Liability (or a fair and reasonable proportion thereof where such other Party's breach is not the only reason for the Data Protection

Liability), but this shall be such other Party's sole liability and the Affected Party's sole remedy in respect of a breach of this Condition 20.4.

- (b) For the avoidance of doubt, the liability of either Party pursuant to the indemnity in Condition 20.4.11(a) shall in no circumstances exceed the sum of five million pounds (£5 million).
- (c) The Affected Party will take all reasonable steps to seek to mitigate any Data Protection Liability and in the conduct of any claim or proceedings brought in connection therewith shall keep the other Party informed of all material steps and act on its reasonable instructions.

21. INTELLECTUAL PROPERTY

- 21.1 Subject to Condition 21.4, all patents, copyright and other intellectual property rights (including but not limited to trademarks, registered designs, designs, know-how, inventions and valuable concepts) and, to the extent that intellectual property is embodied therein, documents (including but not limited to drawings, transparencies, prints, photographs, negatives, tapes, discs, working notes and reports), software or other items created or supplied by National Grid in connection with the Works will be owned by National Grid, and the Customer will on Substantial Completion of the Works deliver up to National Grid or, at National Grid's request, destroy all copies of such documents in the possession of the Customer, and in the case of a third party to whom the Customer has disclosed them, the Customer will use reasonable endeavours to procure the delivery up or destruction of same.
- 21.2 All patents, copyright and other intellectual property rights (including but not limited to trademarks, registered designs, designs, know-how, inventions and valuable concepts) and, to the extent that intellectual property is embodied therein, documents (including but not limited to drawings, transparencies, prints, photographs, negatives, tapes, discs, working notes and reports), software or other items supplied by the Customer in connection with the Works will be owned by the Customer and National Grid will on Substantial Completion of the Works deliver to the Customer or, at the Customer's request, destroy all copies of such documents in the possession of National Grid, and in the case of a third party to whom National Grid has disclosed them, National Grid will use reasonable endeavours to procure the delivery up or destruction of same.
- 21.3 Each Party (the "Granting Party") hereby grants the other Party (the "Receiving Party") a royalty-free, non-exclusive licence (with power to sub-licence), in respect of any such intellectual property of the Granting Party as is reasonably necessary for the purposes only of the performance by the Receiving Party of its obligations under this Agreement or any Contract.
- 21.4 Where National Grid provides the Customer with a Conceptual Study Report and/or a Detailed Design, National Grid shall grant to the Customer a royalty-free, non-exclusive, right and licence (with the power to sub-licence) to use such:
 - (a) Conceptual Study Report; and/or
 - (b) Detailed Design, to carry out works detailed therein.

22. ASSIGNMENT

- 22.1 Subject to Condition 22.3 and 22.4, either Party may assign its rights under this Agreement:
- (a) to an Affiliate, provided that the assigning Party shall continue to be bound by and liable under this Agreement,
 - (b) to any person, with the prior agreement in writing of the other Party, which agreement shall not unreasonably be withheld or delayed.
- 22.2 Except as provided in Condition 22.1, neither Party shall assign or otherwise transfer whether in whole or part any of its rights or obligations under this Agreement and shall not purport to do so.
- 22.3 No assignment shall be made to any person unless:
- (a) where the assigning Party is National Grid, that person holds a Gas Transporter Licence;
 - (b) where the assigning Party is the Customer, that person holds a Supplier Licence.
- 22.4 Where a Party assigns its rights under this Agreement to a person (including an Affiliate) pursuant to Condition 22.1, the assigning Party shall remain liable for all obligations accruing up to the time at which the assignment is made and shall remain liable for all obligations arising after such time.
- 22.5 Any credit limit required under this Agreement shall be determined separately for a person to whom the Customer assigns its rights under Condition 22.1(b) and the Customer may not assign its own credit limit.
- 22.6 A reference in this Agreement to any Party shall include a reference to that Party's successors and permitted assigns.

23. MODIFICATION OF THIS AGREEMENT

This Agreement shall not be modified other than in accordance with:

- (a) the Metering Agreements Modification Provisions; or
- (b) the terms of any Alternative Contract Conditions intended to facilitate the operation of such Alternative Contract Conditions as between National Grid and the Customer (but for the avoidance of doubt only insofar as such modifications relate to National Grid and the Customer and not to any other agreement in the terms hereof between National Grid and any other National Grid Customer).

24. SALE BY NATIONAL GRID OF METERING EQUIPMENT

- 24.1 Upon notification by National Grid in accordance with Condition 24.2 of an actual or proposed sale, transfer or assignment in whole or in part of Metering Equipment the subject of a Contract made hereunder for which National Grid has not at the date of such notification by National Grid been Appointed as referred to in Condition 17.1, and subject always to Condition 24.3, the Customer undertakes to notify each Consumer in respect of Consumer Premises at which such Metering Equipment is situated ("Relevant Consumers") of the identity of the purchaser, transferee or assignee of such Metering Equipment and to seek an

acknowledgement of that notification from each Relevant Consumer, upon and subject to the provisions of this Condition 24.

24.2 National Grid may invoke the provisions of this Condition 24 by notifying the Customer in writing from time to time of any actual or proposed sale, transfer or assignment in whole or in part of Metering Equipment, each such notification to make express reference to this Condition 24 and to include the identity of the purchaser, transferee or assignee, the actual or anticipated date of sale, transfer or assignment and sufficient information to enable the Customer to identify the Relevant Consumers.

24.3 No later than 20 Working Days after National Grid's notice pursuant to Condition 24.2, the Customer may (but shall not be obliged to) notify National Grid in writing invoking this Condition 24.3 to the effect that the Customer shall provide sufficient details relating to its Relevant Consumers to enable National Grid to notify, or procure the notification to, Relevant Consumers of the identity of the purchaser, transferee or assignee, and to enable National Grid to seek an acknowledgement of that notification from each Relevant Consumer, and upon and with effect from such notice from the Customer the following terms and conditions shall apply:-

- (a) on any one or more occasions during the period commencing on the receipt by National Grid of the Customer's notice as aforesaid and ending on the date 6 months thereafter, National Grid may by notice in writing to the Customer specify a date ("the Relevant Consumer Data Date"), being:-
 - (i) not earlier than 3 Working Days prior to the date of such notice from National Grid; and
 - (ii) not later than 20 Working Days after the date of such notice from National Grid, by reference to which the Customer shall compile details of its Relevant Consumers for delivery to National Grid in accordance with (b) below;
- (b) no later than 10 Working Days after the later of the date of National Grid's notice pursuant to (a) above and the Relevant Consumer Data Date, the Customer shall deliver to National Grid in electronic format the name and postal address of each Relevant Consumer as at the Relevant Consumer Data Date complete and up to date to such an extent as will enable National Grid to notify, or procure the notification to, such Relevant Consumer of the identity of the purchaser, transferee or assignee of the relevant Metering Equipment and to seek its attornment or acknowledgement of such notification;
- (c) National Grid undertakes to the Customer that it shall not use and/or disclose the names and addresses delivered to it by the Customer pursuant to (b) above otherwise than for the purposes contemplated by this Condition 24.3;
- (d) in consideration of the performance by the Customer of its obligations under this Condition 24.3, and subject always to (e) and (f) below, National Grid shall reimburse to the Customer its reasonable costs reasonably incurred pursuant to (a) and (b) above, and in respect of each notice served by National Grid pursuant to (a) above the Parties shall use all reasonable endeavours to reach agreement in respect of the amount of such costs but failing agreement either Party may, upon giving to the other

not less than 28 Days prior notice in writing, refer the matter or matters in dispute for determination by an Expert pursuant to Condition 25.9;

- (e) National Grid shall not be obliged to make reimbursement to the Customer pursuant to (d) above if the Customer shall not have complied with its obligations under this Condition 24.3;
- (f) payment shall be made by National Grid to the Customer no later than 30 Days after agreement or determination (as the case may be) of the Customer's costs pursuant to (d) above, against production of a valid invoice in respect thereof; and
- (g) the Customer shall use all reasonable endeavours to mitigate its costs referred to in (d) above.

24.4 If Condition 24.3 shall not have been invoked by the Customer by notice in writing to National Grid by the date specified therein, then no later than 40 Working Days after National Grid's notice pursuant to Condition 24.2, the Customer (acting reasonably) shall formulate and provide to National Grid in writing one or more alternative proposals for notification to Relevant Consumers by or on behalf of the Customer of the identity of the purchaser, transferee or assignee of such Metering Equipment and the obtaining from such Relevant Consumers of attornment to or acknowledgement of such purchaser, transferee or assignee as new owner of such Metering Equipment ("Implementation Options") as follows:

- (a) unless otherwise agreed in writing by National Grid each Implementation Option shall comprise:
 - (i) a method of notification of the identity of the purchaser, transferee or assignee reasonably acceptable to National Grid, subject to (d) below; and
 - (ii) a method of obtaining the attornment to or acknowledgement of such purchaser, transferee or assignee as new owner of such Metering Equipment reasonably acceptable to National Grid, subject to (d) below; and
 - (iii) a timetable for the giving of such notification and obtaining of such attornment or acknowledgement (to include, as a minimum, notification as soon as reasonably practicable after National Grid's notification pursuant to Condition 24.2, notification no later than 3 months after such notification by National Grid, notification no later than 6 months after such notification by National Grid and notification no later than 12 months after such notification by National Grid);
- (b) each Implementation Option shall be accompanied by the Customer's best estimate of its reasonable costs reasonably expected to be incurred in its implementation (including any such cost of providing reasonable evidence of performance of its obligations under this Condition 24 referred to in Condition 24.7(b), on the basis of cost per individual Relevant Consumer, together with sufficient evidence in support thereof as shall enable National Grid to verify such estimate and its reasonableness for the purposes of Condition 24.5(a));
- (c) the Implementation Options shall include as a minimum, and for the purpose of Condition 24.5(b) the Implementation Option which in the reasonable opinion of the Customer is the most cost effective and efficient means of notifying Relevant

Consumers and seeking their attornment or acknowledgement as aforesaid, having regard to the nature of the Customer's business; and

(d) the following methods of notification and obtaining attornment or acknowledgement shall be deemed to be reasonably acceptable to National Grid for the purposes of this Condition 24.4:

(i) notification to each Relevant Consumer by way of annotation on a gas bill (or by separate written notice accompanying a gas bill), irrespective of whether delivered in hard copy or by electronic means, specifying (1) the identity of the purchaser, transferee or assignee and (2) the date of sale, transfer or assignment; and

(ii) either:

(1) a further statement made in writing to each Relevant Consumer at the same time and in the same manner as the notification in (i) above; or

(2) a term in the contract for supply of gas between the Customer and each Relevant Consumer,

in each case to the effect that by continuing to accept a supply of gas the Relevant Consumer shall be treated as having attorned to or acknowledged the title of the purchaser, transferee or assignee to such Metering Equipment.

24.5 The Parties shall each use all reasonable endeavours to agree:

(a) a best estimate of the Customer's reasonable costs reasonably expected to be incurred in the implementation of each Implementation Option; and

(b) the most cost effective and efficient means of notifying Relevant Consumers and seeking their attornment or acknowledgement as aforesaid, having regard to the nature of the Customer's business,

and failing agreement either Party may, upon giving to the other not less than 28 Days prior notice in writing, refer the matter or matters in dispute for determination by an independent expert pursuant to Condition 25.9. For the avoidance of doubt, the most cost effective and efficient means of notifying Relevant Consumers and seeking their attornment or acknowledgement as aforesaid which is so agreed or determined shall be deemed to be an Implementation Option for the purposes of the remaining provisions of this Condition 24.

24.6 Upon agreement or determination of the matters specified in Condition 24.5, National Grid shall (after consultation with the Customer) notify the Customer as to which Implementation Option it requires the Customer to implement, and upon such notification the Customer shall notify all Relevant Consumers of the identity of the purchaser, transferee or assignee and seek their attornment or acknowledgement accordingly in accordance with that Implementation Option (including in the manner and by the date specified therein).

24.7 In consideration of performance by the Customer of its obligations in Condition 24.6, National Grid shall reimburse to the Customer its reasonable costs reasonably incurred pursuant thereto ("Implementation Costs") upon and subject to the following:

(a) National Grid shall not be obliged to reimburse to the Customer the Implementation Costs:

- (i) to the extent that the Implementation Costs exceed the best estimate agreed or determined pursuant to Condition 24.5; and/or
 - (ii) if in respect of that notification by National Grid the Customer shall not have complied with any of its obligations under this Condition 24;
- (b) each payment shall be made by National Grid no later than 30 Days after receipt by National Grid from the Customer of reasonable evidence that it has performed its obligations under this Condition 24 (for example by the production by the Customer of a sworn statutory declaration as to posting) and against production of a valid invoice in respect thereof; and
- (c) the Customer shall use all reasonable endeavours to mitigate the Implementation Costs.

24.8 The Customer shall indemnify and keep indemnified National Grid in full from and against all and any liability, damage and costs and expenses (including without limitation legal costs) awarded against or incurred or paid by National Grid, and whether arising under law, contract, tort (including negligence) or in connection with judgements, proceedings, claims or demands (in this Condition 24.8 "Indemnified Costs"), as a result of or in connection with any loss or damage suffered by a third party (including without limitation the Relevant Consumer) and caused by Metering Equipment the subject of a sale, transfer or assignment where such loss or damage occurs on or after:

- (a) except where Condition 24.3 has been invoked by the Customer, the date 11 months after National Grid's notification pursuant to Condition 24.2, or, where Condition 24.3 has been invoked or otherwise, if later;
- (b) the date on which any proposed sale, transfer or assignment of that Metering Equipment notified by National Grid pursuant to Condition 24.2 actually takes place;

provided always that the Customer shall have no liability to National Grid under this indemnity (or, in respect of (i), (iii) and (v) only, otherwise):

- (i) in respect of any Indemnified Costs to the extent they relate to loss or damage caused to or by any Metering Equipment in relation to which the Customer shall have fully and correctly performed, or is fully and correctly performing, the Implementation Option selected by National Grid pursuant to Condition 24.6 (or, where Condition 24.3 has been invoked, in relation to which the Customer shall have provided to National Grid details of the Relevant Consumer in accordance with Condition 24.3(b)) and otherwise complied with this Condition 24 (and irrespective of whether occurring before or after the time when such damage occurred); or
- (ii) if and to the extent that such loss or damage caused by any Metering Equipment occurred on or after the date on which the Relevant Consumer shall have attorned or acknowledged, or be deemed to have attorned or acknowledged, the purchaser, transferee or assignee as new owner of that Metering Equipment, whether or not the Customer shall have fully and correctly complied with the Implementation Option selected by National Grid (or, where Condition 24.3 has been invoked, whether or not

the Customer shall have provided to National Grid details of the Relevant Consumer in accordance with Condition 24.3(b)) (and without prejudice to any other remedies available to National Grid in respect thereof); or

- (iii) if and to the extent that the Indemnified Costs relate to a claim from the purchaser, transferee or assignee (as the case may be) of any Metering Equipment unless founded upon National Grid's purported ownership of that Metering Equipment at the time the damage caused to or by that Metering Equipment occurred as a result of the Customer's failure to fully and correctly implement the Implementation Option (or, where Condition 24.3 has been invoked, as a result of the Customer's failure to provide to National Grid details of the Relevant Consumer in accordance with Condition 24.3(b)) or otherwise comply with this Condition 24, or
- (iv) if and to the extent that such loss of damage caused by any Metering Equipment results from the negligence or breach of statutory duty of National Grid (but without prejudice to any other remedies available to National Grid in respect thereof); or
- (v) if and to the extent that the Indemnified Costs do not comprise amounts paid or payable to a third party and relate to loss of use, loss of profit, loss of revenue, loss of contract, loss of goodwill or any indirect and/or consequential loss in each case suffered by National Grid,

and National Grid shall use all reasonable endeavours to mitigate any Indemnified Costs.

25. MEDIATION AND EXPERT DETERMINATION

25.1 Mediation

The Parties may agree to refer any dispute under or in connection with this Agreement, to mediation by a single mediator who shall explore the interests of the Parties to the dispute and encourage the Parties to resolve the dispute in light of such interests. Where more than one National Grid Customer is party to a dispute with National Grid the term "Parties" shall be construed as referring to all the National Grid Customers which are party to such dispute.

25.2 Mediator appointment

25.2.1 Within 5 Working Days after agreeing to refer a dispute to mediation the Parties shall meet and use all reasonable endeavours to agree upon a person to act as mediator, unless they have agreed upon a mediator when agreeing so to refer the dispute.

25.2.2 Where the Parties agree upon a mediator they shall request such person to accept appointment as mediator, and shall use all reasonable endeavours to agree (between themselves and with the mediator) upon the terms of his appointment.

25.2.3 A person shall be treated as appointed as a mediator for the purposes of this Condition 25 when he has confirmed his acceptance to act as mediator in accordance herewith.

25.2.4 Where the Parties cannot agree upon a mediator or the terms of his appointment they will use the Centre for Effective Dispute Resolution (CEDR) and where the Parties have agreed to attempt to settle the dispute by mediation by using the CEDR then

they shall do so in accordance with the CEDR Model Mediation Procedure in place of the procedure in this Condition 25.

25.3 Procedure and timetable

25.3.1 Within 5 Working Days following his appointment, the mediator shall require each Party to provide him with a written summary of the dispute, which written summary shall not exceed 5 pages.

25.3.2 The mediator may at his discretion:

- (a) request any Party to provide him with copies of any documentation or information which he believes will assist to explain any such summary; and
- (b) provide any such written summary and/or any information or copy documentation received under paragraph (a) to the other Party(ies) to the dispute.

25.3.3 Within 10 Working Days following his appointment, the mediator shall contact the Parties and shall arrange to meet them.

25.3.4 Each Party shall attend the meeting with the mediator with a maximum of three representatives, one of whom shall be a person with decision making authority in relation to the subject matter of the dispute and one of whom may be the legal adviser of that Party.

25.3.5 No additional persons shall attend without the prior written consent of the mediator.

25.3.6 The mediator may convene more than one meeting with the Parties but shall not convene any meetings later than 40 Working Days following his appointment, unless the Parties agree otherwise.

25.3.7 The mediator may at his discretion meet each Party on his own whether during a meeting attended by the other Parties or otherwise, but he shall not disclose to any other Party matters disclosed to him in such circumstances without the consent of the disclosing Party.

25.3.8 At any meeting attended by the Parties, the mediator may require each Party to make a brief presentation of its case and he may also require the other Parties to reply to another Party's presentation.

25.3.9 The mediator shall not act as an arbitrator (and accordingly the provisions of the Arbitration Acts shall not apply).

25.4 Result of mediation

25.4.1 The mediator shall encourage the Parties to resolve the dispute by agreement and may also discuss informally with any Party his own views as to the merits of the dispute.

25.4.2 If the dispute remains unresolved 45 Working Days after the mediator's appointment the mediator shall, if so requested by any Party, advise the Parties of his views and may, at his discretion, also inform them of what he considers to be a fair settlement of the dispute.

25.4.3 No Party shall be bound to adopt the views or advice expressed or provided by the mediator.

25.4.4 If the dispute is resolved or the Parties accept the views and advice of the mediator under Condition 25.4.2, the Parties shall use all reasonable endeavours, within 5 Working Days after such resolution or acceptance, to enter into a settlement agreement which shall:

- (a) set out the terms accepted by the Parties or on which the dispute was resolved; and
- (b) contain provisions of confidentiality similar to those set out in Condition 25.5.

25.5 Confidentiality

25.5.1 The mediator and the Parties, their representatives and advisers and any person connected in any way with the mediation shall keep confidential the fact that the mediation is taking place, and its outcome, and all documents, submissions, statements, information and data including anything revealed orally or otherwise during the mediation and any settlement agreement except as may be necessary for implementation or enforcement of the settlement agreement.

25.5.2 All documents and information prepared by a Party for and disclosed in the mediation, and all discussions which take place with a party during the course of the mediation, shall be afforded the same protection from discovery as “Without Prejudice” negotiations in proceedings in court; provided that this shall not preclude any document, which may have been disclosed during the mediation but was not prepared solely for use in the mediation, from being discoverable in any proceedings.

25.6 Costs

25.6.1 The Parties shall unless they agree otherwise bear their own costs and expenses of whatsoever nature of the mediation.

25.6.2 The Parties shall bear the fees and expenses of the mediator and all administrative costs arising from the mediation equally.

25.7 Further proceedings

25.7.1 The mediator shall not act in any subsequent legal or similar proceedings in respect of the dispute in which he acted as mediator.

25.7.2 The mediator shall not be held liable for any act or omission unless it shall be shown that he has acted fraudulently or in bad faith.

25.8 Interlocutory relief

Nothing in this Condition 25 shall prevent any party from seeking interim or interlocutory relief in any court.

25.9 Expert determination

25.9.1 Where any provision of this Agreement provides, or the Parties have agreed, for a dispute or difference between the Parties to be referred to an independent expert (the “Expert”) the provisions of this Condition 25.9 shall apply, and no Party shall commence proceedings in any court in respect of or otherwise in connection with such dispute.

25.9.2 The Parties agree that the Expert shall act as an expert and not as an arbitrator and shall decide those matters referred to him using his skill, experience and knowledge

and with regard to all such other matters as he in his sole discretion considers appropriate.

- 25.9.3 If the Parties cannot agree upon the selection of an Expert, the Expert shall be determined by the President for the time being of the Law Society of England and Wales.
- 25.9.4 All references to the Expert shall be made in writing by either Party with notice to the other being given contemporaneously, and the Parties shall promptly supply the Expert with such documents and information as he may request when considering any referral.
- 25.9.5 The Expert shall be requested to use his best endeavours to give his decision upon the question before him as soon as possible in writing following its referral to him, his decision shall, in the absence of fraud or manifest error, be final and binding upon the Parties.
- 25.9.6 If the Expert wishes to obtain independent professional and/or technical advice in connection with the question before him:
- (a) he shall first provide the Parties with details of the name, organisation and estimated fees of the professional or technical adviser; and
 - (b) he may engage such adviser with the consent of the Parties (which consent shall not be unreasonably withheld) for the purposes of obtaining such professional and/or technical advice as he may reasonably require.
- 25.9.7 The Expert shall not be held liable for any act or omission, and his written decision will be given without any liability on the Expert's part to either Party, unless it shall be shown that he acted fraudulently or in bad faith.
- 25.9.8 The Parties shall share equally his fees and expenses (including the fees and all reasonable expenses incurred by any technical or professional advisers) unless the Expert determines otherwise.
- 25.9.9 Save to the extent otherwise expressly provided herein, pending the determination by the Expert, this Agreement shall continue to the extent possible for the Parties to perform their obligations under this Agreement.
- 25.10 Communications
- 25.10.1 Except where otherwise provided in this Condition 25 any notice, submission, statement or other communication relating to any dispute to be given pursuant to this Condition 25 shall be in writing.
- 25.10.2 No such notice, submission, statement or communication shall be given as a Batch Transfer Communication.
- 25.10.3 For the purposes of any limit under this Condition 25 on the length of any submission or statement or any attachment thereto a "page" is a single sided A4 sheet which may contain single spaced type in a normal font size.
- 25.11 To the extent that any Affiliate of a Customer or National Grid is entitled pursuant to Condition 26.7.2 to the benefit of this Agreement it shall be entitled to be party to a dispute in accordance with this Condition 25.

26. GENERAL

26.1 National Grid performance

26.1.1 In relation to exercising its discretions and performing obligations under this Agreement National Grid shall at all times:

- (a) act to the standard of an RPO in the performance of the Works pursuant to this Agreement; and
- (b) act reasonably and in good faith in its dealings with the Customer.

26.1.2 For the avoidance of doubt the operation of this Condition 26.1 shall not prevent National Grid from performing any obligation under this Agreement.

26.2 Waiver

26.2.1 No delay by or omission of any Party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof.

26.2.2 Any single or partial exercise of any such right, privilege or remedy shall not preclude any other or future exercise thereof or the exercise of any other right, power, privilege or remedy.

26.3 Language

Every Metering Communication, and every notice or other communication to be given by one Party to another under this Agreement, shall be in the English language.

26.4 Severance

If any provision of this Agreement is or becomes invalid, unenforceable or illegal, or is declared to be invalid, unenforceable or illegal by any court of competent jurisdiction or by order of any other Competent Authority, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement, which shall continue in full force and effect notwithstanding the same.

26.5 Entire Agreement

26.5.1 The documents listed in (a), (b) and (c) below contain or expressly refer to the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous agreements or understandings between the Parties with respect thereto and any warranty, condition or other term implied at law or by custom is (to the fullest extent permitted by law) expressly excluded therefrom:

- (a) the Provision and Maintenance Agreement; and
the Network Metering Equipment Agreement;
- (b) the relevant Meter Works Conditions;
the Rainbow System User Agreement; and
the Metering Agreements Modification Provisions;
- (c) the Rainbow MAM Manual;
Enhanced IX Operational Guidelines for use with Rainbow;
Standards of Service Query Management Operational Guidelines;

Meter Credit Rules;
National Grid Metering Charges;
Web Portal User Guidelines;
Rainbow System Validation Document;
Contingency Procedures; and
Management of External Access to Rainbow.

26.5.2 In the event of conflict between the documents listed in (a), (b) and (c), the document listed in (a) shall take precedence over the documents listed in (b) and (c) and the documents listed in (b) shall take precedence over the documents listed in (c).

26.5.3 It shall be an obligation of National Grid or the Customer to comply with a provision of the Rainbow MAM Manual where such provision is expressly identified in the Rainbow MAM Manual as one which is made binding on National Grid or the Customer by any of the documents listed in Condition 26.5.1(a) and (b) and not otherwise, but it is acknowledged that as respects all provisions of the Rainbow MAM Manual (whether or not made binding by such documents) the Customer may be unable to make a Batch Transfer Communication (and so may be unable to exercise an entitlement to make a Metering Communication required to be made as such) where the Customer does not comply with such provisions.

26.5.4 Each Party acknowledges that in entering into this Agreement it does not rely on any representation, warranty or other understanding not expressly contained in this Agreement.

26.5.5 Nothing contained in a document referred to in this Agreement beyond what is expressly contemplated by this Agreement as being contained in such document or is necessary for the purposes of giving effect to a provision of this Agreement shall modify or have any effect for the purposes of this Agreement or be construed as relevant to the interpretation of this Agreement.

26.6 Jurisdiction

26.6.1 Subject to Condition 25, the Parties irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceeding (collectively "Proceedings") arising out of or in connection with this Agreement may be brought in such courts.

26.6.2 Each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any Proceedings in any such court as is referred to in Condition 26.6.1 and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any Proceedings brought in the English courts shall be conclusive and binding upon such Party and may be enforced in the courts of any other jurisdiction.

26.6.3 The Customer agrees that if it is not a company incorporated under the Companies Act 1985 it shall provide to National Grid an address in England or Wales for service of process on its behalf in any Proceedings.

26.7 Third Party Rights

26.7.1 Except as provided in Condition 26.7.2 and subject to any rights which may accrue to any successor or permitted assign of the Parties, no provision of this Agreement or any Contract made hereunder shall or may be construed as creating any rights enforceable by a third party (whether under the Contracts Act or otherwise) and all third party rights as may be implied by law (whether under the Contracts Act or otherwise) are hereby excluded to the fullest extent permitted by law from this Agreement and any Contract made hereunder.

26.7.2 The benefit of Condition 14 insofar as and to the extent related to the subject matter of this Agreement shall be conferred on each and any Affiliate of each Party from time to time, and such Affiliate(s) shall have the benefit of Condition 14 under the Contracts Act.

26.7.3 No consent shall be required from any person having rights under this Agreement by virtue only of the Contracts Act to any amendment, variation, waiver or settlement of this Agreement or any right or claim arising from or under it which (in each case) has been agreed by any party to it.

26.8 Standards

National Grid will comply with the various Standards contained in and more particularly described in paragraph 1 of Schedule Two in respect of activities performed by National Grid pursuant to this Agreement.

26.9 Governing law

This Agreement and any Contract made hereto shall be governed by, and construed in all respects in accordance with, English law.

26.10 Further assurance

Subject to the terms and conditions of this Agreement, each Party agrees to use its reasonable endeavours at its own cost to do or cause to be done all things necessary, proper or advisable under the applicable laws and regulations to consummate the transactions contemplated by this Agreement as expeditiously as possible, including, without limitation, the performance of such further acts or the execution and delivery of any additional deeds, instruments or documents to obtain any permits, approvals, licences or waivers required for the purposes of this Agreement and the transactions contemplated hereby.

26.11 Counterparts

This Agreement may be executed by the Parties on separate counterparts, each of which when executed and delivered shall constitute an original but the counterparts shall together constitute both one and the same instrument.

26.12 Sub Contracting

26.12.1 National Grid shall be entitled to sub-contract the whole or any part of the Works to be performed under this Agreement and/or any Contract. Any such sub-contracting by National Grid will not relieve National Grid from any liability or obligation under the Contract.

26.12.2 The Customer may reasonably request that National Grid notify it of the contractors (if any) that National Grid has engaged for the Contract and in the event that the

Customer reasonably objects to the engagement of such contractor, National Grid shall reasonably consider using alternative contractors (where available pursuant to National Grid's usual commercial arrangement and practices) and in the event that National Grid does not propose an alternative contractor reasonably acceptable to the Customer, the Customer may terminate the Contract in accordance with Condition 16.3(f).

26.12.3 The Customer shall be entitled to sub-contract the whole or any part of its obligations under Condition 4. Any such sub-contracting by the Customer will not relieve the Customer from any liability or obligation under the Contract.

26.13 Survival

The provisions of this Agreement and any Contract made hereunder that by their nature or from their context are intended to, or would naturally, continue to have effect after termination of this Agreement or such Contract shall survive after termination.

26.14 This Agreement shall be effective on the date (the "Effective Date") on which the last of the following occurs:

- (a) signature of the Provision and Maintenance Agreement or the Network Metering Equipment Agreement (as applicable) by National Grid and the Customer;
- (b) the Customer Accession Date;
- (c) the implementation date of the Network Code modifications 672, 673, 674, 675, 677 and 678 (the "Implementation Date"); and
- (d) signature of this Agreement by National Grid and the Customer.

27. NOT USED

IN WITNESS WHEREOF the Parties by their duly authorised representatives have this day set their hand.

SIGNED for and on behalf of
National Grid Gas plc

SIGNED for and on behalf of
[REDACTED]

Signature:

Signature:

Name:

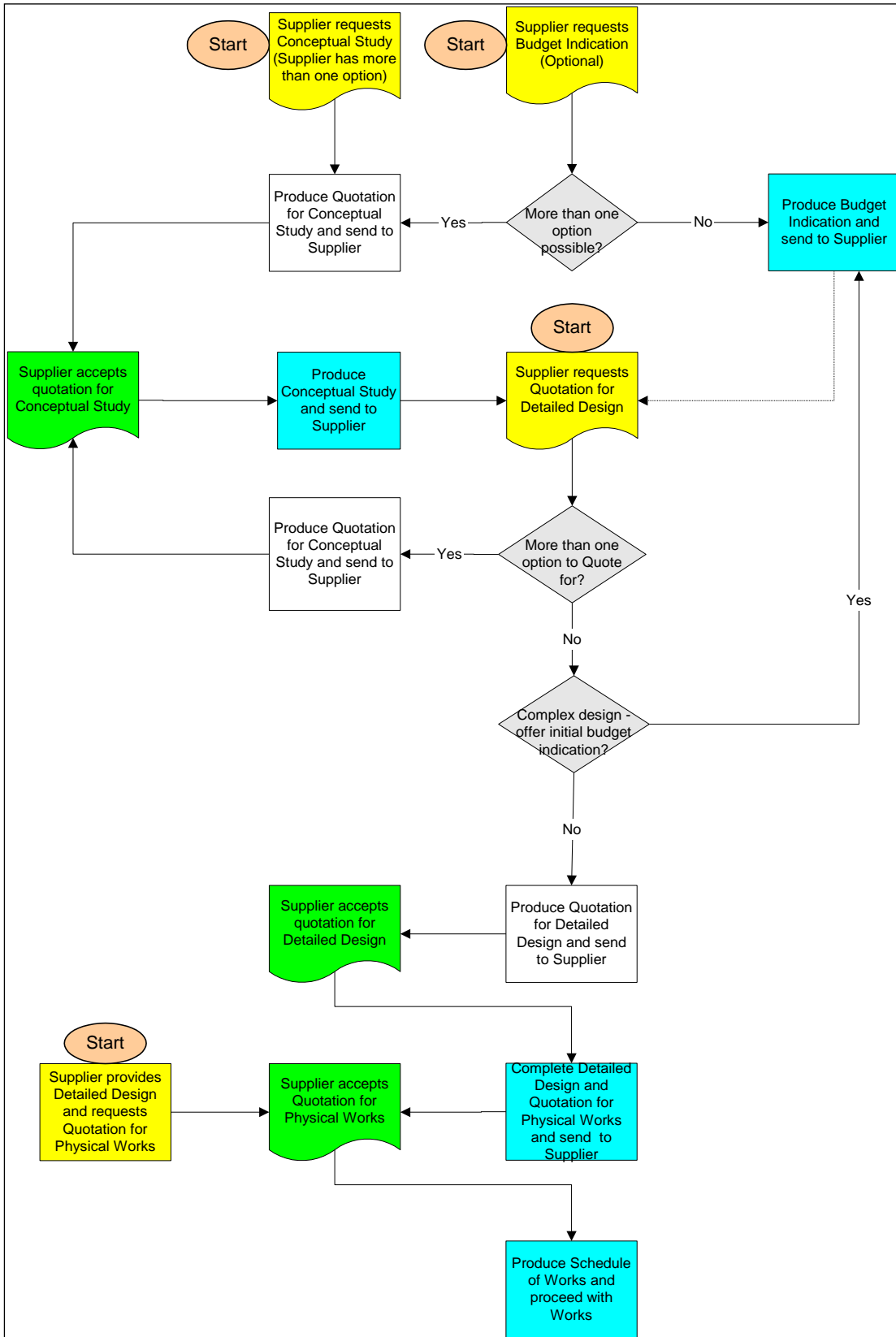
Name:

Position:

Position:

SCHEDULE ONE PROCESS FLOWS

Diagram provided for indicative purposes only.



Notes

The above diagram identifies the high-level process flow for above 7 Bar Works, associated products and request options.

1. Minimum Information

The following are minimum information requirements to complete each step. However, any additional information available to the Customer should be passed to National Grid where this information will support the process.

1.1 Budget Indication and Conceptual Study

Customer details;

Consumer details, including location details;

Expected termination pressure and valve size for new installations or existing for exchanges, removals and alterations;

Expected Annual Offtake quantity;

Q_{MAX} ;

Q_{MIN} .

1.2 Detailed Design Quotation

Customer details;

Consumer details, including location details, map reference and site plan;

Meter Housing details or request for National Grid to provide;

Expected termination pressure and valve size for new installations or existing for exchanges, removals and alterations;

Supply Type;

Load control Type;

Expected Annual Offtake quantity;

Q_{MAX} ;

Q_{NOM} ;

Q_{MIN} ;

Metering Pressure;

Additional information such as downstream boosters to be installed, by-pass or twin stream requirements.

2. Diagram Key

Yellow box – indicates that this is an optional request for the Customer;

Grey box – National Grid to identify options and offer an alternative step in the process where required;

Blue box – National Grid produce a high level output;

Green box – Requires a positive Acceptance from the Customer for the process to continue;

SCHEDULE TWO WORKS

1. Standards

- 1.1 All Works shall be conducted:
- 1.1.1 in accordance with applicable legal requirements including and without limitation:
- (a) the Gas Meters (Information on Connection and Disconnection) Regulations 1996;
 - (b) the Gas Safety (Installation and Use) Regulations 1998;
 - (c) Gas Safety (Management) Regulations 1996;
 - (d) the Gas (Calculation of Thermal Energy) Regulations 1996 (as amended);
 - (e) the CDM Regulations;
- 1.1.2 in accordance with the following documents of the Institution of Gas Engineers and Managers:
- (a) IGE/GM/1 Meter Installations with an inlet pressure less than 100Bar;
 - (b) IGE/GM/4 Flow monitoring practices for meter installation operating between 38 and 250Bar;
 - (c) IGE/GM/5 Selection, installation and use of electronic gas meter volume conversion devices;
 - (d) IGE/GM/7 Electrical connections to gas meters;
 - (e) IGE/SR/25 Hazardous area classification of natural gas installations;
- 1.1.3 in accordance with National Grid 's health, safety and environmental policies from time to time in force;
- 1.1.4 in accordance with COP1/c;
- 1.1.5 by an Ofgem Approved Meter Installer who is, where appropriate, Gas Safe registered.
- 1.2 Where an existing Meter installation contains a by-pass, second stream or in situ valves to enable the installation of a temporary by-pass, the Physical Works shall include utilisation of such by-pass, second stream or such valves to enable the installation of a temporary by-pass where operationally practicable to do so.

2. General

The following items are included in the Works except where expressly stated otherwise:

- (a) all time and materials necessary to undertake the activity during Working Hours;
- (b) provision of all relevant and suitable Meter labels, including one that indicates the ownership of the Meter and indicating the operation of the Emergency Control Valve where one is not present at the time of the Works;
- (c) any additional activities for which a price is specified in the Quotation;
- (d) removal of Surplus National Grid Material.

3. General Exclusions

- 3.1 For the avoidance of doubt, unless a price for such Works is incorporated in the Quotation, the Works will not include:
- (a) the conduct of Works outside of Working Hours;
 - (b) the provision and installation of any telemetry or remote monitoring equipment;
 - (c) connection to and commissioning of downstream pipework, fittings, plant, equipment and appliances;
 - (d) provision of downstream over pressurisation protection equipment where the Customer or Consumer is to install compression equipment;
 - (e) the undertaking of a dynamic off gas test where compression equipment is to be installed;
 - (f) the provision of Metering Equipment without a pressure management system unless the Customer has provided written agreement from the relevant authority and the Relevant Gas Transporter;
 - (g) the conduct of Works so as to avoid interruption to the conveyance of natural gas to the Consumer's Premises during the conduct of the Works or in the course of future maintenance of the Metering Equipment PROVIDED ALWAYS that National Grid shall:
 - (i) use all reasonable endeavours to avoid such interruption where reasonably practicable;
 - (ii) where interruption cannot be avoided as set out in (i) above, use all reasonable endeavours to notify such person as may be reasonably available on the Consumer's Premises that interruption may occur and where the Consumer refuses consent for the interruption to occur, such lack of consent shall be reason to extend the Date of Substantial Completion pursuant to Condition 9.1(e);
 - (h) any work on the Installation Pipework, unless specifically quoted for prior to the commencement of the work;
 - (i) Purging and re-lighting of gas appliances downstream of the Metering Equipment except in the case of a Meter exchange or Meter position alteration activity;
 - (j) provision for the installation of a Convertor.
- 3.2 Without prejudice to paragraph 3.1, the Physical Works will not include:
- (a) any work upstream of the Emergency Control Valve;
 - (b) any trace and repair work provided always that where a gas escape is identified on the internal supply the current industry guidelines and all relevant legislation relating to the situation will be followed;
 - (c) the inspection, installation or alteration of Installation Pipework;
 - (d) in the case of new Meter Installation Works:
 - (i) final connection from the Metering Equipment to the Installation Pipework; and/or

- (ii) the commissioning of Installation Pipework (including, for the avoidance of doubt, any apparatus or equipment downstream of the Metering Equipment) and/or any Metering Equipment not installed by National Grid;
- (e) the rental of any Meter (which, for the avoidance of doubt, will be provided and maintained pursuant to the Provision and Maintenance Agreement) or the Network Metering Equipment Agreement (as applicable).

4. Meter Installation

The following items are included in respect of Meter Installation Works except where expressly stated otherwise:

- (a) designing the Metering Equipment so as to be, capable of properly recording in accordance with applicable statutory requirements the volume of natural gas commensurate with the maximum peak instantaneous demand that the Customer has advised National Grid in writing is intended to pass through the Metering Equipment and in accordance with any provision set out in the Quotation;
- (b) procuring of all items and materials that are to be incorporated into the Metering Equipment;
- (c) installation of a Meter designed to meet the criteria set out in paragraph (a);
- (d) the installation, testing and commissioning of Metering Equipment terminating with the capped outlet of the Meter (and for the avoidance of doubt National Grid acknowledge and agree that where testing and commissioning so requires, National Grid shall undertake a visit to the Consumer's Premises in addition to the installation visit).

5. Meter Exchange and Removal

The following item is included in Meter exchange and removal Works except where expressly stated otherwise:

- the removal from Site of any Metering Equipment not owned by National Grid or the Consumer, storage of the removed Metering Equipment at a collection location and notifying the owner of the Metering Equipment (where reasonably practicable to do so or, where not reasonably practicable, the Customer) that it is available for collection. In the event that the Metering Equipment is not collected within one calendar month of notification National Grid shall dispose of such Metering Equipment as it deems appropriate.

SCHEDULE THREE LIQUIDATED DAMAGES

Liquidated Damages for Above 7 Bar Works

Daily Liquidated Damages **and** the Liquidated Damages Cap shall be negotiated in good faith on an individual basis for each Contract and such amounts set out in the Quotation.

SCHEDULE FOUR
INVOICING AND PAYMENT

1. INVOICING

1.1 Introduction

- 1.1.1 The amounts payable by the Customer to National Grid and by National Grid to the Customer in accordance with this Agreement and any Contract will be invoiced and payable in accordance with this Schedule Four.
- 1.1.2 National Grid will submit to the Customer Invoice Documents in respect of each Billing Period in accordance with this Schedule Four.
- 1.1.3 For the purposes of this Schedule Four:
- (a) subject to paragraph 2.4.8, a “Billing Period” is a calendar month;
 - (b) a “Billing Day” is a day in a Billing Period;
 - (c) an “Invoice Document” is an invoice document submitted electronically by National Grid to the Customer pursuant to this Schedule Four;
 - (d) an “Invoice Item” is an item (in respect of all charges of a particular kind) shown as payable by National Grid or by the Customer in an Invoice Document (including where relevant a Self-Bill Amount in accordance with paragraph 1.1.4);
 - (e) the “Invoice Amount” in relation to an Invoice Item is the amount shown as payable by the Customer or National Grid in respect of that item under the relevant Invoice Document;
 - (f) the “Post Code Out-Code” is the first two to four alpha numeric characters of the post code;
 - (g) “Geographic Zone” is a zone of a geographic area as defined by National Grid by reference to the Post Code Out-Code.
- 1.1.4 An Invoice Document may show as an Invoice Amount an amount (a “Self-Bill Amount”) payable by National Grid to the Customer in respect of which Regulation 13(3) of the Value Added Tax Regulations 1995 shall apply.
- 1.1.5 An Invoice Document may contain an adjustment by way of credit (“Invoice Credit”) in respect of an Invoice Amount in another Invoice Document.
- 1.1.6 An Invoice Document shall take effect as a separate invoice in respect of each Invoice Item, but without prejudice to paragraph 4.
- 1.1.7 No delay by National Grid in submitting an Invoice Document shall prejudice the liability (once such Invoice Document has been submitted) of National Grid or the Customer for the amounts subject thereto.

1.2 Invoice Types

- 1.2.1 For each Billing Period separate Invoice Documents (as described in paragraph 1.2.2) will be submitted to the Customer in respect of amounts payable (if any).

1.2.2 The types (each an “Invoice Type”) of Invoice Documents to be submitted are Asset Works Invoices, Asset Works Ad-Hoc Invoices and PALD Invoices.

1.3 **Form and content of Invoice Document**

1.3.1 Each Invoice Document will specify those items set out as mandatory in the Rainbow MAM Manual.

1.3.2 An Invoice Document which contains an Invoice Credit will also identify the Invoice Document and Invoice Item to which the Invoice Credit relates and the amount of the Invoice Credit unless otherwise agreed by the Customer and National Grid.

1.3.3 Each Invoice Document will be accompanied by a remittance advice (“Invoice Remittance Advice”), to be completed by the Customer in accordance with paragraph 3.4.

1.3.4 Invoice Documents will be submitted to the Customer by Batch Transfer Communications in the form and manner described in the Rainbow MAM Manual, and will be accompanied by the supporting data specified in respect of each Invoice Item.

1.4 **Invoice timing**

1.4.1 Subject to paragraphs 1.4.2, 1.6 and 2.4.7, Invoice Documents of different Invoice Types will be submitted on the 12th Working Day after the Billing Period (“Invoice Submission Date”) to which they relate.

1.4.2 Subject to paragraphs 1.6 and 2.4.7, National Grid will inform the Customer:

- (a) upon not less than 3 months notice of the Invoice Submission Date;
- (b) upon becoming aware that such delay will occur, of any delay of more than 1 Working Day (by reference to such Invoice Submission Date) in the submission of an Invoice Document in respect of a particular Billing Period (but National Grid may not by notifying such delays avoid the requirements under paragraphs (a) and 1.4.3).

1.4.3 Subject to paragraph 1.6, National Grid will not change the Invoice Submission Date of Invoice Documents of a particular Invoice Type more than once in any period of 12 months.

1.5 **Value Added Tax**

All amounts expressed as payable by the Customer or National Grid pursuant to this Agreement or any Contract made hereunder, and whether the amount thereof is set out in this Agreement or any Contract made hereunder or determined by reference to the National Grid Metering Charges, or otherwise, are exclusive (unless expressly otherwise stated) of any applicable Value Added Tax (and accordingly Value Added Tax shall be paid by the paying party where payable in respect of any such amount).

1.6 **Termination**

1.6.1 Notwithstanding paragraph 1.4, National Grid may, at any time after termination of a Contract in accordance with Condition 16, submit to that Customer any Invoice Document in respect of any Billing Period or part of a Billing Period ending at or before the time at which National Grid submits such Invoice Document.

1.6.2 Where National Grid has terminated a Contract in accordance with Condition 16, all amounts payable by the Customer to National Grid or by National Grid to the Customer (whether the Invoice Document in which such amounts are shown was submitted before or after the date of such termination) in respect of such Contract shall be immediately payable notwithstanding paragraph 3.1.

1.7 **Invoice adjustment**

1.7.1 Subject to paragraph 1.7.5, where it appears to National Grid that any Invoice Amount has been incorrectly stated in an Invoice Document, the Invoice Amount may be adjusted by an Asset Works Ad-Hoc Invoice submitted by National Grid in accordance with paragraph 2.4 (and National Grid will not be required to revise and resubmit the original Invoice Document).

1.7.2 An adjustment (by way of debit) representing an increase in an Invoice Amount shall be a new Invoice Amount in respect of which the Invoice Due Date will be the Invoice Due Date of the relevant Asset Works Ad-Hoc Invoice.

1.7.3 As soon as reasonably practicable after any Invoice Query is resolved, and in any event by the end of the second month following the month in which the Invoice Query was resolved, National Grid will submit to the Customer an appropriate Asset Works Ad-Hoc Invoice in respect of the amount (if any) agreed or determined to be payable or repayable by National Grid or the Customer.

1.7.4 As soon as reasonably practicable after any Invoice Query is resolved, and in any event by no later than the last Day in the third month following the month in which the Invoice Query was resolved, National Grid will prepare and submit to the Customer an appropriate Asset Works Ad-Hoc Invoice in respect of the amount (if any) of interest payable by National Grid or the Customer in respect of such Invoice Query.

1.7.5 In the absence of fraud, after the expiry of 24 months (or any other period agreed between National Grid and the Customer) after the Invoice Due Date (in accordance with paragraph 3.1) in respect of any Invoice Document:

(a) no adjustment may be made to an Invoice Amount under that Invoice Document, other than:

(i) an adjustment of which National Grid had given notice to the Customer, or

(ii) an adjustment pursuant to an Invoice Query raised by the Customer (in accordance with paragraph 4) before the expiry of such period;

(b) no Invoice Query may be raised in respect of the Invoice Document; and

(c) the Invoice Document shall (subject to any adjustments already made and any permitted under paragraph (a)) be deemed to be final and conclusive as to the amounts shown as payable thereunder.

1.7.6 The provisions of this Schedule Four whereby an Invoice Amount may be adjusted or an Invoice Query raised are without prejudice to the provisions of this Agreement or any Contract made hereunder.

1.7.7 Where National Grid identifies that the basis upon which an Invoice Amount has been calculated is in error (where such error was identified by reference to an Invoice

Amount in an Invoice Document of the Customer only and not in respect of any other National Grid Customer) and such error has resulted in:

- (a) an overpayment by the Customer to National Grid then National Grid shall make the appropriate adjustment to repay to the Customer any such amount due; or
- (b) an underpayment to National Grid from the Customer then National Grid shall make the appropriate adjustment to recharge the Customer any amount owed;
- (c) and such adjustment shall be made retrospectively in accordance with this paragraph 1.7 in respect of all such Invoice Amounts so affected provided that no adjustment will precede the Effective Date.

2 INVOICE TYPES AND SUPPLEMENTARY DATA

2.1 General

- 2.1.1 Asset Works Invoices, Asset Works Ad-Hoc Invoice and PALD Invoices are Invoice Documents of the Invoice Types described in paragraphs 2.2, 2.4.1 and 2.5 of this Schedule Four and the Rainbow MAM Manual.
- 2.1.2 Subject to paragraphs 2.1.3 and 2.1.4 the Invoice Items to be comprised in each of the Invoice Types referred to in paragraph 2.1.1 are set out in the Rainbow MAM Manual.
- 2.1.3 Upon not less than 3 months notice to the Customer, National Grid may include in any Invoice Document of an Invoice Type referred to in paragraph 2.1.1 Invoice Items which previously were or would have been contained in an Asset Works Ad-Hoc Invoice (but for the avoidance of doubt only in respect of Invoice Items in respect of charges payable pursuant to this Agreement or any Contract made hereunder).
- 2.1.4 Any amount which would otherwise be an Invoice Item within an Invoice Type in the Rainbow MAM Manual, may be contained in an Asset Works Ad-Hoc Invoice.

2.2 Asset Works Invoice

Description:

An Asset Works Invoice is an Invoice Document for Works undertaken for a given Billing Period. As well as providing overall totals, the Invoice Document also supplies details of:

- (a) the total charges for each Geographic Zone;
- (b) the total charges for each transaction type (i.e. FIX XX CR) within a Geographic Zone for each VAT rate;
- (c) job level detail and charges for all transactions that comprise (b).

2.3 Interest

Invoice Amounts representing interest payable pursuant to paragraph 3.5 by the Customer or National Grid in respect of an Invoice Amount under any Invoice Document (including an earlier such Invoice) will be contained in the Asset Works Ad-Hoc Invoice.

2.4 Asset Works Ad-Hoc Invoice

2.4.1 Description:

An Asset Works Ad-Hoc Invoice is an ad hoc Invoice Document for Works undertaken for a given Billing Period. The Invoice Document consists of one-off Works charges not covered by the Asset Works Invoice (AWI) (i.e. interest, liquidated damages), adjustments to charges resulting from one-off retrospective transactional price changes, and credit and debit charges for items from previous Billing Periods that were incorrectly billed. In addition to providing overall totals, this Invoice Document also supplies details of:

- (a) the total charges for each Geographic Zone;
- (b) the total charges for each transaction type (i.e. FIX XX CR) within a Geographic Zone for each VAT rate;
- (c) the total charges (original and revised amounts) for each transaction type that comprise (b).

2.4.2 National Grid may submit an Asset Works Ad-Hoc Invoice to the Customer at any time in respect of any amount (not included in another Invoice Type) which, at any time prior to the submission of such Invoice Document, becomes payable or repayable by the Customer or National Grid to the other pursuant to this Agreement or any Contract made hereunder.

2.4.3 An Asset Works Ad-Hoc Invoice may also contain adjustments (by way of credit or debit) in respect of any Invoice Amount.

2.4.4 National Grid will submit (as an Asset Works Ad-Hoc Invoice) an Invoice Document in respect of amounts becoming payable by National Grid to the Customer pursuant to this Agreement or any Contract made hereunder as soon as reasonably practicable after the month in which the liability to pay such amounts accrues.

2.4.5 The liability of National Grid pursuant to any provision referred to herein to make any payment to the Customer is without prejudice to the Customer's liability for any charge payable to National Grid, and National Grid shall not be entitled to discharge its liability by releasing the Customer from any such liability of the Customer; and National Grid shall secure that (where relevant) the Invoice Amounts in relevant Asset Works Ad-Hoc Invoices are stated accordingly.

2.4.6 An Asset Works Ad-Hoc Invoice may contain Invoice Amounts (or Invoice Credits in respect of Invoice Amounts) accruing (before such invoice is submitted):

- (a) in the calendar month in which the Invoice Document is submitted, and/or
- (b) in more than one calendar month.

2.4.7 The Asset Works Ad-Hoc Invoice will normally be issued on the 12th Working Day of the calendar month, but more than one such Invoice Document may, however, be submitted to the Customer on Working Days in the same calendar month.

2.4.8 A reference to a Billing Period in the context of an Asset Work Ad-Hoc Invoice is to the period from the date of accrual of the first to that of the last accruing Invoice Amount contained in such Invoice Document.

2.5 **PALD Invoice**

Description:

An Invoice for Pre Appointment Liquidated Damages covering the provision, maintenance and installation of Metering Equipment for a given Billing Period. In addition to providing overall totals, this Invoice Document also provides details of:

- (a) the total charges for each Geographic Zone;
- (b) the total charges for each charge item (i.e. P, I or M) within a Geographic Zone for each VAT rate;
- (c) the total charges, number of assets and chargeable Days for those assets for each band. For the avoidance of doubt, a PALD Invoice shall not be valid in the absence of the relevant supplementary data files.

2.6 Invoice Documents and their supplementary data files will be issued in accordance with the Rainbow MAM Manual.

3 INVOICE PAYMENT

3.1 Invoice Due Date

3.1.1 Subject to paragraph 4.2.2, the Invoice Amounts under each Invoice Document shall be paid (by the Customer to National Grid or by National Grid to the Customer, as the case may be) on or before the Invoice Due Date.

3.1.2 The "Invoice Due Date" in respect of an Invoice Document is the Day ending at 24:00 hours on:

- (a) in the case of an Asset Works Invoice, an Asset Works Ad-Hoc Invoice or a PALD Invoice subject to paragraph (b) the 30th Day after the Day on which the Invoice Document was deemed to be received.
- (b) where the Day determined under paragraph (a) (the "Target Due Date") is not a Working Day:
 - (i) subject to paragraph (ii), the Working Day (whether before or after the Target Due Date) which is nearest to the Target Due Date, or
 - (ii) if the nearest Working Days before and after the Target Due Date are equally near, the nearest Working Day after the Target Due Date.

3.1.3 An Invoice Document will be deemed to have been received when National Grid has received Enhanced IX confirmation in accordance with the Rainbow System User Agreement from the Customer.

3.2 Payment details

3.2.1 Payment of any amount payable under this Agreement or any Contract made hereunder shall be made in pounds sterling (or in any currency which is legal tender in the United Kingdom at the time of payment) in same Day funds to the account of the payee at a bank in the United Kingdom notified to the paying party in accordance with paragraph 3.2.2.

3.2.2 National Grid will notify the Customer, and the Customer shall notify National Grid, of the account name and number, and the name, address and sort code of the account bank, to which payments to National Grid by the Customer or (as the case may be) to the Customer by National Grid are to be made, within 5 Working Days after the Customer Accession Date, and of any change in such details not less than 30 Days before such change occurs.

3.2.3 The payer shall instruct the bank remitting payment of any amount payable under this Agreement or any Contract made hereunder to quote the number (under paragraph 1.3.1) of the relevant Invoice Document to the payee's bank when remitting such payment.

3.3 **Deductions, withholdings, taxes etc**

3.3.1 Without prejudice to paragraph 4.2.2, amounts payable under this Agreement or any Contract made hereunder shall be paid:

- (a) free and clear of any restriction, reservation or condition; and
- (b) except to the extent (if any) required by law:
 - (i) without deduction or withholding in respect of tax, or
 - (ii) without deduction or withholding on account of any amount due or to become due to the paying party, whether by way of counterclaim or otherwise except where one Party ("the Paying Party") has incurred any liability to pay any amount due to the other Party, then such other Party may set off the amount of such liability against any sum that would otherwise be due to the Paying Party under this Agreement or any Contract made hereunder.

3.3.2 If, in respect of a payment to be made to National Grid by the Customer, any deduction or withholding is required to be made by the law of any country other than a country of the United Kingdom, the Customer shall:

- (a) ensure that the amount of such withholding or deduction does not exceed the minimum so required;
- (b) forthwith pay National Grid such additional amounts as will ensure that the net amount received by National Grid will be equal to that which would have been received had no deduction or withholding been made; and
- (c) pay the amount withheld or deducted to the relevant authority in accordance with the relevant requirement of law, and provide to the payee a receipt issued by such authority or (if such a receipt is not available) a certificate in respect of such payment. To the extent that National Grid recovers from the relevant authority any withheld or deducted amount then as soon as reasonably practicable following receipt of the same it shall remit any such recovery to the Customer.

3.4 **Remittance advice**

3.4.1 Where payment of any amount is made pursuant to an Invoice Document, the Customer shall complete and submit electronically to National Grid the Invoice Remittance Advice not later than the Day on which payment is to be made (but no inability of the Customer to do so shall affect its obligation to make payment).

3.4.2 The completed Invoice Remittance Advice shall specify:

- (a) the date when payment is to be made;
- (b) the amounts payable to National Grid, by reference to each Geographic Zone specified in the Invoice Document, in respect of which the payment is to be made, and the total amount to be paid;

- (c) any amount or amounts, by reference to each Geographic Zone within each geographic area in respect of which payment is not being made pursuant to paragraph 4.2.2.
 - 3.4.3 Where National Grid makes payment of any amount pursuant to an Invoice Document, National Grid will not later than the date on which payment is made notify the Customer of details equivalent to those to be specified in an Invoice Remittance Advice pursuant to paragraph 3.4.2 (but no inability of National Grid to do so shall affect its obligation to make payment).
 - 3.4.4 Where National Grid or the Customer makes payment under more than one Invoice Document on the same Day, it shall secure that a separate remittance is made in respect of each Invoice Document.
 - 3.4.5 Where the Invoice Document number is not quoted with any remittance made by or on behalf of the Customer (in accordance with paragraph 3.4.4), and/or no Invoice Remittance Advice corresponding to the remittance is submitted National Grid will endeavour to obtain the Customer's instructions (by telephone or facsimile) as to the application thereof; but if it has not (by the Working Day following the Day of the remittance) obtained such instructions, National Grid will at its discretion either:
 - (a) apply the amount remitted to or towards Invoice Amount(s) in order of Invoice Due Date (the earliest first) and proportionately as between Invoice Amounts with the same Invoice Due Date, but applying such amount last to any Invoice Amounts which are subject to an Invoice Query; or
 - (b) allocate such amount into a suspense account where it will be held until receipt by National Grid of an amount equivalent to the amount specified in the Invoice Remittance Advice.
- 3.5 **Late payment**
- 3.5.1 Without prejudice to Condition 16, where any amount payable under an Invoice is not paid on or before the Invoice Due Date, the paying party shall pay interest, after as well as before judgment, at the Applicable Interest Rate, on the unpaid amount from the Invoice Due Date until the Day on which payment is made.
 - 3.5.2 For the avoidance of doubt paragraph 3.5.1 shall not be construed as permitting late payment of any Invoice Amount.
 - 3.5.3 Where in relation to any amount (or amounts in aggregate) of not less than £10,000 which has become due for payment by the Customer under this Agreement or any Contract made hereunder (excluding for the avoidance of doubt amounts the subject of an Invoice Query which by virtue of paragraph 4.2 have not become due for payment) the Customer has not paid the amount in full by the due date for payment, National Grid reserves the right to:
 - (a) refuse to undertake any further Works;
 - (b) suspend any Works in progress.

3.6 **Interest**

- 3.6.1 Where pursuant to any provision of this Schedule Four interest is payable by National Grid or the Customer, such interest shall accrue on a daily basis and on the basis of a 365 Day year.
- 3.6.2 Interest payable under this Schedule Four will be compounded and invoiced in an Asset Work Ad-Hoc Invoice, late payment of which will itself be subject to interest under this paragraph 3.6.
- 3.6.3 The “Applicable Interest Rate” is the rate of interest, expressed as a percentage rate per annum, payable in respect of amounts overdue for payment, or subject to repayment, under this Agreement or any Contract made hereunder.
- 3.6.4 The Applicable Interest Rate shall be the base rate for the time being of Barclays Bank plc plus 3 percentage points per annum.

3.7 **Statement of account**

- 3.7.1 National Grid will provide to the Customer not less than each month a statement of account sent by electronic means showing, by reference to individual Invoice Documents (but not individual Invoice Items) and in aggregate:
 - (a) the amounts shown under paragraph (d) in the preceding statement of account (if any) as payable by the Customer or National Grid;
 - (b) the amounts shown as payable by the Customer or National Grid under Invoice Documents submitted to the Customer since the date of the preceding statement of account (if any), including any amount for which the Invoice Due Date is after the date of the statement of account for the current month;
 - (c) the amounts paid by the Customer or National Grid since the date of the preceding statement of account (if any) that remain unallocated as at the date that such statement is produced (if any);
 - (d) the sum of the amounts shown under paragraphs (a) and (b) less the amounts shown under paragraph (c).
- 3.7.2 Each statement provided under paragraph 3.7.1 shall state that it is not a tax invoice for Value Added Tax purposes.
- 3.7.3 No payment obligation of the Customer or National Grid shall be affected by any delay or failure by National Grid in producing a statement of account.

3.8 **Late Payment of Commercial Debts (Interest) Act 1998**

The Parties agree that the provisions of paragraph 3.6 constitute a substantial remedy for late payment of any sum due under this Agreement or any Contract made hereunder. The parties further agree that the provisions of the Late Payment of Commercial Debts (Interest) Act 1998, and any orders or regulations made pursuant thereto, as to rates of interest or credit periods shall not apply to this Agreement or any Contract made hereunder.

4 **INVOICE QUERIES**

4.1 **Invoice Queries**

- 4.1.1 For the purposes of this Schedule an “Invoice Query” is any question or dispute as to the proper calculation of any amount shown as payable by the Customer or National Grid under an Invoice Document or as to whether any such amount is or was properly

payable and references to the amount of an Invoice Query are to the amount by which the Customer submitting the Invoice Query considers the Invoice Amount to be incorrect.

- 4.1.2 The Customer may notify an Invoice Query, in accordance with the Rainbow MAM Manual providing the agreed set of mandatory information for the particular query code.
- 4.1.3 National Grid and the Customer will endeavour to resolve Invoice Queries by agreement.
- 4.1.4 Any reference in this Schedule Four:
 - (a) to the resolution of an Invoice Query is a reference to the resolution thereof by agreement (at any time) between National Grid and the Customer or by determination thereof (in accordance with paragraph (b));
 - (b) to the determination of an Invoice Query is a reference to the outcome of any proceedings commenced by National Grid or the Customer in respect thereof.
- 4.1.5 In paragraph 4.1.6. 'appropriate resources' shall mean the application by National Grid in respect of an Invoice Query, of available resources that are commensurate with and appropriate to the value of the Invoice Query.
- 4.1.6 In relation to an Invoice Query, for which there exists an operational agreement with the Customer to undertake sample checking with a view to agreeing resolution of the total value of the Invoice Query:
 - (a) where it has not been possible to resolve the Invoice Query by applying appropriate resources; or
 - (b) National Grid is of the opinion that the Invoice Query will not be resolved by applying appropriate resources;National Grid shall, where agreed with the Customer, calculate, in accordance with the operational agreement an estimated value for the Invoice Amount which is the subject of the Invoice Query.
- 4.1.7 Without prejudice to paragraph 4.1.4 where National Grid calculates an estimated value for the amount of an Invoice Query in accordance with paragraph 4.1.6, the Invoice Query shall be held to have been resolved on the basis of such estimated value, which estimated value shall be deemed to be final and conclusive as to the proper calculation of the amount payable.

4.2 **Invoice Queries before payment**

- 4.2.1 Where the Customer wishes to raise any Invoice Query in respect of an amount shown as payable by the Customer under an Invoice Document, the Customer may, not later than the Day before the Invoice Due Date, notify (in accordance with paragraph 4.1.2 and 4.1.3) such Invoice Query to National Grid, specifying those items set out as mandatory in the Rainbow MAM Manual.
- 4.2.2 Where the Customer raises an Invoice Query:

- (a) in accordance with the requirements of paragraph 4.2.1 (but not otherwise), the amount of the Invoice Amount which is subject to the Invoice Query (in accordance with the mandatory explanation item listed in the Rainbow MAM Manual) shall not be payable on the Invoice Due Date, but without prejudice to paragraph 4.2.4;
 - (b) containing less than the required mandatory information in accordance with paragraph 4.2.1:
 - (i) the Customer shall, no later than 10 Working Days after the original submission, provide to National Grid the details which were omitted;
 - (ii) to the extent that the Customer does not comply with paragraph (i), the suspension of the Customer's obligation to pay shall cease to apply.
- 4.2.3 Except as provided in paragraph 4.2.2, but without prejudice to paragraph 4.3.1, the whole amount shown as payable by the Customer in any Invoice Document shall be payable on the Invoice Due Date.
- 4.2.4 Where pursuant to paragraph 4.2.2 any amount is not paid on the Invoice Due Date by the Customer, the amount (if any) which is agreed or determined (following resolution of the Invoice Query) to be payable by the Customer shall be payable upon such resolution, and interest from the Invoice Due Date shall be payable in accordance with paragraph 3.5 on such amount.
- 4.2.5 Where, by reason of a delay in the preparation or submission of any Invoice Documents National Grid submits to the Customer, in the same month, Invoice Documents of the same Invoice Type (other than the Invoice Types referred to in paragraph 4.2.6) in respect of several Billing Periods to the Customer, paragraph 4.2.6 shall apply.
- 4.2.6 In relation to any such Invoice Document as is referred to in paragraph 4.2.5:
- (a) the level of detail by reference to which (for the purposes of paragraph 4.2.1) any Invoice Query is required to be given shall be such as is reasonable having regard to the extent of the supporting data and the time (from submission of the Invoice Document until the Invoice Due Date) available for the Customer to review such Invoice Documents and the supporting data;
 - (b) where the Customer raised an Invoice Query containing less detail than would have been required but for paragraph (a):
 - (i) the Customer shall as soon as is reasonable provide to National Grid the details which were omitted;
 - (ii) to the extent that the Customer does not comply with paragraph (i), the suspension (pursuant to paragraph 4.2.2) of the Customer's obligation to pay shall cease to apply.

4.3 **Other Invoice Queries**

- 4.3.1 Subject to paragraph 1.7.5, nothing in this paragraph 4 shall prevent the Customer from raising any Invoice Query other than pursuant to paragraph 4.2.1, including in respect of any amount after payment has been made in respect of such amount, or

from paying any such amount at the same time as notifying an Invoice Query in respect thereof; provided that (without prejudice to the resolution of the Invoice Query) no constructive trust or other implied term as to the receipt or application by the payee of the amount paid shall arise.

- 4.3.2 Where, upon the resolution of an Invoice Query or otherwise, it is agreed or determined that any amount or part of any amount paid should not have been paid, the payee shall repay such overpaid amount with interest at the Applicable Interest Rate from the date on which payment was made to it or if later the Invoice Due Date until the date of such repayment.
- 4.3.3 Notwithstanding paragraph 4.2.2, the Customer shall pay the Invoice Amount in respect in full on the Invoice Due Date, notwithstanding any Invoice Query, and paragraph 4.3.1 and 4.3.2 will apply in respect of any such Invoice Query.

SCHEDULE FIVE

METER CREDIT LIMITS

1 General

- 1.1 National Grid will, in accordance with the Meter Credit Rules determine and assign to the Customer a Meter Credit Limit, and will keep the Customer informed of its Meter Credit Limit (as revised in accordance with paragraph 2.2) for the time being.
 - 1.2 The “Meter Credit Rules” are the rules from time to time established and revised by National Grid and issued to the National Grid Customers setting out (inter alia):
 - (a) the principles on which National Grid will assess and from time to time revise (in accordance with paragraph 2.2) its assessment of the credit-worthiness of the National Grid Customers (and persons providing surety for National Grid Customers) and establish Meter Credit Limits;
 - (b) the basis on which a National Grid Customer may (with a view to increasing its Meter Credit Limit) provide surety or security for Aggregate Relevant Meter Indebtedness, or (with a view to reducing its Aggregate Relevant Meter Indebtedness) make prepayments to National Grid;
 - (c) procedures by which a National Grid Customer may discuss its Meter Credit Limit with National Grid; and
 - (d) the acceptable forms and instruments of security and acceptable levels of Investment Grade Ratings.
 - 1.3 Without prejudice to paragraph 1.1, the Meter Credit Rules do not form a part of this Agreement.
 - 1.4 Without prejudice to paragraph 1.1, nothing in this Agreement or the Meter Credit Rules shall constitute any duty of care or other obligation on the part of National Grid (whether to or for the benefit of the Customer or National Grid Customers in general) in relation to the observation or application of the Meter Credit Rules or the provisions of this Schedule Five.
- 2. Meter Credit Limit, Relevant Meter Indebtedness and Aggregate Relevant Meter Indebtedness**

- 2.1 For the purposes of this Agreement:
- (a) a "Meter Credit Limit" is an amount representing a Customer's maximum permitted Aggregate Relevant Meter Indebtedness and the Customer shall have a single Meter Credit Limit for the purposes of the Meter Works Conditions, the Network Metering Equipment Agreement, and any other agreement(s) which the Parties have agreed or may agree from time to time in writing shall be taken into account for such purpose and the Provision and Maintenance Agreement;
 - (b) "Relevant Meter Indebtedness" is:
 - (i) the aggregate amount for which the Customer is at any time liable to National Grid pursuant to this Agreement, and any Contracts made hereunder, determined on the basis of amounts accrued and not paid and subject to paragraph (b) (ii) and (iii) irrespective of whether such amounts have been invoiced under Schedule Four (Invoicing and Payment) or (where invoiced) have become due for payment; less
 - (ii) any amount which has been paid to National Grid by the Customer by way of prepayment, on the basis that National Grid may apply such amount without the Customer's consent in or towards payment of amounts referred to in paragraph (i), and which has not yet been so applied; and less.
 - (iii) any amount in respect of which National Grid is entitled to submit an Invoice Document in accordance with Schedule Four, paragraph 1.4.1 and has failed to do so within 5 Working Days of the Invoice Submission Date but only for so long as no such Invoice Document has been submitted.
 - (c) "Aggregate Relevant Meter Indebtedness" is the aggregate of the Relevant Meter Indebtedness calculated pursuant to paragraph (b) and the Relevant Meter Indebtedness calculated pursuant to the Below 7 Bar Meter Works Conditions, the Adversarial Meter Works Conditions, the Network Metering Equipment Agreement, and any other agreement(s) which the Parties have agreed or may agree from time to time in writing shall be taken into account for such purpose and the Provision and Maintenance Agreement.
- 2.2 For the avoidance of doubt, the amount of the Customer's Relevant Meter Indebtedness shall be determined by reference to the relevant provisions of this Agreement, and nothing in this Agreement shall be construed as withdrawing from the Customer any right to dispute whether National Grid has correctly calculated such amount in any case, or from National Grid any right to dispute the validity of any Invoice Query submitted by the Customer.
- 2.3 Without prejudice to paragraph 2.2, where the Customer has submitted an Invoice Query in accordance with Schedule Four paragraph 4.2.1 in respect of any Invoice Document National Grid will review and give due consideration to such Invoice Query before taking any steps pursuant to paragraph 3.3.
- 2.4 The Customer's Meter Credit Limit may from time to time be reviewed and revised in accordance with the Meter Credit Rules, on notice of not less than 10 Days (or any lesser period agreed by the Customer) to the Customer:
- (a) at intervals of approximately 6 months;

- (b) at the Customer's request (but subject to paragraph 2.6 and 2.7);
- (c) where any published credit rating of the Customer or any person providing surety for the Customer is revised downwards;
- (d) where (but without prejudice to any requirements of the Meter Credit Rules) any instrument of surety or security expires or is determined; or
- (e) at National Grid's request where at any time National Grid has reasonable grounds to believe that the effect of the review will be to reduce or increase the Customer's Meter Credit Limit.

2.5 Where:

- (a) any published credit rating of the Customer or any party providing surety or security for the Customer is revised downwards; or
- (b) National Grid has made a demand upon any existing instrument of surety or security in accordance with the terms of such instrument of surety or security provided by the Customer or any person providing surety or security for the Customer;

then the Customer's Meter Credit Limit may be immediately reviewed and revised by National Grid in accordance with the Meter Credit Rules, on notice to the Customer.

2.6 Subject to paragraph 2.7, National Grid will bear the costs and fees that it incurs (but not any costs incurred by the Customer) in connection with any review of the Customer's Meter Credit Limit in accordance with paragraph 2.4.

2.7 National Grid will not be obliged to agree to any request of the Customer under paragraph 2.4(b) unless the Customer agrees to reimburse to National Grid the reasonable costs and fees payable by National Grid to any third party in connection with such request.

3 Requirements as to Aggregate Relevant Meter Indebtedness

3.1 Where:

- (a) the Customer's Aggregate Relevant Meter Indebtedness exceeds 70% of its Meter Credit Limit and National Grid has given notice to the Customer to that effect; and
- (b) at any time following such notice the Customer's Aggregate Relevant Meter Indebtedness exceeds 90% of its Meter Credit Limit and National Grid has given notice to the Customer to that effect (which notice may in appropriate circumstances be given at the same time as that under paragraph 3.1(a)), paragraphs 3.2 and 3.3 shall apply.

3.2 Subject to paragraph 3.1, where the Aggregate Relevant Meter Indebtedness of a Customer for the time being exceeds 90% of the Customer's Meter Credit Limit:

- (a) without prejudice to 3.2(b) the Customer shall make such payment to National Grid of such amount as is necessary to reduce the Customer's Aggregate Relevant Meter Indebtedness to less than 90% of its Meter Credit Limit;
- (b) until such time as the Customer's Aggregate Relevant Meter Indebtedness is reduced to less than 90% of the Customer's Meter Credit Limit, National Grid shall be entitled to:
 - (i) reject or refuse to accept a Quotation Request for Non Standard Work submitted by the Customer; and/or

- (ii) refuse to undertake any further Works not yet commenced to the extent that it is safe to do so; and/or
- (iii) suspend any Works in progress to the extent that it is safe to do so; and/or
- (iv) call upon any instrument of surety or security provided by the Customer; until such time as the Customer's Aggregate Relevant Meter Indebtedness is reduced no less than 90% of its Meter Credit Limit.

3.3 Subject to paragraph 3.1, where and for so long as the Aggregate Relevant Meter Indebtedness of the Customer for the time being exceeds 100% of the Customer's Meter Credit Limit, National Grid may without prejudice to any entitlement under paragraph 3.2 give Termination Notice (in accordance with Condition 16.2(d)) to the Customer.

4 Security under Meter Credit Rules

4.1 Any instrument of surety or security provided by the Customer pursuant to the Meter Credit Rules (and whether or not entered into by the Customer) shall not be a part of this Agreement and no provision of or modification of this Agreement, nor any inconsistency between this Agreement and any such instrument, and nothing done by National Grid pursuant to this Agreement, shall prejudice or invalidate any such instrument.

4.2 Where the Customer has provided surety or security pursuant to the Meter Credit Rules the Customer (or the person giving the surety) may request National Grid to release all or any of such security or agree to a reduction in any maximum amount of such surety.

4.3 Following a request by the Customer under paragraph 4.2, National Grid will as soon as reasonably practicable and, except where the Customer also requests a review (by an agency appointed by National Grid for such purposes) and revision of its Meter Credit Limit, in any event not more than 10 Working Days after such request, release security, or agree to a reduction in surety, to such extent or by such amount as will permit the condition in paragraph 4.4 to be satisfied.

4.4 The condition referred to in paragraph 4.3 is that the amount of the Customer's Aggregate Relevant Meter Indebtedness at the date of such release or reduction is not more than 90% of the amount of the Customer's Meter Credit Limit, determined in accordance with the Meter Credit Rules on the basis of the release of security or reduction in surety (and taking account of any alternative surety or security provided by the Customer).

4.5 The Customer may (inter alia) provide security for the purposes of the Meter Credit Rules in the form of a deposit in a bank account where:

- (a) the account is in the sole name of National Grid; and
- (b) interest on the amount deposited in the account will accrue for the benefit of the Customer.

4.6 In respect of such bank account:

- (a) National Grid shall be entitled to take payment of amounts (up to the amount deposited in the account) which have become due for payment to National Grid (but having regard to the time at which pursuant to Schedule Four, paragraph 4.2 payment is due where an Invoice Query has been raised) against a statement to the bank provided by National Grid that payment of such amount has become due (but such

instruction shall be without prejudice to any provision of Schedule Four as to the payment of interest), and in such case National Grid will provide reasonable evidence to the Customer of its entitlement to take such payment;

- (b) amounts (other than in respect of interest earned) standing to the credit of the account will not be paid to the Customer except with National Grid's written agreement (but subject always to paragraph 4.2, 4.3 and 4.4); and
- (c) the bank shall have agreed that the amounts deposited in the account may not be set-off or otherwise applied by the bank in respect of any indebtedness of the Customer or other person.

**SCHEDULE SIX
NOT USED**

ANNEX 1 (TO CONDITION 20.4) - PROCESSING ACTIVITIES

Subject matter of Processing	NG will process data on behalf of the customer(s) to render the services they are contracted to provide as a MAP/ MAM. NG will only process personal data upon instruction from a customer.
Duration of Processing	The duration of the contractual relationship or as agreed with the data controller -customer.
Nature of Processing	The processing of end consumer contact details, meter readings, business contact details, service provider engineer details; and any other data as may be advised by the customer in order to render the services of a MAP/ MAM.
Purpose of Processing	To facilitate access to conduct meterworks, maintain asset records, ensure accurate billing and compliance; and undertake works as instructed by the customer in line with contractual MAP/ MAM obligations.
Type of Personal Information	<ul style="list-style-type: none"> - End consumer contact details; - Meter readings; - Business to business contact details; - Service Provider Engineer details; and - Any other personal data as may be advised by the customer.
Categories of Data Subjects	<ul style="list-style-type: none"> - Customers; - End consumers; - Appointed agents/ representatives of customers; and - Any other category of data subject as may be advised by the customer.

ANNEX 2 (TO CONDITION 20.4) - SUB-PROCESSORS

National Grid Metering Contracted Service Providers:	
All Gas 1 Ltd	AWH Utility
Bell Decorating Group Limited	Cadent
CMU Infrastructure	F A Clover and Sons Limited
F&R Gas Limited	Fulcrum
Future Energy Group	IQA Operations Limited
Manterfield Drilling Ltd	OCS Group Limited
Penspen	SGN (Scotland & Southern)
T&K Gallagher	Technolog
WG Beaumont & Sons limited	Wales and West Utilities
Morrisons	Amey
Gasworks	<i>*Any other service provider/ agent as may be appointed pursuant to this Agreement from time to time.</i>