



Version : June 2004

DATED []

BETWEEN

[]

AND

[]

GRID TRADE MASTER AGREEMENT

© All rights reserved. Futures and Options Association, 2004.

Revised in association with Denton Wilde Sapte (11.06.04)

INDEX

Clause	Page
1. Interpretation and Construction.....	1
2. Confirmation Procedure	2
3. General Obligations, Representations and Warranties	3
4. ECV Notification Agent Authorisation.....	4
5. ECV Nominations	6
6. Notification Failure.....	7
7. VAT and Other Taxes	9
8. Billing and Payment	9
9. Force Majeure.....	11
10. Confidentiality	12
11. Assignment	12
12. Termination	13
13. Liabilities	20
14. Waiver	21
15. Variation.....	21
16. Entire Agreement	21
17. Severability.....	21
18. Notices	21
19. Third Party Rights	22
20. Conversion to Euro.....	22
21. Applicable Law	23
22. Expert Determination.....	23
23. Changes to the Balancing and Settlement Code.....	24

Schedules

1. Definitions and Interpretation	25
2. Agreement Information.....	32
3. Contract Party Notification Agent Approach.....	34
3B. Contract Party Notification Agent Approach	35
4. Transitional Provisions	50

Annexes

A. Form of Confirmation.....	55
B. Form of Notice of ability to submit ECV Notifications.....	57
C. Form of Notice of position for ECV Notification	58

GRID TRADE MASTER AGREEMENT

IMPORTANT NOTICE

THE FOLLOWING AGREEMENT IS ISSUED BY THE FUTURES AND OPTIONS ASSOCIATION. NEITHER THE ASSOCIATION NOR ANY OF ITS MEMBERS, THEIR REPRESENTATIVES OR COUNSEL INVOLVED IN THE PREPARATION AND APPROVAL OF THIS AGREEMENT SHALL BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF DUTY) OR OTHERWISE AT LAW FOR ITS USE AND ANY DAMAGES OR LOSSES WHATSOEVER ARISING FROM ITS USE BY ANY PERSON. IT IS THEREFORE THE RESPONSIBILITY OF EACH PERSON WISHING TO USE THIS AGREEMENT TO ENSURE THAT ITS TERMS AND CONDITIONS ARE LEGALLY BINDING, VALID AND ENFORCEABLE AND BEST SERVE TO PROTECT THE PARTIES' LEGAL AND COMMERCIAL INTERESTS. NO REPRESENTATION IS GIVEN THAT IT COVERS EVERY OR ANY EVENTUALITY.

Dated as of:

BETWEEN:

- (1) []; and
- (2) [].

INTRODUCTION

- A. The Parties have entered into and/or anticipate entering into one or more Transactions that are or will be governed by this Master Agreement, which includes the Schedules, and the documents and other confirming evidence (each a "**Confirmation**") exchanged between the parties confirming those Transactions.
- B. Each Transaction relates or will relate to a trade of electricity in England and Wales.
- C. The Parties intend that each Transaction shall provide for a trade of electricity which can be notified and taken into account for settlements purposes under the Balancing and Settlement Code.

IT IS AGREED

1. INTERPRETATION AND CONSTRUCTION

1.1 Definitions

The terms set out in part 1 of Schedule 1 have the meanings set out in that part for the purposes of this Agreement.

1.2 Interpretation

The terms of this Agreement shall be construed in accordance with part 2 of Schedule 1.

1.3 Single Agreement

All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the Parties (collectively, the "**Agreement**") and the Parties would not otherwise enter into any Transactions.

2 CONFIRMATION PROCEDURE

2.1 Agreement of a Transaction

The Parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise).

2.2 Exchange of Written Confirmations

2.2.1 Unless otherwise agreed, the Seller shall send to the Buyer by facsimile (or such other means, if any, specified in Schedule 2) a Confirmation recording the details of the Transaction within 2 Banking Days of a Transaction having been entered into.

2.2.2 If the Buyer is satisfied that the Confirmation accurately reflects the terms of the Transaction, the Buyer shall return the Confirmation to the Seller within 2 Banking Days of receipt of the Confirmation.

2.2.3 If the Buyer is not so satisfied, the Buyer shall inform the Seller of any inaccuracies within 2 Banking Days of receipt of the Confirmation. If the Seller agrees that the Confirmation is inaccurate, the Seller shall issue a new Confirmation and the provisions of clauses 2.2.1 and 2.2.2 shall apply with all necessary changes.

2.2.4 If the Buyer has not received a Confirmation from the Seller within 2 Banking Days of a Transaction having been entered into, the Buyer shall send to the Seller a Confirmation, and clauses 2.2.2 and 2.2.3 shall apply in relation to that Confirmation by replacing all references to "Buyer" with "Seller" and all references to "Seller" with "Buyer" in those clauses and by replacing the reference to "2 Banking Days" with "4 Banking Days".

2.2.5 Failure by either Party to send or return a Confirmation shall not: (a) affect the validity or enforceability of any Transaction; or (b) be a material breach of this Agreement under clause 12.1.5.

2.3 Evidence of a Transaction

2.3.1 The Parties consent to the recording of all telephone conversations between the Parties relating in whole or part to this Agreement. Each Party agrees to notify its employees of that consent and obtain their consent to that recording if required by law.

2.3.2 The evidence of the terms of a Transaction contained in recordings made under clause 2.3.1 and in any undisputed Confirmation shall prevail over other oral or written evidence.

3. GENERAL OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties

Each Party represents and warrants to the other Party (which representations and warranties are deemed to be repeated by each Party on each date on which a Transaction is entered into) that:

- 3.1.1 **(Status)** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation (and, if relevant under those laws, in good standing);
- 3.1.2 **(Power)** It has the power (a) to execute this Agreement and any other documentation relating to this Agreement to which it is a party, (b) to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver, and (c) to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise that execution, delivery and performance;
- 3.1.3 **(No Violation or Conflict)** The execution, delivery and performance referred to in clause 3.1.2 do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- 3.1.4 **(Required Authorisations)** All governmental and other licences, authorisations, permits, consents, contracts and other approvals (if any) that are required to enable the Party to fulfil any of its obligations under this Agreement or any Credit Support Document to which it is a party ("**Required Authorisations**") have been obtained and are in full force and effect and all conditions of any Required Authorisations have been complied with;
- 3.1.5 **(Obligations Binding)** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law);
- 3.1.6 **(No Event of Default)** No Event of Default, or event which with notice and/or lapse of time would constitute an Event of Default, has occurred with respect to it and no such event would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party;
- 3.1.7 **(No Litigation)** No litigation, arbitration or administrative suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened against it or any of its Affiliates which would, if adversely determined, result in a material adverse change in its financial condition or its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party, or that is likely to affect the legality, validity or enforceability against it of this Agreement or that Credit Support

Document or its ability to perform its obligations under this Agreement or that Credit Support Document;

- 3.1.8 **(No Reliance)** It is not relying upon any representations of the other Party other than those expressly set out in this Agreement;
- 3.1.9 **(Principal)** It has negotiated, entered into and executed this Agreement and any Credit Support Document to which it is a party as principal (and not as agent or in any other capacity, fiduciary or otherwise);
- 3.1.10 **(Risk Assumption)** It has entered into this Agreement and any Credit Support Document to which it is a party with a full understanding of the material terms and risks of this Agreement and it is capable of assuming those risks;
- 3.1.11 **(No Advice)** The other Party is not acting as a fiduciary or an advisor for it, nor has the other Party given to it any advice, representation, assurance or guarantee as to the expected performance, benefit or result of this Agreement; and
- 3.1.12 **(Accurate Information)** All applicable information that is furnished in writing, if any, by or on behalf of it to the other Party and is identified for the purpose of this clause 3 is, as of the date it is furnished to the other Party, true, accurate and complete in every material respect.

3.2 Required Authorisations

Each Party shall maintain in full force and effect all Required Authorisations at all times during each Transaction Term.

3.3 Balancing and Settlement Code

Without prejudice to clause 3.2:

- 3.3.1 each Party shall ensure that it is a B&SC Party at all times during each Transaction Term;
- 3.3.2 at all times during each Transaction Term, each Party shall conduct its affairs so as not to give the ECV Aggregation Agent cause to reject or cancel ECV Notifications (whether in whole or in part) on grounds that the Party is not in compliance with the Code Range and Credit Cover Tests; and
- 3.3.3 to the extent necessary to enable a Party to fulfil its obligations under this Agreement, that Party shall comply with the Balancing and Settlement Code and take or refrain from taking all such other action as may be reasonable and required in relation to the Balancing and Settlement Code.

4 ECV NOTIFICATION AGENT AUTHORISATION

4.1 ECV Notification Agent

Unless otherwise agreed by the Parties, for the purpose of each Transaction, the ECV notification agent (the "**ECV Notification Agent**") shall be the person (not being a Party to this Agreement) whom the Parties have agreed shall act as such. To the extent that it has not

already done so, each Party shall, using all reasonable endeavours, appoint as soon as practicable the ECV Notification Agent so agreed (or, if required in the circumstances, appoint an alternative ECV Notification Agent).

4.2 Non-Validation of ECV Notification Agent Authorisation

4.2.1 If, at any time during a Transaction Term, the ECV Notification Agent does not have an ECV Notification Agent Authorisation for the Energy Accounts applicable to the relevant Transaction, each Party shall do all things reasonably necessary in co-operation with the other to ensure that the ECV Notification Agent (or, if required in the circumstances, an alternative ECV Notification Agent) obtains and maintains that ECV Notification Agent Authorisation as soon as practicable.

4.2.2 In the case of the initial application for the ECV Notification Agent Authorisation relevant to a Transaction, each Party shall do all things reasonably necessary in co-operation with the other to ensure that the ECV Notification Agent (or, if required in the circumstances, an alternative ECV Notification Agent) obtains an ECV Notification Agent Authorisation for the Energy Accounts applicable to that Transaction prior to the ECV Notification Deadline applicable to the first Settlement Period of the Transaction Term.

4.3 No Termination of ECV Notification Agent Authorisation

Without prejudice to clauses 12.2 (Suspension) and 12.6 (ECV Notification Withdrawal, Cancellation and Termination), in respect of a Transaction, neither Party shall terminate an ECV Notification Agent Authorisation that has been validated by the ECV Aggregation Agent without the written consent of the other Party (which consent shall not be unreasonably withheld or delayed).

4.4 ECV Notification Agent Ceasing to Act

4.4.1 If at any time during a Transaction Term the person appointed as ECV Notification Agent ceases or is unable to act as such, each Party shall do all things reasonably necessary in co-operation with the other to terminate the appointment of that person and appoint a new ECV Notification Agent as soon as reasonably practicable.

4.4.2 If at any time during a Transaction Term, there is no ECV Notification Agent, then, for the period while there is no ECV Notification Agent, the terms of Schedule 3 shall apply in place of clauses 4, 5 and 6 and the Party specified as the fallback ECV Notification Agent in Schedule 2 shall become and act as the ECV Notification Agent. If no fallback ECV Notification Agent is specified, then the Buyer for that Transaction shall become and act as the ECV Notification Agent.

4.5 No Liability for ECV Notification Agent Failure

Subject to clause 6.4, neither Party shall be liable to the other, whether in contract, tort (including negligence and breach of duty) or otherwise at law, for any loss, costs, expenses or damages whatsoever to the extent they are caused by the act or omission of the ECV Notification Agent.

5. ECV NOMINATIONS

5.1 Notification Requirements

Subject to clause 5.4 (Cancellation of Default Settings), for each Settlement Period for which the Settlement Period Volume is other than zero and which falls within a Transaction Term:

- 5.1.1 the Seller shall make an Accurate ECV Nomination, which it shall send also to the Buyer, and which thereafter the Buyer shall confirm to the ECV Notification Agent;
- 5.1.2 each Party shall make corresponding Accurate ECV Nominations to the ECV Notification Agent; or
- 5.1.3 each Party shall otherwise communicate with the other and the ECV Notification Agent and do all such things reasonably necessary to ensure that the ECV Notification Agent is able to make to the ECV Aggregation Agent an Accurate ECV Notification,

in each case within such time as will enable the ECV Notification Agent to make an ECV Notification not later than one hour before the ECV Notification Deadline applicable to that Settlement Period (unless otherwise agreed and subject to the procedures of the ECV Notification Agent). Each Party shall act in accordance with the terms and procedures agreed with the ECV Notification Agent in complying with this clause 5.1.

5.2 Accurate ECV Notification and Nomination

5.2.1 Subject to clause 5.2.2, an "**Accurate ECV Notification**" means an ECV Notification which states for a Transaction:

- (a) the Settlement Period Volume to be taken into account as an Energy Contract Volume;
- (b) the names of the Parties, identifying the Party which is the Seller as the seller and the Party which is the Buyer as the buyer (which may require specifying the Settlement Period Volume as either positive or negative as it relates to each Party);
- (c) the Energy Account for each Party for the Transaction; and
- (d) such other information as is required (including under the Balancing and Settlement Code) for the Settlement Period Volume stated in the ECV Notification to be taken into account by the Settlement Administration Agent in determining the respective Account Energy Imbalance Volumes of the relevant Energy Accounts of the Parties for that Settlement Period.

5.2.2 If one ECV Notification is used for 2 or more Transactions with common Energy Accounts, then an ECV Notification which states:

- (a) the Net Settlement Period Volume instead of the Settlement Period Volume;
- (b) the Net Seller instead of the Seller; and
- (c) the Net Buyer instead of the Buyer,

but which otherwise complies with clause 5.2.1 shall be an Accurate ECV Notification.

- 5.2.3 An "**Accurate ECV Nomination**" means an ECV Nomination which accurately states the information required for an Accurate ECV Notification (having regard to the applicable procedures agreed in this respect by the Parties with the ECV Notification Agent).

5.3 **Withdrawal of ECV Nomination or ECV Notification**

- 5.3.1 Neither Party shall withdraw, cancel, amend or replace:

- (a) an Accurate ECV Nomination;
- (b) its approval or other confirmation of an Accurate ECV Nomination; or
- (c) any communication made or information communicated pursuant to clause 5.1.3,

without the prior consent of the other Party (which shall not be unreasonably withheld or delayed).

- 5.3.2 Except as provided in clause 12.2 (Suspension) or clause 12.6 (ECV Notification Withdrawal, Cancellation and Termination), neither Party shall cause the ECV Notification Agent to withdraw or cancel any Accurate ECV Notification without the prior consent of the other Party (which consent shall not be unreasonably withheld or delayed).

5.4 **Cancellation of Default Settings**

If the Settlement Period Volume is zero and an ECV Notification is required under the Balancing and Settlement Code (due to rules relating to default settings or otherwise) to ensure that the Settlement Period volume of zero is taken into account as an Energy Contract Volume, then the Parties shall comply with this clause 5 in order to make the required Accurate ECV Nomination.

6. **NOTIFICATION FAILURE**

6.1 **Failure Circumstances**

Except to the extent that a Party is relieved from complying with a relevant obligation under clause 9 (Force Majeure), if, in respect of a Settlement Period, a Party (the "**Non-Complying Party**"):

- 6.1.1 (**ECV Notification Agent Authorisation or Appointment Failure**) is in breach of clause 4 and no Accurate ECV Notification is made;
- 6.1.2 (**ECV Nomination Failure**) is in breach of clause 5 and no Accurate ECV Notification is made;
- 6.1.3 (**Non-compliance with Balancing and Settlement Code**) has not complied with clause 3.3 and as a result no Accurate ECV Notification can be made or an Accurate ECV Notification is wholly or partly cancelled or rejected and not remade before the ECV Notification Deadline; or

6.1.4 **(Withdrawal of ECV Nomination or ECV Notification)** is in breach of clause 5.3 and no Accurate ECV Notification is made,

then the Non-Complying Party shall pay to the other Party (the '**Complying Party**') an amount calculated by reference to clause 6.2.

If, in respect of a Settlement Period, both Parties are Non-Complying Parties under this clause 6.1, then both Parties shall be deemed not to be a Non-Complying Party and no amount shall be payable under clauses 6.2 or 6.3.

6.2 Deemed Imbalance Charges

If, for a Settlement Period, one or more of the circumstances in clause 6.1 occurs, then the Complying Party shall calculate the amounts set out below for the Transactions to which the circumstances apply and the resulting net amount shall be paid by the Party owing that amount to the other Party:

6.2.1 the relevant Party shall owe the other Party the net amount of the Contract Amounts calculated for all Transactions for that Settlement Period as if an Accurate ECV Notification had been made and the Traded Settlement Period Volume was equal to the Settlement Period Volume;

6.2.2 the Non-Complying Party shall owe the Complying Party an amount equal to the Deemed Imbalance Charges (if any) deemed to be incurred by the Complying Party; and

6.2.3 the Complying Party shall owe the Non-Complying Party an amount equal to the Deemed Imbalance Charges (if any) deemed to be payable to the Complying Party.

6.3 Incorrect Energy Account

If the relevant failure is the specification of an incorrect Energy Account of the Complying Party, then the calculation of Deemed Imbalance Charges under clause 6.2 must be performed for both the correct and the incorrect Energy Accounts and the net of these two calculated amounts shall be paid by the Party owing that amount to the other Party.

6.4 No Fault Error Amounts

If, in respect of any Settlement Period, a Grid Trade volume is incorrectly notified for any reason (other than for one or more of the reasons set out in clause 6.1 in the case where only one of the Parties is a Non-Complying Party), then:

6.4.1 each Party shall owe to the other Party an amount equal to half of the Deemed Imbalance Charges (if any) deemed to be incurred by the other Party; and

6.4.2 each Party shall owe to the other Party an amount equal to half of the Deemed Imbalance Charges (if any) deemed to be payable to that Party.

7. VAT AND OTHER TAXES

7.1 VAT

All amounts referred to in this Agreement are exclusive of any applicable VAT.

7.2 Other Taxes

Subject to each Party's obligations relating to VAT, each Party shall cause all royalties, taxes, duties and other sums (including any stamp duty, other documentary taxes, climate change levy or other environmental tax or levy) legally payable by that Party arising in connection with this Agreement to be paid.

8. BILLING AND PAYMENT

8.1 Monthly Statement

On or before the 5th Banking Day of the Month following each Month which is wholly or partly in the Transaction Term of a Transaction, the Seller for that Transaction shall send to the Buyer a written statement ("**Monthly Statement**") showing for the preceding Month for that Transaction:

8.1.1 the Traded Settlement Period Volume for each Settlement Period in that Month;

8.1.2 the Contract Price for each Settlement Period in that Month;

8.1.3 the Contract Amount for each Settlement Period in that Month;

8.1.4 any amount owing from one Party to the other, including any amount owing by reason of clause 6, stating any part of that amount or any other amount that has already been paid or set off under clause 8.5;

8.1.5 the net amount payable from one Party to the other after taking into account all the matters set out above; and

8.1.6 VAT.

8.2 Payment Mechanics

8.2.1 On the 10th Banking Day of the Month in which the Monthly Statement is received by the Buyer or the 5th Banking Day after receipt, whichever is the later (the "**Due Date**"), the Buyer or the Seller, as the case may be, shall pay to the other Party to whom it is due the net amount payable in accordance with the Monthly Statement.

8.2.2 Payment shall be made by the Due Date in sterling (subject to clause 20) by direct bank transfer or equivalent transfer of immediately available funds to the Party to whom payment is due and to the credit of the account specified by that Party.

8.2.3 An amount equal to VAT payable to a Party shall not be required to be paid before the other Party provides it with an appropriate VAT invoice in relation to that amount. Each Party shall provide the other with any additional appropriate VAT invoices as required for the purposes of this Agreement.

8.3 Disputed Payments

- 8.3.1 If a Party disputes in good faith any sum shown in the Monthly Statement, or notified in accordance with clause 8.7.2, as being payable by that Party, it shall make payment of any undisputed amount on or before the Due Date and shall give notice of the amount in dispute and the reasons for the dispute to the other Party.
- 8.3.2 The Parties shall seek to settle the disputed amount as soon as reasonably possible.
- 8.3.3 Any adjustment payment required to be made in accordance with the resolution of a dispute shall be made within 3 Banking Days of that resolution.
- 8.3.4 A Party shall not under any circumstances be entitled to initiate any dispute concerning any sum shown in, or which should have been shown in, a Monthly Statement 24 months or more after that Monthly Statement is received, or should have been received, by the Buyer.

8.4 Interest

- 8.4.1 If a Party fails to pay to the other Party any amount due by the Due Date as set out in this Agreement (or otherwise determined by any dispute resolution process), interest shall be payable on that amount at an annual rate equal to the base lending rate for sterling of Barclays Bank plc applicable from time to time plus 3% compounded monthly from and including the Due Date to but excluding the date payment is made.
- 8.4.2 If, following the resolution of a dispute or otherwise to correct any mistaken overpayment or underpayment made in good faith, one Party is required to pay an amount to the other Party, interest shall be payable on that amount at an annual rate equal to the base lending rate for sterling of Barclays Bank plc applicable from time to time plus 1% compounded monthly from the date when the amount would have been paid or not paid (as applicable) if the dispute, overpayment or underpayment had not occurred to but excluding the date payment is made.
- 8.4.3 If the rate in clause 8.4.1 or 8.4.2 ceases temporarily or permanently to be published then the Party owed money may substitute a rate which it considers in good faith to be equivalent to that rate published by a London clearing bank.

8.5 Netting

If on any date Statement Amounts would otherwise be payable by each Party to the other as a result of 2 Monthly Statements being issued, then, on that date, each Party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the Statement Amount that would otherwise have been payable by one Party exceeds the Statement Amount that would otherwise have been payable by the other Party, replaced by an obligation upon the Party by whom the larger Statement Amount would have been payable to pay to the other Party the excess of the larger Statement Amount over the smaller Statement Amount.

8.6 Failure to Issue Monthly Statement

- 8.6.1 If the Seller fails to issue a Monthly Statement in accordance with clause 8.1, then the Buyer may issue that Monthly Statement to the Seller and, once issued, that Monthly Statement shall be treated as a Monthly Statement issued by the Seller for the purposes of this Agreement.
- 8.6.2 Except as provided in this clause 8, failure to issue a Monthly Statement shall not affect the rights and obligations of the Parties under this Agreement and shall not be a material breach of this Agreement under clause 12.1.5.

8.7 No accurate Information

- 8.7.1 If any information required to prepare a Monthly Statement is not available at the time that Monthly Statement is prepared, then a Party may prepare that Monthly Statement based on its reasonable estimate of that information.
- 8.7.2 If there is any change to the information used to prepare a Monthly Statement after that Monthly Statement is received or information that was estimated in order to prepare a Monthly Statement becomes available, then within 12 months of the date the Monthly Statement was received, either Party may, by notice to the other, require an adjustment payment to be made to reflect the changed or newly available information. The adjustment payment shall be made within 3 Banking Days of receipt of the notice together with interest calculated in accordance with clause 8.4.2.

9. FORCE MAJEURE

If, in respect of a Settlement Period, a Party (the "**Force Majeure Party**") is prevented from carrying out any one or more of its obligations in accordance with clause 5 by reason of Force Majeure, then the Force Majeure Party shall:

- 9.1 be relieved of its obligations under clause 5 to the extent that it is prevented by Force Majeure from complying with them; and
- 9.2 not have to pay amounts under clause 6 to the extent of that failure to perform,

provided that:

- 9.3 the Force Majeure Party advises the other Party in writing as soon as reasonably practicable of:
- 9.3.1 the event or circumstance constituting Force Majeure;
- 9.3.2 its estimate of the likely effect of that Force Majeure on its ability to perform its obligations under clause 5; and
- 9.3.3 its estimate of the likely period of that Force Majeure; and
- 9.4 the Force Majeure Party uses all reasonable endeavours to terminate or overcome the event or circumstance constituting Force Majeure and resumes full performance of its obligations as soon as reasonably practicable.

10. CONFIDENTIALITY

The Parties shall treat the terms of this Agreement (including each Transaction) and all information provided under or in connection with this Agreement ("**Confidential Information**") as confidential and shall not disclose Confidential Information without the prior written consent of the other Party, save that consent shall not be required for disclosure:

- 10.1 to directors, employees or Affiliates of a Party, provided that they in turn are required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this clause 10;
- 10.2 to persons professionally engaged by a Party, provided that they in turn are required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this clause 10;
- 10.3 to the extent required by any government department or agency or regulatory authority having jurisdiction over that Party (including the Office of Gas and Electricity Markets);
- 10.4 to any bank, other financial institution or rating agency to the extent required in relation to the financing of a Party's business activities, provided that the bank, or other financial institution or rating agency, as the case may be, is required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this clause 10;
- 10.5 to the extent required by any applicable laws, judicial process or the rules and regulations of any recognised stock exchange;
- 10.6 to any intending assignee of the rights and interests of a Party under this Agreement or to a person intending to acquire an interest in a Party or that Party's Affiliate holding company provided that the intending assignee or acquirer in turn is required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this clause 10;
- 10.7 to the extent required by the System Operator, the ECV Notification Agent, the ECV Aggregation Agent or the Settlement Administration Agent for the purposes of the performance of this Agreement;
- 10.8 to the extent that the Confidential Information is in or lawfully comes into the public domain other than by breach of this clause 10; or
- 10.9 to price reporting agencies in respect of Contract Price, Transaction Term and Settlement Period Volumes only.

11. ASSIGNMENT

11.1 Prohibition of Assignment

Subject to clause 11.2, neither Party shall assign or transfer to any person any of its rights or obligations in respect of this Agreement (including any Transaction) without the written consent of the other Party (which consent shall not be unreasonably withheld or delayed). For these purposes it shall be unreasonable to withhold consent in the case of an assignee that is

demonstrably capable of fulfilling the obligations of the assignor under this Agreement, has a financial standing no worse than that of the assignor as at the date the assignor became a Party to this Agreement and as of the date it entered into the relevant Transactions and provided it is demonstrably capable of continuing to provide security and/or performance assurance at least equal to that provided (or required to be provided) by the assignor.

11.2 Assignment to Affiliates

A Party may assign and transfer its rights and obligations under this Agreement to an Affiliate on notice to, but without the consent of the other Party, provided that the assignor remains liable for the performance of any obligations that that Affiliate fails to perform (even if that Affiliate ceases to be an Affiliate of the assignor).

11.3 Assignment by way of Security

Either Party may assign its rights under this Agreement by way of security to or in favour of any bank or financial institution in relation to the financing of that Party's business activities.

11.4 Assignment in the case of Termination

A Party may assign all or any part of its interest in any Termination Payment payable to it from a Defaulting Party under clause 12.5.

11.5 No Adverse Assignment

A Party may not assign or transfer to any person any of its rights or obligations in respect of this Agreement (including any Transaction) without the written consent of the other Party if that assignment or transfer would render any right of the other Party in respect of this Agreement unenforceable, the performance of any obligation by either Party in respect of this Agreement illegal or adversely affect the other Party's position in relation to tax.

12. TERMINATION

12.1 Event of Default

"**Event of Default**" means the occurrence at any time with respect to a Party or, if applicable, any Credit Support Provider of that Party (the "**Defaulting Party**") of any of the following events:

12.1.1 (**Insolvency**) the Party or any Credit Support Provider of the Party:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or

insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, that proceeding or petition (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (ii) is not withdrawn, dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation of that proceeding or petition;

- (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and that secured party maintains possession, or that process is not withdrawn, dismissed, discharged, stayed or restrained, in each case within 30 days of that event;
- (h) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (g) (inclusive); or
- (i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this clause 12.1.1;

12.1.2 **(Representation or Warranty)** any representation or warranty made, or deemed to have been made, by the Party or any Credit Support Provider of that Party in this Agreement or any Credit Support Document proves to have been false or materially misleading at the time it was made or was deemed to have been made;

12.1.3 **(Non-Payment)** the Party fails to pay any amount when due under this Agreement, and that failure is not remedied on or before the 3rd Banking Day after the Non-Defaulting Party gives the Party notice of that failure;

12.1.4 **(Persistent Notification Default)** if a Compensation Threshold is specified for the Party in Schedule 2, the Party fails to comply with clause 3, 4 or 5 and, as a result, the total of the amounts which the Party is liable to pay under clause 6 for a Month exceeds the Compensation Threshold for that Party;

12.1.5 **(Material Obligations)** the Party fails to perform a material obligation under this Agreement (including clause 3.3.1 but other than an obligation referred to in clause 12.1.3 or 12.1.4) and that failure is not remedied within 5 Banking Days of the Non-Defaulting Party giving the Party notice of that failure;

12.1.6 **(Credit Support)**

-
- (a) the Party or any Credit Support Provider of the Party fails to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if that failure is continuing after any applicable grace period has elapsed;
 - (b) any Credit Support Document expires or terminates or fails or ceases to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of the Party under each Transaction to which that Credit Support Document relates without the written consent of the other Party; or
 - (c) the Party or any Credit Support Provider of that Party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, that Credit Support Document;

12.1.7 **(Cross Default)** if cross default and the related Cross Default Threshold are specified in Schedule 2 and there occurs or exists:

- (a) a default, event of default or other similar condition or event (however described) in respect of the Party or any Credit Support Provider of the Party under one or more agreements or instruments relating to Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the Cross Default Threshold which has resulted in that Indebtedness becoming, or becoming capable at the time of being declared, due and payable under those agreements or instruments, before it would otherwise have been due and payable; or
- (b) a default by that Party or that Credit Support Provider (individually or collectively) in making one or more payments on the due date for those purposes under those agreements or instruments in an aggregate amount of not less than the Cross Default Threshold (after giving effect to any applicable notice requirement or grace period);

12.1.8 **(Default under Relevant Transaction)** the Party or any Credit Support Provider of the Party:

- (a) defaults under a Relevant Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Relevant Transaction;
- (b) defaults (a) in making any payment due on the last date for that payment under the Relevant Transaction; or (b) in making any payment on early termination of a Relevant Transaction, after giving effect to any applicable notice requirement or grace period or, in each case where there is no applicable notice requirement or grace period, where that default continues for at least 3 Banking Days; or
- (c) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Relevant Transaction (or that action is taken by any person or entity appointed or empowered to operate it or act on its behalf); or

12.1.9 (**Material Adverse Change**) in the reasonable opinion of the other Party, one or more events occur which cause a material adverse change in the financial standing or creditworthiness of the Party (unless all of the Party's financial obligations under this Agreement are fully guaranteed under a Credit Support Document), or any Credit Support Provider of the Party, and which affects the Party's, or the Credit Support Provider's, ability to perform its financial or other obligations under this Agreement or any Credit Support Document, respectively, and the Party or the Credit Support Provider fails to procure a guarantee, letter of credit, or other credit support from a person and in a form which is acceptable in the reasonable opinion of the other Party for the performance of its financial obligations under this Agreement or the Credit Support Document, respectively, within 3 Banking Days of the other Party's written request for that guarantee, letter of credit or other credit support.

12.2 Suspension

Notwithstanding any other provision of this Agreement, after the occurrence of:

12.2.1 an Event of Default; or

12.2.2 an event which, with the giving of notice or the passage of time or both would constitute an Event of Default,

with respect to a Party, the other Party (the '**Suspending Party**') may do one or more of:

12.2.3 withhold or suspend payments under this Agreement;

12.2.4 suspend its compliance with clause 5; or

12.2.5 if the other Party is the ECV Notification Agent, require the ECV Notification Agent to cease complying with clause 5 by giving a written notice to the ECV Notification Agent,

in addition to any other remedies that the Suspending Party may have, subject to clause 13.

12.3 Termination Right

12.3.1 If, at any time, an Event of Default has occurred and is continuing, the Non-Defaulting Party may, designate a day as an early termination date (the "**Early Termination Date**") in respect of all outstanding Transactions between the Parties by giving not more than 20 days' notice to the Defaulting Party. This notice shall specify the relevant Event of Default. The Early Termination Date may not be earlier than the day the notice is effective.

12.3.2 The right under clause 12.3.1 is in addition to any other remedies available under this Agreement or at law.

12.3.3 The notice of the Early Termination Date may be made by telephone if that notice is confirmed in writing within 2 Banking Days.

12.4 Early Termination Date

- 12.4.1 If notice designating an Early Termination Date is given under clause 12.3.1, the Early Termination Date will occur on the date so designated even if the circumstances giving rise to the Event of the Default are no longer continuing.
- 12.4.2 Upon the effective designation of an Early Termination Date: (a) no further payments or compliance with clause 5 will be required in respect of all Transactions; and (b) the amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to clause 12.5.

12.5 Termination Payment

- 12.5.1 On, or as soon as reasonably practicable after, the Early Termination Date, the Non-Defaulting Party shall in good faith calculate the termination payment (the "**Termination Payment**"), being the Loss or Market Amount for all Transactions (as appropriate), in accordance with the termination payment method specified in Schedule 2. If a termination payment method is not specified in Schedule 2, the Loss method shall apply.
- 12.5.2 "**Loss**" means an amount that the Non-Defaulting Party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with the termination of the Transactions, including any loss of bargain, cost of funding or, at the election of the Non-Defaulting Party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or re-establishing any related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment required to have been made and not made or non-compliance with clauses 4 or 5 (whether or not as a result of the suspension of the obligation to pay or comply with those clauses under clause 12.2 or 12.4.2) on or before the Early Termination Date. Loss does not include the Non-Defaulting Party's legal fees and out-of-pocket expenses. The Non-Defaulting Party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading traders in the England and Wales wholesale electricity market who are independent of the Parties.
- 12.5.3 "**Market Amount**" means either:

- (a) the sum (whether positive or negative) of (i) the Market Quotation for the Transactions if a Market Quotation is determined and (ii) losses and costs (or gains) in respect of any payment required to have been made and not made or non-compliance with clauses 4 or 5 on or before the Early Termination Date or as a result of suspension under clause 12.2; or
- (b) the Non-Defaulting Party's Loss (whether positive or negative) for the Transactions if a Market Quotation cannot be determined or would not (in the reasonable belief of the Non-Defaulting Party) produce a commercially reasonable result,

where:

- (c) "**Market Quotation**" means, with respect to the Non-Defaulting Party, an amount determined on the basis of the average of quotations from Reference Market Makers. Each quotation will be for an amount, if any, that would be paid to the Non-Defaulting Party (expressed as a negative number) or by the Non-Defaulting Party (expressed as a positive number) in consideration of an agreement between the Non-Defaulting Party and the quoting Reference Market Maker to enter into transactions

(the **Replacement Transactions**") that would have the effect of preserving for the Non-Defaulting Party the economic equivalent of any payment or compliance with clause 6 (whether the underlying obligation was absolute or contingent) that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. The quotation shall (i) take into account any existing Credit Support Document with respect to the obligations of the Non-Defaulting Party but (ii) disregard any losses, costs (or gains) in respect of any payment required to have been made and not made or non-compliance with clauses 4 or 5 on or before the Early Termination Date; and

- (d) **"Reference Market Makers"** means 3 leading traders in the England and Wales electricity market selected by the Non-Defaulting Party in good faith which satisfy all the criteria that the Non-Defaulting Party applies generally at the time in deciding whether to offer or to make an extension of credit and which are independent of the Parties.

- 12.5.4 The Non-Defaulting Party shall notify the Defaulting Party of the Termination Payment including detailed support for the Termination Payment calculation.
- 12.5.5 A Party shall not be required to enter into replacement transactions in order to determine the Termination Payment.
- 12.5.6 If the Termination Payment is a positive number, the Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party within 2 Banking Days of invoice or notification of the Termination Payment amount (the **"Termination Payment Date"**), which amount shall bear interest in accordance with clause 8.4.
- 12.5.7 If the Termination Payment is a negative number, the Non-Defaulting Party shall pay the Termination Payment to the Defaulting Party within 30 Banking Days of the Termination Payment Date, which amount shall bear interest in accordance with clause 8.4.
- 12.5.8 The Non-Defaulting Party may, at its option, set off the Termination Payment against any or all other amounts owing (whether or not matured, contingent or invoiced) between the Parties under this Agreement or under any other agreements, instruments or undertakings between the Parties. The right of set off shall be without prejudice and in addition to any right of set off, combination of accounts, lien, charge or other right to which any party is at any time otherwise entitled (whether by operation of law, by contract or otherwise). If an amount is unascertained, the Non-Defaulting Party may reasonably estimate the amount to be set off. The Parties shall make any adjustment payment required within 3 Banking Days of the amount becoming ascertained.
- 12.5.9 Disputed amounts under this clause 12.5 shall be paid by the Defaulting Party subject to refund with interest calculated in accordance with clause 8.4 if the dispute is resolved in favour of the Defaulting Party.

12.6 ECV Notification Withdrawal, Cancellation and Termination

Notwithstanding any other provision of this Agreement, after the occurrence of an Event of Default with respect to a Party, the other Party may take such action as may be necessary to terminate relevant ECV Notification Agent Authorisations and to withdraw or cancel ECV Notifications (including requiring the ECV Notification Agent to withdraw or cancel any ECV Notification). The Party, with respect to whom the Event of Default has occurred,

irrevocably appoints the other Party as its agent do all things, exercise all powers and give all notices as may be required by the ECV Notification Agent, the ECV Aggregation Agent, the Settlement Administration Agent or the System Operator for the purpose only of allowing that termination, withdrawal or cancellation to be effected. The Party, with respect to whom the Event of Default has occurred, ratifies and confirms whatever the other Party does in accordance with this clause 12.6.

12.7 Illegality

If, due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after that date, it becomes unlawful (other than as a result of a breach by the relevant party of clause 3.2) for a Party (the "**Affected Party**"):

12.6.1 to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of that Transaction or to comply with any other material provision of this Agreement relating to that Transaction; or

12.6.2 to perform, or for any Credit Support Provider of that Party to perform, any contingent or other obligation which the Party (or that Credit Support Provider) has under any Credit Support Document relating to that Transaction,

(an "**Illegality**") then, unless the Parties otherwise agree in writing, either Party may elect to terminate, liquidate and accelerate that Transaction in accordance with clauses 12.3, 12.4 and 12.5, except that, for the purposes of clause 12.3, either Party may designate an Early Termination Date and, for the purposes of clause 12.4 and 12.5, references to the Defaulting Party will be read as references to the Affected Party, references to the Non-Defaulting Party will be read as references to the Party which is not the Affected Party, references to "all Transactions" will be read as references to all Transactions affected by the Illegality. However, if both Parties are Affected Parties, each Party shall determine the Termination Payment in respect of the terminated Transactions and the amount payable shall be the algebraic average of the two Termination Payments.

12.8 Event of Default and Illegality

If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality it will be treated as an Illegality and will not constitute an Event of Default.

12.9 Change in Taxes

12.9.1 If change in taxes is specified in Schedule 2 and due to:

(a) any action taken by a taxing authority or brought in a court of competent jurisdiction on or after the date on which a Transaction is entered into (regardless of whether that action is taken or brought with respect to a Party); or

(b) a Change in Tax Law,

a Party (the "**Affected Tax Party**") will, or there is a substantial likelihood that it will, on the next Due Date either:

- (c) be required to pay an amount in respect of a Relevant Tax; or
- (d) receive a payment from which an amount is required to be deducted or withheld for or on account of a Relevant Tax and no additional amount is required to be paid in respect of that Relevant Tax,

other, in either case, than in respect of interest payable under this Agreement, (a **Relevant Change in Tax**"), then the Affected Tax Party may give a notice electing to terminate, liquidate and accelerate that Transaction in accordance with clauses 12.3, 12.4 and 12.5, except that, for the purposes of clause 12.3, either Party may designate an Early Termination Date and, for the purposes of clause 12.4 and 12.5, references to the Defaulting Party will be read as references to the Affected Tax Party, references to the Non-Defaulting Party will be read as references to the Party which is not the Affected Tax Party, references to "all Transactions" will be read as references to all Transactions affected by the Relevant Change in Tax and the notice given by the Affected Tax Party electing to terminate, liquidate and accelerate the Transaction shall be deemed to be the notice to terminate, liquidate and accelerate to be given by the Non-Defaulting Party for the purposes of clause 12.3. However, if both Parties are Affected Tax Parties, each Party shall determine the Termination Payment in respect of the terminated Transactions and the amount payable shall be the algebraic average of the two Termination Payments.

12.9.2 **"Change in Tax Law"** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date on which the relevant Transaction is entered into.

12.9.3 **"Relevant Tax"** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest or penalties) that is imposed by any government or other taxing authority directly in respect of any payment, notification or nomination under this Agreement other than stamp, registration, documentation or similar tax. Relevant Tax does not include, without limitation, income tax, taxes on the generation, transmission, distribution or use of electricity or taxes imposed generally on a Party's business.

13. LIABILITIES

13.1 No Consequential Loss

Except to the extent included in any amounts to be paid under clause 6 or any Termination Payment, neither Party shall be liable to the other, whether in contract, tort (including negligence and breach of duty) or otherwise at law, for any loss of use, profits, contracts, production, revenue or for business interruption or for any consequential or indirect loss or damage of whatsoever nature and howsoever arising.

13.2 Reasonable Pre-estimate

Each Party acknowledges that the payment obligations in clauses 6 and 12 are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages. Each Party waives the right to contest those payments as an unreasonable penalty or otherwise.

13.3 Sole Remedy

Subject to the rights to suspend, take action, terminate, liquidate and accelerate and to be paid a Termination Payment under clause 12, payment in accordance with the provisions of clause 6 shall be in full and final satisfaction of the rights of the Parties for any total or partial failure to comply with clause 3.3, 4 or 5, howsoever caused and even where caused by the negligence or breach of duty of a Party.

14. WAIVER

No waiver by either Party of any breach by the other of this Agreement shall operate unless expressly made in writing, and any such waiver shall not be construed as a waiver of any other breach.

15. VARIATION

No variation to the provisions of this Master Agreement shall be valid unless it is in writing and signed by each Party (otherwise than to the extent that the variation relates to a specific Transaction, in which case, variations may be made orally in accordance with clause 2).

16. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes and extinguishes any representations previously given or made other than those included in this Agreement, provided that nothing in this clause 16 shall limit or exclude any liability for fraud in relation to those representations.

17. SEVERABILITY

If any provision or part of a provision of this Agreement is found by a court or authority of competent jurisdiction to be void or unenforceable, that provision or part of a provision shall be deemed to be deleted from this Agreement and the remaining provisions shall continue in full force and effect. The Parties shall in this event seek to agree upon a valid and enforceable provision or part of a provision to replace the provision or part of a provision found to be void and unenforceable.

18. NOTICES**18.1 Notices to be in writing**

Any notice or other written communication to be given or made in respect of this Agreement by one Party to the other shall be given or made in writing to the other at the address or contact number that the other Party shall notify to the notifying party from time to time or, if no address has been so notified, at the other Party's registered office.

18.2 Deemed Receipt

A written notice shall be deemed to have been received:

- 18.2.1 if delivered by hand, on the Banking Day of delivery or on the 1st Banking Day after the date of delivery if delivered on a day other than a Banking Day;

-
- 18.2.2 if sent by first class post, on the 2nd Banking Day after the day of posting or, if sent from one country to another, on the 5th Banking Day after the day of posting;
 - 18.2.3 if sent by facsimile transmission and a valid transmission report confirming good receipt is generated, on the day of transmission if transmitted before 1800 hours on a Banking Day or otherwise on the 1st Banking Day after transmission;
 - 18.2.4 if sent by e-mail, on the day of receipt if received before 1800 hours on a Banking Day, or otherwise on the 1st Banking Day after receipt.

19. THIRD PARTY RIGHTS

Subject to the rights that may accrue to any successor or permitted assigns of the Parties, no provision of this Agreement shall be construed as creating any rights enforceable by a third party and all third party rights implied by law are, to the extent permissible by law, excluded from this Agreement.

20. CONVERSION TO EURO

20.1 Euro Mechanics

With effect from the date (if any) that England adopts the Euro as its lawful currency in substitution for sterling (the "**Euro Effective Date**"):

- 20.1.1 to the extent relevant, invoiced amounts shall be calculated in sterling and converted from sterling to Euro and shall be stated in the invoice in Euro;
- 20.1.2 payment of those invoices and all other payments falling due under this Agreement on or after the Euro Effective Date shall be made by the payer to the relevant Euro account of the recipient in Euro in accordance with the provisions of clause 8.4;
- 20.1.3 no payments of invoices falling due after the Euro Effective Date which would have been payable in sterling under this Agreement but for the adoption of the Euro by England as its lawful currency shall be made in sterling or national currency units; and
- 20.1.4 the rate of interest referred to in clause 8.4 shall be the equivalent rate of Barclays Bank plc for Euro.

20.2 Additional Matters

For the purposes of clause 20.1:

- 20.2.1 conversions from sterling to Euro will be at the fixed conversion rate provided for by English law; and
- 20.2.2 "**Euro**" means the lawful currency of the member states of the European Union that adopt the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on European Union.

21. APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with English law. Subject to the express referral of any matter to the Expert under this Agreement, the Parties submit to the exclusive jurisdiction of the English courts for the purposes of any dispute under or in connection with this Agreement. If either Party is not incorporated within England or Wales and does not have, or ceases to have, a permanent place of business within England or Wales, it shall immediately irrevocably appoint an agent to accept service of process on its behalf within England or Wales.

22. EXPERT DETERMINATION

- 22.1 If any matter is referred to an independent expert (the "Expert") in accordance with the Agreement, the Expert shall be appointed by agreement between the Parties. If the Parties fail to agree upon that appointment within 10 Banking Days of a Party notifying the other Party of its decision to refer the matter to an Expert, the President of the Law Society of England and Wales may appoint the Expert on the application of either Party.
- 22.2 In the absence of the Parties agreeing any amendments to this Agreement, if that failure to agree is referable to the Expert, the Expert shall have power to make amendments binding on the Parties to this Agreement consistent with any relevant requirements, purposes or restrictions concerning those amendments expressly provided for in this Agreement. The Parties agree that it is their intention that in the absence of their ability to agree any required amendments to this Agreement, this Agreement should continue and not come to an end or be deemed to be void or voidable in accordance with the doctrine of frustration or any other legal theory. Accordingly, if the Expert is unable to decide upon any amendments based on the express or implied intentions of the Parties, the Expert shall be entitled to have regard to the way in which similar issues or amendments are addressed or are proposed to be addressed by other electricity industry participants and to substitute the Expert's own view of what is reasonable in all the circumstances.
- 22.3 The Expert shall act as an expert and not as an arbitrator and shall give his or her determination in writing.
- 22.4 In the absence of fraud or manifest error, the determination of the Expert shall be final, conclusive and binding upon the Parties.
- 22.5 The Expert shall determine the procedure to be followed by the Expert for the purpose of making a determination provided that the Parties shall use their respective reasonable endeavours to ensure that he or she makes his or her determination within 20 Banking Days of being appointed.
- 22.6 Each of the Parties shall bear one half of the costs of the Expert unless the Expert determines otherwise.
- 22.7 Pending the determination of any amendments to this Agreement by the Parties or the Expert, the Parties shall continue to the extent possible to perform their obligations under this Agreement.

23. CHANGES TO THE BALANCING AND SETTLEMENT CODE**23.1 Balancing and Settlement Code Changes**

Subject to clause 12.6 (Illegality), if:

23.1.1 there are any changes to the Balancing and Settlement Code or any other rules and procedures of the System Operator with which either Party is required to comply in order to trade electricity as contemplated by this Agreement (whether made at the direction of any government, governmental body, regulator, competent authority or otherwise); and

23.1.2 as a result, either Party is unable to comply with one or more provisions of this Agreement,

then, at the written request of either Party, the Parties shall, in good faith, seek to agree the amendments (if any) to this Agreement necessary or appropriate to take account of those changes, so that this Agreement may continue in force and continue to provide for the trade of the respective Contract Amounts at the relevant Contract Prices and during the relevant periods as agreed for each Transaction. The Parties expressly agree that the purpose of any such amendments is solely to enable the mechanics of this Agreement to be changed so that they effectively integrate with the changes to the Balancing and Settlement Code or the other rules and procedures. Any new costs, expenses or risks (including any costs, expenses or risks arising from changes in the way in which transmission or distribution losses or constraints are dealt with) which arise due to the changes and are not of a type provided for in this Agreement are not intended to be allocated from one Party to the other by virtue of this clause 23.1 (unless otherwise expressly agreed by the Parties). Any such changes to the Balancing and Settlement Code or any other rules and procedures of the System Operator shall not constitute Force Majeure for the purposes of this Agreement.

23.2 Reference to Expert

If the Parties fail to agree under clause 23.1 on whether or not any such amendments are necessary or appropriate or the nature or extent of any such amendments, then after 60 days from the date on which the written request was given, either Party may notify the other Party of its decision to refer the matter to the Expert for determination in accordance with clause 22 by giving a notice to the other Party.

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

Part 1 - Definitions

The following words or phrases, where they appear in this Master Agreement or in a Confirmation, have the following meanings respectively:

"Account Bilateral Contract Volume" means, for a Settlement Period and an Energy Account, the aggregate of the Energy Contract Volumes (whether positive or negative) allocated to the Energy Account for the Settlement Period by the Settlement System Administrator under the Balancing and Settlement Code;

"Account Credited Energy Volume" means, for a Settlement Period and an Energy Account, the aggregate of the volume of metered electricity (whether positive or negative) allocated to the Energy Account for the Settlement Period by the Settlement System Administrator under the Balancing and Settlement Code;

"Account Energy Imbalance Volume" means, for a Settlement Period and an Energy Account, the Account Credited Energy Volume less the Account Period Bid-Offer Volume less the Account Bilateral Contract Volume determined by the Settlement Administration Agent under the Balancing and Settlement Code which is used to determine the imbalance cash flow for that Settlement Period and Energy Account;

"Account Period Bid-Offer Volume" means, for a Settlement Period and an Energy Account, the aggregate of the volume of electricity (whether positive or negative) traded under balancing mechanism bids and offers accepted by the Settlement System Operator and allocated to the Energy Account for the Settlement Period by the Settlement System Administrator under the Balancing and Settlement Code;

"Accurate ECV Nomination" has the meaning set out in clause 5.2;

"Accurate ECV Notification" has the meaning set out in clause 5.2;

"Affected Party" has the meaning set out in clause 12.6;

"Affected Tax Party" has the meaning set out in clause 12.9.1;

"Affiliate" means any holding company or subsidiary company of a Party or any company which is a subsidiary company of the holding company of a Party and the expressions "holding company" and "subsidiary" shall have the meanings respectively ascribed to them by section 736 Companies Act 1985;

"Agreement" has the meaning set out in clause 1.3;

"Balancing and Settlement Code" means the document, as modified from time to time, setting out electricity balancing and settlement arrangements established by the System Operator pursuant to its transmission licence;

"B&SC Party" means a signatory of, and party to, the Balancing and Settlement Code;

"Banking Day" means a day (other than a Saturday or Sunday) on which the clearing banks in London are open for general business;

"Buyer" means the Party agreed as such by the Parties for the purposes of a Transaction;

"Change in Tax Law" has the meaning set out in clause 12.9.2;

"Code Range and Credit Cover Tests" means any credit related tests (including those specified in the Balancing and Settlement Code) with which any B&SC Party named in an ECV Notification must comply if the ECV Notification is not to be rejected by the ECV Aggregation Agent;

"Compensation Threshold" means, for a Party, the amount set out in Schedule 2;

"Complying Party" has the meaning set out in clause 6.1;

"Confidential Information" has the meaning set out in clause 10;

"Confirmation" has the meaning set out in the introduction;

"Contract Amount" means, for a Settlement Period and a Transaction, the amount (expressed in sterling) calculated by multiplying the Contract Price for that Settlement Period and that Transaction by the Traded Settlement Period Volume for that Settlement Period and that Transaction;

"Contract Price" means, for a Settlement Period and a Transaction, the amount agreed to be the contract price for that Settlement Period and that Transaction (expressed in £/MWh), exclusive of VAT and other applicable taxes;

"Credit Support Document" means, for a Party, any agreement or instrument that is specified as such in this Agreement in relation to that Party;

"Credit Support Provider" has the meaning set out in Schedule 2;

"Cross Default Threshold" means, for a Party, the amount set out in Schedule 2;

"Deemed Imbalance Charges" means, for a Settlement Period and a Party, the Energy Imbalance Charges (expressed in sterling) that would be imposed on, or payable to, the Party under the Balancing and Settlement Code if the Party is deemed to be responsible for only one Account Energy Imbalance Volume (whether positive or negative) equal to:

- (a) what the Energy Contract Volume of the Party would have been in the relevant ECV Notification if it had been an Accurate ECV Notification,

minus:

- (b) the Energy Contract Volume of the Party specified in the relevant ECV Notification (if any) made for that Settlement Period or, otherwise, zero;

"Defaulting Party" has the meaning set out in clause 12.1;

"Due Date" has the meaning set out in clause 8.2;

"Early Termination Payment" has the meaning set out in clause 12.3.1;

"ECV Aggregation Agent" means the person specified in or pursuant to the Balancing and Settlement Code to whom a notification must be made in order that volumes of electricity stated in the notification may be taken into account in determining respective Account Energy Imbalance Volumes of the BS&C Parties identified in the notification as seller and buyer;

"ECV Nomination" means, for a Settlement Period, a nomination made by a Party to the ECV Notification Agent identifying, amongst other things:

- (a) a volume of electricity to be taken into account as an Energy Contract Volume;
- (b) the B&SC Parties that are party , and which of them is seller and buyer respectively, to the trade (or trades) to which the Energy Contract Volume is to relate (which may require specifying a volume of electricity as either positive or negative as it relates to each party); and
- (c) the Energy Account of each B&SC Party;

"ECV Notification" means, for a Settlement Period, a notification made by the ECV Notification Agent to the ECV Aggregation Agent identifying, amongst other things:

- (a) a volume of electricity to be taken into account as an Energy Contract Volume;
- (b) the B&SC Parties that are party, and which of them is seller and buyer respectively, to the trade (or trades) to which the Energy Contract Volume is to relate (which may require specifying a volume of electricity as either positive or negative as it relates to each party); and
- (c) the Energy Account of each B&SC Party;

"ECV Notification Agent" has the meaning set out in clause 4.1;

"ECV Notification Agent Authorisation" means the authorisation validated by the ECV Aggregation Agent in accordance with the Balancing and Settlement Code, so that volumes of electricity stated in an ECV Notification made by the ECV Notification Agent named in the authorisation may be taken into account in determining the respective Account Energy Imbalance Volumes of the BS&C Parties identified in the ECV Notification;

"ECV Notification Deadline" means, for a Settlement Period, the time by which volumes of electricity must be notified to the ECV Aggregation Agent so that those volumes of electricity will be taken into account as Energy Contract Volumes in determining Account Energy Imbalance Volumes for that Settlement Period for the purposes of the Balancing and Settlement Code;

"Energy Account" means an account established and operated under the Balancing and Settlement Code in the name of a B&SC Party which is used by the Settlement Administration Agent to determine the energy imbalance cash flow for that B&SC Party;

"Energy Contract Volume" or **"ECV"** means, for a Settlement Period and an Energy Account, a volume of electricity (expressed in MWh) that is accepted by the Settlement Administration Agent as a volume of electricity which is the subject of one or more bilateral trades between B&SC Parties;

"Energy Imbalance Charges" means, in respect of a Settlement Period and an Energy Account of a B&SC Party, charges under the Balancing and Settlement Code;

-
- (a) that are imposed upon that B&SC Party in respect of a volume of electricity that it is treated for imbalance settlement purposes as having bought so as to cash-out its electricity imbalance; or
 - (b) that are payable to that B&SC Party in respect of a volume of electricity that it is treated for imbalance settlement purposes as having sold so as to cash-out its electricity imbalance;

"**Euro**" has the meaning set out in clause 20.2.2;

"**Euro Effective Date**" has the meaning set out in clause 20.1;

"**Event of Default**" has the meaning set out in clause 12.1;

"**Expert**" has the meaning set out in clause 22.1;

"**Force Majeure**" means any event or circumstance beyond the reasonable control of a Party, acting and having acted as a Reasonable and Prudent Operator, which, in respect of a Settlement Period, prevents:

- (a) an ECV Notification from being submitted to the ECV Aggregation Agent; or
- (b) the aggregate Settlement Period Volumes from being received or taken into account by the Settlement Administration Agent in determining the Account Energy Imbalance Volume for the relevant Energy Account of that Party for that Settlement Period;

"**Force Majeure Party**" has the meaning set out in clause 9;

"**Grid Trade**" means, for a Settlement Period, the making of an ECV Notification with the effect that the Settlement Administration Agent:

- (a) deducts the Energy Contract Volume specified in that ECV Notification, in determining the Account Energy Imbalance Volume of the Energy Account stated in the ECV Notification of the Party identified in the ECV Notification as the seller; and
- (b) adds that same Energy Contract Volume in determining the Account Energy Imbalance Volume of the Energy Account stated in the ECV Notification, of the Party identified in the ECV Notification as the buyer;

"**Illegality**" has the meaning set out in Clause 12.6;

"**Indebtedness**" means any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money;

"**Loss**" has the meaning set out in clause 12.5.2;

"**Market Quotation**" has the meaning set out in clause 12.5.3(c);

"**Master Agreement**" means this document together with the schedules;

"**Month**" means a period beginning at 0000 hours on the first day of a calendar month and ending at 2400 hours on the last day of that calendar month;

"Monthly Statement" has the meaning set out in clause 8.1;

"Net Buyer" means, for a Settlement Period and an ECV Notification which is used for 2 or more Transactions, the Party for which the sum of the Settlement Period Volumes under Transactions for which it is a Buyer is greater than the sum of the Settlement Period Volumes for Transactions for which it is the Seller;

"Net Seller" means, for a Settlement Period and an ECV Notification which is used for 2 or more Transactions, the Party who is not the Net Buyer;

"Net Settlement Period Volume" means, for a Settlement Period and an ECV Notification which is used for two or more Transactions, the absolute value of:

- (a) the sum of all the Settlement Period Volumes under those Transactions for which one Party is the Seller; less
- (b) the sum of all the Settlement Period Volumes under those Transactions for which that Party is the Buyer;

"Non-Complying Party" has the meaning set out in clause 6.1;

"Non-Defaulting Party" means the Party which is not the Defaulting Party;

"Party" means one or other of the parties to this Agreement;

"Reasonable and Prudent Operator" means a person acting in good faith, with the intention of performing its contractual obligations and who, in so doing, and in the general conduct of its undertaking, exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced person complying with applicable law engaged in the same type of undertaking in similar conditions and circumstances;

"Reference Market Maker" has the meaning set out in clause 12.5.3(d);

"Relevant Change in Tax" has the meaning set out in clause 12.9.1;

"Relevant Tax" has the meaning set out in clause 12.9.3;

"Relevant Transaction" means any transaction relating to electricity (including an agreement with respect to the transaction) existing at the date of this Master Agreement and after that date entered into between one Party (or any Credit Support Provider of that Party) and the other Party (or any Credit Support Provider of that other Party) which is a commodity forward or future, commodity option, commodity swap or other commodity transaction, including any grid trade, contract for differences or transaction, or any other similar transaction;

"Replacement Transactions" has the meaning set out in clause 12.5.3(c);

"Required Authorisations" has the meaning set out in clause 3.1.4;

"Schedule" means a schedule to this Master Agreement;

"Seller" means the Party agreed as such by the Parties for the purpose of a Transaction;

"Settlement Administration Agent" means the person specified in or pursuant to the Balancing and Settlement Code who determines the respective Account Energy Imbalance Volumes of BS&C Parties;

"Settlement Period" means a period of 30 minutes, commencing at the beginning of an hour or 30 minutes after the beginning of an hour, by reference to which energy imbalance cash flows are determined under the Balancing and Settlement Code;

"Settlement Period Volume" means, for a Settlement Period and a Transaction, the volume of electricity agreed to be the settlement period volume by the Parties for that Settlement Period and that Transaction (expressed in MWh). If no Settlement Period Volume is agreed for a Settlement Period, the Settlement Period Volume is deemed to be zero for that Settlement Period;

"Statement Amount" means, for a Monthly Statement, the aggregate of the amounts referred to in clauses 8.1.5 and 8.1.6;

"System" means the high voltage national grid system operated by the System Operator for the transmission of electricity in England and Wales;

"System Operator" means the National Grid Company plc or any successor or other party who carries out the System operation role of National Grid Company plc;

"Termination Payment" has the meaning set out in clause 12.5.1;

"Termination Payment Date" has the meaning set out in clause 12.5.6;

"Traded Settlement Period Volume" means, for a Settlement Period and a Transaction, the amount of electricity (expressed in MWh) for which a Grid Trade has been effected in accordance with the Transaction. If, for a Settlement Period and a Transaction, a Grid Trade of a greater amount of electricity than the Settlement Period Volume has been effected but otherwise the Grid Trade is in accordance with the Transaction, then the Traded Settlement Period Volume shall equal to the Settlement Period Volume;

"Transaction" means an oral or written agreement between the Parties to undertake one or more Grid Trades, which agreement, amongst other things, supplements this Master Agreement (or incorporates the terms of this Master Agreement by reference) and includes details of the Transaction Term, the Settlement Period Volumes, the ECV Notification Agent and the Contract Price;

"Transaction Term" means, for a Transaction, the period from the time the Transaction is agreed until the time the Transaction expires or is terminated; and

"VAT" means any value added tax or any replacement or other tax levied by reference to value added.

Part 2 - Interpretation

1. Any reference, express or implied, to an **"enactment"** includes references to:
 - (a) that enactment as amended, extended or applied by or under any other enactment before or after the date of this Master Agreement;
 - (b) any enactment which that enactment re-enacts (with or without modification); and

- (c) any subordinate legislation made (before or after the date of this Master Agreement) under any enactment, including one within (a) or (b) above,

except to the extent that any of the matters referred to in (a) to (c) occurring after the earlier of the date of this Master Agreement and the date of the first Transaction entered into materially increase or alter the liability of either of the Parties under this Agreement.

2. Any reference to a **"clause"** or **"schedule"**, is a reference to a clause or schedule of this Master Agreement.
3. Words in the singular may be interpreted as including the plural, and vice versa.
4. Any reference to the words **"include"** or **"including"** shall be construed without limitation.
5. If there is conflict between the terms of a Transaction and the terms of this Master Agreement, the terms of the Transaction shall prevail for the purpose of the relevant Transaction.
6. Any reference in a Transaction to a volume of electricity to be traded in a Settlement Period expressed in MW shall correspond to that volume of electricity divided by 2 expressed in MWh.
7. Any reference to **"time"** shall be a reference to time in London, England.

SCHEDULE 2

AGREEMENT INFORMATION

1. Confirmations (Clause 2.2.1)

Facsimile/E-mail/Other (*specify*).....
(Delete whichever is not applicable)

2. Notification Mechanics (Clauses 4, 5 and 6)

The third party notification agent approach set out in the Master Agreement shall be used for this Agreement unless the relevant clauses are expressly replaced by the equivalent contract Party notification agent clauses. Write "Contract Party Notification Agent Applies" below if the contract Party notification agent approach is to apply (in which case the clauses set out in Schedule 3B shall replace the relevant clauses of the Master Agreement).

.....
ECV Notification Agent:

3. Fallback ECV Notification Agent (Clause 4.4.2)

Party:

4. Compensation Threshold (Clause 12.1.4)

Party: Amount: (£/Month)

Party: Amount: (£/Month)

5. Cross Default Threshold (Clause 12.1.7)

The cross default provisions of clause 12.1.7:

will/will not apply to; and

will/will not apply to

(Delete whichever is not applicable)

If those provisions apply, the Cross Default Threshold means:

Party: Amount: (£)

Party: Amount: (£)

6. Termination Payment Method (Clause 12.5)

Loss/Market Amount
(Delete whichever is not applicable)

7. Change in Taxes (Clause 12.9)

The change in taxes provisions in clause 12.9:

will/will not apply to; and

will/will not apply to

(Delete whichever is not applicable)

8. Credit Support

Credit Support Document. Details of any Credit Support Document:

Credit Support Provider means in relation to

Credit Support Provider means in relation to

9. Rollover of Existing EFAs

Transactions existing as at the date of the Master Agreement which are subject to the EFA Terms Edition 2 (1991) between the Parties will automatically be treated as Transactions under this Agreement. If this is not intended, write "Disapply clause 2, Schedule 4" below.

.....

[Note: Consider carefully the operation of clause 2, Schedule 4. It will automatically apply to all contracts entered into between the Parties to this Agreement which reference the EFA Terms, even if those terms have been significantly modified. Consider whether all contracts, particularly those entered into as part of a discrete deal or which operate for the medium or longer term and which are not entered into in the course of general short term trading, should be affected by clause 2, Schedule 4. Consider also whether clause 2, Schedule 4 is effective to bring the existing transactions between the Parties under this Agreement, especially if the existing transactions have unusual or non-standard provisions. Careful consideration of each transaction is recommended before agreeing or disapplying clause 2, Schedule 4.]

SCHEDULE 3

CONTRACT PARTY NOTIFICATION AGENT APPROACH

NOT USED

SCHEDULE 3B**CONTRACT PARTY NOTIFICATION AGENT APPROACH**

If in Schedule 2 the contract Party notification agent approach is specified then the Master Agreement shall be modified as follows:

1. Replace clauses 4, 5 and 6 with the following:

"4 ECV NOTIFICATION AGENT AUTHORISATION**4.1 ECV Notification Agent**

- 4.1.1 Subject to the remainder of this clause 4, for the purpose of each Transaction, the ECV notification agent (the **"ECV Notification Agent"**) shall be the Party whom the Parties have agreed shall act as such.
- 4.1.2 If "Fallback ECVNA" is specified as applying to this Agreement, in the event that, for any reason, the ECV Notification Agent specified in Schedule 2 (the **"Original ECVNA"**) is unable to submit Valid ECV Notifications, the Original ECVNA may give notice of this (in accordance with clause 5.11) to the other Party (the **"Fallback ECVNA"**). The Fallback ECVNA shall promptly notify the Original ECVNA (in accordance with clause 5.11) whether it is able to make Valid ECV Notifications (and if so, from what time) and, subject to clause 4.1.3 below, the Fallback ECVNA shall be the ECV Notification Agent with effect from the time notified by the Fallback ECVNA as being the time from which it is able to make Valid ECV Notifications (or such other time as the Parties agree), until such time as the Original ECVNA gives further notice to the Fallback ECVNA pursuant to clause 4.1.6 below and during such period reference to ECV Notification Agent in this Agreement (excluding this clause 4) shall be read and construed as reference to the Fallback ECVNA.
- 4.1.3 If "Third Party Notification Agent" is specified as applying to this Agreement, in the event that:
 - (a) "Fallback ECVNA" is not specified as applying to this Agreement and the Original ECVNA for any reason is unable to submit Valid ECV Notifications and has given notice of this to the other Party (in accordance with clause 5.11); or
 - (b) "Fallback ECVNA" is specified as applying to this Agreement but for whatever reason the Fallback ECVNA states in its notice to the Original ECVNA pursuant to clause 4.1.2 that it is unable to submit Valid ECV Notifications, or it is able to submit Valid ECV Notifications but only from a time which (in the reasonable opinion of the Original ECVNA) will be after that by which the Third Party Notification Agent would be able to make notifications pursuant to this Agreement, or there is no ECV Notification Agent Authorisation in place in relation to the Fallback ECVNA; or
 - (c) "Fallback ECVNA" is specified as applying to this Agreement but the Fallback ECVNA does not respond timeously (in the reasonable opinion of the Original ECVNA, having considered both the time at which the notice of

the Original ECVNA was given and the time at which ECV Notifications next need to be made pursuant to this Agreement) to the Original ECVNA's notice pursuant to clause 4.1.2 and the Original ECVNA notifies the Fallback ECVNA of this in accordance with clause 18 (Notices);

then each Party shall, from the relevant time specified in clause 4.1.4 below use all reasonable endeavours to appoint a Third Party Notification Agent to perform the obligations of the ECV Notification Agent pursuant to clause 5.1 (although the Parties acknowledge that the Third Party ECVNA shall not be an ECV Notification Agent for the purposes of this Agreement¹). The Parties agree that, with effect from the time notified by the Third Party Notification Agent as being that from which it has agreed to submit ECV Notifications in relation to Transactions, neither Party shall be liable for the performance of those obligations pursuant to clause 5.1 except to the extent that they are required to use reasonable endeavours to co-operate to procure the performance of those obligations by the Third Party Notification Agent.

- 4.1.4 For the purposes of clause 4.1.3 the relevant times shall be:
- (a) in the case in clause 4.1.3(a) or (c), upon receipt of the respective notices by the Fallback ECVNA; and
 - (b) in the case in clause 4.1.3(b), upon receipt of the notice by the Original ECVNA.
- 4.1.5 For the purposes of each Transaction, the **“Third Party Notification Agent”** shall be such person as the Parties agree shall act as such.
- 4.1.6 Where pursuant to clauses 4.1.2 or 4.1.3 ECV Notifications are being submitted by either a Fallback ECVNA or a Third Party Notification Agent, the Original ECVNA shall use reasonable endeavours to regain the ability to submit Valid ECV Notifications. The Original ECVNA shall notify the Fallback ECVNA (in accordance with clause 5.11) once it regains the ability to submit Valid ECV Notifications, and the Original ECVNA shall become the ECV Notification Agent with effect from the time notified by the Original ECVNA as being the time from which it is able to make Valid ECV Notifications (or such other time as the Parties agree). The Parties shall ensure that any appointment of a Third Party Notification Agent is terminated or withdrawn with effect from the time of such notice.
- 4.1.7 In respect of the matters described in this clause 4.1, the Parties shall:
- (a) each bear their own costs, if any; and
 - (b) divide equally between them the costs and expenses incurred as a result of the Third Party Notification Agent providing energy contract notification services for the purposes of this Agreement,

¹ This wording was inserted to clarify that a third party to the agreement cannot be subject to any obligations under it.

provided that the Parties acknowledge that liability for Deemed Imbalance Charges arising in respect of ECV Notifications submitted by a Third Party Notification Agent shall be allocated in accordance with clause 6.2 or 6.4 (as applicable).²

4.2 Non-Validation of ECV Notification Agent Authorisation

4.2.1 The Parties shall do all things reasonably necessary in co-operation with each other under the Balancing and Settlement Code to ensure that:

- (a) an ECV Notification Agent Authorisation is obtained for the Original ECVNA in respect of the Energy Accounts applicable to that Transaction prior to the ECV Notification Deadline applicable to the first Settlement Period of the Transaction Term and, to the extent possible, prior to each of the notification times set out in clause 5.1 for that Settlement Period;
- (b) ECV Notification Agent Authorisations are obtained for the Fallback ECVNA or the Third Party Notification Agent (as appropriate) as soon as possible following receipt of notice pursuant to clause 4.1.2 or 4.1.3 (as applicable) of an inability to submit notifications, and
- (c) during any period from receipt of notice pursuant clause 4.1.2 or 4.1.3 of an inability to submit notifications and until the appointment of the Fallback ECVNA or any Third Party Notification Agent in accordance with clause 4.1.2 or 4.1.3 (as appropriate), all ECV Notifications in respect of relevant Transactions are made.

4.2.2 Subject to clause 4.2.1, during a Transaction Term, each Party shall do all things reasonably necessary in co-operation with the other under the Balancing and Settlement Code to ensure that the Original ECVNA and, where applicable, the Fallback ECVNA, maintain their ECV Notification Agent Authorisation and that all ECV Notifications in respect of the Transaction are made.

4.3 No Termination of ECV Notification Agent Authorisation

Without prejudice to clauses 12.2 (Suspension) and 12.6 (ECV Notification Withdrawal, Cancellation and Termination) and in respect of a Transaction, neither Party shall terminate an ECV Notification Agent Authorisation that has been validated by the ECV Aggregation Agent without the written consent of the other Party (which shall not be unreasonably withheld or delayed) during the Transaction Term.

5. ECV NOTIFICATIONS

5.1 Notification requirement

5.1.1 Unless otherwise agreed and subject to clause 5.9 (Cancellation of Default Settings and Correction of Existing Settings), for each of any of the 48 Settlement Periods (or 46 or 50 as the case may be for daylight saving days) in any day for which the Settlement Period Volume for each or any Transaction(s) between the Parties is other

² This wording reflect the approach taken regarding allocation of Deemed Imbalance Charges where a TPECVNA is in place. Clause 6.4 shares these between the Parties *unless* one of the Parties has, for example, given inaccurate information to the TPECVNA and as a result no Accurate ECVN was made, in which case that Party will be a Non-Complying Party pursuant to clause 6.2 and will be liable for DICs accordingly.

than zero (each a ‘**Relevant Settlement Period**’) the ECV Notification Agent shall, subject to clause 5.1.2, make Valid ECV Notifications in accordance with the following table:

Row	Transactions in respect of which notifications are to be made	Time during which Valid ECV Notifications required to be made
1	All Transactions entered into at any time prior to 18:00 hours on the day falling seven (7) days prior to the day on which the Relevant Settlement Period falls.	On the day which falls not more and not less than seven (7) days prior to the day on which the Relevant Settlement Period falls, before 18:15 hours.
2	All Transactions (other than a Within Day Transaction) entered into during the twenty-four (24) hour period prior to 18:00 hours on any day falling less than seven (7) days prior to the day on which the Relevant Settlement Period(s) falls.	Before 18.15 hours on the day which is the same number of days prior to the day on which the Relevant Settlement Period(s) falls.
3	All Within Day Transactions.	Before the earlier of one hour after agreement of the Transaction in question or thirty (30) minutes prior to the ECV Notification Deadline for the first Relevant Settlement Period.

5.1.2 Where in respect of a Transaction the day specified in Row 1 of the table in clause 5.1.1 falls on a day which is not a Banking Day, the ECV Notification Agent may (to the extent possible under the Balancing and Settlement Code) make ECV Notifications by the equivalent time to that specified in the table in clause 5.1.1 on the Banking Day that precedes the non-Banking Day in question.

5.2 Valid ECV Notification

"**Valid ECV Notification**" means in respect of an ECV Notification Agent or a Third Party Notification Agent (as the case may be) and a Settlement Period, the last ECV Notification made in accordance with and subject to the Balancing and Settlement Code prior to the ECV Notification Deadline in the format required by the ECV Aggregation Agent and which identifies (in the manner required by the Balancing and Settlement Code) for all Transactions (for which the ECV Notification is required according to the table in clause 5.1) relating to the relevant Settlement Period and combination of the Parties' respective Energy Accounts

5.2.1 the ECV Notification Agent or Third Party Notification Agent (as applicable);

5.2.2 the Net Settlement Period Volume (or the Settlement Period Volume where there is only one relevant Transaction) to be taken into account as at the ECV Notification

Deadline as an Energy Contract Volume, replacing (unless otherwise agreed) the previous ECV Notification made by the relevant ECV Notification Agent for the Settlement Period; and

- 5.2.3 the relevant Energy Account of each Party being the Energy (From) Account of one Party and the Energy (To) Account of the other (which will require correctly specifying in accordance with the relevant Transactions the Net Settlement Period Volume (or the Settlement Period Volume where there is only one Transaction) as either positive or negative as it relates to each Party),

which information shall be referred to as "**ECV Notification Information**".

5.3 Other Information

If, for the purpose of making a Valid ECV Notification, a Party requires any ECV Notification Information which it does not possess and cannot, using reasonable endeavours, obtain, then that Party may give notice to the other Party specifying what ECV Notification Information it requires, and if the other Party possesses or can, using reasonable endeavours, obtain that ECV Notification Information, the other Party shall furnish it to the ECV Notification Agent as soon as reasonably practicable.

5.4 Withdrawal or Revision of Notification

- 5.4.1 Except as provided in this clause 5 or clause 12.6 (ECV Notification Withdrawal, Cancellation and Termination) and except for the purposes of ensuring that a Valid ECV Notification has been made, neither Party shall withdraw, cancel, nullify or replace an ECV Notification without the prior consent of the other Party (which consent shall not be unreasonably withheld or delayed).
- 5.4.2 The ECV Notification Agent shall not submit revised ECV Notifications in respect of any Transaction after the times specified in the table in clause 5.1.1 other than in accordance with clauses 5.5, 5.6, 5.8 or 5.9 below.

5.5 Inaccurate Notification Procedure in respect of Transactions other than Within Day Transactions

- 5.5.1 Subject to clause 5.7(a), with respect to Transactions other than Within Day Transactions, both Parties shall check promptly each day the version of the 7 Day Report issued on or around 18:30 hours each day and either Party shall issue promptly a Rejection Notice to the other Party (in accordance with clause 5.11 and including details of the Settlement Periods set out in such Rejection Notice (**Rejected Settlement Periods**)) if it considers that the 7 Day Report does not accurately contain the ECV Notifications it believes should have been made in accordance with the table in clause 5.1.1, provided that if either Party fails to issue a Rejection Notice by 20:00 hours on that day such Party will be deemed to have accepted the positions notified within the relevant ECV Notification. In the event that neither Party sends a Rejection Notice and such ECV Notification is not an Accurate ECV Notification, then both Parties shall be deemed to be Non-Complying Parties and clause 6.4 shall apply.
- 5.5.2 Where a Rejection Notice is issued pursuant to clause 5.5.1, such Rejection Notice shall be deemed to have been issued in respect of all subsequent 7 Day Reports which

include the Rejected Settlement Periods and solely in respect of those Rejected Settlement Periods unless and until:

- (a) the Rejection Notice has been replaced or amended by the party issuing such Rejection Notice;
- (b) a new Transaction takes place which includes Relevant Settlement Periods for a Settlement Date which falls within the Rejection Notice;
- (c) a new Rejection Notice is issued in respect of a subsequent 7 Day Report; or
- (d) a further ECV Notification is made in relation to the Rejected Settlement Periods in accordance with the procedure set out in clause 5.5.3 or 5.5.4.

5.5.3 Where a Party issues a Rejection Notice pursuant to clause 5.5.1, the other Party shall promptly notify the Party issuing the Rejection Notice (in accordance with clause 5.11) of their initial determination of the details required for a Valid ECV Notification, following which:

- (a) if the Parties agree on the details required for a Valid ECV Notification, the ECV Notification Agent shall make an ECV Notification containing such details; or
- (b) if the Parties initially disagree in relation to the details set out within such Rejection Notice then each Party shall use all reasonable endeavours to resolve the matter and ensure that Valid ECV Notifications are made. If the Parties cannot agree by one (1) hour before the relevant ECV Notification Deadline on the amendments required to make a Valid ECV Notification, each Party shall promptly notify the other (in accordance with clause 5.11) of their determination of the details required for a Valid ECV Notification.

5.5.4 Where no agreement is reached pursuant to clause 5.5.3 above in respect of an ECV Notification, the ECV Notification Agent shall decide which Party's determination of the details required for a Valid ECV Notification will be notified and shall make a further ECV Notification containing such details as required prior to the ECV Notification Deadline for the first Relevant Settlement Period. Where such ECV Notification is not an Accurate ECV Notification, then the Party whose determination of the details required for a Valid ECV Notification was adopted in the final ECV Notification submitted pursuant to this clause 5.5.4 shall be the Non-Complying Party for the purposes of clause 6.2, provided that where both Parties' determinations set out within any notice given pursuant to clause 5.5.3(b) are incorrect then both Parties shall be deemed to be Non-Complying Parties and clause 6.4 shall apply.

5.5.5 Any position agreed pursuant to this clause 5.5 shall cease to be an agreed position at the expiry of the next subsequent time period that an ECV Notification is required to be made pursuant to the table in clause 5.1.1, or, where there is no such subsequent time period specified in the table, at the ECV Notification Deadline, if all Transactions taken into account in such ECV Notification no longer (at such next time or the ECV Notification Deadline, as the case may be) constitute all the Transactions between the Parties relating to that Relevant Settlement Period and combination of the Parties' respective Energy Accounts.

5.6 Inaccurate Notification Procedure in respect of Within Day Transactions

- 5.6.1 Subject to clauses 5.6.4 and 5.7(b), with respect to Within Day Transactions, both Parties shall check promptly any Relevant Automatic Feedback Report and either Party shall issue promptly a Rejection Notice to the other Party (in accordance with clause 5.11) if it considers that the Relevant Automatic Feedback Report does not accurately contain the Notifications it believes should have been made pursuant to the table in clause 5.1.1 for Within Day Transactions, provided that if, following receipt of a Relevant Automatic Feedback Report, the Non-Notifying Party has not issued a Rejection Notice by no later than forty-five (45) minutes before the ECV Notification Deadline for the first Relevant Settlement Period, then that Party shall be deemed to have confirmed the position set out in that ECV Notification. The Non-Notifying Party shall be deemed to be the sole Non-Complying Party for the purposes of clause 6.2 in the event that such ECV Notification is not an Accurate ECV Notification. (For the avoidance of doubt, the Non-Notifying Party is required to check only the first Relevant Automatic Feedback Report).
- 5.6.2 Where a Party issues a Rejection Notice pursuant to clause 5.6.1, the other Party shall promptly notify the other Party (in accordance with clause 5.11) of their initial determination regarding the details required for a Valid ECV Notification, following which:
- (a) if the Parties agree details required for a Valid ECV Notification then the ECV Notification Agent shall make an ECV Notification containing such details; or
 - (b) if the Parties initially disagree in relation to the items set out within such Rejection Notice then each Party shall use all reasonable endeavours to resolve the matter and ensure Valid ECV Notifications are made. If the Parties cannot agree by thirty (30) minutes before the relevant ECV Notification Deadline on the amendments required to make a Valid ECV Notification, each Party shall promptly notify the other (in accordance with clause 5.11) of their determination of the details required for a Valid ECV Notification.
- 5.6.3 Where no agreement is reached pursuant to clause 5.6.2 above in respect of an ECV Notification for a Within Day Transaction, the ECV Notification Agent shall decide which details are to be contained within the ECV Notification and shall submit a further ECV Notification containing such details as required prior to the ECV Notification Deadline for the first Relevant Settlement Period. If either Party's determination of the correct position is adopted in full in the final ECV Notification submitted pursuant to this clause 5.6.3, then that Party shall be the Non-Complying Party for the purposes of clause 6.2 where such ECV Notification is not an Accurate ECV Notification, provided that where both Parties' determination set out within any notice given pursuant to clause 5.5.3(b) are incorrect then both Parties shall be deemed to be Non-Complying Parties and clause 6.4 shall apply.
- 5.6.4 Where a Within Day Transaction is entered into within ninety (90) minutes of the ECV Notification Deadline for the first Relevant Settlement Period, in the event that the related ECV Notification is not an Accurate ECV Notification both Parties shall be deemed to be Non-Complying Parties and clause 6.4 shall apply with respect to the first Relevant Settlement Period only. Clauses 5.6.1 to 5.6.3 shall apply with respect

to the second and subsequent Relevant Settlement Periods and all references to times shall be read as if the Transaction commenced at the second Relevant Settlement Period.

- 5.6.5 The Non-Notifying Party shall not be required to check any acceptance feedback report issued by the ECV Aggregation Agent unless it is aware that a Within Day Transaction has taken place. The ECV Notification Agent shall be deemed to be the Non-Complying Party for the purposes of clause 6.2 in the event that an ECV Notification for a Within Day Transaction is submitted where no such Transaction has taken place.
- 5.6.6 Notwithstanding any of the foregoing provisions of this clause 5.6, if, for any reason, the Non-Notifying Party submits an ECV Notification in respect of Within Day Transactions, and that ECV Notification is not an Accurate ECV Notification, or prevents an ECV Notification made by the ECV Notification Agent from being an Accurate ECV Notification, the Non-Notifying Party shall be deemed to be the Non-Complying Party for the purposes of clause 6.2.

5.7 System Failures

Subject to Clause 5.8, where a Non-Notifying Party has not received:

- (a) a 7 Day Report by 19:30 hours on the day of that report; or
- (b) a Relevant Automatic Feedback Report within ninety (90) minutes of agreeing the Transaction,

(as the case may be), the Non-Notifying Party shall immediately inform the ECV Notification Agent that it will be unable to verify the 7 Day Report or the Relevant Automatic Feedback Report (as applicable) in accordance with this Agreement. Both Parties shall use all reasonable endeavours to agree the details required for a Valid ECV Notification. In such circumstances, both Parties shall be deemed to be Non-Complying Parties and clause 6.4 shall apply in the event that such ECV Notifications are not Accurate ECV Notifications.

5.8 ECVAA System Failure

To the extent that the ECV Notification Agent is prevented, hindered or delayed in making Accurate ECV Notification(s) in accordance with the provisions of clause 5 due to an ECVAA System Failure and as a result, no ECV Notification is made which has been, and by what would, but for the ECVAA System Failure, be the ECV Notification Deadline, continues to be, an Accurate ECV Notification, the ECV Notification Agent shall, where applicable, make Accurate ECV Notifications in accordance with the provisions of Section P5 of the Balancing and Settlement Code and:

- 5.8.1 such Accurate ECV Notification shall be treated as being made by the ECV Notification Deadline and Grid Trades shall be treated as being effected in accordance with the relevant Transactions for the purposes of this Agreement; and
- 5.8.2 accordingly, the provisions of clause 6 and clause 9 shall not apply to that extent.

5.9 Cancellation of Default Settings and Correction of Existing Settings

Notwithstanding that the Net Settlement Period Volume (or the Settlement Period Volume where there is only one relevant Transaction) is zero, if an ECV Notification is required either:

- (a) under the Balancing and Settlement Code (due to rules relating to default settings or otherwise); or
- (b) (in the case of a zero Net Settlement Volume only) to replace an existing ECV Notification for the purposes of complying with clauses 5.1, 5.5, 5.6 or 5.8,

to ensure that the Net Settlement Period Volume or, as the case may be, the Settlement Period Volume, of zero is taken into account as an Energy Contract Volume, the Parties shall comply with this clause 5 in order to make an Accurate ECV Notification.

5.10 Additive ECV Notifications

Where the ECV Notification Agent is making ECV Notifications on an additive basis, rather than a replacement basis, the provisions of clauses 5 and 6 shall apply to the net position across all ECV Notification references appearing on the 7 Day Report in question in respect of Transactions between the Parties and "ECV Notification" shall be read and construed as a reference to all such ECV Notification references and not merely one of them.

5.11 Operational notices

5.11.1 Notwithstanding clause 18 (Notices), a notice given pursuant to clauses 4.1.2, 4.1.3 (but excluding clause 4.1.3(c)), 4.1.5, 5.5.1, 5.5.3, 5.6.1 or 5.6.2 above shall be given:

- (a) first by means of a telephone call to the telephone number set out in Schedule 3B³ for this purpose, (or such other number as a Party may notify from time to time in writing), provided that:
 - (i) if a Party is unable to contact the other Party after using reasonable endeavours then that Party will be deemed to have given notice pursuant to this clause 5.11.1(a); and
 - (ii) notice shall not be given by means of a message left on a voicemail or other messaging system, and
- (b) second by facsimile transmission to the facsimile number set out in Schedule 3B for this purpose (or such other number as a Party may notify from time to time in writing) and notices sent in accordance with this clause 5.11.1(b) shall be deemed to be received at the time of the generation of a valid transmission report confirming good receipt.

5.11.2 Any notice given pursuant to clause 5.11.1 shall

³ This number will be the Parties' 24 hour phone number – there is no obligation under this Agreement for these lines to be recorded, since this is not the case operationally

- (a) in the case of notices under clauses 4.1.2, 4.1.3, 4.1.5 contain the information set out in the notice at Annex B (and in the case of a facsimile be substantially in the form of such notice); or
- (b) in the case of notices under clause 5.5.1, 5.5.3, 5.6.1 or 5.6.2, contain the information set out in the notice at Annex C (and in the case of a facsimile, be substantially in the form of such notice) in relation to the applicable Settlement Periods,

and the Parties agree that the evidence of a Party's determination pursuant to the applicable clause which is contained in any recordings of telephone conversations conducted pursuant to this clause 5.11 shall, to the extent practicable, prevail over any other oral or written evidence. For the avoidance of doubt, the Parties agree that notice must be given (or deemed to be given) in accordance with both clause 5.11.1(a) and (b) above for a notice to be effective pursuant to this clause 5.11, provided that where notice is so given it shall be deemed to be effective from the time from which notice was given (or deemed to have been given) pursuant to clause 5.11.1(a) above.

6. NOTIFICATION FAILURE

6.1 Failure Circumstances

- 6.1.1 Except to the extent that a Party is relieved from complying with a relevant obligation under clause 9 (Force Majeure), if, in respect of a Settlement Period and a combination of the Parties' respective Energy Accounts for one or more Transactions, a Party (the "**Non-Complying Party**"):
- (a) (**ECV Notification Agent Authorisation Failure**) is in breach of clause 4.2 or 4.3;
 - (b) (**No ECV Notification Information**) fails to furnish ECV Notification Information, in breach of clause 5.2 or 5.3 and no Accurate ECV Notification has been made that has been, and at the ECV Notification Deadline continues to be, an Accurate ECV Notification;
 - (c) (**No ECV Notification**) being the ECV Notification Agent, fails to make any ECV Notification in accordance with the table set out in clause 5.1 (other than where clause 6.1.1(b) or (f) applies in respect of a breach by the Party who is not the ECV Notification Agent) and no ECV Notification has been made that has been, and at the ECV Notification Deadline continues to be, an Accurate ECV Notification;
 - (d) (**Non-Compliance with Balancing and Settlement Code**) has not complied with clause 3.3 and no Accurate ECV Notification can be made or an Accurate ECV Notification is refused or cancelled and is not remade before the ECV Notification Deadline, or any data in an Accurate ECV Notification is rejected after the ECV Notification Deadline;
 - (e) (**Withdrawal of ECV Notification**) is in breach of clause 5.4 and no Accurate ECV Notification is made as at the ECV Notification Deadline; or

-
- (f) **(No Correction)** fails to comply with, or is deemed to fail to comply with, clauses 5.5 or 5.6 and no Accurate ECV Notification is made as at the ECV Notification Deadline,

then, subject to clause 6.4, the Non-Complying Party shall pay to the other Party (the "**Complying Party**") or the Complying Party shall pay to the Non-Complying Party, as the case requires, an amount calculated by reference to clause 6.2 or 6.3 (as appropriate).

- 6.1.2 If, in respect of a Settlement Period and a combination of the Parties' respective Energy Accounts for one or more Transactions, both Parties are Non-Complying Parties under this clause 6.1 then clause 6.4 shall apply.

6.2 Deemed Imbalance Charges

Subject to clause 6.4, if, for a Settlement Period and a combination of the Parties' respective Energy Accounts for one or more Transactions, one or more of the circumstances specified in clauses 6.1.1(a) to 6.1.1(f) above (inclusive) occurs then both Parties may calculate the following amounts for the Transactions to which the circumstances apply:

- (a) the relevant Party shall owe the other Party the net amount of the Contract Amounts calculated for all relevant Transactions for that Settlement Period as if an Accurate ECV Notification had been made and the Settlement Period Volume (or the net sum of the Settlement Period Volume where more than one relevant Transaction) was equal to the Settlement Period Volume (or the Net Settlement Period Volume where more than one relevant Transaction);
- (b) the Non-Complying Party shall owe the Complying Party an amount equal to the Deemed Imbalance Charges (if any) deemed to be incurred by the Complying Party; and
- (c) the Complying Party shall owe the Non-Complying Party an amount equal to the Deemed Imbalance Charges (if any) deemed to be payable to the Complying Party.

6.3 Incorrect Energy Account

If the relevant failure is the specification of an incorrect Energy Account of the Complying Party, then the calculation of Deemed Imbalance Charges under clause 6.2 must be performed for both the correct and the incorrect Energy Accounts and the net of these two calculated amounts shall be paid by the Party owing that amount to the other Party.

6.4 No Fault Error Amounts

If, in respect of any Settlement Period and a combination of the Parties' respective Energy Accounts for one or more Transactions, a Grid Trade volume is incorrectly notified for any reason (other than for one or more of the reasons set out in clause 6.1 in the case where only one of the Parties is a Non-Complying Party), then both Parties may calculate the following amounts for the Transactions to which the circumstances apply:

- (a) the relevant Party shall owe the other Party the net amount of the Contract Amounts calculated for all relevant Transactions for that Settlement Period as if an Accurate ECV Notification had been made and the Settlement Period Volume (or the net sum

of the Settlement Period Volume where more than one relevant Transaction) was equal to the Settlement Period Volume (or the Net Settlement Period Volume where more than one relevant Transaction); and

- (b) each Party shall owe the other Party an amount equal to half of the Deemed Imbalance Charges (if any) deemed to be incurred by the other Party; and
- (c) each Party shall owe the other Party an amount equal to half of the Deemed Imbalance Charges (if any) deemed to be payable to that Party.

6.5 Payment of Deemed Imbalance Charges

For the avoidance of doubt the obligation to pay the Contract Amount pursuant to clause 6.2(a) or 6.4(a) shall not be in addition to the obligation to pay in respect of Contract Amounts pursuant to clause 8.1.

-
2. The following new definitions and interpretation provisions shall be inserted into the Schedule 1:

“7 Day Report” shall have the meaning given to the term "Forward Notification Summary" in Section V of the Balancing and Settlement Code, or such term as may replace the term "Forward Notification Summary" under the Balancing and Settlement Code;

“Accurate ECV Notification” means an ECV Notification which accurately represents the position agreed pursuant to clauses 5.5 or 5.6;⁴

“ECVAA System Failure” has the meaning given to that term in the Balancing and Settlement Code, or such term as may replace the term "ECVAA System Failure" under the Balancing and Settlement Code;

“ECV Notification Agent” has the meaning set out in clause 4.1.1;

“ECV Notification Information” has the meaning set out in clause 5.2;

“EFA Day” means a twenty-four (24) hour period starting at 23:00 hours (inclusive) on a calendar day and ending at 22:59 hours (inclusive) on the next calendar day;

“Energy (From) Account” has the meaning set out for it in the Balancing and Settlement Code;

“Energy (To) Account” has the meaning set out for it in the Balancing and Settlement Code;

“Fallback ECVNA” has the meaning set out in clause 4.1.2;

“Non-Notifying Party” means a Party which, at the relevant time and in respect of the Transaction in question, is not the ECV Notification Agent;

⁴ The Working Group considered inserting a provision which set out the procedure for determining the Accurate ECV Notification. However the majority of views expressed felt that such a clause would be too prescriptive and create more issues than it resolved.

"**Notification Report**" has the meaning given to that term in Section V of the Balancing and Settlement Code or such term as may replace the term "Notification Report" under the Balancing and Settlement Code;

"**Notification Time**" means 18:00 hours on any calendar day;

"**Original ECVNA**" has the meaning set out in clause 4.1.2;

"**Rejected Settlement Period**" has the meaning set out in clause 5.5.1;

"**Rejection Notice**" means a notice made pursuant to clause 5.5.1 or 5.6.1 and in accordance with clause 5.11;

"**Relevant Automatic Feedback Report**" shall have the meaning given to the term "Acceptance Feedback Report for valid ECVNs" in Section V of the Balancing and Settlement Code, or such term as may replace the term "Acceptance Feedback Report for valid ECVNs" under the Balancing and Settlement Code, where such report is issued by the ECV Aggregation Agent as a result of the ECV Notification Agent making ECV Notifications in relation to Within Day Transactions between the two Parties;

"**Relevant Settlement Period**" has the meaning set out in clause 5.1.1;

"**SAA**" has the meaning set out for it in the Balancing and Settlement Code;

"**Settlement Day**" has the meaning set out for it in the Balancing and Settlement Code;

"**Settlement Run**" has the meaning set out for it in the Balancing and Settlement Code;

"**System Buy Price**" has the meaning set out for it in the Balancing and Settlement Code;

"**System Sell Price**" has the meaning set out for it in the Balancing and Settlement Code;

"**Third Party Notification Agent**" has the meaning set out in clause 4.1.4;

"**Valid ECV Notification**" has the meaning set out in clause 5.2; and

"**Within Day Transaction**" means a Transaction agreed and commencing within 29 hours of the most recently expired Notification Time.

References to the Balancing and Settlement Code shall :

- (i) include references to any other procedures with which the Party is required under the Balancing and Settlement Code to comply and
- (ii) be construed as references to the Balancing and Settlement Code as in force at the time of the application of the relevant provisions of this Agreement.

3. The following definitions within Schedule 1 shall be amended to read as follows:

"B&SC Party" means a party to the BSC by virtue of being a signatory to the BSC Framework Agreement (as that term is defined in the System Operator's transmission licence);

"ECV Notification" means, for a Settlement Period, a notification made by the ECV Notification Agent to the ECV Aggregation Agent, identifying (in the manner required by the Balancing and Settlement Code), amongst other things:

- (a) a volume of electricity to be taken into account as an Energy Contract Volume;
- (b) the B&SC Parties that are party, and which of them is seller and buyer respectively, to the trade (or trades) to which the Energy Contract Volume is to relate (which may require specifying a volume of electricity as either positive or negative as it relates to each party); and
- (c) the Energy Account of each B&SC Party;

"ECV Notification Agent Authorisation" means the authorisation validated by the ECV Aggregation Agent in accordance with the Balancing and Settlement Code, so that volumes of electricity stated in an ECV Notification made by the ECV Notification Agent named in the authorisation may be taken into account in determining the respective Account Energy Imbalance Volumes of the B&SC Parties' Energy Accounts identified in the ECV Notification;

"ECV Notification Deadline" means, for a Settlement Period, the time (known as gate closure) by which volumes by which volumes of electricity must be notified to the ECV Aggregation Agent so that those volumes of electricity will be taken into account as Energy Contract Volumes in determining Account Energy Imbalance Volumes for that Settlement Period for the purposes of the Balancing and Settlement Code; and

"Energy Imbalance Charges" means, in respect of a Settlement Period and an Energy Account of a B&SC Party, changes under the Balancing and Settlement Code that are payable by or (as the case may be) to that B&SC Party for imbalance settlement purposes by way of cash-out in respect of a volume of electricity representing a negative or (as the case may be) positive Account Energy Imbalance Volume;

- 4. Annexes B and C shall be annexed to the Master Agreement.
- 5. Fallback ECVNA [shall/shall not] apply in relation to this Agreement.
- 6. Third Party Notification Agent [shall/shall not] apply in relation to this Agreement.
- 7. The telephone number for notices under clause 5.11 shall be:
 Party: []
 Party: []
- 8. The facsimile number for notices under clause 5.11 shall be:
 Party: []
 Party: []

SCHEDULE 4

TRANSITIONAL PROVISIONS

1. ACCOMMODATION OF NETA

1.1 Background

The background circumstances to this Agreement are:

- 1.1.1 in July 1999 the Office of Gas and Electricity Markets published detailed proposals for implementing new electricity trading arrangements in England and Wales (the "**NETA Proposals**");
- 1.1.2 the NETA Proposals were substantially confirmed in October 1999 by the Department of Trade and Industry and the Office of Gas and Electricity Markets;
- 1.1.3 the NETA Proposals included "A draft specification for the balancing mechanism and imbalance settlement Version 1.2" (the "**Draft Specification**") which contains, amongst other things, a description of a procedure whereby, under the new electricity trading arrangements:
 - (a) an Account Energy Imbalance Volume will be determined in respect of each Settlement Period for each Energy Account of a B&SC Party; and
 - (b) the determination of an Account Energy Imbalance Volume, in respect of a Settlement Period for each Energy Account of a B&SC Party will take into account Energy Contract Volumes for that Settlement Period and Energy Account;
- 1.1.4 the NETA Proposals stated that the Draft Specification may be subject to change prior to implementation of the NETA Proposals;
- 1.1.5 the Parties, in entering into a Transaction, intend that, upon the implementation of the NETA Proposals, the Settlement Period Volumes in respect of a Transaction will be taken into account as part of the Energy Contract Volumes of specified Energy Accounts of the Parties in determining their respective Account Energy Imbalance Volumes for the Settlement Periods comprised in the Transaction; and
- 1.1.6 the Parties intend that this Agreement shall operate and be interpreted to operate consistently with the Draft Specification and, in so far as reasonably foreseeable, any amendment, revision or replacement of the Draft Specification and any translation of the Draft Specification into the Balancing and Settlement Code, or other rules or procedures of the System Operator with which either Party is required to comply or other means by which the Draft Specification is given effect.

1.2 Variation to Accommodate NETA

- 1.2.1 If, after the date on which a Transaction is entered into but prior to the expiry of the Transaction Term for that Transaction:

- (a) the Draft Specification is translated into the Balancing and Settlement Code or other rules or procedures of the System Operator with which either Party is required to comply or is otherwise given effect to; and
- (b) as a result, the Parties are or will be unable, by complying with this Agreement, to ensure that the Settlement Period Volumes in respect of a Transaction are taken into account as part of the Energy Contract Volumes of specified Energy Accounts of the Parties in determining their respective Account Energy Imbalance Volumes for the Settlement Periods comprised in the Transaction,

then clause 1.2.2 of this Schedule shall apply.

- 1.2.2 If the circumstances set out in clause 1.2.1 of this Schedule apply, either Party may give notice to the other to this effect and the Parties shall, in good faith, seek to agree such amendments to this Agreement as will ensure that, for the Settlement Periods comprised in each Transaction, the respective Settlement Period Volumes are taken into account in determining their respective Account Energy Imbalance Volumes.

1.3 NETA Disputes

- 1.3.1 If the Parties fail to agree the amendments referred to in clause 1.2.2 of this Schedule after 10 Banking Days of notice having been given pursuant to that clause, then either Party may notify the other Party of its decision to refer the matter to the Expert for determination in accordance with clause 22 of the Master Agreement by giving a notice to the other Party.
- 1.3.2 Clause 23 of the Master Agreement shall not apply to a matter or amendment to the extent that it is addressed by this clause 1 (even if the dispute arises 90 days or more after the coming into effect of the NETA Proposals).
- 1.3.3 This clause 1 ceases to have effect in relation to a matter or amendment not notified by one Party to the other within 90 days of the time of the coming into effect of the NETA Proposals.

2 ROLLOVER OF EXISTING EFAS

Unless this clause 2 is disapplied in accordance with Schedule 2 and subject to the last paragraph of this clause 2, at the date of this Master Agreement, all transactions between the Parties (and no other persons) which are not covered by, and have not been expressly excluded from being covered by, the clause equivalent to this clause 2 in another Master Agreement between the Parties:

- 2.1 which are expressly stated to be subject to either the EFA Terms Edition 2 (1991) or Edition 3 (the "**EFA Terms**") with or without amendments;
- 2.2 which were agreed before the date of the Master Agreement; and
- 2.3 whose contract periods are not agreed to end before 2300 hours on 29th October, 2000,

shall, without more: (a) be deemed to be a Transaction forming part of this Agreement and (b) be treated as a Transaction covered by clause 3 of this Schedule 4.

This clause 2 shall not affect the rights or obligations of the Parties under the transaction which arose before the date of this Master Agreement. This clause 2 is effective notwithstanding any entire agreement clause relevant to the transaction.

If a Master Agreement has not been signed by the Parties which is supplemented by a Transaction but the terms of this document are incorporated into a Transaction by reference, then, unless the Parties otherwise expressly agree in writing, this clause shall not be effective solely as a result of that Transaction.

3. PRE-NETA ARRANGEMENTS

3.1 Pre-NETA Transactions

With respect to each Transaction, if at the commencement of the Transaction Term the NETA Proposals have not been brought into effect, then from the commencement of the Transaction Term until the time that the NETA Proposals are brought into effect, the Transaction shall be subject to the EFA Terms for the purpose of which:

- 3.1.1 the Contract Price shall be the Strike Price under the EFA Terms;
- 3.1.2 the Transaction shall be financially settled against pool purchase price as the Reference Price for all Settlement Periods ending before the coming into effect of the NETA Proposals in accordance with the EFA Terms and in accordance with the settlements and other terms of this Master Agreement for all Settlement Periods ending after that time; and
- 3.1.3 those other matters in the Transaction that necessarily have to be changed to give effect to the Transaction under the EFA Terms (or under this Master Agreement in the case of Transactions referred to in clause 2 of this Schedule 3) shall also be changed.

If any dispute or difference shall arise between the Parties as to the construction or effect of this clause 3 and it is not resolved within 10 days of either Party giving notice to the other Party, then either Party may notify the other Party of its decision to refer the matter to the Expert under clause 22 of the Master Agreement.

3.2 Required Authorisation Pre-NETA

If this Transaction is entered into before the NETA Proposals have been brought into effect, then a Party shall not be considered to be in breach of clauses 3.1.4, 3.2 or 3.3 of the Master Agreement (relating to Required Authorisations and the Balancing and Settlement Code) to the extent that the Party has not:

- 3.2.1 obtained or maintained a Required Authorisation required for the period after the NETA Proposals have been brought into effect before the time when it would be reasonably practicable for that Party acting as a Reasonable and Prudent Operator to obtain that Required Authorisation where that Required Authorisation is a Required Authorisation by virtue of the NETA Proposals; or
- 3.2.2 become a B&SC Party or taken any action with respect to the Balancing and Settlement Code before the time when it would be reasonably practicable for that

Party acting as a Reasonable and Prudent Operator to do so in accordance with any applicable timetables relating to the implementation of the NETA Proposals.

3.3 Determining ECV Notification Agent

Unless the single notification approach applies in accordance with Schedule 2, if this Transaction is entered into before the NETA Proposals have been brought into effect and prior to any person (not being a Party) being both willing and able, to the reasonable satisfaction of the Parties, to act as an ECV Notification Agent on their behalf, clause 4.1 of the Master Agreement shall be treated as requiring the Parties to agree upon the person that shall act as ECV Notification Agent as soon as reasonably practicable. If, after 10 days of either Party serving a notice on the other, the Parties do not agree on the person that shall act as ECV Notification Agent, either Party may notify the other Party of its decision to refer the matter to the Expert for determination in accordance with clause 22 of the Master Agreement.

4. DEFINITIONS

The following words or phrases, where they appear in this Master Agreement or in a Confirmation, have the following meanings respectively:

"**Draft Specification**" has the meaning set out in clause 1.1.3 of this Schedule;

"**EFA Terms**" has the meaning set out in clause 2 of this Schedule; and

"**NETA Proposals**" has the meaning set out in clause 1.1.1 of this Schedule.

IN WITNESS of this agreement the parties have executed this Master Agreement on the respective dates set out below with effect from the date set out on the first page of this document.

.....
(Name of Party)

By:
(Signature)

Name:
Title:
Date:
(Print)

.....
(Name of Party)

By:
(Signature)

Name:
Title:
Date:
(Print)

**ANNEX A
FORM OF CONFIRMATION**

This Confirmation evidences the terms of the binding agreement between the Seller and the Buyer named below regarding the Transaction to undertake Grid Trades described in this Confirmation.

This Confirmation supplements the Futures and Options Association Grid Trade Master Agreement signed by the Parties dated [].

[Note: If the Parties have not yet executed, but intend to execute a Grid Trade Master Agreement, include, instead of the last paragraph, the following: "This Confirmation evidences a complete and binding agreement between you and us as to the terms of the Transaction to which this Confirmation relates. In addition, you and we agree to use all reasonable efforts promptly to negotiate, execute and deliver an agreement in the form of the Grid Trade Master Agreement (the "Master Agreement"), with such modifications as you and we will in good faith agree. Upon the execution by you and us of such an agreement, this Confirmation will supplement, form part of, and be subject to that agreement. All provisions contained in or incorporated by reference in that agreement upon its execution will govern this Confirmation except as expressly modified below. Until we execute and deliver that agreement, this Confirmation, together with all other documents referring to the Master Agreement (each a "Confirmation") confirming transactions (each a "Transaction") entered into between us (notwithstanding that a Confirmation is not expressly stated to supplement, form a part of, or be subject to an agreement in the form of the Master Agreement), shall supplement, form a part of, and be subject to, an agreement in the form of the Master Agreement as if we had executed an agreement in such form (but without completing any of the items in Schedule 2) on the date of the first such Transaction between us. If there is any inconsistency between the provisions of that agreement and this Confirmation, this Confirmation will prevail for the purpose of this Transaction."]

Seller:

Seller Energy Account No.:

Buyer:

Buyer Energy Account No.:

Time Transaction Agreed

Settlement Periods (for which Grid Trades are to be made):

Total Volume (MWh):

Settlement Period Volume(s) (MWh):

Contract Price(s) (£/MWh):

Special Conditions

[Special conditions]

If this Confirmation correctly sets out the terms of our agreement, please sign and return a copy of this Confirmation within 2 Banking Days from receipt of this Confirmation. If you believe that this Confirmation does not correctly set out the terms of our agreement, send a response within 2 Banking Days from receipt of this Confirmation, which sets out in detail the alleged inaccuracy.

If your response contains additional or different terms from those set out in this Confirmation and/or the Master Agreement, they shall only become part of the Transaction if we expressly agree in a supplemental written confirmation.

Dated.....

Signed.....
Duly authorised on behalf of the Seller

Signed.....
Duly authorised on behalf of the Buyer

ANNEX B
FORM OF NOTICE OF ABILITY TO SUBMIT ECV NOTIFICATIONS

Date:

Time:

From: [Name]

(delete as appropriate) acting as [Original ECVNA / Fallback ECVNA / Third Party Notification Agent]
for the purposes of this Agreement.

Fax:

Tel:

To: [Name]

(delete as appropriate) which is acting as [Original ECVNA/Fallback ECVNA / Third Party
Notification Agent] for the purposes of this Agreement.

Fax:

Tel:

Confirmation We confirm that we [are / are not capable] of making Valid ECV
(delete as appropriate) Notifications of the GTMA

Time by which [*hours, date/month/year*]
capable of notifying
(if applicable)

**ANNEX C
FORM OF NOTICE OF POSITION FOR ECV NOTIFICATION**

Date: **Time sent:**

From: **Fax:**
Tel:

To: **Fax:**
Tel:

RECIPIENT PARTY:

Energy Account:

ISSUING PARTY:

Energy Account:

ECV NOTIFICATION AGENT:

Transaction other than Within Day Transaction

Time and date of issue of applicable 7 Day Report:

Within Day Transaction

Time and date of issue of applicable Relevant Automatic Feedback Report:

Settlement Date relating to Rejection Notice	Settlement Period relating to Rejection Notice	Net Settlement Period Volume	Expected notified volume