

## **Schedule A2**

### **Model Agreement**

Agreement for the Supply of Energy and  
Additional Services between:

**EDF Energy Customers Limited**

And

**Transport for London**

Crown  
Commercial  
Service  
*Supplier*

#### **CONTENTS**

**Clause**

**Page No**

<b>1. COMMERCIAL TERMS</b>	<b>5</b>
<b>2. CONDITIONS PRECEDENT</b>	<b>7</b>
<b>3. REGISTRATION</b>	<b>8</b>
<b>4. GENERAL OBLIGATIONS OF SUPPLIER, AND SUPPLY OF ELECTRICITY PRODUCTS</b>	<b>9</b>
<b>5. SUPPLIER'S OBLIGATIONS</b>	<b>12</b>
<b>6. CUSTOMER OBLIGATIONS</b>	<b>17</b>
<b>7. METERING EQUIPMENT</b>	<b>18</b>
<b>8. INVOICE AMOUNT AND CHARGES</b>	<b>21</b>
<b>9. INVOICING AND PAYMENT</b>	<b>22</b>
<b>9A. DATA PROVISION</b>	<b>26</b>
<b>10. DE-ENERGISATION AND DISCONNECTION</b>	<b>26</b>
<b>11. CONNECTION AGREEMENT</b>	<b>27</b>
<b>12. REPRESENTATIONS AND WARRANTIES</b>	<b>27</b>
<b>13. FORCE MAJEURE EVENTS</b>	<b>29</b>
<b>14 LIABILITY, INDEMNITIES AND INSURANCE</b>	<b>33</b>
<b>15 TERM AND RENEWAL</b>	<b>35</b>
<b>16 ACCESS TO SITE</b>	<b>35</b>
<b>17 OBJECTIONS</b>	<b>35</b>
<b>18 DATA PROTECTION</b>	<b>36</b>
<b>19 CONFIDENTIALITY</b>	<b>39</b>
<b>20 FREEDOM OF INFORMATION</b>	<b>40</b>
<b>21 GOVERNING LAW AND DISPUTE RESOLUTION</b>	<b>41</b>
<b>22 SUBCONTRACTING AND ASSIGNMENT</b>	<b>44</b>
<b>23 MISCELLANEOUS PROVISIONS</b>	<b>44</b>
<b>24 RECOVERY OF SUMS DUE</b>	<b>45</b>
<b>25 NOTICES</b>	<b>46</b>
<b>26 CORRUPT GIFTS AND PAYMENTS OF COMMISSION</b>	<b>46</b>
<b>27 OFFICIAL SECRETS</b>	<b>47</b>
<b>28 DISCRIMINATION</b>	<b>48</b>
<b>29 DISABILITY EQUALITY</b>	<b>49</b>
<b>30 RACE EQUALITY</b>	<b>49</b>
<b>31 PREVENTION OF FRAUD &amp; CONFLICTS OF INTEREST</b>	<b>49</b>

<b>32 SUSTAINABLE PROCUREMENT</b>	<b>50</b>
<b>33 CONTRACTOR STATUS</b>	<b>50</b>
<b>34 ACTS BY THE PARTIES</b>	<b>50</b>
<b>35 DEFINITIONS</b>	<b>51</b>
<b>36 INTERPRETATION</b>	<b>60</b>
<b>37 PRECEDENCE</b>	<b>60</b>
<b>Appendix 1 Official Secrets T&amp;Cs</b>	<b>62</b>
<b>Appendix 2 Processing Personal Data</b>	<b>65</b>
<b>Appendix 3 Tax</b>	<b>66</b>

**THIS AGREEMENT** 27 September 2024 | 07:27 AM PDT

**BETWEEN**

- (1) **EDF Energy Customers Limited** a company registered in England and Wales under company number 02228297 and having its registered office at 90 Whitfield Street, London W1T 4EZ (the “**Supplier**”); and
- (2) **LONDON UNDERGROUND LTD ON BEHALF OF THE TRANSPORT FOR LONDON GROUP** and having its registered office at 5 Endeavour Square, London, United Kingdom E20 1JN (the “**Customer**”);

**WHEREAS**

- (A) The Authority provides energy contracting services for eligible (public and private) entities, including volume aggregation, competitive price determination and hedging of electricity supply (“**Services**”), and the Customer is an eligible entity.
- (B) The Authority provides the Services through the use of the Framework Agreement with the Supplier which regulates, inter alia, the aggregation of the Customer Portfolio, the forward purchasing of electricity for the aggregated Customer Portfolio, the locking and unlocking of wholesale electricity prices, related hedging activities and the scheduling of supply of electricity to the Customers.
- (C) To engage the Authority's Services the Customer has entered into, or is in the process of entering into, the Customer Access Agreement pursuant to which the Authority performs the Services.
- (D) The Supplier wishes to sell and supply electricity to the Customer and the Customer wishes to buy and take delivery of electricity from the Supplier using the Services. Such supply shall be for the commercial purposes of managing its costs of purchasing electricity for its business and not for any speculative or investment purpose.
- (E) It is the intention of the Parties that this Agreement governs the terms and conditions for the sale, delivery and purchase of such supply.
- (F) The Framework Agreement also provides for the ordering of Additional Services in accordance with the Ordering Procedures (as defined in the Framework Agreement).

**WHEREBY IT IS AGREED as follows:**

**PART 1 - COMMERCIAL TERMS AND CONDITIONS FOR THE SUPPLY OF ELECTRICITY**

**1 COMMERCIAL TERMS**

- 1.1. The Supplier shall supply the Customer with electricity, and the Customer shall take delivery of such electricity, on the following terms:

**Contract Period:** From the Earliest Supply Start Date until its expiry, or termination following the final requested associated delivery period in accordance with Clause 13.7 of this Agreement.

**Earliest Supply Start Date:**

**Supply Points:** To be agreed annually for each relevant delivery period in accordance with the Framework Agreement

**Details of the Meter Operator:** To be agreed annually for each relevant delivery period in accordance with the Framework Agreement

**Details of the Data Collector:** To be agreed annually for each relevant delivery period in accordance with the Framework Agreement

**Details of the Data Aggregator:** To be agreed annually for each relevant delivery period in accordance with the Framework Agreement

**Payment method:** The Customer may elect any one of the following payment methods:

- direct debit;
- BACS; or
- GPC Card

**Payment terms:** The Customer may elect to pay invoices issued under this Agreement:

- 7 days following receipt of invoice;
- 10 days following receipt of invoice;
- 14 days following receipt of invoice;
- 21 days following receipt of invoice;

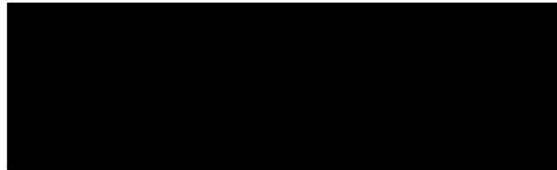
- 28 days following receipt of invoice; or
- 30 days following receipt of invoice

**Invoice format:**

The Customer may, subject to applicable Laws, elect any one or more of the following formats for receiving invoices:

- hard copy;
- e-billing;
- EDI; or
- another format agreed between the Parties.

**Supplier's Bank Account:**



**Customer's Bank Account:**

To be provided upon request

**Customer's Notice Address:**

5 Endeavour Square,  
London,  
United Kingdom  
E20 1JN

**Supplier's Notice Address:**

EDF Energy,  
90 Whitfield Street,  
London,  
W1T 4EZ

**Supplies of Renewable Electricity:**

To be agreed annually for each relevant delivery period in accordance with the Framework Agreement

## **PART 2 – GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF ELECTRICITY**

### **2 CONDITIONS PRECEDENT**

- 2.1. In relation to each Supply Point the Supplier's obligation to provide the Supply, and the Customer's obligation to make payment, are conditional at all times upon the following conditions precedent being satisfied in respect of each Supply Point:
  - 2.1.1. an agreement being in force in relation to each Metering Point at such Supply Point for the provision of Meter Asset Services;
  - 2.1.2. there being a Meter installed, satisfactorily commissioned, registered and operating at each Metering Point and such Meter meeting the requirements set out in this Agreement ("**Agreement**");
  - 2.1.3. the Supplier holding a Licence to supply electricity in accordance with the Act;
  - 2.1.4. the Supplier being Registered as the sole Supplier for each Supply Point;
  - 2.1.5. a Connection Agreement or Standard Connection Agreement being in force in respect of each Metering Point and, if required by the BSC (as defined in the Framework Agreement), an Unmetered Supply Connection Agreement being in force in respect of each Unmetered Supply Point;
  - 2.1.6. an agreement or agreements with the Data Collector and Data Aggregator being in force in respect of each Metering Point;
  - 2.1.7. to the extent required by applicable Law and Industry Documents, a Use of System Agreement being in force in respect of such Supply Point;
  - 2.1.8. the Supplier being a party to the DCUSA; and
  - 2.1.9. for Unmetered Supply Point(s), an Unmetered Supply Certificate has been issued.
- 2.2. The conditions precedent in Clauses 2.1.1, 2.1.2, and 2.1.6 do not apply to Unmetered Supply Points.
- 2.3. The Customer shall:
  - 2.3.1. use its reasonable endeavours to ensure that the conditions in Clauses 2.1.2 and 2.1.5 are satisfied by the Earliest Supply Start Date for each Supply Point and that they remain satisfied until this Agreement ends; and
  - 2.3.2. cooperate with the Supplier to ensure that the condition in Clause 2.1.4 can be satisfied by the Supplier.
- 2.4. The Supplier shall use its reasonable endeavours to ensure that the conditions in Clauses 2.1.3, 2.1.4, 2.1.7, 2.1.8 and 2.1.9 are satisfied by the Earliest Supply Start Date for each Supply Point and that they remain satisfied until this Agreement ends.
- 2.5. The Responsible Party shall use reasonable endeavours to ensure that the conditions in Clauses 2.1.1 and 2.1.6 are satisfied by the Earliest Supply Start Date for each Supply Point and that they remain satisfied until this Agreement ends.

- 2.6. The conditions in Clauses 2.1.2 and 2.1.5 are for the benefit of, and may only be waived or deferred by, the Supplier. The conditions in Clauses 2.1.3, 2.1.4, 2.1.7, 2.1.8 and 2.1.9 are for the benefit of, and may only be waived or deferred by, the Customer. The conditions in Clause 2.1.1 and 2.1.6 are for the benefit of, and may only be waived or deferred by, the Party which is not the Responsible Party.
- 2.7. The failure of the Parties to satisfy all the conditions precedent for a Supply Point by the Earliest Supply Start Date for that Supply Point does not affect the Supplier's obligation to provide the Supply and the Customer's obligation to make payment in relation to the Supply, in respect of Supply Points in relation to which all the conditions precedent have been satisfied (or waived in accordance with Clause 2.6).
- 2.8. The Customer accepts that, by entering into this Agreement, the National Terms of Connection (being the relevant standard industry connection terms of this name) apply between it and the relevant Distribution Network Operator and that the Supplier acts as agent of the Distribution Network Operator for these purposes.

### **3 REGISTRATION**

- 3.1. The Supplier shall ensure that it is Registered in respect of each Supply Point prior to the Earliest Supply Start Date for that Supply Point.
- 3.2. For the purposes of registration the Supplier shall use the Managed Registration Information which the Authority provides to it in accordance with the Framework Agreement.
- 3.3. If the Supplier fails to Register itself in respect of a Supply Point in accordance with the requirements of the Framework Agreement:
  - 3.3.1. the Supplier shall notify the Customer within two (2) Working Days of the failure;
  - 3.3.2. the Supplier shall use all reasonable endeavours to Register itself in respect of the relevant Supply Point as soon as reasonably practicable; and
  - 3.3.3. subject to Clause 3.4, and to the extent that any such failure is attributable to any act or omission of the Supplier, compensate the Customer in accordance with the relevant provisions of the Framework Agreement.
- 3.4. The Supplier shall not be liable pursuant to Clause 3.3.3 to the extent that such failed Registration is caused by a Notice of Objection submitted by the Incumbent Supplier.
- 3.5. Without prejudice to the generality of Clause 3.3.2, the Supplier shall use all reasonable endeavours to resolve any Notice of Objection submitted by the Incumbent Supplier as soon as is reasonably practicable and to minimise any delays to the Actual Supply Start Date for the relevant Supply Point. The Customer shall cooperate with the Supplier to the extent reasonably necessary to resolve such a Notice of Objection.
- 3.6. The Parties acknowledge and agree that any disputes between the Supplier and Incumbent Supplier relating to the late Registration of such Supply Point, including any amounts that may be owed, shall be resolved (and payments made) in accordance with the REC.
- 3.7. If a Notice of Objection submitted by the Incumbent Supplier is not resolved on or before the third (3rd) attempt to do so, then:



- 3.7.1. either Party may by notice in writing to the other remove the relevant Supply Point from this Agreement. In these circumstances, the Supplier shall advise the Customer of the onward process via site additions if the Customer wishes the Supplier to make further attempts to Register the Supply Point; and
- 3.7.2. the Supplier shall advise the Customer of the onward process via site additions] if the Customer wishes the Supplier to make further attempts to Register the Supply Point.

#### **4 GENERAL OBLIGATIONS OF SUPPLIER, AND SUPPLY OF ELECTRICITY PRODUCTS**

##### ***General obligations in respect of this Agreement***

- 4.1. Without prejudice to any specific obligation of the Supplier under this Agreement, the Supplier shall perform its obligations under this Agreement:
  - 4.1.1. in accordance with applicable Law (including the Act and the Regulations), the Supplier's Licence and all applicable Industry Documents; and
  - 4.1.2. with the skill and care of a Reasonable and Prudent Operator.
- 4.2. The Supplier shall ensure that the Customer obtains good title to the Electricity Products received from the Supplier under this Agreement and that at the respective Supply Point the Electricity Product so received shall be free from all liens, charges and adverse claims of every description.
- 4.3. The Supplier shall ensure that, during the Term:
  - 4.3.1. the Customer and each Site are eligible for Supply by the Supplier under the terms of the Supplier's Licence; and
  - 4.3.2. it has secured all necessary third party consents, approvals and permissions, including a Licence, required for the Supplier to supply electricity to the Customer at each Site; and
  - 4.3.3. it accedes to and complies with the terms of all applicable Industry Documents.

##### ***Obligation to Supply***

- 4.4. The Supplier shall provide:
  - 4.4.1. the Supply from the Actual Supply Start Date; and
  - 4.4.2. at each Supply Point, up to the Maximum Consumption for such Supply Point.
- 4.5. Provided that the Supplier performs its obligations under this Agreement in accordance with Clause 4.1:
  - 4.5.1. it is not deemed to make any representation, or provide any undertaking, in relation to the quality of the Supply; and
  - 4.5.2. accordingly, shall not be liable for any losses incurred by the Customer resulting from the quality of the Supply.

- 4.6. All electricity that is consumed by the Customer at a Supply Point (whether or not recorded by a Meter) shall be deemed to be supplied under the terms of this Agreement.

### ***Suspension of Supply***

- 4.7. Subject to Clause 4.8, the Supplier shall not be liable to the Customer for any interruption, reduction or impairment of the Supply to any Supply Point if it is caused by:

4.7.1. an act of the Supplier; or

4.7.2. the exercise of demand control by the Distribution Network Operator or the Transmission System Operator,

in either case to ensure compliance with the applicable Law (including the Act and the Regulations), the Supplier's Licence or any other Industry Document.

- 4.8. If at the time of the suspension of the Supply the Supplier is in material breach of this Agreement or the Framework Agreement (other than for the reasons set out in Clause 4.7) the Supplier shall not obtain relief under Clause 4.7.

- 4.9. If the Supply to a Supply Point is suspended as a result of an act of the Supplier, or by the exercise of demand control by the Distribution Network Operator or the Transmission System Operator, to ensure compliance with applicable Law (including the Act and the Regulations), the Supplier's Licence or any other Industry Document:

4.9.1. the Supplier shall give, and shall use reasonable endeavours to cause the Distribution Network Operator or the Transmission System Operator (as applicable) to give, to the Customer as much notice as possible of any interruption, reduction or impairment of Supply; and

4.9.2. to the extent that it is not in the sole responsibility of the Distribution Network Operator or the Transmission System Operator under any applicable Law or applicable Industry Document, the Supplier shall remedy any interruption, reduction or impairment to the Supply as soon as reasonably practicable.

### ***Compensation***

- 4.10. If and to the extent that the Supplier recovers compensation from the Distribution Network Operator or Transmission System Operator for loss incurred by the Customer relating to a suspension of the Supply to a Supply Point the Supplier shall pay the full amount of such compensation to the Customer (less any reasonable costs and expenses incurred by the Supplier in recovering such amount).

### ***Renewable Electricity***

- 4.11. 4.11 Where this Agreement provides for the Supply (or a percentage of the Supply) to be of Renewable Electricity, the Supplier shall ensure that the electricity (or relevant percentage of the electricity) supplied hereunder is Renewable Electricity.

- 4.12. Not used.

### ***Supply Point Withdrawals***

- 4.13. If a Customer:

- 4.13.1. vacates a Site;
  - 4.13.2. sells, assigns, transfers or otherwise disposes of its interest in a Site; or
  - 4.13.3. removes a Supply Point from a Site, or otherwise disconnects a Supply Point from the Distribution System to which the Supply Point is connected,
- as a result of which the Customer no longer wishes the Supplier to provide the Supply to a Supply Point ("**Supply Point Withdrawal**"), the Customer shall give the Supplier no less than thirty (30) Days' notice in writing that it no longer wishes the Supplier to provide the Supply to the relevant Supply Point and shall state:
- 4.13.4. the date upon which (subject to the remaining provisions of this Clause 4) such Supply shall cease ("**Withdrawal Date**"); and
  - 4.13.5. in the case of a Supply Point Withdrawal under Clause 4.14.2, details of the proposed new occupier of the Supply Point (including contact information).
- 4.14. The Customer shall continue to be liable for Fixed Daily Charges in respect of such a Supply Point until the later of:
- 4.14.1. sixty (60) days after notice is given by the Customer under Clause 4.14; and
  - 4.14.2. the date the Supply Point Withdrawal becomes effective in accordance with Clause 4.17,
- and accordingly, should the Supply Point Withdrawal not become effective in accordance with Clause 4.17, the Customer will remain liable for the relevant Charges.
- 4.15. Without prejudice to the Supplier's right to lodge a Notice of Objection, where Clause 4.15.2 applies, the Supplier shall cooperate with the new Electricity Supplier and do such things as are necessary to enable the Registration of the new Electricity Supplier as soon as reasonably practicable.
- 4.16. A Supply Point Withdrawal shall become effective in relation to a Supply Point on the earlier of the date which:
- 4.16.1. a third party has entered into an agreement with the Supplier for the supply of electricity to such Supply Point;
  - 4.16.2. another Electricity Supplier has Registered and started supplying electricity to such Supply Point; or
  - 4.16.3. the relevant Supply Point is De-energised because no supply of electricity is required at such Supply Point.
- 4.17. The Customer shall, within two (2) Working Days of the date a Supply Point Withdrawal becomes effective in accordance with Clause 4.17, provide the Supplier with written notice which shall include:
- 4.17.1. the date when such Supply Point Withdrawal was made;
  - 4.17.2. where Clause 4.14.2 applies, details of the new occupier of the Supply Point (including contact information) and the date the new occupier took occupancy of the Supply Point; and

- 4.17.3. Meter readings on the date on which the Supply Point Withdrawal took effect.
- 4.18. In the event that the Supply continues at a Supply Point after the Withdrawal Date then until the Supply Point Withdrawal becomes effective in accordance with Clause 4.17:
  - 4.18.1. the Supplier shall continue to provide the Supply, and
  - 4.18.2. the Customer shall continue to pay the Charges in accordance with this Agreement save that the Charges shall be calculated by reference to the Deemed Contract Rate.
- 4.19. As soon as reasonably practicable following the date a Supply Point Withdrawal is effective in accordance with Clause 4.17, the Supplier shall issue a final invoice to the Customer showing all outstanding monies owed by the Customer in relation to Supply to the Supply Point that has been withdrawn, up to the date on which such Supply Point Withdrawal was effective.
- 4.20. Any provision of this Agreement in relation to the Supply or De-energisation of any Supply Point shall arise, subsist and cease individually and separately, so that:
  - 4.20.1. where a new Supply Point is added to this Agreement, the provisions of this Agreement shall apply separately to such new Supply Point; and
  - 4.20.2. where an existing Supply Point is to be withdrawn from this Agreement, the provisions of this Agreement shall cease to apply separately to such Supply Point to be withdrawn, and the Supply shall continue in relation to Supply Points not withdrawn.

### ***Supply Point Additions***

- 4.21. The Parties acknowledge and agree that the Customer may add Supply Points from time to time to this Agreement by giving notice to the Supplier in accordance with the Customer Access Agreement, and the Supplier shall Register itself in respect of such additional Supply Points as requested by the Customer and as required by the Authority under the Framework Agreement. The Registration provisions in Clause 3 shall apply to such additional Supply Points.
- 4.22. Unless the Authority and the Supplier agree otherwise under the Framework Agreement, the Supply to a Supply Point shall be on an Interim Supply basis for the period between the date on which the Customer adds the Supply Point and the First Supply Start Date of the first Electricity Product the Customer chooses to receive at that Supply Point pursuant to the Customer Access Agreement.
- 4.23. If the Customer adds a Supply Point after the Price Setting Round Commitment Point in respect of the relevant Supply Year, then the Customer shall pay the Supplier the Interim Price in respect of Interim Supply to such Supply Points during the Interim Supply Period, including any discount equivalent to those offered by the Supplier to the Customer under Clause 8.

## **5 SUPPLIER'S OBLIGATIONS**

### ***Account Manager***

- 5.1. The Supplier shall ensure that, in accordance with its obligations under the Framework Agreement, it provides an Account Manager to each Customer who shall:

- 5.1.1. provide a copy of the Customer Welcome Pack (as described in Schedule 6) to the Customer prior to the First Supply Start Date;
  - 5.1.2. hold regular account review meetings with the Customer;
  - 5.1.3. support the Customer by using analysis of the Customer's account to proactively identify potential savings opportunities and improvement initiatives;
  - 5.1.4. support the Customer in their understanding of regulatory, legislative and policy challenges within the energy industry;
  - 5.1.5. where required by the Customer, work with them to agree a communications protocol, which should detail appropriate lines of communication and how such communications will be managed and monitored in order to avoid instances of miscommunication and information loss;
  - 5.1.6. undertake other such activities as to be reasonably expected in order to successfully manage the Customers account.
- 5.2. Within two (2) Working Days of the Effective Date, the Supplier shall notify the Customer of the name and contact details of the Account Manager. If those details change during the Term, the Supplier shall notify the Customer of the new details of the Account Manager as soon as possible.

#### ***Customer Service Team***

- 5.3. The Supplier shall ensure that, in accordance with its obligations under the Framework Agreement, it has a Customer Service Team which shall:
- 5.3.1. ensure accurate set-up and management of the Customer's account with the Supplier;
  - 5.3.2. ensure invoices are billed and, subject to Clause 9.4, issued in the format requested by the Customer;
  - 5.3.3. be the first point of contact for the Customer if it has a Query and/or Complaint, and deal with and resolve such Queries and Complaints;
  - 5.3.4. attend meetings with the Customer as and when required;
  - 5.3.5. prepare all reports, documents and other information required under the Framework Agreement or this Agreement to be provided to the Customer; and
  - 5.3.6. 5.3.6 deal with Customer Queries and Complaints in accordance with Clauses 5.4 to 5.15.

#### ***Customer Queries and Complaints***

- 5.4. If the Supplier receives a query from the Customer it shall:
- 5.4.1. identify whether the query is:
    - (a) an Invoicing Query;
    - (b) a General Query; or

- (c) a Complaint.
- 5.4.2. if the query is:
  - (a) an Invoicing Query or a General Query, resolve the Query in accordance with Clause 5.5 to 5.7; or
  - (b) a Complaint, resolve the Complaint in accordance with Clauses 5.8 to 5.11.
- 5.5. If a Supplier receives a Query from a Customer, the Supplier shall:
  - 5.5.1. immediately log the Query in its Query Management System;
  - 5.5.2. within two (2) Working Days of receipt of the Query, send the Customer (by email, or letter) an acknowledgement of receipt of the Query which specifies what steps the Supplier shall take to resolve the Query;
  - 5.5.3. use all reasonable endeavours to resolve the Query to the Customer's satisfaction within two (2) Working Days of receipt of the Query;
  - 5.5.4. if the Query is an Invoicing Query and if reasonably required, the Supplier shall immediately re-issue the amended invoice to the Customer and the Customer shall pay the re-issued invoice in accordance with Clause 5.7;
  - 5.5.5. if the Query is not resolved to the Customer's satisfaction within two (2) Working Days, provide the Customer with a written response giving the reason why it was not resolved, and a date when full resolution is expected; and
  - 5.5.6. if the Query is not resolved to the Customer's satisfaction within five (5) Working Days of receipt of the Query from the Customer, identify and describe the Query in the relevant Reporting Documents.
- 5.6. If a Query is not resolved to the Customer's satisfaction within the timeframes required by Clause 5.5.6 the Customer may request that the Query be dealt with as a Complaint.
- 5.7. If the Supplier cancels an issued invoice ("**Original Invoice**") and re-issues the invoice in accordance with Clause 5.5.4, the Customer shall:
  - 5.7.1. if the re-issued invoice is received by the Customer no fewer than ten (10) Days prior to the due date of the Original Invoice, pay the amount of the invoice by the due date of the Original Invoice; or
  - 5.7.2. if the re-issued invoice is received by the Customer fewer than ten (10) Days prior to the due date of the Original Invoice, pay the amount of the invoice within such period as applies pursuant to the Payment Terms after the date the Customer receives the re-issued invoice from the Supplier.
- 5.8. If the Supplier receives a Complaint from a Customer, the Supplier shall:
  - 5.8.1. log the Complaint in its Query Management System;
  - 5.8.2. prioritise resolution of the Complaint;

- 5.8.3. provide the Customer with a written acknowledgement of the Complaint within one (1) Working Day of receipt of the Complaint;
  - 5.8.4. use all reasonable endeavours to resolve the Complaint to the Customer's satisfaction within ten (10) Working Days of receipt of the Complaint; and
  - 5.8.5. if the Complaint is not resolved to the Customer's satisfaction at the end of the ten (10) Working Day period described in Clause 5.8.4, notify the Customer and inform the Customer of the steps the Supplier shall take to resolve the matter.
- 5.9. If the Complaint is not resolved to the Customer's satisfaction within the timeframe specified in Clause 5.8, or the Supplier's estimated timescale for resolution of the Complaint is not acceptable to the Customer, the Customer may escalate the Complaint in accordance with Clauses 5.12 to 5.14.
- 5.10. The Supplier shall provide the Customer with regular updates on its resolution of the Complaint throughout the 10 Working Day period referred to in Clause 5.8.4.
- 5.11. The Parties acknowledge and agree that the Supplier shall, in accordance with the Framework Agreement, notify the Authority of a Complaint and that, if the Complaint is not resolved to the Authority's satisfaction, or the Supplier's estimated timescale for resolution of the Complaint is not acceptable to the Authority, then the Authority may require the Supplier to escalate the Complaint in accordance with the escalation procedure in Clauses 5.12 to 5.14.

#### ***Escalation procedure***

- 5.12. If:
- 5.12.1. the Customer is not satisfied that a Complaint has been resolved in accordance with Clauses 5.8 to 5.11; or
  - 5.12.2. the Authority is not satisfied that a Complaint has been resolved in accordance with Clauses 5.8 to 5.11 and has required the Supplier to escalate the Complaint,
- then the Customer may, or the Supplier must (as the case may be) refer the matter to the Supplier's Strategic Account Manager who shall review the Complaint and provide the results of his or her review to the Customer and the Authority within ten (10) Working Days.
- 5.13. If, following the review of the Complaint by the Strategic Account Manager in accordance with Clause 5.12, the Complaint has not been resolved to the Customer's or the Authority's satisfaction (as the case may be), the Customer may refer the Complaint to the Energy Ombudsman or, if the Energy Ombudsman does not have authority to review the Complaint, to the Dispute resolution process in Clause 21.
- 5.14. The Supplier agrees that a determination of the Energy Ombudsman shall be final and binding in respect of the Supplier save in the case of fraud or manifest error.
- 5.15. The Parties agree that neither Party shall be entitled to refer a Complaint or a Query to the Dispute resolution process in Clause 21 until the processes set out in Clauses 5.4 to 5.14 have been exhausted in respect of that Query or Complaint.

### ***Customer Survey***

- 5.16. The Supplier shall, at least once each Supply Year, provide the Customer with a written survey document by email, or such other format as agreed by the Parties from time to time, ("**Customer Survey**") which shall enable the Customer to provide comments to the Supplier on matters including:
- 5.16.1. the quality, type and scope of the Supply and associated services provided by the Supplier to the Customer under this Agreement;
  - 5.16.2. 5.16.2 any ways in which the Supplier's provision of the Supply and performance of its obligations under this Agreement can be improved; and
  - 5.16.3. 5.16.3 any other matters which the Authority notifies the Supplier should be included.
- 5.17. The Customer Survey must also enable the Customer to specify if there are new electricity products or services which the Customer would like the Supplier to provide to the Customer.
- 5.18. If the Customer Survey identifies Queries or Complaints, then the Supplier shall immediately resolve such Queries or Complaints to the Customer's satisfaction in accordance with the applicable Query and Complaint resolution procedure set out in this Clause 5.18. To the extent that the Customer Survey identifies that the Customer is dissatisfied with the Supplier's performance of this Agreement but such dissatisfaction is not characterised by the Customer as a Query or a Complaint, the Supplier shall use all reasonable endeavours to resolve to the Customer's satisfaction the cause of the dissatisfaction as soon as possible.
- 5.19. The Supplier shall provide the results of the Customer Survey to the Authority.

### ***Access***

- 5.20. The Supplier shall comply, and shall ensure that the Supplier Staff (including agents) comply with any conditions of access or Site requirements (including security, health and safety requirements) that the Customer may impose in relation to access to a Site. The Customer shall provide the Supplier with details of any such conditions of access from time to time.

### ***Payment of subcontractors***

- 5.21. The Supplier shall:
- 5.21.1. 5.21.1 in relation to any sub-contract entered into in relation to this Agreement or the Supplier's obligations under it, ("Supplier Sub-contract"), pay all undisputed sums due under the Supplier Sub-contract within 30 (thirty) days of the relevant due date; and
  - 5.21.2. 5.21.2 include in each Supplier Sub-contract provisions similar to those referred to in Clause 5.21.1 such that all subcontractors, of any tier in relation to Supplier Subcontracts, must pay undisputed sums within 30 (thirty) days of the due date.

### ***Sourcing Playbook***

- 5.22. It is the intention of the Government to publish the top KPIs in the vast majority of contracts, to help facilitate this, the Customer may publish at least three KPIs and one Social Value KPI for this Agreement chosen at their absolute discretion. The Supplier agrees that any KPI which is published in accordance with this clause 5.22:



- 5.22.1. is not Confidential Information;
  - 5.22.2. is not Commercially Sensitive Information;
  - 5.22.3. is not exempt from publication;
  - 5.22.4. shall not give rise to any Dispute;
  - 5.22.5. shall not give rise to any form of liability on behalf of the Customer or the Authority
- 5.23. To enable the Customer to comply with clause 5.22, the Supplier shall;
- 5.23.1. supply any information and/or data requested by a Customer within 10 Working Days of any request; and
  - 5.23.2. supply any reasonable assistance requested by the Customer or the Authority in relation to clause 5.22 above
- 5.24. The Customer shall have the discretion to categorise this Agreement as Gold, Silver or Bronze using the Cabinet Office Tiering Tool as a guide.
- 5.25. Where the Customer has specified that this Agreement is a Critical Services Contract (either in the Order Form or via another form of communication to the Supplier) then the Supplier shall comply with Part B of Schedule 17 of the Framework Agreement.
- 5.26. The Supplier shall comply with any request of the Customer to include an Insolvency Continuity Plan into the Supplier's BCDR plan in accordance with Schedule 17 of the Framework Agreement (such request to be made at the Customer's discretion).

## **6 CUSTOMER OBLIGATIONS**

### ***Obligation to accept and pay for Supply***

- 6.1. The Customer shall accept and pay for all Supply at each Supply Point, including any Supply that is in excess of Maximum Consumption.

### ***Provision of information and access***

- 6.2. The Customer shall provide the Supplier with such additional information, other than that otherwise provided for in this Agreement, as the Supplier may reasonably request from time to time to enable the Supplier to meet its obligations under this Agreement and the Framework Agreement. The Customer shall provide and shall notify the Supplier of any changes to such information.
- 6.3. Without prejudice to any statutory power, or other legal right, of entry to the Sites, the Supplier and the Supplier Staff (including agents appointed by the Supplier) may, at reasonable times and by giving reasonable notice to the Customer, enter a Site (or where the Meter is installed in any other premises, those premises) for the purpose of carrying out agreed activities related to the Supply under this Agreement, including inspecting, reading, testing, (and, where the Supplier is responsible for the Meter, maintaining, repairing and replacing) a Meter.

### ***Emergencies***

- 6.4. In an Emergency, the Customer shall use its best endeavours to comply with all reasonable requests of the Supplier or the Distribution Network Operator and/or Transmission Licensee for the purposes of:
- 6.4.1. averting or reducing danger to life or property; and
  - 6.4.2. securing the safety of the Distribution System and/or the relevant Transmission Licensee's System for the safe distribution and/or transmission of electricity.
- 6.5. In an Emergency or following a direction made under Section 2(1)(b) of the Energy Act 1976, the Supplier may discontinue or restrict the Supply to Supply Points at the relevant Site and the Customer shall use its best endeavours to refrain from using electricity immediately upon being notified by the Supplier or the Distribution Network Operator or Transmission Licensee (as the case may be) that it must do so.

## **7 METERING EQUIPMENT**

### ***General provisions in relation to Metering Equipment***

- 7.1. The Parties acknowledge and agree that:
- 7.1.1. Supply to each Metering Point shall be measured by a Meter (save in the case of Unmetered Supply Points); and
  - 7.1.2. the Responsible Party shall ensure (or shall procure that the third party owner of the relevant Meter ensures) that all Meters are:
    - (a) in proper working order and suitable for measuring the Supply; and
    - (b) compliant with the Act and applicable Industry Documents.

### ***The Responsible Party***

- 7.2. 7.2 Subject to Clause 7.3, the Supplier shall be responsible for the Metering Equipment and shall:
- 7.2.1. provide to the Customer the Meter Asset Services;
  - 7.2.2. appoint a Meter Operator to provide the Meter Asset Services and a Data Collector and Data Aggregator to provide the Data Collection Services to the Customer in respect of each Meter; and
  - 7.2.3. ensure that each Metering Agent appointed by it carries out its functions in accordance with Good Industry Practice and any other requirements notified by the Customer to the Supplier
- 7.3. The Customer may appoint a Meter Operator to provide the Meter Asset Services and a Data Collector and a Data Aggregator to provide the Data Collection Services (and as a result become, as applicable, responsible for the Metering Equipment, the Meter Asset Services and Data Collection Services) by giving notice to the Supplier. The Supplier shall be deemed to have been given notice of the appointment of a Meter Operator, Data Collector and Data Aggregator by the Customer if the Managed Registration Information identifies that such appointment has been made. Where this Clause 7.3 applies, the Supplier shall ensure that

the Customer is not charged (to the extent applicable) for the provision of the Meter Asset Services or the Data Collection Services.

- 7.4. The person responsible for the Metering Equipment, Meter Asset Services in accordance with Clauses 7.1 to 7.3 (the “**Responsible Party**”) shall:
- 7.4.1. install, inspect, maintain, adjust, repair and replace all such Metering Equipment so as to comply with all requirements under the Act and all relevant Industry Documents and so as to ensure that the Metering Equipment accurately registers the quantity of electricity supplied; and
  - 7.4.2. ensure that the Metering Equipment is appropriate to supply all apparatus connected to it. If a Party who is not the Responsible Party becomes aware that the Metering Equipment does not comply with the requirements of this Clause 7 it shall inform the Responsible Party.
- 7.5. If the Supplier is the Responsible Party, the Customer shall pay the Supplier the Metering Charges for the Meter Asset Services provided.
- 7.6. The Party which is not the Responsible Party (“**the Indemnifying Party**”) shall indemnify the Responsible Party for any costs, claims, liabilities, charges, costs, expenses (including legal expenses) or damage suffered or incurred by the Responsible Party as a result of: (i) damage caused to the Metering Equipment by the Indemnifying Party; or (ii) removal of the Metering Equipment by the Indemnifying Party.

***Customer responsibility in relation to Metering Equipment***

- 7.7. 7.7 The Customer shall:
- 7.7.1. notify the Supplier and Distribution Network Operator as soon as reasonably practicable if it believes there has been damage or change to, or interference with, any Metering Equipment. The Customer shall provide the Supplier with any information regarding such damage or interference which the Supplier may, in writing, reasonably request;
  - 7.7.2. protect the Metering Equipment against weather damage, physical damage and any unauthorised third party interference or adjustment;
  - 7.7.3. provide power as required for the Metering Equipment; and
  - 7.7.4. provide safe and reasonable access to all Metering Points.
- 7.8. The Customer shall notify the Supplier as soon as reasonably practicable if it believes there has been damage to or interference with the Metering Equipment, and in doing so the Customer shall provide the Supplier with such supporting evidence as is reasonable in the circumstances.
- 7.9. Save to the extent, if any, that any third party may notify the Customer that it accepts responsibility, in which case the Customer shall notify the Supplier that the third party accepts responsibility (or shall procure that the third party notify the Supplier that the third party accepts responsibility), the Customer shall be responsible for all pipes and apparatus installed for the purposes of Supply beyond the Meter.

### ***Change to the Metering Equipment or Services***

- 7.10. The Parties may agree to change the Metering Equipment, the arrangements for Meter reading or other Meter-related services at one or more Supply Points. The costs of implementation of any such changes shall be allocated between the Parties as agreed.
- 7.11. The Responsible Party shall give the other Party not less than one (1) month's written notice of the end of the provision of Meter Asset Services by such Meter Operator to the Responsible Party. Such notice must include the date of the end of the provision of the relevant Meter Asset Services and the name and contact details of the new Meter Operator which will provide the relevant Meter Asset Services.

### ***Testing of Metering Equipment***

- 7.12. All Meters shall be deemed to be accurate except as provided in Clauses 7.13 to 7.16. If a Party reasonably believes that a Meter is registering inaccurately, that Party may require the Meter to be tested by the Meter Operator responsible for such Meter by giving not less than fourteen (14) Days' written notice to the other Party.
- 7.13. As soon as reasonably practicable following the issue of a notice under Clause 7.12, the Responsible Party shall procure that the Meter Operator, or an alternative party that the Parties agree is appropriate to carry out the tests, tests the accuracy of the relevant Meter in accordance with the Act and all applicable Industry Documents to determine whether the Meter is registering inaccurately beyond the limits permitted by the Act and the Industry Documents and, if so, the likely period of such inaccuracy. The results of the Meter Operator's tests shall be final and binding, except in the case of fraud or manifest error.
- 7.14. If the Meter is found to be registering inaccurately beyond the limits permitted under the Act and applicable Industry Documents, the costs of inspection shall be paid by the Responsible Party.
- 7.15. If the Meter is found to be registering inaccurately beyond the limits permitted under the Act and applicable Industry Documents, and as a result there is a difference between:
- 7.15.1. the amount that would have been payable by the Customer to the Supplier for electricity consumed at such Meter had it been registering accurately; and
- 7.15.2. the amount actually invoiced to and paid by the Customer for electricity consumed at such Meter,
- then the amounts underpaid or overpaid by the Customer during the past 12 months' from the date of the test, shall be paid or refunded between the Parties as the case may be.
- 7.16. If a Meter is found to be registering accurately following an inspection, the Party who gave notice under Clause 7.12 shall be liable for the costs of such inspection.

### ***Opening Meter reading and Meter Data***

- 7.17. Following Registration of a Metering Point, the Responsible Party shall procure that the Data Collector produces an opening Meter reading for the Metering Point, which shall be based on a validated D86. If a validated D86 is unavailable, the Supplier shall estimate an opening Meter reading for such Metering Point based on the Customer's Estimated Annual Consumption. If the Customer reasonably considers that the Supplier's estimate in respect of a Metering Point is inaccurate, the Customer shall be entitled to read the relevant Meter and provide an alternative Meter reading to the Supplier. The Supplier shall accept the

Customer's Meter reading as the opening Meter reading except in the case of fraud or manifest error.

- 7.18. the Supplier shall, upon the request of the Customer, provide the Customer with consumption data for specified Meter(s) and for a specified period being no less than one Month ("**Meter Data**"). The Supplier may refuse a request from the Customer to provide Meter Data in relation to the same Meter more than once a Month.

***Meter reading***

- 7.19. The Customer, or Metering Agent, may provide Meter readings to the Supplier, and the Supplier, acting reasonably and where unable to take Meter readings themselves, shall accept such Meter readings, for the purposes of calculation of invoices, by any one of the following methods:

7.19.1. the Supplier's Website;

7.19.2. telephone;

7.19.3. email to the address specified by the Supplier from time to time; or

7.19.4. pre-paid postcard.

- 7.20. The Responsible Party shall ensure that each Meter is read in accordance with the BSC.

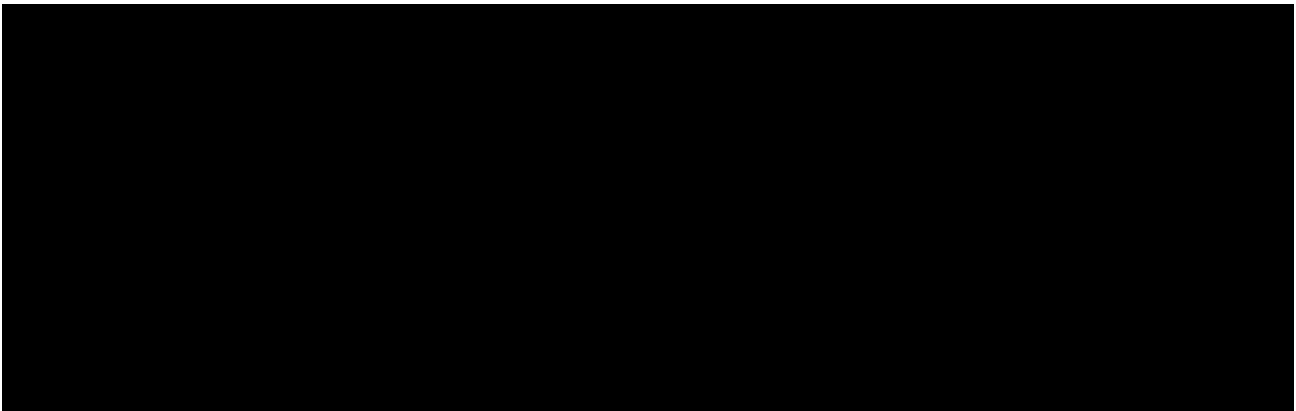
**8 INVOICE AMOUNT AND CHARGES**

- 8.1. Subject to Clauses 8.2 and 4.23 the Customer shall (subject to any Disputed Payment) pay the Supplier the Charges for the Supply, which shall include the Variable Charges and the Fixed Daily Charges (the "**Invoice Amount**").

- 8.2. The Customer shall pay the Supplier the Interim Price for any Interim Supply, including any discount which is equivalent to the discount offered by the Supplier and available to the Customer under Clauses 8.3 and 8.4.

- 8.3. The applicable adjustments (if any) set out in this Clause 8.3 shall apply depending upon the Payment Terms agreed.

8.3.1. **Payment method/timeframe adjustment:**



**8.3.2. Invoicing adjustment:**

- 8.4. If the Customer wishes to receive the discounts referred to in Clause 8.3 then the Customer shall:
- 8.4.1. if Clauses 8.2 or 4.23 apply, notify the Authority (at the same time as it provides the Managed Registration Information under the Customer Access Agreement) of the relevant Payment Terms and the Supplier shall apply the discounts referred to in Clause 8.3 to Invoice Amounts contained in those invoices issued to the Customer in respect of the Interim Supply; or
  - 8.4.2. in all other cases notify the Supplier of the relevant Payment Terms no less than ten (10) Working Days prior to the beginning of a Supply Year and the Supplier shall apply the discounts referred to in Clause 8.3 to Invoice Amounts contained in those invoices issued to the Customer for the remainder of the Term unless the Customer otherwise notifies the Supplier.

**9 INVOICING AND PAYMENT**

- 9.1. The Supplier shall invoice the Customer on a Supply Point basis provided that the Customer may elect by notice to the Supplier to receive, and if it so elects the Supplier shall provide, invoices on an aggregate Supply Point basis.
- 9.2. Each Month, the Supplier shall invoice the Customer for Supply during the previous Month in the format and by the payment method prescribed in Part 1.
- 9.3. 9.3 If the invoice is to be provided to the Customer:
- 9.3.1. in hard copy, the Supplier shall use all reasonable endeavours to provide the Customer with the invoice by the twelfth (12th) Working Day of the Month immediately following the Supply Month; or
  - 9.3.2. electronically, the Supplier shall use all reasonable endeavours to provide the Customer with the invoice by the eleventh (11th) Working Day of the Month immediately following the Supply Month,
- and any delay in receipt of an invoice by the Customer shall extend the Payment Terms by a number of days equivalent to the delay in receipt of such invoice.
- 9.4. 9.4 The Customer may at any time change the format in which it receives invoices by providing written notice to the Supplier, provided that the new format must be one or more of the following formats:
- 9.4.1. hard copy;

- 9.4.2. e-billing;
  - 9.4.3. EDI; or
  - 9.4.4. such other format as the Parties may agree.
- 9.5. 9.5 The Customer may at any time request that the Supplier send an invoice or a copy of an invoice to an address that is different to the address identified in the Managed Registration Information provided that the address on the invoice remains the address of the Customer.
- 9.6. 9.6 The Customer may, prior to the beginning of each Supply Year, change the method by which it pays an invoice by providing written notice to the Supplier which shall apply throughout that Supply Year, provided that the new payment method must be one of the following formats:
  - 9.6.1. direct debit;
  - 9.6.2. BACS; or
  - 9.6.3. GPC Card.
- 9.7. If the Customer makes no election, the payment method shall be by BACS transfer.
- 9.8. Any change of payment method notified by the Customer to the Supplier in accordance with Clause 9.6 shall take effect from the commencement of the relevant Supply Year and continue for the Term unless otherwise notified by the Customer in accordance with Clause 9.6.
- 9.9. If:
  - 9.9.1. the Customer is the Responsible Party the Supplier shall (subject to Clauses 9.10 and 9.11) use Meter readings provided by the Customer or Metering Agent to calculate the amount of an invoice. If the Customer's Meter reading is received by the Supplier by the 2nd Working Day following the end of the Supply Month, then the Supplier shall use the Customer's Meter reading to calculate the invoice for that Supply Month. If the Customer's Meter reading is received after that time, then the Supplier shall use the Customer's Meter reading when calculating the invoice for the Supply Month following the Supply Month in which such reading is received. If the Supplier receives Meter readings from both the Customer and a Metering Agent, the Supplier shall use the Metering Agent's Meter reading when calculating the amount of an invoice in accordance with this Clause 9.9; or
  - 9.9.2. the Supplier is the Responsible Party the Supplier shall use Meter readings obtained by or on behalf of it to calculate the amount of an invoice.
- 9.10. If the Customer is the Responsible Party and the Customer, or Metering Agent, does not provide Meter readings to the Supplier for a Supply Month, the Supplier shall use the consumption data recorded by the Meters under Clause 7.19.
- 9.11. If the Customer is the Responsible Party and a Metering Agent's Meter reading, Customer's Meter reading or actual consumption data is not available, or if the accuracy of a Meter or Meters is disputed, the Supplier shall prepare the invoice or any part thereof using the Supplier's reasonable estimate of the Supply based on historical consumption data and all other relevant information in accordance with Good Industry Practice.

- 9.12. If the Customer is the Responsible Party, and an invoice has been prepared under Clause 9.11, when actual data is received by the Supplier in respect of the relevant period, any invoices delivered under this Agreement in respect of such period shall be adjusted and any amounts underpaid or overpaid as a consequence shall be paid or refunded between the Parties as the case may be.
- 9.13. Each Month the Supplier shall send the Customer the invoice showing and/or providing the Charges due from the Customer for the Supply taken at the Site during the relevant Supply Month comprising:
- 9.13.1. the Invoice Amount;
  - 9.13.2. any VAT or other taxes, including CCL, customarily to be paid or reimbursed by the Customer;
  - 9.13.3. any adjustments required under this Agreement or the Framework Agreement;
  - 9.13.4. any reductions or exemptions to the CCL for which the Customer may qualify or any other exemptions or reductions the Customer may be entitled to or qualify for under the Act, the Licence, any legislation or regulation or any relevant Industry Documents or practices in relation to any characteristics of the Supply or the Customer's consumption behaviour, or any change thereof, provided that the Customer has submitted to the Supplier all necessary evidence, relief certificates or information thereof;
  - 9.13.5. any discount offered by the Supplier and available to the Customer under this Agreement, including for prompt payment of sums due; and
  - 9.13.6. any other information or data as may be specified in Part 1 as required from the Supplier.
- 9.14. The Supplier shall seek to validate each invoice before sending it to a Customer and, as a result of such validation process, shall determine whether such invoice is legitimate and accurate (Pass) or is not legitimate and accurate (Fail). The Supplier shall send invoices to Customers only where they are Passes. The process of validation referred to in this Paragraph shall include a comparison to the previous invoice totals. Should any invoice exceed the percentage of the Monthly billed average agreed between the Supplier and the Authority from time to time (the average of invoice values over last twelve (12) Months on a like for like basis), the Supplier shall review that invoice to ensure legitimacy and accuracy taking into account factors such as:
- 9.14.1. seasonal variance;
  - 9.14.2. price changes;
  - 9.14.3. any differences between a Meter read and a previously assumed level of consumption; and
  - 9.14.4. number of days consumption.
- 9.15. If an invoice is a Pass the Supplier may issue it to the Contracted Customer in accordance with the relevant Agreement and this Framework Agreement.
- 9.16. For the avoidance of doubt, where group billing applies, the Supplier shall validate invoices both at group and site level and any site level failure shall result in the group level invoice being considered as a Fail.



- 9.17. The Supplier shall contact the Contracted Customer within three (3) Working Days of the standard billing date to discuss any invoice which is a Fail, and the timing of any reissued invoice.
- 9.18. Any Contracted Customers which have not been invoiced because an invoice is a Fail shall be billed manually during the Month following the Month of consumption, if a Contracted Customer requires it.
- 9.19. The Supplier shall adopt procedures to support manual billing should it be required by a Contracted Customer.
- 9.20. If an invoice is a Fail, the Supplier shall recalculate the invoice and issue the recalculated invoice to the Contracted Customer as soon as reasonably possible during the Month following the Month of consumption.
- 9.21. Subject to Clause 9.23, each invoice shall be paid by the Customer in accordance with the Payment Terms. No payment is deemed to be received by the Supplier until it is available as cleared funds in the Supplier's account. Failure to pay any valid invoice, or part of an invoice, that is not the subject of a dispute in accordance with the Payment Terms shall entitle the Supplier to require the Customer to pay interest to the Supplier on the sum overdue. Such interest shall accrue at three per cent (3%) above the Bank of England base rate, from time to time, as compounded annually from the date such sum first became due until the date received (as cleared funds) by the Supplier.
- 9.22. The Customer agrees that, notwithstanding any provisions herein or in the Framework Agreement or the Customer Access Agreement, the Supplier shall be entitled to require payment directly from the Customer.
- 9.23. If the Customer does not agree with the amount of an invoice provided pursuant to this Clause 9.23, the Customer shall notify the Supplier in writing giving reasonable particulars of the fact within ten (10) Working Days of receipt of such invoice or otherwise as soon as reasonably practicable once the issue giving rise to the dispute comes to the Customer's attention. The Customer shall only withhold payment of the amount of the invoice that is disputed (the "**Disputed Payment**").
- 9.24. The Parties agree and acknowledge that a Disputed Payment shall be a Complaint and the Supplier shall resolve the Disputed Payment in accordance with the Complaint resolution process in Clause 5. If, as part of the resolution of a Complaint in accordance with that process, the Supplier re-issues an invoice to the Customer, the Customer shall:
  - 9.24.1. if the re-issued invoice is received by the Customer no less than ten (10) Days prior to the due date of the Original Invoice, pay the outstanding amount of the re-issued invoice by the date specified in the Original Invoice; or
  - 9.24.2. if the re-issued invoice is received by the Customer less than ten (10) Days prior to the due date of the Original Invoice, pay the outstanding amount of the reissued invoice within such period as applied pursuant to the Payment Terms after the Customer's receipt of the re-issued invoice from the Supplier, and the reissued invoice may only require the Customer to pay the outstanding amount.
- 9.25. 9.25 Any non-regular payment under this Agreement shall be by GPC Card, BACS (or equivalent instantaneous transfer of funds) or CHAPS to the Party to whom it is due at the bank and to the credit of the account specified in Part 1, or such other account as the receiving Party may notify to the other in writing no later than five (5) Days before the relevant payment is due. All bank charges shall be for the account of the Party making the payment.

9.26. The Supplier shall only be entitled to vary the Charges in accordance with the Framework Agreement.

9.27. The Supplier shall comply with Appendix C of the Agreement

#### **9A. DATA PROVISION**

9A.1 The Supplier shall maintain for each Supply Point the information identified in Part 1 of this Agreement, and shall update such information during the Term to reflect any changes to that information, including by adding information for new Supply Points which are added to this Agreement from time to time.

9A.2 The Supplier shall, if requested by the Customer, provide a report to the Customer which identifies each of the items listed in Part 1 of this Agreement in any of the following formats:

- (a) hard copy in spreadsheet format;
- (b) email at an email address notified to the Supplier by the Customer;
- (c) EDI;
- (d) in electronic spreadsheet format;
- (e) internet; or
- (f) any other format agreed by the Supplier and the Customer from time to time.

#### **10 DE-ENERGISATION AND DISCONNECTION**

10.1. The Supplier may De-energise a Supply Point if:

- 10.1.1. there are circumstances of Force Majeure Event resulting in the Supplier being unable to provide the Customer with the Supply at such Supply Point;
- 10.1.2. the Supplier reasonably believes that electricity has been unlawfully abstracted from the Supply to such Supply Point or, where applicable, that the Meter or other associated equipment of the Distribution Network Operator or the Supplier have been tampered with, removed or broken;
- 10.1.3. the Supplier, the Distribution Network Operator (or any other person authorised by them) believe it is necessary or desirable to De-energise such Supply Point:
  - (a) to ensure the safety of persons (whether or not in relation to the relevant Site);
  - (b) to avoid a possible breach of the applicable Law (including the Act and the Regulations) or applicable Industry Documents;
  - (c) to enable maintenance or repair work to be carried out on the relevant Distribution System;
  - (d) where the Supplier provides the Meter Asset Services, to inspect, assess, maintain, repair, replace, reconfigure or supply any Metering Equipment;  
or

- (e) where the Supplier is requested or instructed to do so by the Customer, the Distribution Network Operator, the Transmission System Operator, GEMA or any other regulator having jurisdiction over the Supplier or a court order,

and the Supplier shall give the Customer as much prior notice of the De-energising as possible; or

- 10.1.4. the Customer has not paid in full any sums due to the Supplier (excluding Disputed Payments) in accordance with invoices issued by the Supplier in respect of this Agreement or the Framework Agreement.
- 10.2. The Supplier may disconnect a relevant Metering Point if it has been De-energised for a period of three (3) Months or longer, subject to the agreement of the Customer, not to be unreasonably withheld.
- 10.3. Prior to exercising its right to De-energise or disconnect a Supply Point under Clause 10.1 or 10.2, the Supplier must give the Customer at least (7) seven days' written notice of its wish to do so.

## **11 CONNECTION AGREEMENT**

- 11.1. If at the Effective Date the Customer has entered into a Connection Agreement with the relevant Distribution Network Operator in relation to some or all of its Sites, the Customer shall maintain and comply with such Connection Agreement throughout the Term.
- 11.2. If Clause 11.1 does not apply in respect of some or all of the Customer's Sites, the Customer agrees that by executing this Agreement, a Standard Connection Agreement shall apply in respect of such Site(s).
- 11.3. The Customer shall be a party to an Unmetered Supply Connection Agreement in relation to all Unmetered Supply Points and shall, at all times during the Term, comply with and perform its obligations under such Unmetered Supply Connection Agreement.

## **12 REPRESENTATIONS AND WARRANTIES**

- 12.1. Each Party warrants, represents and undertakes to the other Party that:
  - 12.1.1. it has obtained all corporate authorisations required to empower it to enter into this Agreement and to perform its obligations hereunder in accordance with its terms;
  - 12.1.2. neither the entry into this Agreement nor the obligations contemplated by this Agreement by it shall:
    - (a) violate or conflict with the provisions of its constitutional documents;
    - (b) amount to a violation or breach of any applicable Laws or regulations in any relevant jurisdiction;
    - (c) amount to a violation or default with respect to any relevant order, decree or judgement of any court or any governmental or regulatory authority in any jurisdiction to which it is a Party or by which it is bound, which violation

or default is material in the context of the transactions contemplated by this Agreement; or

- (d) result in a breach of, or constitute a default under, any instrument to which it is a Party or by which it is bound, which breach or default is material in the context of the transactions contemplated by this Agreement;

12.1.3. where applicable, it is duly incorporated and validly existing under the laws of the place of its incorporation;

12.1.4. it has not taken any action, nor have any other steps been taken or legal proceedings commenced or, so far as it is aware, threatened against it for its winding-up or dissolution or for any similar or analogous proceedings in any jurisdiction, or for it to enter into any arrangement or composition for the benefit of creditors, or for the appointment of a receiver, administrative receiver, trustee or similar officer;

12.1.5. it has not relied on or been induced to enter into this Agreement by any representation other than those expressly set out in this Agreement; and

12.1.6. the obligations under this Agreement constitute its legal, valid and binding obligations enforceable in accordance with their 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.

12.2. The Customer represents and warrants to the Supplier that:

12.2.1. the Authority has been fully authorised to act on behalf of the Customer in all aspects of the Framework Agreement, including the Transactions;

12.2.2. it is the Customer's intention to consume electricity only and it is not the Customer's intention to speculate in any way. The Customer acknowledges that the electricity procurement services to be provided by the Supplier to the Authority under the Framework Agreement will not constitute a recommendation or advice to enter into one or more Transactions; and

12.2.3. it has not and shall not revoke the appointment of the Authority nor appoint an alternative to the Authority otherwise than in accordance with the terms of the Customer Access Agreement.

12.3. 12.3 The Supplier represent, warrants and undertakes to the Customer that:

12.3.1. the Authority is not in any way an agent, partner or representative of any kind of the Supplier or any of its associated group of companies;

12.3.2. the Customer and the Supply Points are eligible for Supply by the Supplier under the terms of the Supplier's Licence;

12.3.3. the services provided by the Supplier under this Agreement shall be provided and carried out by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;

- 12.3.4. it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary for the performance of this Agreement;
  - 12.3.5. it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive element, including any virus, worm and/or Trojan horse, into systems, data, software or Confidential Information held in electronic form owned by or under the control of, or used by, the Customer;
  - 12.3.6. it has secured all necessary third party consents, approvals and permissions, including a Licence, required for the Supplier to supply electricity to the Customer at the Supply Point;
  - 12.3.7. it has acceded to all applicable Industry Documents and the Supplier undertakes that it shall remain in compliance with all applicable Industry Documents;
  - 12.3.8. the Customer shall obtain good title to the electricity received from the Supplier under this Agreement and that, at the relevant Metering Point, the electricity so received shall be free from all liens, charges and adverse claims of every description; and
  - 12.3.9. it has not committed any act or omission which would, if it occurred after the date of this Agreement, constitute a breach of Clause 27.1.
- 12.4. The Supplier acknowledges and undertakes that any breach by it of the warranties, representations or undertakings in Clause 12.1 or Clause 12.3 shall be remedied by the Supplier as a matter of urgency. Without prejudice to the generality of Clause 14.1.2 or Clause 14.1.3, any failure to remedy (if capable of remedy) such breach within thirty (30) Working Days of notification by the Customer of the breach of warranty, or any breach of warranty which is not capable of remedy, shall constitute a breach of this Agreement entitling the Customer to terminate in accordance with Clause 13.
- 12.5. Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including fitness for purpose) are hereby excluded to the extent permitted by Law.

### **13 13. FORCE MAJEURE EVENTS**

- 13.1. If either Party is prevented or delayed in the performance of its obligations to the other by a Force Majeure Event ("**Affected Party**") it shall forthwith give written notice to the other Party specifying the period for which it believes that such prevention or delay shall continue. The Affected Party shall, subject to Clause 13.4, be excused from the performance of its obligations to the extent that such non-performance is due to a Force Majeure Event from the date of such notice for the period for which such prevention or delay continues.
- 13.2. Notwithstanding Clause 13.1, and to the extent the Supplier receives from the Distribution Network Operator or Transmission System Operator through which electricity is supplied to the Supply Point monies in respect of loss suffered by the Customer, the Supplier shall account to the Customer for the amount so received.
- 13.3. If a Force Majeure Event occurs then, as soon as practicable following notice being given under Clause 13.1, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree whatever action is needed to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

13.4. 13.4 An Affected Party cannot claim relief pursuant to this Clause 13:

- 13.4.1. if the relevant Force Majeure Event results from any wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event;
- 13.4.2. if the relevant Force Majeure Event results from a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of an event which is equivalent to a Force Majeure Event); or
- 13.4.3. to the extent that the Affected Party does not use all reasonable endeavours (including, without limitation, carrying out all of those actions agreed pursuant to Clause 13.3) in accordance with Good Industry Practice, to mitigate the effect of the Force Majeure Event and to continue to perform the relevant obligation notwithstanding the existence of the Force Majeure Event.

**Early Termination**

13.5. Either Party may terminate this Agreement immediately by notice in writing if:

- 13.5.1. the other Party fails to make, when due, any payment required to be made by it under this Agreement, other than in the case of an unresolved Disputed Payment, and such failure is not remedied within three (3) months after notice of such failure is given to the Party;
- 13.5.2. the other Party fails to observe or perform any of the terms of this Agreement which apply to it, if such failure is: (i) material, and not remedied on or before the thirtieth (30th) Working Day after notice of such failure is given to the Party; (ii) material and not capable of remedy; or (iii) persistent such that, taken together with other, similar or repeated breaches, it has a substantial impact on the other Party;
- 13.5.3. any representation or warranty made by the other Party in this Agreement is or becomes untrue, inaccurate or misleading in any material respect;
- 13.5.4. any necessary licence, authorisation or consent of the other Party, including any financial services licence or exemption from holding such a licence, is revoked, not renewed or suspended, or any applicable conditions of such licence are not complied with;
- 13.5.5. any of the following events occurs in respect of the other Party:
  - (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
  - (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
  - (c) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given or an order is made for its winding-up or an application is made for the appointment of a provisional liquidator;

- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
  - (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
  - (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
  - (g) a moratorium comes into force pursuant to Part A1 of the Insolvency Act 1986; or
  - (h) any event analogous to those listed in sub-Clauses (a) to (g) above, or relevant legal equivalent, occurs under the law of any other jurisdiction;
- 13.5.6. a Notice of Objection is made by the Incumbent Supplier and is not resolved in accordance with Clause 3.7, in which case such termination shall only apply in respect of the affected Supply Point; or
- 13.5.7. a Supplier of Last Resort is appointed in relation to any Supply Point.
- 13.6. Termination of this Agreement can also occur in the following circumstances:
- 13.6.1. if a Force Majeure Event continues for a consecutive period of three (3) Months, the Party whose performance under this Agreement is not affected directly by the Force Majeure Event can terminate this Agreement, save that the Agreement shall only be terminated in relation to each Supply Point which is affected by the Force Majeure Event;
  - 13.6.2. if any change in any applicable Law prevents or prohibits the Supplier from supplying electricity or if the Supplier ceases to hold a Licence, otherwise than through its own breach or relinquishment, the Customer may terminate this Agreement;
  - 13.6.3. if any of the conditions precedent in Clause 2.1 have not been either: (i) satisfied; (ii) waived in writing by the relevant Party (meaning the relevant Party for whose benefit the relevant condition is by reference to Clause 2.6) within six (6) Months from the Effective Date or, in the case where the relevant Supply Point was added to this Agreement after the Effective Date by the Customer's or the Authority's notification, the date such notification is received by the Supplier, the relevant Party may terminate this Agreement provided that:
    - (i) the relevant Party shall not be entitled to terminate this Agreement on these grounds where the failure to satisfy the condition(s) precedent in question is attributable to any breach of this Agreement or other act or omission on the part of that Party; and
    - (j) where the relevant Party is the Supplier, it shall only be entitled to terminate this Agreement in relation to the Supply Points in respect of which the conditions precedent are not satisfied;
  - 13.6.4. if the Customer Access Agreement is terminated in whole, or all of the Customer's Energy Product Orders relating to the Supply have been terminated, this Agreement may be terminated by the Customer; or

- 13.6.5. if the Supplier is in breach of Clauses 27, 28, 29, 30 or 31, the Customer may terminate this Agreement.
- 13.6.6. if the Supplier has committed any breach of the kind described to in clauses 3.1.2 or 4.7 or 7 of Appendix 3, the Customer may terminate this Agreement.
- 13.7. This Agreement shall expire, or is terminated following the final requested associated delivery period.
- 13.8. This Agreement shall terminate forthwith should the Authority terminate or cease provision of the Electricity Products pursuant to this Agreement in accordance with clause 7.11 of the Framework Agreement.
- 13.9. In the case of termination under:
  - 13.9.1. Clauses 13.5.1, 13.5.2, 13.5.4 or 13.5.5 the relevant Party may terminate this Agreement by giving fourteen (14) Working Days' notice in writing; or
  - 13.9.2. In the case of Clause 13.5.3, the relevant Party may terminate this Agreement by giving ten (10) Working Days' notice in writing.
- 13.10. 13.10 On termination of this Agreement for any reason:
  - 13.10.1. the Supplier shall issue a final invoice to the Customer based on the closing Meter reading for each of the Supply Points or, where appropriate, Clause 9.11 shall apply. Where a Supply Point has been transferred to a new Electricity Supplier, the Supplier shall use the Meter reading provided by the new Electricity Supplier;
  - 13.10.2. the Customer shall, within a reasonable time of termination, allow the Supplier's representatives or agents to enter the relevant Site to remove any of the Supplier's Metering Equipment; and
  - 13.10.3. the Supplier shall, if requested by the Customer, continue to provide the Supply to a Supply Point on terms previously applicable under this Agreement until such Supply Points are Registered with the Customer's new Electricity Supplier(s).
- 13.11. The Customer acknowledges that the Supplier will purchase electricity in order to provide the Supply and to supply other customers who are also parties to equivalent Agreements (collectively "**CCS Customers**"). If, on termination of this Agreement:
  - 13.11.1. by the Supplier exercising its rights under any of Clauses 13.5 or 13.6.3;
  - 13.11.2. for any reason under Clause 13.6.1, 13.6.2, 13.6.4 or 13.6.5,

the volume of electricity that the Supplier has committed to purchase (whether individually for the Customer or in aggregate for all CCS Customers) exceeds the ongoing electricity supply requirements of CCS Customers at the point such electricity was to be delivered, then the Supplier shall seek to sell this excess to an alternative party, using its best endeavours to achieve the best available price. If the revenue received by the Supplier by selling this excess is less than what the Supplier would have received in aggregate from CCS Customers (including the Customer) for the same volume of electricity had their Agreements not come to an end, the Supplier may seek to recover the difference, on a prorated basis, from the CCS Customers (including the Customer) in relation to whom the excess relates as a result of their Agreements coming to an end. If such



revenue exceeds what the Supplier would have received in aggregate from CCS Customers (including the Customer) for the same volume of electricity had their Agreements not come to an end, the Supplier shall first apply the excess revenue (above the amount the Supplier would have received from the CCS Customers) against any unpaid Charges due from the relevant CCS Customers, and shall then make any remainder available to the Authority or the relevant CCS Customers (as directed by the Authority). The Customer agrees to the above mentioned uses of funds.

- 13.12. Where this Agreement is terminated and the Supplier continues to be the Registered Electricity Supplier in respect of a Supply Point, the provisions of this Agreement shall continue to apply until:
  - 13.12.1. a new Electricity Supplier is Registered in respect of all of the Supply Points; or
  - 13.12.2. the Customer and the Supplier enter into a new agreement for the sale and purchase of electricity;
- 13.13. The Parties agree and acknowledge that each Party shall provide the Authority with a copy of any termination notice issued by it under this Clause 13 on the same day as such notice is issued to the other Party.
- 13.14. The Supplier shall on demand indemnify and keep the Customer indemnified in full from and against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages suffered or incurred by the Customer by reason of termination in accordance with Clauses 13.5 (provided that the relevant termination arises from the default of the Supplier), 13.6.3 or 13.6.5. These costs shall include, without limitation, any increased costs, additional expenditure or loss of savings which results from the Customer obtaining replacements for the Electricity Products through another agreement or call-off.
- 13.15. Expiry or termination (howsoever caused) of this Agreement shall not affect any rights or obligations which may have accrued prior to such expiry or termination or which result from the event giving rise to such termination and shall not affect the coming into force or continuation in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such expiry or termination. Without limitation to the generality of this Clause 13.15, provisions of this Agreement which relate to the compensation or indemnification of a Party, or confidentiality, shall continue in force in accordance with their terms notwithstanding expiry or termination of this Agreement.

#### **14 LIABILITY, INDEMNITIES AND INSURANCE**

- 14.1. The Supplier shall on demand indemnify and keep the Customer indemnified in full from and against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from:
  - 14.1.1. damage to property;
  - 14.1.2. death or personal injury to persons; or
  - 14.1.3. 14.1.3 breach of statutory duty,to the extent that such damage to property, or death or personal injury to persons, or breach of statutory duty is caused by the breach, default, negligence, or wilful act or omission of the Supplier, its agents or contractors. This is provided that, subject to Clause 14.2, any compensation payable under this Clause 14 or otherwise under or in connection with this Agreement for property damage shall not exceed the higher of:

- 14.1.4 [REDACTED] and
- 14.1.4. the price payable by the Customer, for all supplies of Electricity Products under this Agreement, in the period between the date of this Agreement and the occurrence of the relevant damage to property.
- 14.2. The limitation on liability set out at Clause 14.1 shall not apply to limit or exclude any liability of the Supplier in relation to claims, proceedings, losses, liabilities, costs (including legal costs and expenses), damages and expenses:
- 14.2.1. which relate to or arise from a third party claim which could have been brought directly against the Supplier by the relevant third party; or
- 14.2.2. which relate to or arise from a risk which is insured by the Supplier, or which would have been insured against by the Supplier had it complied with its obligations under this Agreement.
- 14.3. Without prejudice to Clauses 14.2 and 14.4 neither Party nor its officers, employees or agents shall be liable to the other Party for any loss of profit, revenue, use, agreement or goodwill or any indirect or consequential loss or loss resulting from the liability of such other Party to any other person.
- 14.4. Nothing in this Agreement shall exclude, restrict or otherwise prejudice:
- 14.4.1. any of the rights, powers or duties of the Authority, the Secretary of State or either Party which are conferred by the Supplier's Licence or the Act; or
- 14.4.2. any liability of a Party in respect of death or personal injury resulting from that Party's negligence.
- 14.5. Each Party:
- 14.5.1. shall on demand indemnify the Authority and keep it indemnified in full from and against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages suffered or incurred by the Authority as a result of any act or omission of that Party (including its agents and contractors) arising out of or in connection with this Agreement, including any breach by that Party of its obligations under this Agreement, tort (including negligence and breach of statutory duty), misrepresentation or any claim for restitution; and
- 14.5.2. acknowledges and agrees that it is not entitled to bring any claim or proceedings against the Authority for any claims, proceedings, losses, liabilities, costs (including legal costs and expenses), damages and expenses incurred or suffered by that Party as a result of any act or omission of the other Party arising out of or in connection with this Agreement, including breach of contract by the other Party, tort (including negligence and breach of statutory duty), misrepresentation or any claim for restitution.
- 14.6. The Supplier:
- 14.6.1. shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Supplier under this Agreement, including death or personal injury, or loss of or damage to property;

- 14.6.2. shall hold employer's liability insurance in respect of its employees in accordance with any legal requirement for the time being in force; and
- 14.6.3. agrees that the terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Agreement. It shall be the responsibility of the Supplier to ensure that the amount of insurance cover is adequate to enable it to satisfy all its potential liabilities subject to the limit of liability specified in this Agreement.

## **15 TERM AND RENEWAL**

- 15.1. This Agreement shall come into force on the date hereof and shall, subject to early termination, continue for the Contract Period as specified in Part 1 to this Agreement (the "**Term**").

## **16 16 ACCESS TO SITE**

- 16.1. Without prejudice to any statutory power, or other legal right, of entry to the Site(s), the Supplier and its employees, agents and representatives (including Metering Agents appointed by the Supplier), may, at reasonable times and by giving reasonable notice to the Customer, enter a Site (or where the Meter is installed in any other premises, those premises) for the purpose of carrying out agreed activities related to the Supply under this Agreement, including inspecting, reading, testing, (and, where the Supplier is responsible for the Meter, maintaining, repairing and replacing) a Meter.
- 16.2. The Supplier shall comply, and shall ensure that its employees, agents and representatives (including Metering Agents) comply with any conditions of access or Site requirements (including security, health and safety requirements) that the Customer may impose in relation to access to a Site.

## **17 OBJECTIONS**

- 17.1. The Supplier may, subject to Clause 17.2, give a Notice of Objection under the REC to a new Electricity Supplier's application to register a Supply Point if (and only if):
  - 17.1.1. the new Electricity Supplier's application is for the purpose of commencing the supply of electricity to such Supply Point before the date of termination or expiry of this Agreement;
  - 17.1.2. at the time such application is made, an invoice issued by the Supplier for Supply to the Customer under this Agreement is due but has not been paid in full by the Customer (excluding invoices which are the subject of a Payment Dispute); or
  - 17.1.3. such Supply Point is a Related Metering Point and the new Electricity Supplier has not applied to transfer all the Related Metering Points on the same Working Day and with the same supply start date.
- 17.2. The Supplier may not give a Notice of Objection if the Authority has nominated a Nominated Supplier pursuant to Clause 15.6 of the Framework Agreement.
- 17.3. The Supplier shall give the Customer written notice of any Notice of Objection made under Clause 17.1 as soon as reasonably practicable after giving such notice. Such notice shall include details of the grounds on which the Supplier has made the Notice of Objection and the procedure by which the Customer can dispute or resolve the matter giving rise to the Notice of Objection.

- 17.4. Where the Supplier gives a Notice of Objection otherwise than as allowed in accordance with Clause 17, then the Supplier shall compensate the Customer for any expense incurred by the Customer in paying more for the electricity supplied thereafter than the Customer would have been liable to pay under the terms of its contract with the new Electricity Supplier.

## **18 DATA PROTECTION**

- 18.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Agreement dictates the status of each party under the DPA 2018. A Party may act as:

18.1.1. "Controller" in respect of the other Party who is "Processor";

18.1.2. "Processor" in respect of the other Party who is "Controller";

18.1.3. Where a Party is a Processor, the only Processing that it is authorised to do is listed in Appendix 2 (Processing Personal Data) by the Controller.

The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

- 18.2. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:

18.2.1. a systematic description of the envisaged Processing and the purpose of the Processing;

18.2.2. an assessment of the necessity and proportionality of the Processing in relation to the Services;

18.2.3. an assessment of the risks to the rights and freedoms of Data Subjects; and

18.2.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

- 18.3. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Agreement:

18.3.1. Process that Personal Data only in accordance with Appendix 2 (Processing Personal Data), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall notify the Controller before Processing the Personal Data unless prohibited by Law;

18.3.2. ensure that it has in place Protective Measures, having taken account of the:

18.3.2.1. nature of the data to be protected;

18.3.2.2. harm that might result from a Personal Data Breach;

18.3.2.3. state of technological development; and

18.3.2.4. cost of implementing any measures;

18.3.3. ensure that:

18.3.3.1. the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Appendix 2 (Processing Personal Data));

- 18.3.3.2. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
  - 18.3.3.2.1. are aware of and comply with the Processor's duties under this clause 18
  - 18.3.3.2.2. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
  - 18.3.3.2.3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
  - 18.3.3.2.4. have undergone adequate training in the use, care, protection and handling of Personal Data;
- 18.3.4. not transfer Personal Data outside of the UK or EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - 18.3.4.1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or LED Article 37) as determined by the Controller;
  - 18.3.4.2. the Data Subject has enforceable rights and effective legal remedies;
  - 18.3.4.3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - 18.3.4.4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
- 18.3.5. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
- 18.4. Subject to clause 18.6, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:
  - 18.4.1. receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 18.4.2. receives a request to rectify, block or erase any Personal Data;
  - 18.4.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 18.4.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
  - 18.4.5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

- 18.4.6. becomes aware of a Personal Data Breach.
- 18.5. The Processor's obligation to notify under clause 18.5 shall include the provision of further information to the Controller, as details become available.
- 18.6. Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 18.5 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
  - 18.6.1. the Controller with full details and copies of the complaint, communication or request;
  - 18.6.2. such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 18.6.3. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 18.6.4. assistance as requested by the Controller following any Personal Data Breach; and/or
  - 18.6.5. assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 18.7. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 18. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
  - 18.7.1. the Controller determines that the Processing is not occasional;
  - 18.7.2. the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - 18.7.3. the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 18.8. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 18.9. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 18.10. Before allowing any Sub-processor to Process any Personal Data related to the Contract, the Processor must:
  - 18.10.1. notify the Controller in writing of the intended Sub-processor and Processing;
  - 18.10.2. obtain the written consent of the Controller;
  - 18.10.3. 18.10.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 18 such that they apply to the Sub-processor; and
  - 18.10.4. 18.10.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 18.11. The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

- 18.12. The Authority may, at any time on not less than thirty (30) Working Days' notice, revise this clause 18 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Agreement).
- 18.13. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Working Days' notice to the Supplier amend the Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **19 CONFIDENTIALITY**

- 19.1. Except to the extent set out in this Clause 19 or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:
  - 19.1.1. treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
  - 19.1.2. not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 19.2. 19.2 Clause 19.1 shall not apply to the extent that such:
  - 19.2.1. disclosure is made to professional advisers, insurers and insurance brokers and
  - 19.2.2. strictly on the basis that the information disclosed to such persons is confidential and is not to be disclosed to any third party;
  - 19.2.3. disclosure is a requirement of an applicable Law placed upon the Party making
  - 19.2.4. the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 21;
  - 19.2.5. information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 19.2.6. information was obtained from a third party without obligation of confidentiality;
  - 19.2.7. 19.2.5 information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
  - 19.2.8. information is independently developed without access to the other Party's Confidential Information.
- 19.3. The Supplier may only disclose the Customer's Confidential Information to the Supplier Staff who are directly involved in the provision of the Supply and who need to know the information, and shall ensure that such Supplier Staff are aware of and shall comply with the obligations set out in this Clause 19 in respect of such information.
- 19.4. The Supplier shall not, and shall procure that the Supplier Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Agreement.
- 19.5. Nothing in this Agreement shall prevent the Customer from disclosing the Supplier's Confidential Information:

- 19.5.1. in the case of Customer, to any Crown Body or any other Contracting Authority on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
  - 19.5.2. to any consultant, contractor or other person engaged by the Customer, or to any person conducting a government gateway or other review on the basis that the information is confidential;
  - 19.5.3. for the purpose of the examination and certification of the Customer's accounts; or
  - 19.5.4. for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 19.6. The Customer shall ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 19.5 is notified in writing of the Customer's obligations of confidentiality set out in this Agreement.
- 19.7. Nothing in this Clause 19 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.

## **20 FREEDOM OF INFORMATION**

- 20.1. The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer, to enable the Customer to comply with its Information disclosure obligations.
- 20.2. The Supplier shall (and shall procure that its subcontractors shall) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or regulation 5 of the Environmental Information Regulations, to include providing the Customer with a copy of all Information in its possession, or power in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request.
- 20.3. The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether Information deemed commercially sensitive and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 20.4. In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Customer.
- 20.5. The Supplier acknowledges that the Customer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be



obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the services provided by the Supplier under this Agreement unless an exemption applies. The Customer may at its discretion consult the Supplier with regard to whether the FOIA applies to the Information or whether an exemption applies.

- 20.6. The Supplier shall ensure that all Information produced in the course of this Agreement or relating to this Agreement is retained for disclosure in a manner agreed by the Parties and shall permit the Customer to inspect such records as requested from time to time.
- 20.7. The Supplier acknowledges that any Information it deems commercially sensitive is of indicative value only and that the Customer may be obliged to disclose it in accordance with Clause 20.5.

## **21 GOVERNING LAW AND DISPUTE RESOLUTION**

- 21.1. This Agreement (and all contractual and non-contractual matters arising under or in relation to it) shall be governed and construed in accordance with English law.
- 21.2. Each Party shall use reasonable endeavours to resolve any dispute, difference or disagreement arising out of or in connection with this Agreement ("**Dispute**") in good faith. If the Parties are not able to agree a resolution, or if there is a failure to implement the resolution correctly, then, subject to Clause 21.4, either Party may pursue any remedies that it may have under this Agreement or at law. This Agreement shall apply during the Dispute resolution process, and the Supplier agrees not to disconnect any Supply Point prior to an award being made in the Supplier's favour.
- 21.3. The Parties agree that neither Party shall be entitled to refer a Complaint or a Query to the Dispute resolution process in this Clause 21 until the process set out in Clause 5 has been exhausted in respect of that Query or Complaint.
- 21.4. Subject to the provisions of Clause 21.5, any Dispute between the Parties relating to this Agreement shall be dealt with in accordance with this Clause 21, and neither the Customer nor the Supplier shall be entitled to commence or pursue any legal proceedings under the jurisdiction of the courts in connection with any such Dispute until the procedures set out in this Clause 21 have been exhausted.
- 21.5. Clause 21.4 shall be without prejudice to the rights of termination set out in Clause 13 and shall not prevent the Customer or the Supplier from applying for injunctive relief in the case of:
  - 21.5.1. breach or threatened breach of confidentiality by the other Party;
  - 21.5.2. infringement or threatened infringement of its Pre-Existing Intellectual Property Rights; or
  - 21.5.3. infringement or threatened infringement of the Intellectual Property Rights of a third party.
- 21.6. All Disputes between the Parties relating to this Agreement shall in the first instance be referred to an operational employee or officer of each Party nominated by each Party in relation to the relevant dispute. If the respective officer(s) and employee(s) fail to resolve the Dispute within ten (10) Working Days of it being referred to them:

- 21.6.1. it shall be referred to the Supplier's Director and the Customer's Manager respectively for their consideration with a view to making a decision in relation to the Dispute; and
- 21.6.2. if the Supplier's Director and the Customer's Manager fail to resolve the Dispute within ten (10) Working Days of it being referred to them it shall be referred to the Supplier's Managing Director and the Customer's Chief Executive Officer respectively for their consideration with a view to making a decision in relation to the Dispute.
- 21.7. If any particular manager referred to in this Clause 21 does not exist or is not available, then the relevant Party shall be able to refer the Dispute to another suitable alternative manager of similar status and authority.
- 21.8. In the event that a Dispute cannot be resolved by the Parties in accordance with Clause 21.6.2 within a maximum of ten (10) Working Days after referral, the Dispute shall be further referred to mediation in accordance with the provisions of Clause 21.9.

### ***Mediation***

- 21.9. The procedure for mediation shall be as follows:
  - 21.9.1. a neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the Customer and the Supplier or, if they are unable to agree upon the identity of the Mediator within ten (10) Working Days after a request by one Party to the other (provided that there remains agreement for mediation), or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("**CEDR**") to appoint a Mediator;
  - 21.9.2. the Customer and the Supplier shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. The Parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;
  - 21.9.3. all negotiations connected with the Dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
  - 21.9.4. in the event that the Customer and the Supplier reach agreement on the resolution of the Dispute, the agreement shall be reduced to writing and shall be binding on both Parties once it is signed by the Customer's Manager and the Supplier's Director;
  - 21.9.5. failing agreement, either the Customer or Supplier may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of both Parties;
  - 21.9.6. the Customer and the Supplier shall each bear their own costs in relation to any reference made to the Mediator and the fees and all other costs of the Mediator

- 21.9.7. shall be borne jointly in equal proportions by both Parties unless otherwise directed by the Mediator;
- 21.9.8. work and activity to be carried out under this Agreement shall not cease or be delayed during the mediation process; and
- 21.9.9. in the event that the Customer and the Supplier fail to reach agreement in the structured negotiations referred to in Clause 21.9.2 within forty (40) Working Days of the Mediator being appointed, or such longer period as may be agreed, then any Dispute between them may, subject to the agreement of both Parties, be referred to arbitration in accordance with the provisions of Clause 21.10.

### **Arbitration**

- 21.10. Subject to Clause 21, the Parties may, at any time before court proceedings are commenced, refer the matter to arbitration in accordance with this Clause 21.10. The Procedure for arbitration shall be as follows:
  - 21.10.1. the Party seeking to initiate the arbitration shall give a written notice of arbitration to the other Party. The notice of arbitration shall specifically state:
    - 21.10.1.1. that the Dispute is referred to arbitration;
    - 21.10.1.2. the particulars of this Agreement; and
    - 21.10.1.3. a brief summary of the subject of the Dispute;
  - 21.10.2. unless otherwise agreed in writing by the Customer and the Supplier, the provisions of the Arbitration Act 1996 shall govern the arbitration commenced pursuant to this Clause 21.10;
  - 21.10.3. any Dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, if referred to arbitration in accordance with this Clause 21.10 shall be resolved by arbitration under the procedural rules of the London Court of International Arbitration;
  - 21.10.4. it is agreed between the Customer and the Supplier that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996;
  - 21.10.5. it is agreed by the Customer and the Supplier that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made to any body other than the tribunal, the Customer and the Supplier, their legal representatives and any person necessary to the conduct of the proceedings, without the agreement of all Parties to the arbitration;
  - 21.10.6. the arbitration proceedings shall take place in London and in the English language and the arbitration proceedings shall be governed by, and interpretations made in accordance with, English law; and
  - 21.10.7. the Customer and the Supplier shall each bear their own costs in relation to any reference made to the arbitrator and the fees and all other costs of the arbitrator shall be borne jointly in equal proportions by both Parties unless otherwise directed by the arbitrator.

### ***Recourse to the courts***

- 21.11. In the event that the Parties do not agree to refer the matter to arbitration, the Parties agree to submit any Dispute to the jurisdiction of the Courts of England and Wales and shall be at liberty to issue proceedings.
- 21.12. Each Party irrevocably waives any objections which it may have to the choice of venue of any proceedings in any such court and any claim that any such proceedings have been brought in an unconventional forum and further irrevocably agrees that judgement in any proceedings brought in the English courts shall be conclusive and binding upon such Party and may be enforced in the courts of any other jurisdiction.

## **22 SUBCONTRACTING AND ASSIGNMENT**

- 22.1. Save as provided by the Framework Agreement and this Clause 22, neither Party shall assign, novate, sub-contract or otherwise transfer or dispose of this Agreement or any part thereof without the previous consent in writing of the other Party, such consent not to be unreasonably withheld.
- 22.2. Without prejudice to Clause 22.1 the Customer shall not assign, novate or otherwise transfer or dispose of this Agreement or any part thereof to a person who is not a party to a services agreement with the Authority in a form similar to the Customer Access Agreement.
- 22.3. Without prejudice to Clause 22.1 if the Supplier sub-contracts this Agreement or any part thereof, the Supplier shall remain responsible for the performance of its obligations under this Agreement at all times and shall be responsible for the acts and omissions of the subcontractor as though they are the Supplier's own.
- 22.4. Where, pursuant to the Framework Agreement, the Authority has issued a notice to the Supplier requiring the Supplier to assign or transfer the Customer and the Supply Points to a new Electricity Supplier, the Parties shall execute such documents, give such consents, provide each other with such assistance and carry out all other actions as are necessary to enable such transfer as are required under the Framework Agreement, the Act, the Supplier's Licence and applicable Industry Documents,
- 22.5. The Supplier will enter into a deed of novation, where required to do so by the Authority, pursuant to Schedule 5 of the Framework Agreement and undertake any other actions required in order to put the provisions of that Paragraph into effect.

## **23 MISCELLANEOUS PROVISIONS**

- 23.1. No delay or omission by either Party in exercising any right, power or remedy shall impair or be construed as a waiver of such right, power or remedy and any single or partial exercise thereof shall not preclude any future exercise of the same.
- 23.2. The Parties shall provide each other from time to time with non-confidential information required by the other Party to perform its obligations under this Agreement, including information about the name and address of the owner and occupier of the Site and any change thereof.
- 23.3. This Agreement except where otherwise expressly specified contains the entire agreement between the Parties in respect of the Supply and supersedes all previous agreements and understandings between them. Each Party acknowledges and confirms that it does not enter into this Agreement in reliance upon any representation or warranty or other undertaking not fully reflected in the terms of this Agreement. Neither Party shall have any

- liability in respect of warranties, representations or other undertakings made prior to the date of this Agreement unless such warranty, representation or undertaking was made fraudulently or unless there has been any fraudulent concealment.
- 23.4. If any provision of this Agreement is declared invalid, unenforceable or illegal by any court of competent jurisdiction or any Competent Authority such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.
- 23.5. No amendments to this Agreement shall be effective unless made in writing and signed by or on behalf of both Parties, save that Clauses 2.1 and 2.2 shall not be amended without the prior written consent of the Authority. Both Parties shall effect any amendment required to this Agreement as a result of any change in the Supplier's Licence, any order made pursuant to the Act, any direction of a Competent Authority, any variation required by the Framework Agreement as a result of a Change Control Request, or any variation of any agreement, licence, code, authorisation or consent necessary to permit the Supply. The Parties shall immediately notify the Authority of any amendment to this Agreement.
- 23.6. Expiry or termination (howsoever caused) of this Agreement shall not affect any rights or obligations which may have accrued prior to such expiry or termination or which result from the event giving rise to such termination and shall not affect the coming into force or continuation in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such expiry or termination.
- 23.7. Except where otherwise provided in this Agreement, a person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term or condition of this Agreement, excluding any right or remedy of a third party which is available apart from pursuant to such Act nor any right which is expressly granted in this Agreement.

## **24 RECOVERY OF SUMS DUE**

- 24.1. The Customer shall be permitted to deduct and withhold from any sum due to the Supplier under this Agreement any sum of money due from the Supplier under either:
- 24.1.1. this Agreement;
- 24.1.2. the Framework Agreement; or
- 24.1.3. any other agreement between the Supplier and the Customer; provided that the terms of such other agreement provide for sums of money due from the Supplier under that agreement to be recovered by way of a deduction from sums of money due to the Supplier under this Agreement (albeit that this Agreement may not be referenced specifically in that agreement).
- 24.2. The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.
- 24.3. Unless otherwise specified in this Agreement, all payments due shall be made within a reasonable time, in cleared funds, to such bank or building society account as the Customer may from time to time direct.

## 25 NOTICES

- 25.1. 25.1 All notices, orders, or other forms of communication (including invoices) ("**Notices**") under or in connection with this Agreement shall be sent to the relevant Party's notices address as set out in this Agreement, or such other address as either Party may specify by giving notice and shall:
- 25.1.1. be given in writing;
  - 25.1.2. be authenticated by signature or by such other method as agreed between the Parties;
  - 25.1.3. be marked for the attention of the appropriate department or officer; and
  - 25.1.4. be marked in a prominent position with the relevant contract number for this Agreement.
- 25.2. 25.2 Notices should be delivered by:
- 25.2.1. hand;
  - 25.2.2. first-class prepaid post (or airmail, in the case of Notices to or from overseas);
  - 25.2.3. recorded delivery post; or
  - 25.2.4. electronic mail, where such a means of communication has been agreed for the purposes of this Agreement.
- 25.3. Notices shall be deemed to have been received:
- 25.3.1. if delivered by hand, on the day of delivery if it is the recipient's Working Day and otherwise on the first Working Day of the recipient immediately following the day of delivery;
  - 25.3.2. if sent by first-class prepaid post (or airmail, if appropriate), on the third (3rd) Working Day (or on the tenth (10th) Working Day, in the case of airmail) after the day of posting;
  - 25.3.3. if sent by or electronic means:
    - 25.3.3.1. 25.3.3.1 if transmitted between 9.00am and 5.00pm on a Working Day (recipient's time) on receipt by the sender of verification of the transmission from the receiving instrument; or
    - 25.3.3.2. 25.3.3.2 if transmitted at any other time, at 9.00am on the first Working Day (recipient's time) following the receipt by the sender of verification of the transmission from the receiving instrument; or
  - 25.3.4. if sent by email, on the day of receipt in legible form if received before 17:00 hours on a Working Day or otherwise on the 1st Working Day after receipt.
- 25.4. Where either Party requests written confirmation of any communication which does not constitute a Notice such request shall not unreasonably be refused.

## 26 CORRUPT GIFTS AND PAYMENTS OF COMMISSION

26.1. **26.1 The Supplier shall not:**

- 26.1.1. offer or give, or agree to give, to any person employed by or on behalf of the Customer any gift or consideration of any kind as an inducement or reward for doing, or having done, or not doing, any act in relation to the obtaining or execution of this Agreement or any other agreement with the Customer, or for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Customer; or
  - 26.1.2. enter into this Agreement or any other agreement with the Customer or any other department or office of Her Majesty's Government in connection with which commission has been paid, or agreed to be paid by him or on his behalf, or to his knowledge, unless, before this Agreement is made, particulars of any such commission and the terms and conditions of any agreement for the payment thereof, have been disclosed in writing to any person duly authorised by the Customer to act as its representative for the purpose of this Clause 26.
- 26.2. Nothing contained in this Clause 26 shall prevent the Supplier paying such commission or bonuses to his own staff in accordance with their agreed contracts of employment.
- 26.3. Any breach of this Clause 26 by the Supplier, or by anyone employed by him or acting on his behalf (whether with or without his knowledge), or the commission of any offence by the Supplier or by anyone employed by him or acting on his behalf under the Bribery Act 2010, in relation to this Agreement or any other contract with the Customer, shall entitle the Customer to terminate this Agreement with immediate effect and recover from the Supplier the amount of any loss resulting from such termination and the amount of the value of any such gift, consideration or commission as the Customer shall think fit.
- 26.4. Any Dispute or question arising in respect of:
- 26.4.1. the interpretation of this Clause 26 (except so far as the same may relate to the amount recoverable from the Customer under Clause 26.3 in respect of any loss resulting from such termination of this Agreement); or
  - 26.4.2. the right of the Customer to terminate this Agreement; or
  - 26.4.3. the amount or value of any gift, consideration or commission,
- may be referred by either Party to the Authority, whose decision shall be final and conclusive.

**27 OFFICIAL SECRETS**

- 27.1. In this Clause:
- 27.1.1. **"Secret Matter"** means any matter connected with this Agreement or its performance, which is designated in writing by the Customer as 'Top Secret', 'Secret' or 'Official', and shall include any information concerning the content of such matter and anything which contains or may reveal that matter; and
  - 27.1.2. **"Employee"** shall include any person who is an employee or director of the Supplier or who occupies the position of a director of the Supplier, by whatever title given.
- 27.2. The Supplier shall:

- 27.2.1. take all reasonable steps to ensure that all Employees engaged on any work in connection with this Agreement have notice that the Official Secrets Acts 1911/1989 applies to them and will continue so to apply after the completion or termination of this Agreement; and
  - 27.2.2. if directed by the Customer, ensure that any Employee shall sign a statement acknowledging that, both during the Term and after the completion or termination, of the Agreement he is bound by the Official Secrets Acts 1911/1989 (and where applicable by any other legislation).
- 27.3. Unless it has the written authorisation of the Customer to do otherwise, neither the Supplier nor any of its Employees shall, either before or after the completion or termination of this Agreement, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:
  - 27.3.1. who is not a British citizen;
  - 27.3.2. who does not hold the appropriate authority for access to the Secret Matter; or
  - 27.3.3. in respect of whom the Customer has notified the Supplier in writing that the Secret Matter shall not be disclosed to or acquired by that person.
- 27.4. If at any time either before or after the completion or termination of this Agreement, the Supplier or any of its Employees discovers or suspects that any unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Supplier shall forthwith inform the Customer of the matter with full particulars thereof.
- 27.5. If the Supplier proposes to make a sub-contract which will involve the disclosure of Secret Matter to the sub-contractor, the Supplier shall:
  - 27.5.1. submit for approval of the Customer the name of the proposed subcontractor, a statement of the work to be carried out and any other details known to the Supplier which the Customer shall reasonably require;
  - 27.5.2. incorporate into the sub-contract the terms of Appendix 1 and such secrecy and security obligations as the Customer shall direct; and
  - 27.5.3. inform the Customer immediately it becomes aware of any breach by the subcontractor of any secrecy or security obligation and, if requested to do so by the Customer, terminate the sub-contract.
- 27.6. The Customer shall be entitled to terminate this Agreement immediately if:
  - 27.6.1. the Supplier is in breach of any obligation under this Clause 27; or
  - 27.6.2. the Supplier is in breach of any secrecy or security obligation imposed by any other contract with the Crown.

## **28 DISCRIMINATION**

- 28.1. The Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2010, the Human Rights Act 1998 or any other applicable Law relating to discrimination in employment.



- 28.2. The Supplier shall take all reasonable steps to secure the observance of the provisions of Clause 28.1 by the sub-contractors employed in the execution of this Agreement.

**29 DISABILITY EQUALITY**

The Customer is subject to the Equality Act 2010. The Supplier shall, and shall procure that its subcontractors, agents and personnel shall, comply with the Equality Act 2010. Upon the Supplier breaching, or causing the Customer to breach, the Equality Act 2010, the Customer shall be entitled to terminate this Agreement with immediate effect by notice in writing to the Supplier and without prejudice to any other rights or remedies of either Party in respect of the breach concerned or any other breach of this Agreement.

**30 RACE EQUALITY**

The Customer is subject to the Equality Act 2010. The Supplier shall, and shall procure that its subcontractors, agents and personnel shall, comply with the Equality Act 2010. Upon the Supplier breaching, or causing the Customer to breach, the Equality Act 2010 the Customer shall be entitled to terminate this Agreement with immediate effect by notice in writing to the Supplier and without prejudice to any other rights or remedies of either Party in respect of the breach concerned or any other breach of this Agreement.

**31 PREVENTION OF FRAUD & CONFLICTS OF INTEREST**

- 31.1. The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by the Supplier Staff or the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 31.2. The Supplier shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 31.3. If the Supplier commits any Fraud in relation to this or any other agreement with a Contracting Authority or the Customer, the Customer may:
- 31.3.1. terminate this Agreement with immediate effect by giving the Supplier notice in writing and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Term; and/or
  - 31.3.2. recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this Clause 31.
- 31.4. The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Supplier Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Supplier Staff and the duties owed to the Customer under the provisions of this Agreement.
- 31.5. The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 31.4 arises or is reasonably foreseeable.
- 31.6. The Customer reserves the right to terminate this Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed

to the Customer under the provisions of this Agreement. The actions of the Customer pursuant to this Clause 31 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

- 31.7. This Clause 31 shall apply during the Term and for a period of two (2) years after expiry of the Term.

## **32 SUSTAINABLE PROCUREMENT**

- 32.1. The Supplier shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Supply. Without prejudice to the generality of the foregoing, the Supplier shall promptly provide all such information regarding the environmental impact of the Supply as may reasonably be requested by the Customer.
- 32.2. The Supplier shall meet all reasonable requests by the Customer for information evidencing compliance with the provisions of this Clause 32 by the Supplier.
- 32.3. The Parties shall use all reasonable endeavours to ensure that all written outputs, including reports, produced in connection with this Agreement shall (unless otherwise specified) be produced on recycled paper containing at least 80% post-consumer waste and used on both sides where appropriate.

## **33 CONTRACTOR STATUS**

Nothing in this Agreement shall create or be construed as creating a partnership, joint venture, a contract of employment or relationship of employer and employee, or a relationship of principal and agent between the Customer and the Supplier.

## **34 ACTS BY THE PARTIES**

Any decision, act or thing which the Parties are required or authorised to take or do under this Agreement may be taken or done by any person authorised, either expressly or impliedly, by the Parties to take or do that decision, act or thing.

### PART 3 – DEFINITIONS, INTERPRETATION AND PRECEDENCE

#### 35 DEFINITIONS

In this Agreement the following expressions shall have the meanings set opposite them below:

<b>Act</b>	the Electricity Act 1989 and the regulations made thereunder.
<b>Account Manager</b>	the person notified by the Supplier to the Customer from time to time as being the Account Manager.
<b>Actual Supply Start Date</b>	in relation to each Supply Point, the first date on or after the Effective Date on which the Supplier is Registered in respect of that Supply Point.
<b>Additional Services</b>	has the meaning given to it in the Framework Agreement.
<b>Additional Services Contract</b>	has the meaning given to it in the Framework Agreement.
<b>Affiliate</b>	any holding company or subsidiary, or any subsidiary of a holding company, of a Party (or other person), in each case within the meaning of the Companies Act 2006.
<b>Agreement</b>	this Agreement and all of its parts, Appendices and schedules.
<b>Authority</b>	the Minister for the Cabinet Office as represented by Crown Commercial Service being a trading fund of the Cabinet Office without separate legal personality.
<b>Award Questionnaire Response</b>	the response submitted by the Supplier to the Authority's award questionnaire issued by the Authority on 15 <sup>th</sup> November 2022.
<b>Change Control Request</b>	a request by the Authority or the Supplier to change the Framework Agreement under the change control process in Schedule 16 of the Framework Agreement.
<b>Charges</b>	the charges payable by the Customer to the Supplier in accordance with this Agreement and as calculated or determined pursuant to Schedule 3 to the Framework Agreement.
<b>CCL</b>	the Climate Change Levy being a charge levied at the rate from time to time imposed pursuant to the Finance Act 2000 and any regulations made thereunder or in connection with such charge.
<b>Competent Authority</b>	the Secretary of State, GEMA and any local or national agency, authority, department, inspectorate, minister, ministry, official or public, judicial, regulatory or statutory body or person (whether autonomous or not) of the government of the United Kingdom.
<b>Complaint</b>	a complaint by the Customer in connection with the Supplier's performance of its obligations under this Agreement.
<b>Confidential Information</b>	any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of a Party, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including commercially

	sensitive information.
<b>Connection Agreement</b>	an agreement, other than a Standard Connection Agreement, between the Customer and the relevant Distribution Network Operator which, among other things, governs the connection of the Site(s) to the Distribution System.
<b>Contracting Authority</b>	any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the Authority.
<b>Crown</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf, and “ <b>Crown Bodies</b> ” shall be interpreted accordingly.
<b>CUSC</b>	the Connection and Use of System Code and any other equivalent code in addition to or substitution thereof, required to be in place pursuant to a transmission licence granted under Section 6(1)(b) of the Act.
<b>Customer Access Agreement</b>	has the meaning given to it in the Framework Agreement.
<b>Agreement</b>	an agreement between the Supplier and a customer pursuant to the Framework Agreement.
<b>Customer Portfolio</b>	has the meaning given to it in the Framework Agreement.
<b>Customer Service Team</b>	a group of personnel provided by the Supplier for the facilitation of the administration and management of the provision of services to customers of the Authority in accordance with the Framework Agreement.
<b>Customer Survey</b>	has the meaning given to it in the Framework Agreement
<b>Customer Transfer Notice</b>	the notice given by the Authority to the Supplier pursuant to the Framework Agreement in which the Authority nominates a new Electricity Supplier to provide the Supply to the Customer and requires the Supplier to allow that Electricity Supplier to become Registered for the Supply Points.
<b>Customer’s Chief Executive Officer</b>	the person notified by the Customer to the Supplier from time to time as being its Chief Executive Officer and having the skills and experience to deal with strategic issues under this Contract.
<b>Customer’s Manager</b>	the person notified by the Customer to the Supplier from time to time as having the appropriate experience to deal with commercial issues arising under this Agreement.
<b>D86</b>	the standard data transfer tool as defined in the REC (as that definition may be amended from time to time).
<b>Data Aggregator</b>	has the meaning given to “Half Hourly Data Aggregator” in the BSC.
<b>Data Collection Services</b>	the collection and aggregation of data from Meters.
<b>Data Collector</b>	has the meaning given to “Half Hourly Data Collector” in the BSC.

<b>Day</b>	the twenty-four (24) hour period starting at 0600 hours on a day and ending at 0600 hours on the following day.
<b>Deemed Contract Rate</b>	the deemed rate charged by the Supplier for any Supply provided after the Withdrawal Date in relation to any Supply Point.
<b>De-energise</b>	has the meaning given in the BSC (as that definition may be amended from time to time).
<b>Dispute</b>	has the meaning given to it in the Framework Agreement
<b>Disputed Payment</b>	has the meaning given to it in the Framework Agreement
<b>Distribution Connection and Use of System Agreement, or "DCUSA"</b>	the agreement between the Supplier and the Distribution Network Operator which permits, among other things, the Supplier's use of the Distribution System to provide the Supply.
<b>Distribution Network Operator</b>	the relevant holder of a licence under Section 6(1)(c) of the Act to distribute electricity in the area where the Site(s) is/are situated.
<b>Distribution System</b>	the Distribution Network Operator's system for distributing electricity to which each Site is connected.
<b>Earliest Supply Start Date</b>	in relation to each of the Supply Points, the date set out as such in Part 1 of this Agreement (or, where this Agreement is novated to a new Electricity Supplier in accordance with Clause 3.5, the date on which such novation is to be effective).
<b>E-billing</b>	an electronic facility provided by the Supplier which, among other things, allows for invoices to be generated as a pdf document and viewed by a Customer via a secure website.
<b>EDI</b>	electronic data interface.
<b>Effective Date</b>	the date of this Agreement or, where this Agreement is novated to a new Electricity Supplier the date of the deed of novation by which such novation is effected.
<b>Electricity Product</b>	has the meaning given to it in the Framework Agreement.
<b>Electricity Supplier</b>	a person holding a Licence granted, or treated as granted, under Section 6 of the Act as modified from time to time.
<b>Emergency</b>	circumstances in which, in the opinion of the Distribution Network Operator and/or the Transmission Licensee: (i) the safety of the System of the Distribution Network Operator and/or Transmission Licensee is significantly at risk; or (ii) the safe transmission and/or distribution of electricity by that System constitutes, when supplied to a site, a danger to life or property
<b>Energy Product Order</b>	has the meaning given to it in the Customer Access Agreement.
<b>Energy Ombudsman</b>	the redress scheme operated by The Ombudsman Service Limited and approved as a statutory redress scheme by GEMA under Section 49 of the Consumers, Estate Agents and Redress Act 2007.
<b>Environmental Information Regulations</b>	the Environmental Information Regulations 2004 and any codes of practice issued by the Information Commissioner in relation to such

	regulations.
<b>Estimated Annual Consumption, or “EAC”</b>	the estimated annual consumption of each Supply Point, as specified in the Framework Agreement
<b>Exit Point</b>	a point of connection at which the supply of electricity may flow between the Distribution System and the Customer's installation, equipment or lines and has been granted the status of an Unmetered Supply as authorised by the Distribution Network Operator.
<b>Fail</b>	refers, for the purposes of the invoice validation process envisaged by Clause 9.14, to circumstances in which the Supplier has determined that a particular invoice is not legitimate and/or not accurate
<b>Fixed Daily Charges</b>	has the meaning given to it in the Framework Agreement.
<b>FOIA</b>	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any codes of practice issued by the Information Commissioner in relation to such legislation.
<b>Force Majeure Event</b>	<p>any event, occurrence, circumstance or matter outside of the reasonable control of the Affected Party which prevents or materially delays the Affected Party from performing its obligations under this Framework Agreement, including:</p> <ol style="list-style-type: none"><li>1) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</li><li>2) acts of Government or Competent Authorities;</li><li>3) suspension or reduction of transmission or distribution through or constraints affecting a Distribution System;</li><li>4) fire, flood, disaster or any act of nature; or</li><li>5) an industrial dispute affecting a third party for which a substitute third party is not reasonably available, but excluding any industrial dispute relating only to the Supplier Staff (or a subset of them),</li></ol> <p>but always excluding:</p> <ol style="list-style-type: none"><li>a) any event, occurrence, circumstance or matter to the extent it (or its consequences) would have been avoided had the Affected Party acted in accordance with Good Industry Practice;</li><li>b) any event, occurrence, circumstance or matter to the extent it (or its consequences) is within the scope or contemplation of the disaster recovery or business continuity plans required of the Affected Party in accordance with this Framework Agreement a Agreement or Good Industry Practice;</li><li>c) any failure or delay caused by a third party in the performance of such third party's obligations to the Affected Party, unless such third party is itself prevented or delayed from complying with its obligations as result of a Force Majeure Event; and</li><li>d) lack of funds.</li></ol>
<b>Framework Agreement</b>	a framework agreement entered into on 27 <sup>th</sup> February 2023 for the procurement of electricity between the Authority and the Supplier, as such agreement may be amended or supplemented from time to.

<b>Fraud</b>	any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the Crown.
<b>GEMA</b>	the Electricity and Electricity Markets Authority established under Section 1 of the Utilities Act 2000, and shall include the Office of Electricity and Electricity Markets (as applicable).
<b>General Query</b>	a Query which is not an Invoicing Query or a Complaint.
<b>Good Industry Practice</b>	standards, practices, methods and procedures conforming to the Law and the exercise of that degree of skill and care, diligence, prudence and foresight which would be expected from a leading company within the relevant industry or business sector.
<b>Incumbent Supplier</b>	the existing Electricity Supplier to the relevant Supply Point immediately prior to the Effective Date.
<b>Industry Documents</b>	all agreements, licences, authorizations and codes or procedures applicable to the Supplier and relating to or necessary for the Supply, including the Connection Agreement (or Standard Connection Agreement), Use of System Agreement, BSC, MRA and CUSC.
<b>Information</b>	has the meaning given to it under Section 84 of the Freedom of Information Act 2000.
<b>Information Commissioner</b>	the person appointed as Information Commissioner pursuant to section 12 of the Data Protection Act 2018.
<b>Intellectual Property Rights or IPRs</b>	<p>all of:</p> <ul style="list-style-type: none"> <li>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</li> <li>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</li> </ul> <p>all other rights having equivalent or similar effect in any country or jurisdiction.</p>
<b>Interim Price</b>	has the meaning given to it in the Framework Agreement.
<b>Interim Supply</b>	has the meaning given to it in the Framework Agreement.
<b>Interim Supply Period</b>	has the meaning given to it in the Framework Agreement.
<b>Invoice Amount</b>	has the meaning given to it in the Framework Agreement
<b>Invoicing Query</b>	a question posed by the Customer to the Supplier which relates to an invoice issued by the Supplier to the Customer, and which the Customer raises prior to the payment of any monies by the Customer in respect of the invoice. A Disputed Payment is not an Invoicing Query.

<b>Law</b>	any law, statute, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgement of a relevant court of law, or directives or requirements of any Regulatory Body;.
<b>Licence</b>	a licence granted, or treated as granted, under section 6(1)(d) of the Act for the supply of electricity.
<b>Managed Registration Information</b>	has the meaning given to it in the Framework Agreement.
<b>Maximum Consumption</b>	for each Supply Point, the maximum volume of electricity the Supplier is required to supply to such Supply Point in any hour, month, day or year as specified in the Managed Registration Information.
<b>Mediator</b>	has the meaning given to it in the Framework Agreement
<b>Meter</b>	the meter and associated equipment (including any telecommunications link) installed at or associated with a Metering Point at a Site for the purpose of recording the amount of electricity supplied to it under this Agreement.
<b>Meter Operator</b>	a person qualified (as that term is defined in the BSC) under the BSC to provide Meter Asset Services and as detailed at Part 1.
<b>Meter Operator Agreement</b>	in relation to each Site, an agreement between Customer or the Supplier (as the case may be) and a Meter Operator for the provision of Meter Asset Services.
<b>Metering Agent</b>	as the context requires, any, both or all of a Meter Operator, Data Collector and Data Aggregator.
<b>Metering Charges</b>	has the meaning given to it in the Framework Agreement.
<b>Metering Equipment</b>	Meters, associated transformers (both voltage and current), Metering protection equipment including alarms circuitry and their associated data collection outstations and wiring which are part of the energy measuring equipment installed from time to time at a Metering Point.
<b>Metering Point</b>	the outlet of the control valve for each Meter at a Site where the supply of electricity from a Distribution System shall be measured.
<b>Meter Asset Services</b>	all services in connection with the provision, installation, maintenance, removal and replacement of Meters and other Metering Equipment.
<b>Month</b>	a period beginning at 0600 hours on the first Day of a calendar month and ending at 0600 hours on the first Day of the following calendar month and “ <b>Monthly</b> ” shall be construed accordingly.
<b>MPAN</b>	the unique meter point administration number associated with each Meter.
<b>Notice of Objection</b>	has the meaning given in the REC (as may be amended from time to time).
<b>Notices</b>	the meaning given to it in the Framework Agreement



<b>Original Invoice</b>	has the meaning given to it in the Framework Agreement
<b>Party</b>	any party to this Agreement, and “ <b>Parties</b> ” shall be construed accordingly.
<b>Pass</b>	refers, for the purposes of the invoice validation process envisaged by Clause 9.14, to circumstances in which the Supplier has determined that a particular invoice is legitimate and accurate
<b>Payment Terms</b>	the payment method, date and invoice format set out in Part 1, or as otherwise agreed between the Parties from time to time.
<b>Pre-existing Intellectual Property Rights</b>	any Intellectual Property rights vested in or licensed to the Customer or the Supplier prior to or independently of the performance by the Customer or Supplier of their obligations under this Agreement.
<b>Process</b>	has the meaning given to it under the Data Protection Requirements but, for the purposes of this Agreement, it shall include both manual and automatic processing and references to “ <b>Processing</b> ” shall be construed accordingly.
<b>First Price Setting Round</b>	has the meaning given to it in the Framework Agreement.
<b>Price Setting Round Commitment Point</b>	has the meaning given to it in the Framework Agreement.
<b>Query</b>	any type of question posed by the Customer to the Supplier, including a request for information or clarification about any of the Supplier's obligations under this Agreement, and includes a General Query and an Invoicing Query.
<b>Query Management System</b>	the online database maintained by the Supplier for registering Queries and Complaints from customers.
<b>Reasonable and Prudent Operator</b>	a person acting in good faith to perform its contractual obligations in compliance with all Applicable Laws, the Licence and Industry Documents and in so doing and in the general conduct of its undertaking, exercising that degree of care, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced material or service provider, as the case may be, engaged in the same type of operation and undertaking in the same or similar locality and under the same or similar circumstances and conditions, and any reference to the standard of a Reasonable and Prudent Operator herein shall be a reference to such degree of care, skill, diligence, prudence and foresight as aforesaid.
<b>Registered</b>	has the meaning given to it in the BSC and “ <b>Registration</b> ” and “ <b>Register</b> ” shall be construed accordingly.
<b>REGO</b>	a renewable energy guarantee of origin as issued by GEMA pursuant to the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations 2003.
<b>Regulations</b>	the Electricity Safety, Quality and Continuity Regulations 2002 or any amendment or re-enactment of such regulations or any other regulations made under section 29 of the Act.

<b>Regulatory Bodies</b>	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Authority.
<b>Related Metering Point</b>	has the meaning given to it in the REC (as such definition may be amended from time to time).
<b>Renewable Electricity</b>	electricity generated from a renewable source in respect of which REGOs have been issued.
<b>Reporting Documents</b>	has the meaning given to it in the Framework Agreement.
<b>Request for Information</b>	a request for information or an apparent request under the FOIA or the Environmental Information Regulations.
<b>Responsible Party</b>	the Party responsible for the Metering Equipment and Meter Asset Services in accordance with the Framework Agreement and/or, as applicable, the Party responsible for Data Collection Services.
<b>Services</b>	has the meaning given to it in recitals to this Agreement.
<b>Site</b>	each site at which is located one or more Supply Points which are subject to be supplied pursuant to this Agreement.
<b>Standard Connection Agreement</b>	an agreement deemed to be entered into between the Customer and the Distribution Network Operator for the connection to the Distribution System.
<b>Sterling, £ and pence</b>	pounds or pence sterling, the legal currency of the United Kingdom.
<b>Supplier of Last Resort</b>	a licensed supplier of electricity appointed by GEMA under a last resort direction.
<b>Supplier Staff</b>	all persons employed or engaged by the Supplier together with the Supplier's agents, suppliers, consultants and subcontractors (and all persons employed by any subcontractor together with the subcontractor's servants, consultants, agents, suppliers and subcontractors) used in the performance of its obligations under this Agreement or any Agreement.
<b>Supply</b>	the supply of electricity by the Supplier to the Customer to a Supply Point.
<b>Supply Month</b>	a Month during which electricity is supplied by the Supplier to the Customer pursuant to this Agreement.
<b>Supply Point</b>	has the meaning given to it in the BSC.
<b>Supply Point Withdrawal</b>	has the meaning given to it in the Framework Agreement
<b>Supply Year</b>	has the meaning given to it in the Framework Agreement.
<b>Supplier's Director</b>	the person notified by the Supplier to the Customer from time to time as being a director and having the appropriate experience to deal with commercial issues arising under this Agreement.
<b>Supplier's Managing Director</b>	the person notified by the Supplier to the Customer from time to time as being its Managing Director and having the skills and experience to deal

	with strategic issues under this Contract
<b>Supplier's Website</b>	the section of the Supplier's website which is dedicated to customers of the Authority in accordance with the Framework Agreement.
<b>Term</b>	has the meaning as given to it in Clause 15.
<b>Transaction</b>	has the meaning given to it in the Framework Agreement.
<b>Transmission Licensee</b>	the holder of a transmission licence granted under section 6(1)(b) of the Act to participate in the transmission of electricity.
<b>Transmission System</b>	the system of electrical transmission lines from time to time and for the time being owned or operated by Transmission Licensees and through which the Customer receives the Supply directly or indirectly.
<b>Transmission System Operator</b>	the Transmission Licensee, from time to time, responsible for operation of the system in Great Britain and being as at the date of this Agreement National Grid Electricity System Operator Limited.
<b>Unmetered Supply</b>	has the meaning given in the BSC, as such definition is amended from time to time
<b>Unmetered Supply Certificate</b>	has the meaning given in the BSC, as such definition is amended from time to time.
<b>Unmetered Supply Connection Agreement</b>	a Connection Agreement in relation to Unmetered Supply.
<b>Unmetered Supply Point</b>	inventory to which Unmetered Supply is provided.
<b>Use of System Agreement</b>	an agreement of that title between the Supplier and a Transmission Licensee for use of its Transmission System for the transmission of electricity directly or indirectly to, among other places, to the relevant Supply Point.
<b>VAT</b>	the value added tax chargeable under the Value Added Taxes Act 1994 (as amended) or any replacement or analogous tax.
<b>Variable Charges</b>	has the meaning set out in the Framework Agreement.
<b>Withdrawal Date</b>	has the meaning given to it in the Framework Agreement
<b>Working Day</b>	any day other than a Saturday or a Sunday and which is not Christmas Day, Good Friday or a statutory Bank Holiday.
<b>Working Hours</b>	the hours of 9.00am to 5.00pm on any Working Day.

## **36 INTERPRETATION**

### **36.1. In this Agreement:**

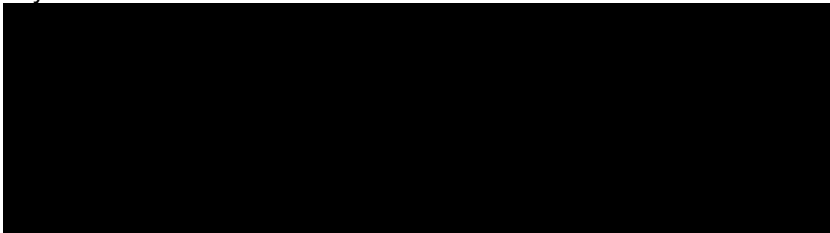
- 36.1.1. where the context permits, capitalised terms used in this Agreement but not defined herein shall have the same meaning as such capitalised terms as they are used in the Framework Agreement or Customer Access Agreement, as appropriate;
- 36.1.2. headings are for convenience only and do not affect interpretation;
- 36.1.3. the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture, a partnership and a trust; a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- 36.1.4. a reference to any document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- 36.1.5. a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- 36.1.6. words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- 36.1.7. references to Parties, clauses, Clauses, schedules, exhibits or Appendices are, unless otherwise specified, references to Parties, clauses, Clauses, articles, schedules, exhibits and Appendices to or of this Agreement, and a reference to this Agreement includes any schedule, exhibit or Appendices to this Agreement;
- 36.1.8. where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- 36.1.9. any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words. Accordingly, the rule of interpretation known as ejusdem generis shall not apply in such cases.

## **37 PRECEDENCE**

If there is any conflict between the provisions of Part 1, Part 2 and Part 3, Part 1 shall prevail.

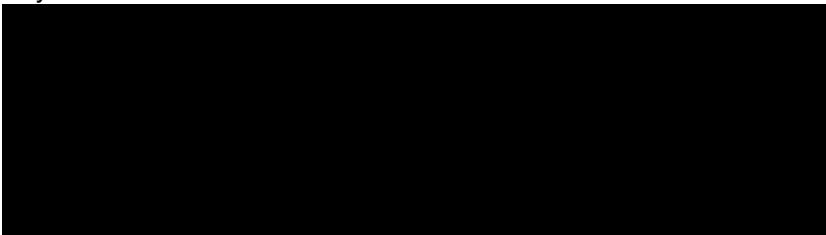
Signed by and duly authorised for and on behalf of the  
**LONDON UNDERGROUND LTD ON BEHALF OF THE TRANSPORT FOR LONDON GROUP, 5**  
Endeavour Square, London, United Kingdom E20 1JN

Heather McStay  
By:.....



Signed by and duly authorised for and on behalf of the Supplier  
**EDF Energy Customers Limited, 90 Whitfield Street, London W1T 4EZ**

Sharon Sage  
By:.....





## APPENDIX 1 - OFFICIAL SECRETS TERMS AND CONDITIONS TO BE INCLUDED IN ANY SUPPLIER SUB-CONTRACT

Provisions to be included in relevant Sub-contracts

### Definitions

1. In this Clause:
  - a) **“Secret Matter”** means any matter connected with this Agreement or its performance, which the First Party informs the Second Party in writing has been designated by the Customer as ‘Top Secret’, ‘Secret’ or ‘Official’, and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;
  - b) **“Employee”** shall include any person who is an employee or director of the Second Party or who occupies the position of a director of the Second Party, by whatever title given; and
  - c) the **“Customer”** means Transport for London

The Official Secrets Acts

2. The Second Party shall:
  - a) take all reasonable steps to ensure that all Employees engaged on any work in connection with this Agreement have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of this Agreement; and
  - b) if directed by the First Party or the Customer, ensure that any Employee shall sign a statement acknowledging that, both during the Term and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable by any other legislation).

### Security Measures

3. Unless it has the written authorisation of the Customer to do otherwise, neither the Second Party nor any of its Employees shall, either before or after the completion or termination of this Agreement, do or permit to be done anything which they know or ought reasonably to know may result in a Secret Matter being disclosed to or acquired by a person in any of the following categories:
  - a) who is not a British citizen;
  - b) who does not hold the appropriate authority for access to the protected matter;
  - c) in respect of whom the Customer has notified the Second Party in writing that the Secret Matter shall not be disclosed to or acquired by that person;
  - d) who is not an Employee of the Second Party; and
  - e) who is an Employee of the Second Party and has no need to know the information for the proper performance of this Agreement.

4. Unless he has the written permission of the Customer to do otherwise, the Second Party and his Employees shall, both before and after the completion or termination of this Agreement, take all reasonable steps to ensure that:
  - a) no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of this Agreement; and
  - b) any Secret Matter is at all times strictly safeguarded in accordance with the Manual of Protective Security and upon request, is delivered up to the Customer who shall be entitled to retain it. A decision of the Customer on the question of whether the Second Party has taken or is taking reasonable steps as required by this Clause, shall be final and conclusive.
5. The Second Party shall:
  - a) provide to the Customer:
    - (i) upon request, such records giving particulars of those Employees who have had at any time, access to any Secret Matter that is required to be kept in accordance with Clause 4;
    - (ii) upon request, such information as the Customer may from time to time require so as to be satisfied that the Second Party and his Employees are complying with his obligations under this Clause, including the measures taken or proposed by the Second Party so as to comply with his obligations and to prevent any breach of them; and
    - (iii) full particulars of any failure by the Second Party and his Employees to comply with any obligations relating to Secret Matter arising under this condition immediately upon such failure becoming apparent; and
  - b) ensure that, for the purpose of checking the Second Party's compliance with the obligation in Clause 4 , a representative of the First Party or the Customer shall be entitled at any time to enter and inspect any premises used by the Second Party which are in any way connected with this Agreement and inspect any document or thing in any such premises, which is being used or made for the purposes of this Agreement. Such representative shall be entitled to all such information as he may reasonably require.
6. If at any time either before or after the completion or termination of this Agreement, the Second Party or any of his Employees discovers or suspects that any authorized person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Second Party shall forthwith inform the Customer of the matter with full particulars thereof.

#### Sub-contracts

7. If the Second Party proposes to make a sub-contract which will involve the disclosure of Secret Matter to the sub-contractor, the Second Party shall:
  - a) submit for approval of the Customer the name of the proposed subcontractor, a statement of the work to be carried out and any other



details known to the Second Party which the Customer shall reasonably require;

- b) incorporate into the sub-contract the terms of this Clause and such secrecy and security obligations as the Customer shall direct; and
- c) inform the Customer immediately it becomes aware of any breach by the sub-contractor of any secrecy or security obligation and, if requested to do so by the Customer, terminate this Agreement.

#### Termination

- 8. The First Party shall be entitled to terminate this Agreement immediately if
  - a) the Second Party is in breach of any obligation under this Clause; or
  - b) the Second Party is in breach of any secrecy or security obligation imposed by any other contract with the Crown; or
  - c) where the Customer considers the circumstances of the breach authorized the secrecy or security of the Secret Matter and notifies its contractor accordingly.

## APPENDIX 2 - Processing Personal Data

This Appendix shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Appendix shall be with the Authority at its absolute discretion.

- 1.1 The contact details of the Supplier's Data Protection Officer are: [REDACTED]
- 1.2 The contact details of the Customer's Data Protection Officer are: [REDACTED]
- 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 1.4 Any such further instructions shall be incorporated into this Appendix.

Description	Details
Identity of Controller for each Category of Personal Data	<b>The Customer is Controller and the Supplier is Processor</b>  The Parties acknowledge that in accordance with the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor of the following Personal Data.
Duration of the Processing	Throughout the Contract Period and for such a time thereafter where the Processing is essential to complete any outstanding activities of the Agreement, such as invoicing.
Nature and purposes of the Processing	All collection, organisation, recording, storage and retrieval of data required for the purposes of operating the Agreement effectively to deliver its various obligations under the Agreement.
Type of Personal Data	Names, addresses, telephone numbers, email addresses and any other such related contact details for those individuals with whom the Processor must liaise to operate the Agreement effectively.
Categories of Data Subject	Customer staff (including volunteers, agents, and temporary workers), other suppliers and their staff (including volunteers, agents, and temporary workers).
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under any Law to preserve that type of data	The Processor agrees to return and/or destroy the data once the need to process such data is complete (see Duration of Processing above).

## APPENDIX 3 TAX

- A. In case of any ambiguity or conflict, the terms below will supersede any other terms in the Agreement in relation to this Appendix.

### 1. Definitions

These definitions are in addition to those found in the Agreement and the Framework Agreement. Defined terms used in this Appendix 3 which do not appear in the list below shall be defined in the Agreement or the Framework Agreement.

<b>“Affiliate”</b>	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
<b>“Customer Data”</b>	(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Supplier by or on behalf of the Customer; and/or (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or (b) any Personal Data for which the Customer is the Controller, or any data derived from such Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified;
<b>“Connected Company”</b>	means, in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person;
<b>“Control”</b>	the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly;
<b>“Key Subcontractor”</b>	any Subcontractor: (a) which, in the opinion of the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or (b) with a Subcontract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Call-Off Contract;
<b>“Purchase Order Number”</b>	the Customer’s unique number relating to the supply of the Services;
<b>“Subcontract”</b>	any contract or Agreement (or proposed contract or Agreement) between the Supplier (or a Subcontractor) and any third party whereby that third party agrees to provide to the Supplier (or the Subcontractor) all or any part of the Services, or facilities or services which are material for the provision of the Services, or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

<b>“Subcontractor”</b>	any third party with whom: (a) the Supplier enters into a Subcontract; or (b) a third party under (a) above enters into a Subcontract, or the servants or agents of that third party;
<b>“Supplier Personnel”</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
<b>“Supporting Documentation”</b>	sufficient information in writing to enable the Customer to reasonably verify the accuracy of any invoice;
<b>“Tax”</b>	(a) all forms of tax whether direct or indirect; (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction; (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and (d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above, in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;
<b>“Tax Non-Compliance”</b>	where an entity or person under consideration meets all 3 conditions contained in the relevant excerpt from HMRC’s “Test for Tax Non-Compliance”, as set out in Appendix 1, where: (a) the “Economic Operator” means the Supplier or any agent, supplier or Subcontractor of the Supplier requested to be replaced pursuant to Clause 4.3; and (b) any “Essential Subcontractor” means any Key Subcontractor;

## 2. Payment and Recovery of Sums Due

2.1 The Supplier shall invoice the Customer as specified in the Agreement. Without prejudice to the generality of the invoicing procedure specified in the Agreement, the Supplier shall procure a Purchase Order Number from the Customer prior to the commencement of any Services and the Supplier acknowledges and agrees that should it commence Services without a Purchase Order Number:

2.1.1 the Supplier does so at its own risk; and

2.1.2 the Customer shall not be obliged to pay any invoice without a valid Purchase Order Number having been provided to the Supplier.

2.2 Each invoice and any Supporting Documentation required to be submitted in accordance with the invoicing procedure specified in the Agreement shall be submitted by the Supplier, as directed by the Customer from time to time via the Customer’s electronic transaction system.

2.3 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other Agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

### **3. Warranties**

#### **3.1 The Supplier represents and warrants that:**

- 3.1.1 in the three years prior to the Effective Date, it has been in full compliance with all applicable securities and Laws related to Tax in the United Kingdom and in the jurisdiction in which it is established;
- 3.1.2 it has notified the Customer in writing of any Tax Non-Compliance it is involved in; and
- 3.1.3 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue and the Supplier has notified the Customer of any profit warnings issued in respect of the Supplier in the three years prior to the Effective Date.

#### **3.2 If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 3.1.1, 3.1.2 and/or 3.1.3 has been breached, is untrue, or is misleading, it shall immediately notify the Customer of the relevant occurrence in sufficient detail to enable the Customer to make an accurate assessment of the situation.**

#### **3.3 In the event that the warranty given by the Supplier pursuant to Clause 3.1.2 is materially untrue, the Customer shall be entitled to terminate the Agreement with immediate effect pursuant to clause 13.6.6 in the main part of the Agreement.**

### **4. Promoting Tax Compliance**

#### **4.1 All amounts stated are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a valid VAT invoice.**

#### **4.2 To the extent applicable to the Supplier, the Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.**

#### **4.3 The Supplier shall provide to the Customer the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor of the Supplier prior to the provision of any material Services under the Agreement by that agent, supplier or Subcontractor. Upon a request by the Customer, the Supplier shall not contract, or will cease to contract, with any agent, supplier or Subcontractor supplying Services under the Agreement.**

#### **4.4 If, at any point during the Term, there is Tax Non-Compliance, the Supplier shall:**

- 4.4.1 notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
- 4.4.2 promptly provide to the Customer:
  - (a) details of the steps which the Supplier is taking to resolve the Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
  - (b) such other information in relation to the Tax Non-Compliance as the Customer may reasonably require.

- 4.5 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 4.5 shall be paid in cleared funds by the Supplier to the Customer not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Customer.
- 4.6 Upon the Customer's request, the Supplier shall provide (promptly or within such other period notified by the Customer) information which demonstrates how the Supplier complies with its Tax obligations.
- 4.7 If the Supplier:
- 4.7.1 fails to comply (or if the Customer receives information which demonstrates to it that the Supplier has failed to comply) with Clauses 4.2, 4.4.1 and/or 4.6 this may be a material breach of the Agreement;
  - 4.7.2 fails to comply (or if the Customer receives information which demonstrates to it that the Supplier has failed to comply) with a reasonable request by the Customer that it must not contract, or must cease to contract, with any agent, supplier or Subcontractor of the Supplier as required by Clause 4.3 on the grounds that the agent, supplier or Subcontractor of the Supplier is involved in Tax Non-Compliance this shall be a material breach of the Agreement; and/or
  - 4.7.3 fails to provide details of steps being taken and mitigating factors pursuant to Clause 4.4.2 which in the reasonable opinion of the Customer are acceptable this shall be a material breach of the Agreement;
- and any such material breach shall allow the Customer to terminate the Agreement with immediate effect pursuant to clause 13.6.6 in the main part of the Agreement.
- 4.8 The Customer may internally share any information which it receives under Clauses 4.3 to 4.4 (inclusive) and 4.6, for the purpose of the collection and management of revenue for which the Customer is responsible.

## 5. Use of Off-shore Tax Structures

- 5.1 Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Customer) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Customer under or pursuant to this Agreement or (in the case of any Key Subcontractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Subcontract ("**Prohibited Transactions**"). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business.

- 5.2 The Supplier shall notify the Customer in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Customer within a reasonable time to allow the Customer to consider the proposed Prohibited Transaction before it is due to be put in place.
- 5.3 In the event of a Prohibited Transaction being entered into in breach of Clause 5.1 above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Subcontractor (as applicable) shall discuss the situation with the Customer and, in order to ensure future compliance with the requirements of Clauses 5.1 and 5.2, the Parties (and the Supplier shall procure that the Key Subcontractor, where applicable) shall agree (at no cost to the Customer) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the escalation process in the Agreement.
- 5.4 Failure by the Supplier (or a Key Subcontractor) to comply with the obligations set out in Clauses 5.2 and 5.3 shall allow the Customer to terminate the Agreement pursuant to the Clause that provides the Customer the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

## **6. Data Protection and off-shoring**

- 6.1 The parties agree that the Supplier shall, whether it is the Controller or Processor, in relation to any Personal Data processed in connection with its obligations under the Agreement:
- 6.1.1 not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- (a) the Supplier or any applicable Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or, where relevant, section 75 of the Data Protection Act 2018) as determined by either the Customer or the Supplier when it is the Controller;
  - (b) the Data Subject has enforceable rights and effective legal remedies;
  - (c) the Supplier or any applicable Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist either the Customer or the Supplier when it is the Controller in meeting its obligations); and
  - (d) the Supplier or any applicable Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- 6.2 Failure by the Supplier or any applicable Processor to comply with the obligations set out in Clause 6.1 shall allow the Customer to terminate the Agreement pursuant to the Clause that provides the Customer the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

## **7. Commissioners for Revenue and Customs Act 2005 and related Legislation**

- 7.1 The Supplier shall comply with and shall ensure that all Supplier Personnel who will have access to, or are provided with, Customer Data comply with the obligations set out in Section 18 of the Commissioners for Revenue and Customs Act 2005 ('CRCA') to maintain the confidentiality of Customer Data. Further, the Supplier acknowledges that (without prejudice

to any other rights and remedies of the Customer) a breach of the aforesaid obligations may lead to a prosecution under Section 19 of CRCA.

- 7.2 The Supplier shall comply with and shall ensure that all Supplier Personnel who will have access to, or are provided with, Customer Data comply with the obligations set out in Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Customer) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.
- 7.3 The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel who will have access to, or are provided with, Customer Data in writing of the obligations upon Supplier Personnel set out in Clause 7.1 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.
- 7.4 The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Customer Data sign (or have previously signed) a Confidentiality Declaration, in the form provided at Annex B to this Appendix 3. The Supplier shall provide a copy of each such signed declaration to the Customer upon demand.
- 7.5 In the event that the Supplier or the Supplier Personnel fail to comply with this Clause 7, the Customer reserves the right to terminate the Agreement with immediate effect pursuant to clause 13.6.6 in the main part of the Agreement.



## Annex A

### Excerpt from HMRC's "Test for Tax Non-Compliance"

#### *Condition one (An in-scope entity or person)*

1. There is a person or entity which is either: ("X")
  - 1) The Economic Operator or Essential Subcontractor (EOS)
  - 2) Part of the same Group of companies of EOS. An entity will be treated as within the same Group of EOS where that entities' financial statements would be required to be consolidated with those of EOS if prepared in accordance with *IFRS 10 Consolidated Financial Accounts*<sup>1</sup>;
  - 3) Any director, shareholder or other person (P) which exercises control over EOS. 'Control' means P can secure, through holding of shares or powers under articles of association or other document that EOS's affairs are conducted in accordance with P's wishes.

#### *Condition two (Arrangements involving evasion, abuse or tax avoidance)*

2. X has been engaged in one or more of the following:
  - . Fraudulent evasion<sup>2</sup>;
  - a. Conduct caught by the General Anti-Abuse Rule<sup>3</sup>;
  - b. Conduct caught by the Halifax Abuse principle<sup>4</sup>;
  - c. Entered into arrangements caught by a DOTAS or VADR scheme<sup>56</sup>;
  - d. Conduct caught by a recognised 'anti-avoidance rule'<sup>7</sup> being a statutory provision which targets arrangements where either a main purpose, or an expected benefit, is to obtain a tax advantage or where the arrangement is not effected for commercial purposes. 'Targeted Anti-Avoidance Rules' (TAARs). It may be useful to confirm that the Diverted Profits Tax is a TAAR for these purposes;
  - e. Entered into an avoidance scheme identified by HMRC's published Spotlights list<sup>8</sup>;
  - f. Engaged in conduct which falls under rules in other jurisdictions which are equivalent or similar to (a) to (f) above.

#### *Condition three (Arrangements are admitted, or subject to litigation/prosecution or identified in a published list (Spotlights))*

3. X's activity in *Condition 2* is, where applicable, subject to dispute and/or litigation as follows:
  1. In respect of (a), either X:
    1. Has accepted the terms of an offer made under a Contractual Disclosure Facility (CDF) pursuant to the Code of Practice 9 (COP9) procedure<sup>9</sup>; or,
    2. Has been charged with an offence of fraudulent evasion.

2. In respect of (b) to (e), once X has commenced the statutory appeal process by filing a Notice of Appeal and the appeal process is ongoing including where the appeal is stayed or listed behind a lead case (either formally or informally). NB Judicial reviews are not part of the statutory appeal process and no supplier would be excluded merely because they are applying for judicial review of an HMRC or HMT decision relating to tax or national insurance.
3. In respect of (b) to (e), during an HMRC enquiry, if it has been agreed between HMRC and X that there is a pause with the enquiry in order to await the outcome of related litigation.
4. In respect of (f) this condition is satisfied without any further steps being taken.
5. In respect of (g) the foreign equivalent to each of the corresponding steps set out above in (i) to (iii).

For the avoidance of doubt, any reference in this Annex A to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time including any implementing or successor legislation.

**Annex B Form**

**CONFIDENTIALITY DECLARATION**

CONTRACT REFERENCE: RM6251 ('the Agreement') DECLARATION:

I solemnly declare that:

- 1. I am aware that the duty of confidentiality imposed by section 18 of the Commissioners for Revenue and Customs Act 2005 applies to Customer Data (as defined in the Agreement) that has been or will be provided to me in accordance with the Agreement.
- 2. I understand and acknowledge that under Section 19 of the Commissioners for Revenue and Customs Act 2005 it may be a criminal offence to disclose any Customer Data provided to me.

SIGNED:
FULL NAME:
POSITION:
COMPANY:
DATE OF SIGNATURE: