

RAINBOW SYSTEM USER AGREEMENT

between

NATIONAL GRID GAS PLC

and

[REDACTED]

SUBJECT TO CONTRACT
Updated June 2018 to reflect Mod 62

INDEX

CONDITION	PAGE NO.
1. DEFINITIONS, INTERPRETATION, ETC.	1
2. EQUIPMENT AND OPERATIONAL REQUIREMENTS	10
3. ACCESS TO AND USE OF THE RAINBOW MAM MANUAL	14
4. COMMUNICATIONS	15
5. CONTINGENCY ARRANGEMENTS	17
6. FAILURE OF RAINBOW	18
7. RAINBOW, LEGAL PROCEEDINGS AND INDEMNITIES	19
8. INFORMATION AND CONFIDENTIALITY	20
9. LIABILITY	22
10. FORCE MAJEURE	22
11. NOTICES AND COMMUNICATIONS	24
12. DATA PROTECTION ACT	26
13. THIRD PARTY RIGHTS	34
14. ASSIGNMENT	35
15. WAIVER	35
16. LANGUAGE	35
17. SEVERANCE	35
18. ENTIRE AGREEMENT	35
19. JURISDICTION	36
20. METERING AGREEMENTS MODIFICATION PROVISIONS	37
21. GOVERNING LAW	37
22. MODIFICATION SCHEDULE	37
SCHEDULE ONE	39
SCHEDULE TWO	40
SCHEDULE THREE	42
SCHEDULE FOUR	43
SCHEDULE FIVE	47
SCHEDULE SIX	48
20C. ALTERNATIVE CONTRACT CONDITIONS	54
20D. MEDIATION AND EXPERT DETERMINATION	54
ANNEX 1 (TO CLAUSE 12) - PROCESSING ACTIVITIES	54
ANNEX 2 (TO CLAUSE 12) - SUB-PROCESSORS	55

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) [] (registered number [] and market participant identity []) whose registered office is at [] (the "**Customer**") which expression shall include its successors and/or permitted assigns.

WHEREAS:

- (A) National Grid provides Metering Services to the Customer in accordance with the Metering Agreements and the Rainbow MAM Manual and having regard to the Web Portal User Guidelines and Enhanced IX Operational Guidelines For Use With Rainbow.
- (B) National Grid will secure the establishment and operation of Rainbow, and will afford to Rainbow Customers access to and use of Rainbow, and National Grid and each Rainbow Customer will communicate with each other by means of Rainbow, subject to and in accordance with this Agreement.
- (C) Rainbow Customers are required to comply with the relevant requirements of this Agreement in respect of access to and use of Rainbow.

1. DEFINITIONS, INTERPRETATION, ETC.

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

"**Affected Party**": shall have the meaning ascribed thereto in Clause 10.1.1;

"**Affected Rainbow Customer**": shall have the meaning ascribed thereto in paragraph 1(b) of Schedule Five;

"**Agreement**": shall mean this Rainbow System User Agreement as amended from time to time;

"**Annual Charge**": shall have the meaning ascribed thereto in paragraph 6.3 of Schedule Four;

"**Authorised Representative**": shall mean a representative of a Rainbow Customer who has been designated by the Rainbow Customer in accordance with Clause 2.3.2 and for whom a Rainbow Identity under Clause 2.4.1(ii) has been issued;

"**Automatic Audit Trail Facility**": shall mean a facility forming part of the Rainbow System at National Grid's premises, which will automatically record the sending or the receipt by National Grid of the message comprised in a Batch Transfer Communication and of the date and time of such sending or receipt;

"**Batch Transfer Communication**": shall mean a data file transmitted by National Grid or by the Rainbow Customer in accordance with the requirements of Clause 4 by means of the Rainbow Network, as described in the Rainbow MAM Manual;

“Business Activities”: shall mean in the case of the Customer those activities of the Customer performed in its capacity as a Supplier to Consumer Premises;

“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;

“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;

“Conventional Notice”: shall mean a Metering Communication which is or may be given by any of the means in Clause 11.1;

“Customer”: shall mean a Supplier and the signatory to this Agreement;

“Customer Agent”: shall have the meaning ascribed thereto in Condition 17.1.1 of the Provision and Maintenance Agreement or the Network Metering Equipment Agreement (as applicable);

“Customer Accession Date”: shall have the meaning ascribed thereto in Schedule One, paragraph 2.1 of the Provision and Maintenance Agreement or the Network Metering Equipment Agreement (as applicable);

“Day”: shall mean a calendar day;

“Distribution Network”: shall mean 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);

“Effective Date”: shall have the meaning ascribed thereto in Clause 1.5;

“Enhanced IX”: shall mean an electronic, batch file transfer communication service that operates over a wide area network as described in the Enhanced IX Operational Guidelines For Use with Rainbow;

“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;

“Force Majeure”: shall have the meaning ascribed thereto in Clause 10.1.1;

“Gas Act”: shall mean the Gas Act 1986;

“Gas Day”: shall mean a period from 5 a.m. on one Day until 5 a.m. on the following Day;

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

“Gateway”: shall mean a computer server forming part of the Rainbow Network, installed at the premises of National Grid and of each Rainbow Customer (and in the case of a Rainbow Customer forming part of the Rainbow Customer Equipment as described in the Enhanced IX Operational Guidelines For Use with Rainbow);

“Help Desk”: shall have the meaning ascribed thereto in Clause 1.6;

“Help Desk Response Procedure”: shall have the meaning ascribed thereto in paragraph 1(c) of Schedule Five;

“Implementation Date”: shall have the meaning ascribed thereto in Clause 1.5;

“Inappropriate Rainbow Customer Action”: shall have the meaning ascribed thereto paragraph 1(g) of Schedule Five;

“Indemnified Party” and **“Indemnifying Party”**: shall have the meanings ascribed thereto in Clause 7.3.2;

“Individual Access Parts”: shall have the meaning ascribed thereto in Clause 2.3.1;

“Initial Access Charge”: shall have the meaning ascribed thereto paragraph 6.2 of Schedule Four;

“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 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;

“Meter Works Conditions”: shall mean the Agreement and General Conditions of Contract for Transactional Meter Works Not Exceeding 7 Bar and/or the Agreement and General Conditions of Contract for Above 7 Bar Transactional Meter Works and/or the Agreement and General Conditions of Contract for Adversarial Meter Works;

“Metering Agreements”: shall mean this Agreement, the Meter Works Conditions, the Provision and Maintenance Agreement, the Network Metering Equipment Agreement, and the Metering Agreements Modification Provisions together with the documents listed in Clause 18.1 and any other agreement(s) which the Parties have agreed or may agree from time to time in writing;

“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 this Agreement) as amended from time to time;

“Metering Communications”: shall mean any communication to be given by a Rainbow Customer or National Grid (including any notice, application, request, approval, acceptance, invoice, or other notice to be given, made or submitted) for the purposes of the Metering Agreements and (where appropriate) the Network Metering Equipment Agreement and any other agreement(s) which the Parties have agreed or may agree from time to time in writing;

“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 or Web Communications;

“Metering Equipment”: shall have the meaning ascribed thereto in the Provision and Maintenance Agreement or (as applicable) shall mean **“Off-Network Metering Equipment”** as such term is defined in the Network Metering Equipment Agreement;

“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 Available Equipment”: shall mean respectively those items of computer hardware and other equipment which are available to be provided by National Grid as described in the Schedule Four;

“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 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 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 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 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;

"Operational Service Hours": shall mean the period from 8 a.m. to 6 p.m. on a Working Day;

"Other Party": shall have the meaning ascribed thereto in Clause 10.1.1;

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

"Planned Rainbow Downtime": shall have the meaning ascribed thereto in Clause 1.9.1;

"Provision and Maintenance Agreement": shall mean the document entitled "Agreement and General Conditions of Contract for the Provision and Maintenance by National Grid 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 of Meters and Ancillary Equipment located at points of connection to the National Grid Network;

"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 Failure": shall have the meaning ascribed thereto in paragraph 1(a) of Schedule Five;

"Rainbow Customer": shall mean (a) any National Grid Customer, provided that the Customer shall cease to be a Rainbow Customer upon termination of the Provision and Maintenance Agreement and the Network Metering Equipment Agreement; or (b) any other person permitted to have access to and use of Rainbow;

"Rainbow Customer Equipment": shall mean the computer hardware and other equipment from time to time provided to or by a Rainbow Customer in accordance with Clause 2.2.1 and more particularly described in Schedule Four;

"Rainbow Identity": shall mean the user identification(s) and pass code(s) by means of which:

- (a) a Rainbow Customer, or
- (b) as respects Individual Access Parts of Rainbow, a representative of a Rainbow Customer,

may have access to Rainbow;

"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;

"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;

"Recover": shall have the meaning ascribed thereto in paragraph 1(d) of Schedule Five;

"Recovery Period": shall have the meaning ascribed thereto in paragraph 1(e) of Schedule Five;

"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;

"Repeated Failure of Rainbow": shall have the meaning ascribed thereto in paragraph 1(f) of Schedule Five;

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

"Shipper": shall mean a gas shipper licensed under Section 7(A)(2) of the Gas Act (and acting in such capacity) to arrange with the Relevant Gas Transporter for the conveyance or offtake of gas for purposes connected with the supply of gas to premises;

"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 7A(1) of the Gas Act (including standard and special conditions thereto) as modified from time to time;

"Termination Date": shall have the meaning ascribed thereto in Clause 2.6;

"Three month Period": shall have the meaning ascribed thereto in paragraph 1(h) of Schedule Five;

"Termination Date": shall have the meaning ascribed thereto in Clause 2.6;

"Tripartite Agreement": shall mean an agreement entered into between National Grid, the Customer and UMS pursuant to the Provision and Maintenance Agreement;

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

"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 on 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;

1.2 INTERPRETATION

In this Agreement 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;
- 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 practices, 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 are to official time in the United Kingdom and except where otherwise provided:
 - (a) where anything is to be done under this Agreement by or not later than a Day or any period under this Agreement is to run to a Day such thing may be done or such period shall run up to the end of such Day;
 - (b) where anything is to be done under this Agreement from or not earlier than a Day or any period under this Agreement is to run from a Day, such thing may be done or such period shall run from the start of such Day;
- 1.2.7 in the event of any conflict between these Clauses and the Schedules, the former shall prevail;
- 1.2.8 unless the context otherwise requires, references to a Clause or Schedule are to a Clause or Schedule in this Agreement, and references in a Schedule or part of a Schedule (including an Annexure to that Schedule) to a paragraph or sub-paragraph are to a paragraph or sub-paragraph of that Schedule or that part of that Schedule.

1.3 METERING COMMUNICATIONS

- 1.3.1 The Rainbow MAM Manual specifies in respect of each Metering Communication therein listed whether it is to be given as a Batch Transfer Communication, Web

Communication, by Conventional Notice, or by telephone, and in some cases alternative such means by which it may be given; and (subject to Clause 1.3.3 and to the relevant Notices provisions in the Metering Agreements) a Metering Communication may only be given by the means so specified or, where alternative such means are specified, by one of such alternative means. Where any such Metering Communication is given in accordance with such means specified then it shall have legal effect for the purpose of the Metering Agreements.

1.3.2 Where the Metering Agreements or the Rainbow MAM Manual specifies the form and/or format of Batch Transfer Communication by which a particular Metering Communication is required to be given, that Metering Communication may be given only in that form and/or that format.

1.3.3 In the event of certain failures (referred to in Clause 5) of Rainbow, Metering Communications shall be (and are permitted to be) given in accordance with Clause 5.

1.3.4 Where a Metering Communication which is required to be given as a Batch Transfer Communication or Web communication (and is not permitted to be given by another means except pursuant to Clause 1.3.3) is not given in accordance with the requirements of this Agreement and the Rainbow MAM Manual, and as a result is not properly received by the intended recipient, it shall be deemed not to have been given and shall be of no effect. Where the intended recipient becomes aware of any such failed communication it will inform the sending Party accordingly as soon as reasonably practicable (but in any event within 2 (two) Working Days) and the sending Party will take appropriate action to avoid repetition of such failure.

1.3.5 The failure of a Rainbow Customer or National Grid to comply with a requirement that a Metering Communication be given as a Batch Transfer Communication or Web Communication, or as to the form or format in which such Batch Transfer Communication or Web communication is to be given, shall not of itself be a breach of the Metering Agreements (but without prejudice to Clause 1.3.4 or to any breach which may result from the failure to give the Metering Communication).

1.4 CUSTOMER AGENTS

1.4.1 Customers acknowledge that National Grid may permit Customer Agents to have access to and use of Rainbow acting as a representative of the Rainbow Customer.

1.4.2 Such Customer Agent will cease to have such access on the date upon which (i) the Customer ceases to be a Rainbow Customer or (ii) National Grid receives notice from the Customer informing National Grid that the appointment of its Customer Agent has been terminated.

1.5 COMMENCEMENT OF AGREEMENT

- 1.5.1 This Agreement shall be effective on the date (the “**Effective Date**”) which is the last to occur of the following:
- (a) signature of the Provision and Maintenance Agreement or the Network Metering Equipment Agreement 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.
- 1.6 HELP DESK
- 1.6.1 National Grid will provide a response facility (“**Help Desk**”), with suitably trained personnel and adequate resources to meet reasonable requests made by Rainbow Customers, which will assist Rainbow Customers in identifying the nature and cause of any operational problems experienced in accessing or using Rainbow, as outlined in Schedule Two.
- 1.6.2 No communication by or to the Help Desk shall take effect as a Metering Communication.
- 1.7 OPERATIONAL SECURITY
- 1.7.1 Each Rainbow Customer and National Grid undertakes to implement and maintain appropriate security procedures and measures to prevent unauthorised access to or use of Rainbow and to ensure the protection of Metering Communications against the risk of resulting alteration, delay, disruption or loss.
- 1.7.2 If a Rainbow Customer becomes aware that (notwithstanding Clause 1.7.1) any unauthorised access to or use of Rainbow has or may have occurred, it shall promptly by telephone so notify National Grid’s Help Desk.
- 1.7.3 If National Grid becomes aware that (notwithstanding Clause 1.7.1) any unauthorised access to or use of Rainbow has or may have occurred, (including where there may have been unauthorised access to information relating to such Rainbow Customer) it shall promptly by telephone, or electronic mail, so notify any Rainbow Customer who may be affected thereby.
- 1.7.4 Upon any notification under Clause 1.7.2 or 1.7.3, National Grid and the relevant Rainbow Customer(s) shall discuss what steps if any may be appropriate to reduce the risk of any further unauthorised access to or use of Rainbow, and the extent to which any modification may be appropriate in the light thereof and take such steps as soon as reasonably practicable.
- 1.7.5 If through Rainbow, the Customer as a Rainbow Customer obtains or receives unauthorised access to information concerning another Rainbow Customer, or receives a Metering Communication sent to another Rainbow Customer, the Customer will promptly so inform National Grid and will in the case of any Metering Communication make no further copies, destroy any copy accidentally made (including in the case of Web Communications close the screen on which such information or communication appears and in the case of a Batch Transfer

Communication delete the same from its Rainbow Customer Equipment and any other equipment) and make no further use thereof.

1.8 VIRUS PROTECTION

1.8.1 National Grid and each Rainbow Customer shall:

- (a) implement and maintain policies and procedures in accordance with accepted industry practice designed to prevent harmful code or programming instruction(s):
 - (i) from being transmitted to the other or incorporated into Rainbow or into any computer program material or medium delivered to the other by reason of anything done by such Party pursuant to this Agreement; or
 - (ii) if received by it from the other, from being incorporated into its own computer hardware or software; and
- (b) promptly notify the other by telephone, or electronic mail, if it knows or has any reason to believe that (notwithstanding Clause (a)) any such code or instruction has been so transmitted or incorporated or received.

1.9 PLANNED RAINBOW DOWNTIME

1.9.1 To enable National Grid to operate and maintain Rainbow, on each Day and/or particular Days Rainbow, or particular parts of Rainbow, will not be operational at certain times and for certain periods ("**Planned Rainbow Downtime**") specified in or determined in accordance with Schedule Three, Part 1.

1.9.2 During Planned Rainbow Downtime, Rainbow Customers and National Grid will not be able to have access to or use Rainbow or the relevant part thereof. Accordingly during such period Rainbow Customers will not be able to make Web Communications and although Rainbow Customers will be able to make Batch Transfer Communications, National Grid will not process any Batch Transfer Communications during Planned Rainbow Downtime.

2. EQUIPMENT AND OPERATIONAL REQUIREMENTS

2.1 INTRODUCTION

2.1.1 This Clause 2 and Schedule One and Four sets out requirements (in respect of the provision of computer hardware, telecommunications facilities and equipment and computer software, and operational requirements) applicable to Rainbow Customers in relation to access to and use of Rainbow.

2.1.2 Rainbow has been designed to function:

- (a) on and with certain hardware and software configurations; as described in Schedule Four; and
- (b) in accordance with defined protocols as described in the Rainbow MAM Manual.

2.2 RAINBOW CUSTOMER EQUIPMENT

2.2.1 It is the responsibility of each Rainbow Customer, at its expense to obtain and secure that there are installed at its premises and maintained and from time to

time modified, upgraded or replaced, the computer hardware and other equipment, software and telecommunication facilities, and the other facilities and resources, necessary to enable the Rainbow Customer to access and use Rainbow and transmit, receive, translate, record and store Batch Transfer Communications and Web Communications.

- 2.2.2 National Grid and each Rainbow Customer shall take all reasonable steps:
- (a) to secure that the equipment, software and facilities which are installed in connection with Rainbow are adequately protected against damage and security risks; and
 - (b) to implement and maintain at its premises the operational environment required for the operation of the Rainbow Network.
- 2.2.3 The Rainbow Customer shall not access or use Rainbow other than by means of and in accordance with the requirements set out in this Agreement.
- 2.2.4 Except in so far as provided by National Grid in accordance with Clause 2.2.6 and 2.2.7, it is the responsibility of the Rainbow Customer to ensure that the Rainbow Customer Equipment complies with the specifications and satisfy the configurations described in Schedule Four.
- 2.2.5 Clause 2.2.1 is without prejudice to any term referred to in Clause 2.2.7 pursuant to which the cost of the provision and maintenance of any National Grid Available Equipment is to be borne by National Grid.
- 2.2.6 Upon request by a Rainbow Customer (by notice to National Grid and otherwise subject to and in accordance with Schedule Four) National Grid will provide any National Grid Available Equipment.
- 2.2.7 The terms upon which National Grid provides or maintains any National Grid Available Equipment, shall be those set out in Schedule Four or otherwise agreed between National Grid and the Rainbow Customer.
- 2.2.8 The means of telecommunication to be used for the purposes of the Rainbow Network, including the telecommunication protocols and requirements will be as set out in the Enhanced IX User Guidelines for Use with Rainbow.

2.3 AUTHORISED REPRESENTATIVE

- 2.3.1 an Authorised Representative shall have access to and use of certain parts of Rainbow on behalf of the Rainbow Customer as set out in the Web Portal User Guidelines ("**Individual Access Parts**").
- 2.3.2 Each Rainbow Customer shall designate, as set out in the Management of External Access to Rainbow document, one or more representatives of that Rainbow Customer as having authority to access and use, on behalf of that Rainbow Customer, Individual Access Parts.
- 2.3.3 A designation, and any withdrawal of the designation, of a representative under Clause 2.3.2 shall be made by the nominating Rainbow Customer by Conventional Notice to National Grid specifying:
- (a) the name of the representative;

- (b) the date (not, unless National Grid shall agree otherwise, being less than 5 (five) Working Days after such notification is given) with effect from which such designation or withdrawal is to take effect, provided that upon the Rainbow Customer's request in exceptional circumstances National Grid will endeavour to accommodate notice of a lesser period, in respect of such matter.
 - 2.3.4 A representative designated under Clause 2.3.2 shall become an Authorised Representative with effect from the date when a Rainbow Identity is issued for his use in accordance with Clause 2.4.1(b).
 - 2.3.5 Subject to Clause 2.3.6, a Rainbow Customer shall not be entitled to have access to or use of Individual Access Parts of Rainbow other than by its Authorised Representatives.
 - 2.3.6 Where, in accordance with any relevant requirements of Schedule One, any access to or use of any individual access part of Rainbow by a Rainbow Customer is initiated by a computer system of the Rainbow Customer on an automated basis pursuant to an arrangement made by an Authorised Representative, such access or use shall be treated as being by such Authorised Representative.
- 2.4 CUSTOMER IDENTIFICATION AND PASSCODE
- 2.4.1 National Grid shall issue to each Rainbow Customer in accordance with Schedule One
 - (a) a Rainbow Identity to such Rainbow Customer; and
 - (b) upon receipt of notice from a Rainbow Customer of a designation under Clause 2.3.3, a Rainbow Identity for the use of the representative of the Rainbow Customer designated in such notice in respect of Individual Access Parts of Rainbow.
 - 2.4.2 A Rainbow Customer shall be responsible for the actions of persons to whom it may make known its Rainbow Identity for access to Rainbow, and of its Authorised Representatives, and for the security of its and of each of its Authorised Representatives' Rainbow Identities, which shall not be assigned or transferred or made known to any third party, nor (in the case of a Rainbow Identity under Clause 2.4.1(b)) to any representative of the Rainbow Customer other than the Authorised Representative for whose use it was issued.
 - 2.4.3 National Grid shall take reasonable steps to ensure the confidentiality and security of each Rainbow Identity, and shall not disclose it to third parties. In the event of a disclosure of a Rainbow Identity National Grid shall take all reasonable steps to notify the Rainbow Customer and to provide it with a new Rainbow Identity as soon as reasonably practicable.
 - 2.4.4 For security reasons, in the circumstances described in and otherwise in accordance with the Schedule One, a new Rainbow Identity may be issued to a Rainbow Customer or an Authorised Representative.

2.4.5 National Grid shall be entitled to assume that any person using a Rainbow Customer's Rainbow Identity under Clause 2.4.1(a), and any Authorised Representative of a Rainbow Customer, is fully authorised to access and use Rainbow (and in particular to initiate, authorise and transmit, and to receive or access for the purposes of receiving, Batch Transfer Communications and Web Communications); and any Batch Transfer Communication or Web Communication transmitted by such a person or (as the case may be) an Authorised Representative shall be treated as given by the Rainbow Customer.

2.5 TEMPORARY INHIBITION OF ACCESS

2.5.1 Where at any time:

- (a) a Rainbow Customer is not complying with any requirement of this Agreement or the Rainbow MAM Manual in respect of access to or use of Rainbow;
- (b) such non-compliance does not result from:
 - (i) any action by National Grid, other than an action which it is required to take or might reasonably be expected to take to comply with a requirement of this Agreement or the Rainbow MAM Manual; or
 - (ii) a failure by National Grid to comply with a requirement of this Agreement or the Rainbow MAM Manual; and
- (c) in the reasonable opinion of National Grid such non-compliance is resulting in or will result in material disruption to the access to or use of Rainbow by other Rainbow Customers and/or National Grid;

an appropriately authorised representative within National Grid may take any reasonable steps to inhibit or (but only where appropriate) discontinue access to Rainbow by the defaulting Rainbow Customer.

2.5.2 National Grid will notify a Rainbow Customer by telephone (followed by facsimile, or electronic mail) of any steps under Clause 2.5.1 wherever practicable before and in any event as soon as practicable after taking such steps; and will restore the Rainbow Customer's access to Rainbow promptly upon the Rainbow Customer demonstrating to National Grid's reasonable satisfaction that the non-compliance referred to in Clause 2.5.1(c) has ceased to occur and that the Customer is taking all necessary steps to prevent its reoccurrence.

2.6 TERMINATION

The Customer shall cease to be a Rainbow Customer upon the date it ceases to be a Customer in respect of all the Metering Agreements (the "**Termination Date**"). In such case National Grid will deny further access to Rainbow and post termination invoices may be validly processed by email, facsimile, or post.

2.7 DISASTER RECOVERY

National Grid and the Rainbow Customer shall each maintain disaster recovery procedures including back up facilities.

3. ACCESS TO AND USE OF THE RAINBOW MAM MANUAL

3.1 Without prejudice to Clause 7:

3.1.1 National Grid has contributed to the creation and development of certain formats and processes which are incorporated in the Rainbow MAM Manual and any copyright arising in respect of any such part shall vest in National Grid;

3.1.2 The Customer has contributed to the creation and development of certain formats and processes which are incorporated in the Rainbow MAM Manual and hereby grants to National Grid ownership of copyright arising in respect of such formats and processes;

3.1.3 National Grid hereby grants to the Customer (and to any third party whom the Customer has authorised or may in future authorise to act on its behalf) a perpetual, non-exclusive, irrevocable, royalty-free licence (which shall survive the Termination Date) to (i) make use of the Rainbow MAM Manual for the purposes of performance of implementation of the Agreement and the Metering Agreements and its Business Activities (ii) and use, and copy such formats and processes contained in the Rainbow MAM Manual for use in relation to its Business Activities and metering activities in the member states of the European Union and the European Free Trade Association;

3.1.4 Where National Grid wishes to commercially exploit any copyright the ownership of which has been transferred to National Grid in accordance with Clause 3.1.2 it shall notify all its Rainbow Customers accordingly, consult with them in respect of the arrangements for such exploitation (including intellectual property licence terms, cost recovery and revenue sharing) and obtain their prior written agreement in respect of such arrangements.

3.2 Each Rainbow Customer shall:

(a) reproduce National Grid's copyright notices so marked on the Rainbow MAM Manual on any copy made by it of the Rainbow MAM Manual;

(b) not delete, remove or in any way obscure any proprietary notices of National Grid on the Rainbow MAM Manual; and

(c) without prejudice to the foregoing take all such other reasonable steps which shall from time to time be necessary in the reasonable opinion of National Grid to protect the intellectual property rights of National Grid in the Rainbow Manual except where the Rainbow Customer is in breach of Clause 3.2 (a) or (b) such steps shall not require a Rainbow Customer to take or join in taking any legal proceedings:

(1) where the Rainbow Customer is (in its reasonable opinion) justified in declining to do so on the grounds that it does not wish to be involved in legal proceedings against the particular third Party(ies) involved; and

(2) except on terms that National Grid indemnifies the Rainbow Customer in respect of all costs and liabilities incurred in so doing and on such other terms as the Rainbow Customer may reasonably require.

4. COMMUNICATIONS

4.1 BATCH TRANSFER COMMUNICATIONS

- 4.1.1 The form in which particular Batch Transfer Communications are to be given as a Batch Transfer Communication is described in the Rainbow MAM Manual.
- 4.1.2 Where a Batch Transfer Communication is received by National Grid after the last processing time as described in the Rainbow MAM Manual, it will be processed by National Grid on the next processing time and this may be the next Working Day.
- 4.1.3 A message transmitted as a Batch Transfer Communication will reside at the recipient's Gateway, and can be accessed by the recipient.
- 4.1.4 A Batch Transfer Communication will remain accessible by a Rainbow Customer or National Grid at its Gateway until deleted by it or deleted automatically.
- 4.1.5 Each Rainbow Customer and National Grid shall be responsible for accessing (from its Gateway) Batch Transfer Communications transmitted to it at such intervals as shall be consistent with the Batch Schedule Table of the Rainbow MAM Manual (having regard without limitation to Clause 4.2.4).
- 4.1.6 Each Gateway incorporates facilities by which:
 - (a) where a Batch Transfer Communication is transmitted, a message is automatically transmitted from the recipient's Gateway to the sender's Gateway acknowledging receipt thereof;
 - (b) if a Batch Transfer Communication is transmitted and no acknowledging message (in accordance with Clause 4.1.6(a)) is received at the sender's Gateway, the Batch Transfer Communication will be re-transmitted.
- 4.1.7 Subject to Clause 4.4.2(e), a Batch Transfer Communication shall be deemed to have been received by the recipient at the time the message referred to in Clause 4.1.6(a) acknowledging receipt thereof is received at the sender's Gateway.
- 4.1.8 Communications by batch files will be via Enhanced IX unless and until access to this facility is withdrawn (in which case an alternative communications facility will be made available). Any withdrawal notice period will be no less than:
 - (a) 24 months, where National Grid requires the Customer to make a financial contribution to the funding of the alternative communications facility; and
 - (b) 12 months, where National Grid does not require the Customer to make any such financial contribution;unless in either case agreement has been reached between Rainbow Customers and National Grid to shorten such notice period.

4.2 AUDIT TRAIL FOR BATCH TRANSFER COMMUNICATIONS

- 4.2.1 National Grid will retain (i) a complete and chronological record of all Batch Transfer Communications it has transmitted or received on any Day, for a period of 3 months following such transmission or receipt (ii) details of data in each file it has transmitted or received on any Day for a period of 10 Days following such transmission or receipt.

- 4.2.2 National Grid and each Rainbow Customer shall ensure that electronic or computer records containing Batch Transfer Communications are readily accessible and are capable of being reproduced in a human readable form and of being printed, if required.
- 4.2.3 Records made by the Automatic Audit Trail Facility of the transmission or receipt of Batch Transfer Communications, and (as respects Batch Transfer Communications the transmission or receipt of which is not so recorded) other records retained by National Grid and/or Rainbow Customers in accordance with this Clause 4.2, shall be prima facie evidence of the transmission or receipt of such Batch Transfer Communications.
- 4.2.4 In the event of a dispute between National Grid and a Rainbow Customer as to any Metering Communication the sending of which was (as a Batch Transfer Communication) recorded by the Automatic Audit Trail Facility, National Grid will, as soon as reasonably practicable after a request to do so, provide to the Rainbow Customer a copy of what is recorded (in respect of such communication) in such facility.

4.3 WEB FUNCTIONALITY

- 4.3.1 Access to the Rainbow System is permitted by means of Web Communication as an alternative method to Batch Transfer Communication in accordance with the circumstances set out in the Rainbow MAM Manual (Transaction Request Communication Alternatives Matrix) and details of how to access the web interface to the Rainbow System are set out in the Web Portal User Guidelines.
- 4.3.2 Web Communications will be given through an Internet facility which will provide on-line access to Rainbow, through which Rainbow Customers will only be able to access data or communications associated with their own portfolio. The Rainbow Customer shall ensure that it complies with any requirements in connection with the use of web browser as described in Schedule Four.
- 4.3.3 For Web access, Rainbow has been designed to support 20% concurrency for external users (i.e. as a percentage of the total number of external user licences it is assumed that no more than 20% will be executing a transaction at exactly the same instant). For further clarity, concurrency for the Web is not considered to be the period during which a user is logged on but the period of actually executing a transaction.

4.4 BATCH TRANSFER AND WEB COMMUNICATIONS

- 4.4.1 Where National Grid or a Rainbow Customer has transmitted a Batch Transfer Communication or Web Communication and does not receive an acknowledging message, subject always to, and in parallel with the actions in, Clause 4.1.6(b), Clause 4.4.2 shall apply.
- 4.4.2 In the circumstances in Clause 4.4.1:
 - (a) the sender of the Batch Transfer Communication or Web Communication shall, as soon as it becomes aware that no acknowledging message was received, endeavour to contact (by telephone or facsimile, or electronic

mail) and so notify the intended recipient of that Batch Transfer Communication or Web Communication respectively as soon as reasonably practicable;

- (b) following such notification the sender and the intended recipient shall immediately take all reasonable steps (other than steps involving the investigation of equipment installed at the other's premises) to identify the cause of the recipient's non-receipt of an acknowledging message, and if either of them shall so identify such cause it shall promptly so inform the other (by telephone or facsimile);
- (c) upon the identification of such cause the Party responsible for such cause shall promptly remedy any non-compliance with any operational requirement for the proper functioning of the Rainbow Network and take any other reasonable steps available to it to restore proper communication between their respective Gateways;
- (d) as soon as such communication has been restored, the sender shall retransmit the Batch Transfer Communication or Web Communication;
- (e) unless the sender admits responsibility for the failure of transmission or the intended recipient is able to demonstrate, that the sender had failed to comply with any operational requirement for the proper functioning of the Rainbow Network, the Batch Transfer Communication or Web Communication when retransmitted under Clause (d) shall be deemed to have been received by the recipient at the time (as logged by the sender's Gateway) of the sender's first transmission referred to in Clause 4.4.1.

4.4.3 Notwithstanding contractual limitations as may be specified in the Metering Agreements, so as to avoid potential disruption to other Rainbow Customers, otherwise than by prior written agreement of National Grid (such agreement not to be unreasonably withheld) the Rainbow Customer agrees not to exceed the limitations on file transfer set out in Schedule Three Part 2. Any request to send any quantity in excess of the limits set out in Schedule Three, Part 2 shall be given to National Grid by no less than 2 (two) Working Days prior notice.

5. CONTINGENCY ARRANGEMENTS

5.1 GENERAL

5.1.1 National Grid and Rainbow Customers agree to adopt and (in the event of a Metering Contingency) to implement the relevant Contingency Procedures.

5.1.2 A Metering Contingency may (where so specified in the Contingency Procedures) include:

- (a) a degradation in performance of Rainbow which falls short of a failure thereof (where the Contingency Procedures are likely, having regard to such degradation, to provide a superior method of communicating);
- (b) Rainbow Failure.

5.2 METERING COMMUNICATIONS

- 5.2.1 In the event of a Metering Contingency, where so provided in the Contingency Procedures, a Metering Communication which would normally be required to be given as a Batch Transfer Communication or Web Communication may (notwithstanding any other provision of the Metering Agreements or the Rainbow MAM Manual) be given by any means of alternative communication provided for in the Contingency Procedures.
- 5.2.2 Except as provided in the Metering Agreements or the Contingency Procedures, the provisions of the Metering Agreements will apply in and will not be affected by a Metering Contingency; and in particular any requirements under the Metering Agreements or the Rainbow MAM Manual as to the timing and content of any Metering Communication, and the giving of communications by means other than Rainbow, will continue to apply.
- 5.2.3 Under the Contingency Procedures communication resources of National Grid and Customers will be used for the purposes of facilitating the continued giving (in accordance with the Contingency Procedures) of certain kinds of Metering Communications in a Metering Contingency, and so may not be available for other kinds of Metering Communications; and accordingly in any case where the Contingency Procedures do not make provision for the giving of a particular kind of Metering Communication (which is required to be given as a Batch Transfer Communication or Web Communication), it may not be possible for Metering Communications of that kind to be given.

5.3 SHORT-TERM SUSPENSION OF ACCESS

Where at any time a failure in or degradation in the performance of any part of Rainbow is likely to occur, or such a degradation has occurred, and in National Grid's judgment acting reasonably it will be possible to prevent such failure or degradation, or remedy such degradation, by suspending access to and use of Rainbow or a part thereof at a time and for a period which will not result in significant inconvenience to Rainbow Customers in the use of Rainbow for making Metering Communications:

- (a) National Grid shall be entitled, without initiating any Contingency Procedures (but subject to Clause (b)) which otherwise would be applicable, to suspend access to and use of Rainbow by notification to Rainbow Customers and shall where reasonably practicable provide prior notice of such suspension;
- (b) if at any time subsequently it becomes apparent to National Grid that such suspension will continue for a period or at a time at which it will result in such inconvenience to Rainbow Customers, any applicable Contingency Procedures will be initiated.

5.4 INFORMATION CIRCULATION

National Grid shall inform by electronic mail all Rainbow Customers as soon as reasonably practicable (i) when suspension in accordance with Clause 5.3 occurs and (ii) when the problem which caused the suspension is resolved.

6. FAILURE OF RAINBOW

6.1 PERFORMANCE LEVELS

Rainbow has been designed to operate with a view to achieving not less than:

- (a) a level of availability of 95% of the time during Operational Service Hours;
- (b) a level of availability of 90% of the time outside Operational Service Hours in the period not covered by Planned Rainbow Downtime.

6.2 Notwithstanding the design criteria set out in 6.1, National Grid and Customers agree and acknowledge:

- (a) that it would not be economical for Rainbow to be designed, built or operated so as to reduce the probability of its failure below a certain level and accordingly that such failures may occur; and
- (b) that the Enhanced IX Network has been designed for the levels of usage set out in Schedule 3 part 2, and that higher usage may give rise to failures in transmission.

6.3 National Grid liability to the Rainbow Customer for Rainbow Failure is set out in Schedule Five.

7. RAINBOW, LEGAL PROCEEDINGS AND INDEMNITIES

7.1 INTRODUCTION

7.1.1 A Rainbow Customer may for the purposes contemplated by the Metering Agreements or the Rainbow MAM Manual but not otherwise have access to and use Rainbow which entitlement shall terminate automatically upon that Rainbow Customer ceasing to be a Rainbow Customer for any reason.

7.1.2 Rainbow, any accompanying documentation, and all copyright and other intellectual property rights of whatever nature therein are and shall at all times remain as between National Grid and each Rainbow Customer the property of National Grid.

7.2 RESTRICTIONS ON USE

7.2.1 A Rainbow Customer shall not, and shall not attempt to, download, delete, modify or knowingly damage or access for any purpose other than as authorised under this System User Agreement, any software program comprised in the Rainbow System or installed on any equipment (other than the National Grid Available Equipment) forming part of Rainbow.

7.3 INDEMNITIES

7.3.1 Each Rainbow Customer shall indemnify and hold harmless National Grid from and against any and all loss, liability, damage, claim, action, proceeding, cost and expense resulting from any breach by such Rainbow Customer of Clause 3.2.

7.3.2 Where any claim has been made against National Grid (the "**Indemnified Party**") on the basis of facts, events or circumstances which are or may be the subject of the indemnity given under Clause 7.3.1 by a Rainbow Customer (the "**Indemnifying Party**"), and the Indemnified Party intends to enforce such indemnity in respect of such claim, the Indemnifying Party:

- (a) if so requested by the Indemnified Party, agrees to provide reasonable assistance, not being financial assistance (but without prejudice to the indemnity itself), to the Indemnified Party in defending the claim;
- (b) agrees that where it may reasonably be concluded, having regard to the extent to which the Indemnified Party has defended the claim, from a finding of a court of competent jurisdiction (including any court of appellate jurisdiction) against the Indemnified Party that the Indemnifying Party was in breach of Clause 3.2 such breach will be taken to be established by such finding of such court;
- (c) acknowledges that there will be circumstances in which it is commercially appropriate that the Indemnified Party should settle or cease to defend such claim, and agrees (if requested) to discuss in good faith with the Indemnified Party such settlement or ceasing to defend, or any other arrangements by which the financial and other burden of continued defence would be borne by the Indemnifying Party.

8. INFORMATION AND CONFIDENTIALITY

- 8.1 National Grid shall secure that any written information relating to the affairs of a Rainbow Customer which is obtained by National Grid (whether delivered by hard copy or electronic means) pursuant to the implementation or performance of this Agreement is:
- (a) not disclosed to any person other than an officer or employee of National Grid whose province it is to know the same, or a professional adviser of or consultant to National Grid for the purpose of advising National Grid, or any affiliate of National Grid, or a Party who has appointed the Rainbow Customer to be its agent for the purposes of this Agreement; and
 - (b) not used by National Grid for any purpose other than one expressly contemplated by this System User Agreement or the Metering Agreements.
- 8.2 The Rainbow Customer shall secure that all written information relating to the affairs of National Grid or of another Rainbow Customer (whether delivered by hard copy or electronic means) which is obtained by the Rainbow Customer pursuant to the implementation or performance of this Agreement is:
- (a) not disclosed to any person other than an officer or employee of the Rainbow Customer whose province it is to know the same, or a professional adviser of or consultant to that Rainbow Customer for the purpose of advising the Rainbow Customer, or a Party for whom the Rainbow Customer is acting as agent for the purposes of this Agreement; and
 - (b) not used by the Rainbow Customer for any purpose other than one expressly contemplated by this System User Agreement or the Metering Agreements.
- 8.3 Where information is disclosed by National Grid as permitted under Clause 8.1 or by a Rainbow Customer as permitted under Clause 8.2, the disclosing Party shall (without prejudice to its obligations under Clause 8.1 or 8.2) ensure that the person to whom that information is disclosed is aware of the disclosing Party's obligations under Clause 8.1

- or 8.2 in relation thereto and does not disclose the information to any other person nor use it other than for the purpose for which its use is permitted by the disclosing Party.
- 8.4 Clauses 8.1 to 8.3 shall not apply to the disclosure or use of information to which (i) the parties have consented in writing or (ii) is in or enters into the public domain otherwise than by a breach of this Agreement, (iii) is already in the possession of the receiving Party at the time of disclosure by the other Party, or (iv) is obtained from a third Party who is free to disclose it, or (v) is required to be disclosed by law or by or pursuant to the rules or requirements of any government authority, or any order or government licence, or any judicial process or other arbitral process or tribunal having appropriated jurisdiction.
- 8.5 Nothing in:
- (a) Clause 8.1 shall apply to the disclosure of information by National Grid:
 - (i) to any person to the extent such disclosure is required pursuant to any of the Metering Agreements; or
 - (ii) to any Rainbow Customer where such information is contained in a Batch Transfer Communication or Web Communication transmitted to such Rainbow Customer in accordance with the requirements contained in any of the Metering Agreements, or is accessible by such Rainbow Customer by or from Rainbow in accordance with any function or facility of Rainbow described in the Rainbow MAM Manual.
 - (b) Clause 8.2 shall apply to the disclosure of information by the Rainbow Customer:
 - (i) to any person to the extent such disclosure is required pursuant to any of the Metering Agreements; or
 - (ii) to any other Rainbow Customer where such information is accessible by such Rainbow Customer by or from Rainbow in accordance with any function or facility of Rainbow described in the Rainbow MAM Manual.
- 8.6 Where a Party has complied with the requirements of Schedule One relating to operational security and notwithstanding such compliance a person obtains confidential information by unauthorised access to any element of Rainbow for the security of which that Party is responsible, that Party shall not be in breach of Clause 8.1 or 8.2 by virtue of such person having so obtained that information.
- 8.7 The provision of this Clause 8 shall continue to bind the parties for a period of 3 years after termination of this Agreement.
- 8.8 Nothing in this Agreement shall be construed as requiring (i) National Grid to disclose or use any information in breach of any requirement of the National Grid GT Licence or (ii) the Rainbow Customer to disclose or use information in breach of a requirement of the Supplier Licence.
- 8.9 Where the Rainbow Customer uses National Grid Available Equipment through a Shipper, the Rainbow Customer shall be responsible for ensuring that any of its confidential information is not available for view by such Shipper.

9. LIABILITY

- 9.1 Without prejudice to any provision of this Agreement which provides for an indemnity or for any other right or remedy (including the right of either party to exercise a remedy arising from breach of Clause 8), each Party agrees and acknowledges that no Party shall be liable (to the extent permitted by law) to the other Party for any loss arising from any breach of this Agreement.
- 9.2. No Party shall in any circumstances be liable in respect of any breach of this Agreement to the other Party for any loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill, or increased cost of working, or any indirect or consequential loss or any loss arising from the liability of the other Party to any other person arising out of or in accordance with this Agreement.
- 9.3 The rights and remedies of the parties pursuant to this Agreement exclude and are in place of any rights or remedies of the parties in tort (including negligence and nuisance) or misrepresentation in respect of the subject matter of this Agreement; and accordingly but without prejudice to Clause 9.1, each Party (to the fullest extent permitted by law) waives any rights or remedies, and releases the other Party from any duties or liabilities arising in tort or misrepresentation in respect of the subject matter of this Agreement.
- 9.4 For the avoidance of doubt, nothing in this Clause 9 shall prevent either Party from or restrict it in enforcing any obligation under or pursuant to this Agreement.
- 9.5 Each provision of this Clause 9 shall be construed as a separate and severable contract term, and shall survive termination of this Agreement.
- 9.6 Each Party agrees and acknowledges that the provisions of this Agreement have been the subject of discussion and negotiation and that the remedy conferred by such provisions (including Schedule Five) is exclusive of and is in substitution for any remedy in damages in respect of such breach or the event or circumstance giving rise thereto.

10. FORCE MAJEURE

10.1 Meaning of Force Majeure

10.1.1 For the purposes of this Agreement, subject to Clause 10.1.2, "**Force Majeure**" shall mean any event or circumstance, or any 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 Rainbow System User Agreement, 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.

10.1.2 Without prejudice to the generality of Clause 10.1.1 either Party will be entitled to claim relief through Force Majeure in the event of a major gas emergency incident requiring the attendance of National Grid's personnel in support of the emergency service obligation set out in the Relevant Gas Transporter's Licence.

10.1.3 Lack of funds (however caused) of a Party shall not be Force Majeure.

10.1.4 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 Clause 10.1.1 if such person were the Affected Party.

10.2 Effect of Force Majeure

10.2.1 Subject to Clause 10.2.2, the Affected Party (from the time of occurrence of the Force Majeure) shall be relieved from liability (including any requirement under this Agreement 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 which is caused by or results from Force Majeure.

10.2.2 The Affected Party shall be relieved from liability under Clause 10.2.1 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.

10.3 Information

10.3.1 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 Clause (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 occurrence.

11. NOTICES AND COMMUNICATIONS

11.1 NOTICES BY DELIVERY, POST OR FACSIMILE

- 11.1.1 References in this Clause 11.1 to a notice are to any Metering Communication or other notice or communication to be given by one Party to the other under this Agreement, other than one which is given as a Batch Transfer Communication, Web Communication, or by telephone.
- 11.1.2 Any notice shall be in writing and shall be addressed to the recipient Party at the recipient Party's address or facsimile number referred to in Clause 11.1.3, and marked for the attention of the representative (identified by name or title) referred to in that Clause, or to such other address or facsimile number and/or marked for such other attention as the recipient Party may from time to time specify by notice given in accordance with this Clause 11.1 to the Party giving the notice.
- 11.1.3 The initial address or facsimile number of a Party, and representative for whose attention notices are to be marked, shall be the same as that specified by a provision pursuant to the Provision and Maintenance Agreement, or the Network Metering Equipment Agreement (as applicable), Schedule One, paragraph 1.2(a)(iii) for a Customer or Schedule One, paragraph 2.2 for National Grid.
- 11.1.4 Any notice given by delivery shall be given by letter delivered by hand, and any notice given by post shall be sent by first class prepaid post (airmail if overseas).
- 11.1.5 Any notice shall be deemed to have been received:
 - (a) in the case of delivery by hand, when delivered; or
 - (b) in the case of first class prepaid post, on the second Working Day following the Working Day of posting or (if sent airmail overseas or from overseas) on the fifth Working Day following the Working Day of posting; or
 - (c) in the case of facsimile, on acknowledgement by the recipient Party's facsimile receiving equipment or, if that is not available, as evidenced by the notifying Party's facsimile transmission report.
- 11.1.6 Where a notice is sent by facsimile (but without prejudice to Clause 11.1.5(c)):
 - (a) the Party giving the notice shall if requested by the recipient Party, resend as soon as reasonably practicable the notice by facsimile; and
 - (b) in the case of a Termination Notice, National Grid will in any event, within 2 Working Days following the sending of such facsimile, send to the

Customer a copy of the notice by first class prepaid post (airmail if overseas);

- (c) in the case of a Discontinuance Notice, the Customer will in any event, within 2 Working Days following the sending of such facsimile, send to National Grid a copy of the notice by first class prepaid post (airmail if overseas).

11.1.7 A Party may in accordance with Clause 11.1.2 specify by notice different addresses or facsimile numbers and representatives for the purposes of notices of different kinds or relating to different matters.

11.1.8 For the avoidance of doubt, where a notice is given by facsimile 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.

11.2 COMMUNICATION BY TELEPHONE

11.2.1 For the purposes of enabling Metering Communications to be given (where required or permitted to be so given) by telephone:

- (a) National Grid shall provide to the Customer and the Customer shall provide to National Grid not more than 3 telephone numbers (or such other number as they may agree) and details (by name or title) of the representative to whom the Party giving such a communication should speak;
- (b) each Party shall use reasonable endeavours to ensure that a Party seeking to give such communication will at any time be able to contact a representative (of the first Party) by means of one of such telephone numbers;
- (c) National Grid and the Customer shall, if either of them shall so request, establish such further procedures as may be reasonable and appropriate for the purposes of ensuring:
 - (i) that a Metering Communication being given by telephone may be identified by the recipient as such; and/or
 - (ii) that such communications may be given securely, without delay and effectively.

11.2.2 Where a Party seeking to give a Metering Communication by telephone is unable to contact a representative of the receiving Party, such Party must give the communication by facsimile and the communication will not be deemed to have been given except in accordance with Clause 11.1.5(c).

11.2.3 Unless otherwise agreed between the relevant Parties a telephone notice may not be given as a message recorded on a telephone answering device.

11.2.4 Where a Metering Communication is given by telephone:

- (a) National Grid will promptly after the telephone communication is completed make and keep a record in which the time and content of the telephone notice is logged, but may do so by recording the telephone

communication where it has notified the Customer (on the occasion or on a standing basis) of its intention to do so;

- (b) the Metering Communication shall be treated as given at the time at which the telephone communication is completed.

11.2.5 A Party may in accordance with Clause 11.1.2 specify by notice different telephone numbers and representatives for the purposes of receiving by telephone Metering Communications of different kinds or relating to different matters.

12. DATA PROTECTION ACT

12.1 Definitions

For the purposes of this Clause 12, 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).

12.2 **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 Clause 12.
- (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.

12.3 **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;
 - (ii) 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;
 - (iii) 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 Clause 12.3 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.

12.4 **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.

12.5 **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.

12.6 **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 Clause 12.4.
- (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 Clause 12.6 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

12.7 **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 Clause 12.7(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.

12.8 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 Clause 12.8(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.

12.9 **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 Clause 12.9, "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.

12.10 **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 Clause 12.10 first comes into effect.

12.11 **Liability and indemnity**

- (a) Notwithstanding any other limitations on liability contained in this Agreement, and subject always to Clause 12.11(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 Clause 12.4 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 Clause 12.4.
- (b) For the avoidance of doubt, the liability of either Party pursuant to the indemnity in Clause 12.11(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.

13. **THIRD PARTY RIGHTS**

- 13.1 Except as provided in Clause 13.2 and subject to any rights which may accrue to any successor or permitted assign of the Parties, no provision of this Agreement 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.

- 13.2 The benefit of this Clause 13 insofar as and to the extent related to
- (i) 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 Clause 9 under the Contracts Act;
 - (ii) a breach of Clause 1.7.5 by the Customer, shall be conferred on any Rainbow Customer to the extent that such breach concerns the information of such other Rainbow Customer.
- 13.3 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.

14. ASSIGNMENT

- 14.1 Neither Party may assign its rights under this Agreement without the prior written consent of the other Party, not to be unreasonably withheld or delayed, save that where National Grid is assigning or novating its rights and obligations in whole or in part under any of the other Metering Agreements to facilitate the operation of any such other Metering Agreements, the Customer shall not refuse to give consent to the assignment or novation of this Agreement.

15. WAIVER

- 15.1 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.
- 15.2 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.

16. 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.

17. 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.

18. ENTIRE AGREEMENT

- 18.1 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 thereof, 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;
this 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.
- 18.2 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).
- 18.3 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 Clause 18.1(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 or Web 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.
- 18.4 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.
- 18.5 Each Party acknowledges that the terms of this Agreement shall not modify, replace or excuse a Party from complying with (to the extent applicable) any other obligation and requirements on that Party contained in the Metering Agreements, or in any other agreement between the parties.
- 18.6 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.
- 19. JURISDICTION**
- 19.1 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.

19.2 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 Clause 19.1 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.

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

20. METERING AGREEMENTS MODIFICATION PROVISIONS

This Agreement shall not be modified other than in accordance with Metering Agreements Modification Provisions.

21. GOVERNING LAW

This Agreement shall be governed by and construed in all respects in accordance with the English law.

22. MODIFICATION SCHEDULE

The coming into effect of Schedule Six, Parts A (Initial Amendments) and B (Consequential Amendments Upon Assignment/Transfer by National Grid) shall be conditional upon the entering into by National Grid, the Customer and UMS of the Tripartite Agreement, whereupon:

22.1 Schedule Six, Part A (Initial Amendments) shall be effective on and from the date specified in the Tripartite Agreement; and

22.2 Schedule Six, Part B (Consequential Amendments Upon Assignment/Transfer by National Grid) shall be effective subject to and in accordance with Clause 14.2 (as inserted by Schedule Six, Part A).

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:

SCHEDULE ONE
SECURITY ARRANGEMENTS

1. In respect of Batch Transfer Communications and Web Communications:
 - (a) The Rainbow Customer shall nominate a Local Security Officer (and a deputy to act in his/her absence) whose role it is to maintain the security of the Rainbow Customer Equipment, the Gateway and data at the Rainbow Customer's premises, to provide the operational contact point on security matters for National Grid, and to enable Rainbow System access to only Authorised Representatives at the Rainbow Customer's location.
 - (b) Passwords will be the means by which access to and use of Rainbow will be permitted.
 - (c) Detailed procedures and any other related security requirements will be as set out in the Management of External Access to Rainbow document and the Enhanced IX Operational Guidelines for Use with Rainbow
2. In respect of security arrangements:
 - (a) National Grid will provide the Customer with the Rainbow Identity and security code necessary to enable it to become a Rainbow Customer;
 - (b) using such security code, the Rainbow Customer's Local Security Officer may then send a request to National Grid requesting a number of Authorised Representatives;
 - (c) following verification of the request, National Grid will then promptly allocate the number of such Authorised Representatives allowed access to Rainbow on behalf of the Rainbow Customer and provide passwords to the Rainbow Customer for use by such Authorised Representatives;
 - (d) The Rainbow Customer will be responsible for allocating such passwords to each of its Authorised Representatives for access to Individual Access Parts and for monitoring and administering their use, and will be liable for, and indemnify National Grid, in respect of any non compliance.

SCHEDULE TWO
SERVICE LEVELS FOR HELP DESK OPERATION AND
RESOLUTION OF OPERATIONAL PROBLEMS

1. National Grid will have in place an auditable mechanism for receiving, escalating and resolving problems. Rainbow Customers must provide National Grid with the following information when registering a problem incident with the Help Desk:
 - (a) Full name
 - (b) Rainbow Customer
 - (c) Location
 - (d) Telephone Number
 - (e) Description of problem
 - (f) System or application identification

2. The relevant priority (P) level will be determined by National Grid after an assessment by the Help Desk in consultation with the caller. On recording the incident a reference number will be allocated and given to the caller. Thereafter the problem will be identified by this reference number. Individual calls will be dealt with on a "First In First Out" basis across all Rainbow Customers within a given priority level. Rainbow Customers will be kept informed of progress on their problems on a regular basis. On recording the incident as a PI priority level National Grid shall, as soon as reasonably practicable within Operational Service Hours, communicate the incident to all Rainbow Customers by electronic mail.

3. Problems will be prioritised as follows in respect of an individual Rainbow Customer:

Priority Level	Description
P1	Complete loss of service
P2	Major loss of service
P3	Significant loss of service
P4	Minor loss of service
P5	Work (and information) requests

4. The priority levels are determined in relation to the impact of the problem on users of the Rainbow System. The following descriptions illustrate the criteria used by National Grid to categorise Rainbow System problems:

P1 Complete loss of service

Loss of service which affects more than one Rainbow Customer, or if an overnight batch failure will affect the availability of an on-line system, or if data communications are down to one or more sites.

Examples: Loss of Rainbow mainframe; network communications down to a Rainbow Customer's office.

P2 Major loss of service

If users of the Rainbow System are encountering problems with response times, or there is a loss of service to an individual Rainbow Customer which affects all Authorised Representatives.

Examples: Rainbow is running slowly. A Rainbow Customer's gateway is non-operational.

P3 Significant loss of service

Loss of service to an individual Rainbow Customer which affects more than one but not all Authorised Representatives.

Example: Several Authorised Representatives have problems accessing Rainbow.

P4 Minor loss of service

One Authorised Representative is having problems accessing Rainbow. A check will be made to see if other Authorised Representatives in the same location are having similar problems (if the affected Authorised Representative is the only Authorised Representative for the Rainbow Customer on that site, the problem will be escalated to an IM5).

Examples: Password violation, general error messages.

If there is a problem, but it does not affect the operation of the service.

Example: an Authorised Representative is receiving poor response times. A check will be made to see if other Authorised Representatives in the same locations are having similar problems. If response time is more than 4 seconds, escalate to an IM5.

P5 Work (and information) requests

If the call has no impact upon the use of the service, such as general enquiries or general queries, in relation to the use of Rainbow.

Examples: A query on how to request access to new facilities, how to use a Rainbow screen.

5. The following list details the fix targets (as per impact). The targets shall be met on 90% of occasions. Times measured will be from the time the fault is registered with the Help Desk (the time of the call).

Impact	Time to Fix
P1	4 hours
P2	8 hours
P3	12 hours
P4	24 hours
P5	5 Days

Help Desk Hours shall be 8 a.m. to 8.30 p.m. on Working Days. Time to fix is measured as elapsed time during the Operational Service Hours. Without prejudice to the time to fix provisions above, National Grid will use reasonable endeavours to fix out of hours P1 service failures as soon as reasonably practicable.

6. P1 and P2 calls have a separate process of problem management within IS Operations to ensure priority treatment. Where there is a failure to meet the target resolution time for such priority calls National Grid or the Rainbow Customer may escalate such failure to a duty manager. Where a problem is escalated by National Grid to the duty manager, the Rainbow Customer will be informed and National Grid will issue the Rainbow Customer with a telephone number for contacting the duty manager directly.
7. If a Rainbow Customer is dissatisfied, and wishes to conduct further escalation, the Rainbow Customer should contact the Help Desk who will escalate the situation to the Hinckley Data Centre.

SCHEDULE THREE

PART 1 - PLANNED RAINBOW DOWNTIME

1. Planned Rainbow Downtime will occur between the hours of 1 a.m. and 3 a.m. on each Day or at such other time within a Day as National Grid may notify the Rainbow Customer from time to time by means of electronic mail, by giving no less than four weeks prior notice avoiding Operational Service Hours where practicable.
2. Following the occurrence of Planned Rainbow Downtime, a Metering Contingency, or shortterm suspension of access in accordance with Clause 5.3, National Grid shall process any back log of Batch Transfer Communications in the order in which they have been received by date stamp.

PART 2 - MAXIMUM DATA TRANSMISSIONS BY ENHANCED IX NETWORK

The maximum file size that can be transmitted is 10 Megabytes per individual data file

Period (hours)	Maximum total quantity of data to be transmitted (Megabytes)	Maximum number of files to be transmitted
1	10	20
4	20	40
12	30	60
24	60	120
48	120	240

**SCHEDULE FOUR
EQUIPMENT AND SOFTWARE REQUIREMENTS**

1. RAINBOW CUSTOMER EQUIPMENT

Introduction

This Schedule Four describes the hardware, software and telecommunications which are required to access Rainbow and the configurations for such equipment and software on which Rainbow has been designed and tested to operate. The precise requirements will vary depending on which of the two Rainbow services that the Rainbow Customer needs to access.

1.1 For access to the **CFTM/XFTM File Transfer** (supporting Batch Transfer Communication) service a Rainbow Customer requires:

- a PC file server (to fulfil the functions of the Gateway) with a registered IP address and Windows NT operating system
- a **Network Access Point** (NAP) with a registered IP address
- a telecommunication line
- the National Grid specified file transfer software package

The majority of this equipment and software is available from or through National Grid, as described in paragraphs 2 and 3 below.

1.2 For access to the **SAP Enterprise Portal** (supporting Web Communication) service a Rainbow Customer requires:

- a PC with a web browser configured for Internet access – either Microsoft Internet Explorer (IE) or Netscape’s Navigator

All content is delivered to the web browser using HTML, CSS, JavaScript and other standard web technologies.

The portal is certified to be accessed using the following operating systems/web browsers:

S. no	Operating System	Browsers	Version
1	Windows 95 Windows 98 (restricted) Windows ME WindowsNT4.0 SP6a Windows 2000 Windows XP	Internet Explorer	5,01 Service Pack 2 5.5 Service Pack 2
2	Windows NT 4.0 SP6a Windows XP Windows 2000	Internet Explorer	6.0x
3	Windows 95 Windows 98 (restricted) Windows NT 4.0 SP6a Windows 2000	Netscape	4.7x

The standard port for secure web sites (Port 443) will be used as **Secured Socket Layer (SSL)** will be used to encrypt all traffic.

2. RAINBOW CUSTOMER EQUIPMENT

2.1 The Rainbow Customer Equipment described in Paragraph 1 above may be classified into two categories:

- National Grid Available Equipment
- Rainbow Customer Hardware

2.2 National Grid Available Equipment

2.2.1 Access to Gateway may be available to a Rainbow Customer through a Shipper by means of the access a Shipper derives through UK Link as defined in National Grid's Network Code and its use of the equipment and software required for this purpose.

2.2.2 Where access to Gateway is not available to the Rainbow Customer then the following equipment will be provided by National Grid:

- Telecommunication lines
- Router (including a 10Meg RJ45 socket).

2.2.3 National Grid Available Equipment may be upgraded from time to time.

2.3. Rainbow Customer Hardware

2.3.1 Where access to Gateway is available to the Rainbow Customer it is not permitted to access Rainbow directly using the available Gateway since local logons are disabled. This is to avoid the Rainbow Customer affecting performance by installing software on the Gateway other than that installed on the Gateway by National Grid. Each Rainbow Customer therefore requires at least one PC which it can use to transfer files to and from the Gateway. The process for completing this is described in the 'Enhanced IX Operational Guidelines For Use With Rainbow'.

2.3.2 Rainbow Customer Hardware is not provided by National Grid. Multiple access points can be provided using a Rainbow Customer's own internal PC networks. National Grid does not supply the PCs which Rainbow Customers must use to access Rainbow beyond the Gateway. National Grid recommended minimum requirement for such PCs can be obtained from National Grid via the Help Desk.

3. SOFTWARE REQUIRED BY RAINBOW CUSTOMERS

3.1 Access to Gateway may be available to a Rainbow Customer through a Shipper, by means of the access a Shipper derives by UK Link as defined in National Grid's Network Code and its use of the software required for this purpose. Where access to Gateway is not available to the Rainbow Customer then National Grid will provide the following software which is held centrally on its server:

For the Dial up option:

- *CFTM software to support file transfer*
- *File transfer software*
- *Virus checking software*
- *one licensed copy of terminal emulation, the software is Microsoft SNA client and Attachmate Extra.*

4. RELOCATION OF NATIONAL GRID AVAILABLE EQUIPMENT

- 4.1 The Rainbow Customer shall inform National Grid of the premises at which such National Grid Available Equipment is installed and shall not relocate such equipment from such premises except in accordance with this paragraph 4.
- 4.2 All relocations of National Grid Available Equipment will be carried out by National Grid and is chargeable.
- 4.3 Relocation of National Grid Available Equipment may impact on the load and traffic on part of the Rainbow Network and may also require installation of new telecommunications lines.
- 4.4 If a Rainbow Customer wishes to relocate National Grid Available Equipment it must notify National Grid via the Help Desk. The relevant notice periods to be given are:
- 20 Business Days if communication line bandwidths are 64k (subject to site survey)
 - 40 Business Days if communication line bandwidths are more than 64k (subject to site survey)
- 4.5 National Grid will determine procedures for each relocation on a case-by-case basis and use its reasonable endeavours to ensure that relocations are completed within the relevant notice period. National Grid will arrange for the telecommunications supplier to relocate the telecommunications circuits. National Grid will agree a date for the relocation with the Rainbow Customer and will give an estimate of the costs to be incurred.
- 4.6 In the case of an emergency which, in the reasonable opinion of the Rainbow Customer is causing or is likely to cause damage to any National Grid Available Equipment, a Rainbow Customer may temporarily relocate such equipment provided that the Rainbow Customer shall notify National Grid of any such relocation within one Business Day and shall allow National Grid to undertake any checks which National Grid in its reasonable opinion shall deem necessary to ensure that the equipment is functioning normally and continues to fulfil the requirements of this paragraph 5.
- 4.7 The costs associated with relocating National Grid Available Equipment will be charged by National Grid on a time and materials basis.

5. OPERATIONAL ENVIRONMENT

- 5.1 The National Grid Available Equipment supplied by National Grid does not have any special operating environment requirements other than those recommended by the equipment manufacturers and contained within relevant EU and UK Health & Safety legislation. Each installation will be site specific with the following requirements:
- for maintenance purposes, a clear working area of one metre is required at the front and rear of the rack. This can be achieved by moving the rack into free working space;
 - for maintenance purposes, the Router requires a clear working area of one metre on all sides. Again, this can be achieved by moving the Router into clear working space;
 - for operational purposes the Router requires a clear air flow front and back;

- the operating environment for all equipment should not be excessively dusty or smoky;
 - the operating temperature must be in the range 10-40°C; and the operating humidity must be in the range 10-90% relative humidity.
- 5.2 National Grid will not install any National Grid Available Equipment if these requirements cannot be met.
- 5.3 Much of the information held on the Router will be commercially sensitive and therefore for both security and insurance purposes Rainbow Customers should ensure that the equipment is housed in a secure area. Any keys which give access to the equipment must be kept in a secure place and authorised staff of National Grid Gas plc or its subcontractors must have on-site access to the keys for maintenance and support purposes.

6. ACCESS RIGHTS AND CHARGES

- 6.1 A limited number of direct access rights to the Rainbow System by means of the Web Portal will be available to Rainbow Customers at the Implementation Date at no charge; such direct access rights will be allocated by National Grid prior to the Implementation Date, and may be reallocated by National Grid from time to time, in consultation with Rainbow Customers. The first such reallocation will take place no earlier than six months following the Implementation Date, and at this time Rainbow Customers will be given three months' notice of any changes to access rights.
- 6.2 In addition, National Grid will make available additional chargeable direct access rights to the Rainbow System by means of the Web Portal and in respect of each such access rights the Rainbow Customer shall pay National Grid a charge ("Initial Access Charge") following the Implementation Date.
- 6.3 A SAP licence maintenance and administration charge will be payable each year ("Annual Charge") in relation to all direct access rights that have been allocated to the Rainbow Customer (both the chargeable or non chargeable).
- 6.4 The provisions of Schedule Four of the Agreement and General Conditions of Contract for Transactional Meter Works Not Exceeding 7 Bar shall apply mutatis mutandis in respect of such Metering Works Ad-hoc Invoice.
- 6.5 The Initial Access Charge and the Annual Charge will be as set out in National Grid Metering Charges, save that in the first year the Annual Charge will not apply in relation to the access rights referenced to in Clause 6.1. The Initial Access Charge and the Annual Charge shall be invoiced by National Grid by means of an Asset Works Ad-hoc Invoice.
- 6.6 The total number of access rights to the Rainbow System will be limited by National Grid to a number that National Grid reasonably believes is consistent with the design criteria of 20% concurrency in accordance with Clause 4.3.3.

SCHEDULE FIVE
FAILURE LIABILITY

1. For the purposes of this Schedule:
 - (a) a "**Rainbow Failure**" is a system failure as defined within priority level P1 of paragraph 4.6 of Schedule Two, Part A;
 - (b) an "**Affected Rainbow Customer**" is a Rainbow Customer who was using Rainbow at the time of the Rainbow Failure and reported that they were unable to access the failed system in accordance with the Help Desk Response Procedure;
 - (c) "**Help Desk Response Procedure**" shall mean the problem management procedure operated by National Grid and described in Schedule Two;
 - (d) "**Recover**" shall mean the successful return of service for the affected element within Rainbow and "**Recovery**" shall be construed accordingly;
 - (e) "**Recovery Period**" shall mean the period commencing on the earlier of:
 - (i) where National Grid becomes aware of a Rainbow Failure by way of the Help Desk Response Procedure, the time that the problem is defined as priority level IM6; and
 - (ii) the time that National Grid becomes aware of the Rainbow Failure; until the completion of Recovery;
 - (f) a "**Repeated Failure of Rainbow**" is a recurrence within 24 hours of resolution of a Rainbow Failure, recorded by National Grid in accordance with the Help Desk Response Procedure;
 - (g) an "**Inappropriate Rainbow Customer Action**" is a failure by a Rainbow Customer that results in or contributes to a Rainbow Failure;
 - (h) "**Three Month Period**": shall mean the period commencing on the Effective Date and ending three calendar months thereafter.
2. In the event of a Rainbow Failure, National Grid will endeavour to recover Rainbow within a 5 hour Recovery Period.
3. Subject to paragraphs 4 and 7, if the Recovery Period for a Rainbow Failure exceeds 5 hours then National Grid will pay each Affected Rainbow Customer £50.
4. In the event of a Repeated Failure of Rainbow paragraphs 2 and 3 shall apply, save that in the event that a Rainbow Customer is an Affected Rainbow Customer for both the original Rainbow Failure and subsequent Repeated Failure(s) of Rainbow, paragraph 3 shall apply in respect of the subsequent Repeated Failure of Rainbow as though the amount set out were 200% of the payment due in respect of the immediately preceding Rainbow Failure or Repeated Failure of Rainbow (as the case may be).
5. In the event of a Rainbow Failure where the Recovery Period is greater than 24 hours, National Grid will (subject to paragraph 7) pay to each Affected Rainbow Customer an amount of £1,000.

6. For Batch Transfer Communications, where National Grid fails to make the Rainbow Network available for a period greater than 24 hours over and above the timescales permitted for processing Batch Transfer Communications as specified in the Rainbow MAM Manual, National Grid will (subject to paragraph 7) pay to each Affected Rainbow Customer an amount of £1,000.
7. National Grid shall not be liable to pay:-
 - (a) the amounts set out in paragraphs 3 and 4 where a Rainbow Failure has been caused by the performance levels (as set out in Schedule Three, Part 2) being exceeded;
 - (b) the amounts set out in paragraphs 3, 4, 5 and/or 6 in the event that the Rainbow Failure was in whole or part the result of an Inappropriate Rainbow Customer Action;
 - (c) any amounts in respect of any Rainbow Failure which occurs in the Three Month Period.
8. The performance standards set out in this paragraph 6 shall be in addition to and not replacement of the performance standards set out in the Metering Agreements.
9. National Grid will use its best endeavours to promptly resolve a Rainbow Failure which occurs during the Three Month Period but shall have no liability for any failure to do so.

SCHEDULE SIX MODIFICATION SCHEDULE

PART A INITIAL AMENDMENTS

Upon the entering into by National Grid, the Customer and UMS of the Tripartite Agreement pursuant to the Provision and Maintenance Agreement, and on and from the Effective Date (as defined therein), this Agreement shall be amended in the following manner:-

1. **Definitions – Clause 1.1**
The definition of “**Schedules**” shall be deleted and replaced with the following new definition:-
“**Schedules**”: shall mean Schedules One through to Six of this Agreement;”
2. **Assignment – Clause 14.2**
The following new Clause 14.2 shall be inserted:-
“14.2 Where National Grid assigns or novates its rights and obligations in whole or in part under this Agreement as referred to in Clause 14.1, then as between the Customer and such assignee or transferee, and with effect from the date of such assignment or transfer:-
 - (a) this Agreement shall be amended in the manner set out in Schedule Six, Part B;
and
 - (b) the following defined terms shall be read and construed as relating to such assignee or transferee:-
 “National Grid Customer”
 “National Grid Available Equipment””

SCHEDULE SIX

PART B

CONSEQUENTIAL AMENDMENTS UPON ASSIGNMENT/TRANSFER BY NATIONAL GRID

As of and with effect from the date referred to in Clause 14.2 and in the circumstances set out therein, this Agreement shall be amended in the following manner:

1. **Recitals**

Recitals (A), (B) and (C) shall be deleted and replaced with the following new Recitals (A), (B), (C) and (D):-

- “(A) National Grid provides Metering Services to the Customer in accordance with the Metering Agreements and the Rainbow MAM Manual and having regard to the Web Portal User Guidelines and Enhanced IX Operational Guidelines For Use With Rainbow.
- (B) National Grid will secure the establishment and operation of Rainbow, and will afford to Rainbow Customers access to and use of Rainbow, and National Grid and each Rainbow Customer will communicate with each other by means of Rainbow, subject to and in accordance with this Agreement.
- (C) Rainbow Customers are required to comply with the relevant requirements of this Agreement in respect of access to and use of Rainbow.
- (D) This Agreement came into force and effect as between National Grid Gas plc and the Customer on the Effective Date, and in accordance with Clause 14 thereof rights and obligations of National Grid Gas plc under this Agreement were transferred to the Meter Provider.”

2. **Clause 1.1 - Definitions**

2.1 The following new definitions shall be inserted in alphabetical order in Clause 1.1 of the Rainbow System User Agreement:

“**Change**”: shall mean a variation to this Agreement proposed by the Meter Provider or the Customer under and in accordance with Clause 20A;

“**Changes in Law**”: shall mean:

- (a) the coming into effect or (where applicable) repeal (without re-enactment or consolidation) of any Legal Requirement; or
- (b) a judgement of a relevant court of law which creates or changes binding precedent;

“**Contract Review Meeting**”: shall mean the meeting held from time to time between the Meter Provider Representative and the Customer Representative in accordance with Clause 20B.4;

“**Customer Notice of Change**”: shall have the meaning ascribed thereto in Clause 20A.2.1;

“**Customer Representative**”: shall mean an individual nominated by the Customer from time to time pursuant to Clause 20B.1;

“**Impact Assessment**”: shall have the meaning ascribed thereto in Clause 20A.2.5;

“**Expert**”: shall have the meaning ascribed thereto in Clause 20D;

“**Meter Provider**”: shall mean the assignee or transferee of all or any part of National Grid’s rights and

- obligations under this Agreement as more particularly described in Clause 14.1;
- “Meter Provider Notice of Change”**: shall have the meaning ascribed thereto in Clause 20A.3.1;
- “Meter Provider Representative”**: shall mean an individual nominated by the Meter Provider from time to time pursuant to Clause 20B.1;
- “Representative”**: shall mean either a Meter Provider Representative or a Customer Representative;”
- 2.2 The definition of **“National Grid Metering Charges”** shall be deleted and replaced by the following new definition:-
- ““Meter Provider 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 the Meter Provider for the purposes of this Agreement;”
- and accordingly, all references in this Agreement to the defined term **“National Grid Metering Charges”** shall be replaced by the new defined term **“Meter Provider Metering Charges”**.
- 2.3 The definition of “Metering Agreement Modification Provisions” shall be deleted.
- 2.4 The words “the Network Metering Equipment Agreement, and the Metering Agreements Modification Provisions” shall be deleted in the definition of “Metering Agreements” and replaced with the words “and the Network Metering Equipment Agreement”.
3. **Clause 1.2.2 - Interpretation**
- Clause 1.2.2 shall be deleted and replaced with the following new Clause 1.2.2:-
- “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, provided that the provisions of this paragraph shall be without prejudice to the operation of Clause 20 which shall operate in relation to Changes in Law on the basis set out in this Agreement; 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;”
4. **Information and Confidentiality - Clause 8**
- The words “(i) National Grid to disclose or use any information in breach of any requirement of National Grid GT Licence or (ii)” shall be deleted from Clause 8.8.
5. **Entire Agreement - Clause 18**
- The words (1) “the Metering Agreements Modification Provisions;” shall be deleted from Clause 18.1(b) and (2) the word “and” shall be deleted after the words “this Agreement;” and inserted after the words “the relevant Meter Words Conditions;”.
6. **Modification - Clause 20**
- The existing Clause 20 shall be deleted and replaced with the following new Clauses 20A, 20B, 20C and 20D and the index revised accordingly:-

“20A. CHANGE PROCEDURE

- 20A.1 Subject always to Clause 20C, the Meter Provider or the Customer may request a Change in accordance with the provisions of this Clause 20A and the Parties shall comply with their respective obligations under this Clause 20A.
- 20A.2 Customer Change
- 20A.2.1 If the Customer requires a Change, it must serve a notice (“a **Customer Notice of Change**”) on the Meter Provider Representative no later than 10 Working Days prior to the next following Contract Review Meeting, at which the Customer Notice of Change will be considered. If the Customer Notice of Change is received later than this date, the Customer Notice of Change will be considered at the next following Contract Review Meeting after that.
- 20A.2.2 The Customer Notice of Change shall contain sufficient information to enable the Meter Provider to evaluate it, and without limitation shall include:
- (a) rationale for the Change, (including whether or not required as a result of a Change in Law);
 - (b) if applicable, details of the Change in Law; and
 - (c) details of any amendment required to this Agreement.
- 20A.2.3 The Parties shall discuss the Customer Notice of Change at the relevant Contract Review Meeting. During their discussions the Meter Provider may propose modifications to the Customer Notice of Change.
- 20A.2.4 Subject always to Clause 20A.4, no later than 7 Days after the relevant Contract Review Meeting, the Meter Provider shall either reject the Customer Notice of Change or accept the Customer Notice of Change (as modified by agreement with the Customer) (but subject always to Clause 20A.2.12) and failing either such notification by such date the Meter Provider shall be deemed to have rejected the Customer Notice of Change.
- 20A.2.5 Where the Meter Provider notifies its acceptance of the Customer Notice of Change it shall as soon as reasonably practicable and in any event no later than 28 Days thereafter provide to the Customer an impact assessment with respect to such Change (“the **Impact Assessment**”).
- 20A.2.6 The Impact Assessment may include the opinion of the Meter Provider on:
- (a) whether relief from compliance with any of its obligations hereunder is or may be required during the implementation of the Change;
 - (b) any amendment required to this Agreement as a result of the Change;
 - (c) any new or increased costs of the Meter Provider that result from the Change and any change to the Rental Charge in consequence thereof;
 - (d) any loss of revenue anticipated by the Meter Provider that results from the Change;
 - (e) any regulatory approvals which are required; and
 - (f) an estimate timetable of when and in what stages, if any, the Change could take effect.
- 20A.2.7 As soon as reasonably practicable after the Customer receives the Impact Assessment, the Parties shall discuss and seek to agree the issues set out in the Impact Assessment.
- 20A.2.8 If the Parties cannot agree on the contents of the Impact Assessment then the dispute may be referred to an Expert for determination pursuant to Clause 20D.

- 20A.2.9 As soon as practicable after the contents of the Impact Assessment have been agreed or otherwise determined pursuant to Clause 20D (Mediation and Expert Determination), the Customer shall:
- (a) confirm in writing the Impact Assessment (as modified); or
 - (b) withdraw the Customer Notice of Change.
- 20A.2.10 If the Customer confirms in writing the Impact Assessment within 30 Days of the contents of the Impact Assessment having been agreed or determined, then unless Clause 20A.2.12 applies the relevant Change shall be implemented as soon as reasonably practicable. Within this period, the Parties shall consult and agree the remaining details and shall enter into any documents to amend this Agreement which are necessary to give effect to the Change.
- 20A.2.11 If the Customer does not confirm in writing the Impact Assessment (as modified) within 30 Days of the contents of the Impact Assessment having been agreed or determined, then the Customer Notice of Change shall be deemed to have been withdrawn.
- 20A.2.12 Where the Impact Assessment has been determined pursuant to Clause 20D (Mediation and Expert Determination), then subject always to Clause 20A.4 the Meter Provider may within 7 Days of such determination notify the Customer in writing that it rejects the Customer Notice of Change, in which case, for the avoidance of doubt, the Change shall not proceed, but failing such notice the Meter Provider shall be deemed to have accepted such Change.
- 20A.3 Meter Provider Change
- 20A.3.1 If the Meter Provider wishes to introduce a Change, it must serve a notice (“a **Meter Provider Notice of Change**”) on the Customer Representative no later than 10 Working Days prior to the next following Contract Review Meeting, at which the Meter Provider Notice of Change will be considered. If the Meter Provider Notice of Change is received later than this date, the Meter Provider Notice of Change will be considered at the next following Contract Review Meeting after that.
- 20A.3.2 The Meter Provider Notice of Change must contain sufficient information to enable the Customer to evaluate it, and without limitation shall include the rationale for the Change (including whether or not required as a result of a Change in Law) and may also include the opinion of the Meter Provider on each of the matters listed in Clause 20A.2.6.
- 20A.3.3 The Parties shall discuss the Meter Provider Notice of Change at the Contract Review Meeting. During their discussions the Customer may propose modifications to the Meter Provider Notice of Change.
- 20A.3.4 Subject always to Clause 20A.4, no later than 7 Days after the relevant Contract Review Meeting, the Customer shall either reject the Meter Provider Notice of Change or accept the Meter Provider Notice of Change (as modified by agreement with the Meter Provider), and failing either such notification by such date the Customer shall be deemed to have rejected the Meter Provider Notice of Change.
- 20A.3.5 If Clause 20A.4 applies and the Customer does not accept the contents of the Meter Provider Notice of Change by the date 7 Days after the date of its

submission by the Meter Provider to the Customer, then the dispute may be referred to an Expert for determination pursuant to Clause 20D.

20A.3.6 As soon as practicable after the contents of the Meter Provider Notice of Change have been accepted by the Customer or determined pursuant to Clause 20D, the Meter Provider shall:

- (a) confirm in writing the Meter Provider Notice of Change (as modified); or
 - (b) withdraw the Meter Provider Notice of Change,
- and if the Meter Provider has done neither within 30 Days of the contents of the Meter Provider Notice of Change having been accepted or determined, then the Meter Provider shall be deemed to have confirmed the Meter Provider Notice of Change (as modified).

20A.3.7 If the Meter Provider confirms the Meter Provider Notice of Change pursuant to Clause 20A.3.6, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Agreement which are necessary to give effect to the Change and the relevant Change shall be implemented as soon as reasonably practicable.

20A.4 Changes in Law

Neither Party shall reject (and shall not be deemed to have rejected) a Change proposed by the other Party where that Change is required by the other Party in order to comply with a Change in Law.

20A.5 Force Majeure

Where as a direct result of implementing a Customer Notice of Change the Meter Provider fails to perform, or delays in performing, any of its obligations under this Agreement and such failure or delay could not have been avoided by taking steps which might be reasonably expected to have been taken, then this shall be regarded as Force Majeure and the Meter Provider shall be the Affected Party for the purposes of this Agreement.

20B. CONTRACT MANAGEMENT

20B.1 Each Party shall nominate and appoint an individual who will be named as its Representative. The Representative may from time to time by written notice to the other party delegate all or any part of their authority and responsibilities to an assistant or assistants.

20B.2 The Representative is responsible for:

- (a) co-ordinating the activities of the relevant Party under this Agreement;
- (b) providing a single point of communication with the other Party for this Agreement;
- (c) managing the change process on behalf of the relevant Party in accordance with Clause 20A or as otherwise agreed;
- (d) managing and ensuring the discharge of the relevant Party's obligations under this Agreement; and
- (e) resolving performance issues and failures by the relevant Party.

20B.3 In the event that the individual appointed as Customer Representative shall for any reason cease to perform the role, then the Customer shall ensure that a suitable replacement shall be appointed as soon as reasonably practicable.

20B.4 The Meter Provider Representative and the Customer Representative shall, unless otherwise agreed, meet at least quarterly to review the operation of this Agreement ("the **Contract Review Meeting**"), but shall use all reasonable endeavours to meet earlier to consider any Notice of Change where such Change is required by a Party in the

circumstances described in Clause 20A.4.

20B.5 The Meter Provider Representative shall consult with the Customer Representative and arrange the first Contract Review Meeting.

20C. ALTERNATIVE CONTRACT CONDITIONS

Notwithstanding Clause 20A, this Agreement may be modified by the terms of any Alternative Contract Conditions intended to facilitate the operation of such Alternative Contract Conditions as between the Meter Provider and the Customer (but for the avoidance of doubt only insofar as such modifications relate to the Meter Provider and the Customer and not to any other agreement in the terms hereof between the Meter Provider and any other Meter Provider Customer).”

20D. MEDIATION AND EXPERT DETERMINATION

Where any provision of this Agreement provides, or the Parties have agreed, for a dispute or differences between the Parties to be referred to an independent expert (the “Expert”) the provisions of Condition 18.9 of the Provision and Maintenance Agreement shall apply to this Agreement mutatis mutandis as if all references therein to “Agreement” were to this Agreement.

ANNEX 1 (TO CLAUSE 12) - 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	*Any other service provider/ agent as may be appointed pursuant to this Agreement from time to time.