

# | TERMS AND CONDITIONS OF SUPPLY

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## 1. Basis of the Contract

- 1.1 The Supplier agrees to supply electricity under the terms of this Contract and the Customer agrees to take exclusively from the Supplier and to pay for the electricity taken at the Supply Point(s) set out in Schedule 1.
- 1.2 This Contract will come into force and effect on the date it is signed by the Parties and supply of electricity will commence on the Start Date, subject to Clause 7. This Contract will end on the End Date shown in the Offer unless the Offer indicates that the Contract is Evergreen.
- 1.3 If this Contract is Evergreen, it will continue for the Initial Period and thereafter until terminated. Either Party may terminate this Contract after the Initial Period by giving the other at least 60 days' written notice prior to the end of a Contract Year. Any such termination will take effect on the last Business Day of such Contract Year, except that the Contract cannot be terminated before the end of the Initial Period.
- 1.4 If by the End Date the Customer has not entered into a new contract with the Supplier, moved to another Electricity Supplier or Disconnected all of the Supply Points, a Deemed Contract will come into force between the Parties on the first day after the End Date at the Deemed Rates.
- 1.5 This Contract is conditional on the Customer meeting the Supplier's credit checks. If the Supplier notifies the Customer before the Start Date that the Customer has failed the checks, this Contract shall be deemed not to have come into force or effect and the Supplier shall not be obliged to supply electricity to the Customer.

## 2. Calculation of the Amount of Electricity Used

- 2.1 The Supplier will base its calculation of the amount of electricity the Customer has used during a Supply Month on:
  - (a) the Meter reading that the Supplier receives from the Data Collector within 5 Business Days of the end of the month; or
  - (b) if an Advanced Meter is not fitted at a Supply Point or readings are not available for any reason, the Supplier will estimate the amount of electricity used.
- 2.2 If at any time the Supplier identifies an error in, or receives an update to, a Meter reading or estimate of electricity consumption, it may send an invoice or credit note for the adjusted amount.
- 2.3 Ownership of the electricity will pass from the Supplier to the Customer at each of the Supply Points.
- 2.4 The Customer will pay for all electricity taken at each Supply Point irrespective of whether it is used by the Customer or anyone else.

## 3. Calculation of the Invoice Price

- 3.1 For Flexible Price Contracts, electricity supplied to each Supply Point shall be charged at:
  - (a) the Electricity Price;
  - (b) the Supplier Charges; and
  - (c) the Third Party Charges.
- 3.2 For Fixed Price Contracts, electricity supplied to each

Supply Point shall be charged at:

- (a) the Electricity Price;
- (b) the Daily Charge; and
- (c) the Third Party Charges.

## 4. Electricity Price

- 4.1 The Electricity Price for electricity supplied to each Supply Point during a Supply Month shall be as set out in Schedule 4.
- 4.2 For Flexible Price Contracts, Instructions to Fix and Instructions to Refloat shall be made in accordance with the Hedging Procedure, which is incorporated into these Terms and Conditions.
- 4.3 If either Party believes that any of the pricing indices used to calculate the Electricity Price are temporarily or permanently unavailable, the Supplier and the Customer's Representative shall work in good faith to agree an alternative index.
- 4.4 If the Supplier and the Customer fail to agree upon an alternative index within 30 days of the unavailability of the pricing index then in calculations of the Electricity Price for electricity supplied while the pricing index is unavailable, the unavailable index will be substituted with the System Price when buying or selling electricity.

## 5. Supplier, Third Party and Daily Charges

- 5.1 Charges may be fixed or pass-through. Whether the Third Party Charges are fixed or pass-through is indicated in the column headings in Schedule 3. If they are fixed, they are fixed at that amount for the Term unless it indicates a shorter Fixed Period. If they are pass-through, the amount that is charged for them will be derived from data published by third parties, including the Transmission System Operator and Distribution System Operator, in respect of the relevant period of supply and reconciled against any updates to the published data. The Supplier Charges, Daily Charge and any Charges incorporated into the Electricity Price are fixed at a price for a Fixed Period, each as identified in the Offer. After the expiry of a Charge's Fixed Period, the Supplier may change a Charge by no less than 30 days' written notice to the Customer, to take effect for a new Fixed Period (lasting no less than one year unless otherwise agreed by the Parties). The Supplier may only increase a Charge to the extent necessary to reflect an increase in the costs it anticipates incurring in the new Fixed Period and, on request, shall provide the Customer with supporting data on which it has based its assumptions.
- 5.2 All Charges will be calculated on the basis that the electricity delivered to each Supply Point is adjusted for Transmission Losses, Distribution Losses and GSP Group Correction Factors.
- 5.3 The Supplier may pass through any Mutualisation Amount and associated costs incurred by the Supplier in respect of the Renewables Obligation, Contracts for Difference or Capacity Market in proportion to the volume consumed by the Customer.
- 5.4 The Charges may include commission paid to a broker or consultant acting on the Customer's behalf.
- 5.5 The Daily Charge will be made for each Day in the Term and will be charged whether or not any electricity is consumed.

5.6 If at any time the Supplier identifies an error in, or receives an update to, the Charges that have been invoiced or identifies an error in the information on which it based its Charges at the date of this Contract, it may send an invoice or credit note for the adjusted amount.

## 6. Payment Terms

6.1 Each month, the Supplier will send the Customer an invoice for the Charges that apply to the electricity supplied in the previous Supply Month (a "Monthly Invoice"). The Supplier may invoice other amounts due under this Contract from time to time.

6.2 All amounts payable under this Contract are stated net of VAT, the Climate Change Levy or any other tax, duty or charge (together referred to as "Taxes" and each a "Tax") applicable to supplying electricity to the Customer. The Customer must pay these Taxes and the Supplier will pass through any that the body imposing the Tax intends the Customer to pay rather than the Supplier. This Clause 6.2 will also apply to any increase in a Tax, or any new Tax, introduced during the Term.

6.3 The Customer will pay the full amount of each Monthly Invoice and any other invoice so that the Customer's payment is received by the Supplier not later than the payment date shown in the Offer.

6.4 The Customer must pay each invoice in pounds sterling by the method shown in the Offer to the bank account designated by the Supplier.

6.5 The Supplier may charge the Customer interest on any amount the Customer has not paid from the date it is due for payment until the date it is received by the Supplier. Interest will accrue at 3% above the Bank of England base rate.

6.6 The Customer must make all payments under this Contract without taking off any amounts (for tax or any other purpose), unless the Customer has to do this by law.

6.7 If the Customer does not agree with any amount the Supplier has charged the Customer under this Contract, the Customer must pay the part of the invoice the Customer agrees with, and notify the Supplier of the details of the Customer's dispute within 30 days of the date of the invoice.

6.8 If the Customer and the Supplier are not able to settle the dispute within 30 days of the Customer's notice, either the Customer or the Supplier may refer the matter to an independent expert that the Customer and the Supplier jointly agree on. If the Customer and the Supplier cannot agree on that person within 21 days of referral the Customer or the Supplier can refer the dispute to an expert appointed by the President of the Institute of Chartered Accountants in England and Wales. This person will act as an expert and not as an arbitrator and their decision will be final and binding. The Supplier and the Customer will share the cost equally of providing this expert unless the expert decides either the Customer or the Supplier have acted unreasonably. If this is the case, the expert will decide who should pay the costs.

## 7. Preconditions for Supply

7.1. The Supplier will ensure that it is registered and begin supplying each Supply Point by the later of:

- (a) 15 days from the date of this Contract;
- (b) the Start Date; or
- (c) another date as may be agreed by the Supplier and the Customer

(the "Relevant Date").

The Customer may request a later date for registration or notify that it does not want registration to take place.

7.2. The Supplier is not obliged to be registered by the Relevant Date if:

- (a) the previous Electricity Supplier has prevented the registration by objecting to the transfer in line with its Supply Licence;
- (b) a supply exemption holder is currently supplying electricity to the relevant Supply Point and has objected to the proposed registration;
- (c) the Supplier does not have all of the information it needs to complete the registration, despite having taken all reasonable steps to obtain the missing information;
- (d) the Customer is currently taking electricity at the Supply Point through an exempt distribution system and the Supplier cannot start supplying electricity to the relevant Supply Point because:
  - (i) a physical connection has not yet been made; or
  - (ii) the distribution exemption holder has specified a specific metering arrangement that is not yet in place; or
- (e) the Supplier cannot complete the registration due to any other circumstance which is outside of its control and which it has taken all reasonable steps to resolve.

7.3. If any of the conditions referred to in Clause 7.2 applies, the Supplier will complete the registration within 15 days of the date on which all relevant conditions no longer apply.

7.4. The following conditions must be satisfied before the Supplier will begin to supply to a Supply Point:

- (a) a Meter is installed at the Supply Point which is registered and operating in compliance with all applicable Legal Requirements;
- (b) a Data Collector and Data Aggregator are appointed and a Use of System Agreement is in effect;
- (c) a Meter Operator is contracted with and appointed; and
- (d) a Connection Agreement is in effect.

7.5. The Customer will ensure that condition 7.4(d) is satisfied by the Relevant Date. The Supplier will ensure that condition 7.4(c) is satisfied by the Relevant Date unless it agrees to the Customer appointing the Meter Operator in accordance with Clause 9, in which case the Customer will ensure the satisfaction of condition 7.4(c) by the Relevant Date. The Customer will provide the Supplier with the information and assistance it reasonably requires to enable it to resolve conditions in Clauses 7.2, 7.4(a), 7.4(b) and 7.4(c) by the Relevant Date.

7.6. The Customer represents and warrants to the Supplier that at the Start Date and for the Term:

- (a) the electricity supplied to each Supply Point under this Contract is to be used totally or mainly for non-domestic purposes;
  - (b) there are no pre-payment meters installed at any Supply Point;
  - (c) it intends to take physical delivery for its consumption of all quantities of electricity which are the subject of any Instruction to Fix;
  - (d) each of the Customer and Customer Representative is acting on its own accord and has not been advised by the Supplier, or by any of the Supplier's Affiliates in respect of any Instruction to Fix or Refloat; and
  - (e) it is entering into the Contract for the purpose of obtaining a supply of electricity for its own consumption, and not for a speculative purpose.
- 7.7. The representations and warranties set out in Clause 7.6(c) to (e) shall be deemed to be repeated by the Customer at the date of any Instruction to Fix or Instruction to Refloat. The Customer will promptly tell the Supplier if any of the representations and warranties in Clause 7.6 ceases to be true, in which case the Supplier may terminate this Contract.
- ## 8. Requirements relating to Supply Points
- 8.1 The Customer will make sure that all electricity taken passes through a Meter at each Supply Point.
  - 8.2 The Customer will give the Supplier written notice of any changes to any details of a Supply Point (including any change to the address or MPAN of a Supply Point) and the date from which the changes will apply.
  - 8.3 The Customer must provide all information the Supplier reasonably requests relating to any electricity-generating equipment installed at any Supply Point, including amounts generated, generation capacity, fuel type and planned maintenance periods and shutdowns.
  - 8.4 The Customer will notify the Supplier if it is party to any agreement for the provision of Ancillary Services or adapts its consumption pattern to avoid energy charges, including Triad, red rates and Capacity Market.
  - 8.5 The Supplier represents and warrants that their Supply Licence entitles the Supplier to supply electricity to the Supply Points and that the Supplier is party to the Industry Codes required to enable it to supply electricity to the Supply Points.
  - 8.6 The Customer will comply with the Connection Agreement for each Supply Point, the Regulations, Distribution Code, Grid Code and CUSC, each to the extent applicable to it.
  - 8.7 The Supplier does not give any warranties or guarantees about the reliability or quality of the supply of electricity to the Supply Points.
- ## 9. Meter Installation and Maintenance
- 9.1 If, on the Start Date, the Customer has a non half-hourly Supply Point where there is no Advanced Meter that meets the Supplier's requirements, the Supplier will use reasonable endeavours to install and commission automated meter reading equipment at the Supply Point. The Supplier will pay the installation and commissioning costs of that equipment. If the Customer asks the Supplier to replace or upgrade any elements of a Meter other than automated reading equipment, the Supplier may recover the costs of carrying out this work from the Customer. The Supplier will not have any liability to the Customer for any delay in installing and commissioning an Advanced Meter.
  - 9.2 The Customer must give the Supplier any reasonable information and help the Supplier may need so that they can supply and record electricity consumption at each Supply Point.
  - 9.3 The Supplier will appoint and enter into contracts with a Data Collector and Data Aggregator in respect of each Supply Point unless the Customer requests to nominate them.
  - 9.4 The Customer will contract with a Meter Operator in respect of any half-hourly Supply Point. The Supplier will nominate and contract with a Meter Operator in respect of any non half-hourly Supply Point unless the Customer requests to nominate them.
  - 9.5 Any Data Collector, Data Aggregator or Meter Operator nominated by the Customer must:
    - (a) in the reasonable opinion of the Supplier, be Qualified to carry out their duties; and
    - (b) have a contract in effect with the Customer within 10 days of the Start Date.
  - 9.6 If the conditions in Clause 9.5 are satisfied, the Supplier shall appoint the Data Collector, Data Aggregator or Meter Operator nominated by the Customer. If not, or at any time the conditions cease to be satisfied, the Supplier may appoint and contract with a Data Collector, Data Aggregator or Meter Operator. The Customer will be liable for any cost incurred by the Supplier as a result of the conditions in Clause 9.5 failing or ceasing to be satisfied.
  - 9.7 Each Party will ensure that its Meter Operator operates, maintain and renews its Meters in accordance with good industry practice and applicable Legal Requirements and Industry Codes.
  - 9.8 The Customer shall be liable for the acts and omissions of its Meter Operator and the Supplier shall not be liable to the Customer in respect of any breach of any of the Supplier's obligations in this Contract, including its obligation to supply electricity to the Supply Points, if and to the extent that such breach was caused by any act or omission of a Meter Operator contracted by the Customer.
  - 9.9 The Customer must provide safe and clear access to each Meter at all reasonable times, and always between 8am and 5pm on any Business Day, so that the Distribution System Operator, Meter Operator,

Data Collector, Supplier or any associated contractors can:

- (a) install, maintain, inspect, test, repair, replace, upgrade, disconnect or disable any part of the Meter;
- (b) take any Meter readings;
- (c) disconnect or de-energise any Supply Point where the Distribution System Operator or Supplier has the right to do so.

9.10 The Supplier will comply with, and will make sure that its employees, agents and subcontractors comply with, any of the Customer's reasonable health, safety and security requirements relating to their Supply Points provided the Customer has given the Supplier advanced written notice of such requirements.

9.11 If the Customer does not provide access in accordance with Clause 9.9, the Customer must compensate the Supplier for any resulting costs that the Supplier incurs from any third party.

9.12 The Customer must regularly check the Meter to make sure that it has not been damaged, mistreated or interfered with. If it has been damaged, mistreated or interfered with, the Customer must:

- (a) tell the Supplier as soon as possible; and
- (b) obtain a crime number from the police if the Meter was damaged, mistreated or interfered with by anyone other than the Supplier or its authorised contractor.

9.13 Other than as a result of the Supplier's negligence, if the Meter has been damaged, mistreated or interfered with, the Customer must compensate the Supplier for any costs that it incurs as a result.

9.14 The Customer will install half-hourly metering at a Supply Point at its own cost if required under the BSC, including if the meters are profile class 5 to 8 or if a maximum demand of 100kW is recorded at any time at a non half-hourly Supply Point. Where the Supplier is required to install half-hourly metering under the BSC or its Supply Licence, the Customer will provide all reasonable assistance to enable the Supplier to install the Meter(s) within the required timeframe. The Supplier may amend the Third Party Charges to reflect the change to half-hourly metering.

## 10. Meter Accuracy

10.1 If either Party believes that a Meter is inaccurate they can request that it be removed, examined and checked for accuracy by a Meter Examiner. If the request was made by the Customer and the equipment proves to be working within the levels of accuracy set by Legal Requirement or Industry Codes, or if the Meter Operator is contracted to the Customer, the Customer will have to pay the costs for removing, examining and checking the equipment. The Supplier will pay these costs in all other cases.

10.2 If a Meter is found to be inaccurate by the Meter Examiner, the Supplier will send an invoice or credit note for the volume of electricity that was inaccurately metered. For the purposes of this calculation, unless the Meter Examiner specifies otherwise, the Supplier will assume that the Meter became inaccurate from the date on which the Meter was tested by the Meter Examiner.

## 11. Volume Forecasts

11.1 The Forecast Consumption set out in Schedule 2 is the total quantity of electricity forecast to be supplied in a Supply Month to all of the Supply Points. The Supplier also allocates the Forecast Consumption into Settlement Periods, which the Customer may see on request. Each Forecast Consumption figure is derived by the Supplier from historic data relating to the Customer's consumption of electricity and information provided by the Customer in advance of this Contract as to its anticipated consumption of electricity. The Customer agrees with the Forecast Consumption.

11.2 For Flexible Price Contracts, the Supplier will derive Base Load Blocks and Peak Load Blocks of electricity from the Forecast Consumption (the "Load Block Volume") and calculate the difference between the Forecast Consumption and Load Block Volume in each Settlement Period (the "Residual Volume"), each as shown in Schedule 2.

11.3 For Flexible Price Contracts, the Forecast Consumption may be amended in accordance with the following steps:

- (a) by 5 Business Days before a Supply Month, the Customer or Supplier may notify the other Party to amend the Forecast Consumption for that month and subsequent months;
- (b) by 3 Business Days before such Supply Month, the Supplier will notify the Customer of any consequent change to the Charges and the amended Load Block Volume and Residual Volume (if applicable);
- (c) within 1 Business Day of step (b), the Customer will notify the Supplier whether it objects to the amended Forecast Consumption, Residual Volume or Charges, otherwise they will be deemed accepted and will apply until amended subsequently under this Clause 11 or in accordance with this Contract;
- (d) if the Customer accepts or is deemed to accept under step (c), the Customer shall make or be deemed to have made any Instructions to Fix or Instructions to Refloat which the Supplier requires of it to adapt to the new Forecast Consumption; and
- (e) if the Customer objects under step (c), the notice under step (a) will be deemed withdrawn and there will be no change to the Forecast Consumption, Residual Volume or Charges.

11.4 For Fixed Price Contracts with volume reconciliation, the methodology for the reconciliation is as set out in Schedule 4.

11.5 The Customer will use reasonable endeavours to give the Supplier at least 7 Business Days' notice of any planned maintenance or shutdowns of its electricity consuming equipment (and generating equipment, if applicable) and as soon as possible if it is unplanned, together with an estimate of how much less electricity will be consumed. Such notice shall not of itself constitute notice under Clause 11.3(a).

## 12. Capacity and Terms of Connection

12.1 The Customer must make sure that its consumption of electricity at any Supply Point is never more than the Maximum Capacity of that Supply Point. The Customer must compensate the Supplier for any charges or costs the Supplier incurs as a result of the Customer's failure to comply with this Clause, including any charges imposed by the relevant Distribution System Operator or Transmission System Operator.

12.2 Except where a Supply Point is directly connected to a Transmission System or where the Customer has entered into a non-standard Connection Agreement with the Distribution System Operator, this Contract is subject to the National Terms of Connection ("NTC"). The NTC is a legal agreement. The Supplier is acting as an agent of the Distribution System Operator to make an agreement that the NTC will apply. This will happen from the time that the Customer enters into this Contract and affects the Customer's legal rights. It sets out rights and duties in relation to the connection at which the Distribution System Operator delivers electricity to, or accepts electricity from, the Customer's business. If the Customer wants a copy of the NTC or has any questions about it, the Customer should write to: Energy Networks Association, 6th Floor, Dean Bradley House, 52 Horseferry Road, London SW1P 2AF; phone 0207 706 5137, or see the website at [www.connectionterms.co.uk](http://www.connectionterms.co.uk). The Customer agrees that, if this Clause 12.2 applies, the Distribution System Operator has the benefit of, and is entitled to enforce, the conditions of the NTC under the Contracts (Rights of Third Parties) Act 1999.

## 13. Adding and Removing Supply Points

13.1 Subject to this Clause 13, the Customer may remove a Supply Point from this Contract or add a Supply Point to this Contract by giving not less than 30 days' prior written notice to the Supplier. Such notice shall include:

- (a) if a Supply Point is to be added, details of the new Supply Point necessary to enable the Supplier to register the Supply Point and identify the Charges associated with it;
- (b) if a Supply Point is to be removed, details of the new owner, lessee, licensee or occupier of the Supply Point (if any); and
- (c) the proposed date that the supply of electricity to such Supply Point is required to commence, or cease (as applicable).

13.2 The Customer must notify the Supplier in writing if it

decides to sell, lease, license or otherwise dispose of any interest in, or no longer occupy or own, any premises supplied under this Contract. The Customer will be deemed to have given such notice if any of the conditions in Clause 7.4 ceases to apply after the commencement of supply.

13.3 The Customer shall be deemed to have given a notice to amend the Forecast Consumption under Clause 11.3(a) if it gives notice of the addition or removal of a Supply Point. If notice is deemed withdrawn under Clause 11.3(e) then notice of the addition or removal of a Supply Point is deemed withdrawn.

13.4 The Supplier will not be required to supply electricity to any Supply Point added to this Contract until the Supplier is registered for that Supply Point. The conditions in Clauses 7.2 and 7.4 shall apply to any Supply Point to be added to this Contract, where "Relevant Date" shall be read to mean the date notified under Clause 13.1(c).

13.5 The Supplier will not be required to remove a Supply Point from this Contract unless:

- (a) the new owner, lessee, licensee or occupier of the premises where the Supply Point is located signs a contract to supply electricity to that Supply Point with the Supplier or another Electricity Supplier; or
- (b) that Supply Point is disconnected, and the Customer will continue to be liable for and will pay for all electricity supplied to that Supply Point (including the Charges) until the date the Supplier removes it from this Contract.

13.6 The Supplier may object to any proposed transfer of a Supply Point to another Electricity Supplier if:

- (a) the transfer would happen before the End Date or the Initial Period; or
- (b) the Customer has failed to pay the Supplier any Charges or other payments for the supply of electricity to that Supply Point.

## 14. Emergencies, Supply Reduction and Failure to Supply

14.1 A Distribution System Operator or Transmission System Operator has the right to De-energise or reduce supply of electricity to a Supply Point. If the Supplier recovers compensation from the Distribution System Operator or Transmission System Operator on the Customer's behalf, the Supplier will pay this compensation to the Customer, less the Supplier's reasonable costs.

14.2 The Supplier will not be failing its duty to supply electricity to a Supply Point if the Customer has to reduce the amount of electricity it takes at its Supply Points, or to stop taking electricity completely, because of:

- (a) actions taken, or instructions given, by the Distribution System Operator or Transmission

- System Operator;
- (b) action the Meter Operator, Data Collector, Data Aggregator, Supplier or any associated contractors have taken in line with Clause 9.8;
- (c) any part of the Meter failing or being faulty;
- (d) the Customer exceeding the Maximum Capacity; or
- (e) the Distribution System being maintained or an emergency existing.

- the Supplier otherwise than to Renewable Source Electricity supplies made by the Supplier in that averaging period.
- 16.3 If the Customer requires an exemption or reduction from the Climate Change Levy, the Customer must give the Supplier a completed relief or supplier PP11 certificate in the format set by HMRC.
- 16.4 The Supplier will not be required to supply Renewable Source Electricity during any period when a Deemed Contract applies.

## 15. Disconnection and De-energisation

- 15.1 The Supplier may arrange for the De-energisation or Disconnection of the supply of electricity to any Supply Point by giving the Customer notice in any of the following circumstances:
  - (a) if in the Supplier's reasonable opinion, a De-energisation or Disconnection of the Supply Point is necessary to avoid danger or damage to any person or property;
  - (b) to allow the Distribution System Operator to inspect, maintain, repair or alter any part of the Distribution System;
  - (c) if any of the circumstances in Clause 20.1 or 20.2 (Ending this Contract) apply (whether or not this Contract is terminated);
  - (d) if this Contract is terminated or the Supply Point is removed from this Contract; or
  - (e) if the Customer requests us to Disconnect the Supply Point.
- 15.2 The Supplier will give the Customer no less than 28 Business Days' prior written notice of the Disconnection of any Supply Point.
- 15.3 If asked by the Customer the Supplier may arrange the re-connection or re-energisation of the supply of electricity to a Supply Point provided that the reasons that the Supply Point was De-energised or Disconnected no longer apply.
- 15.4 The Customer will be liable for and will pay the Supplier on demand for any and all losses and expenses incurred by the Supplier due to the Disconnection, De-energisation or re-connection or re-energisation of any Supply Point.

## 16. Supply of Renewable Source Electricity

- 16.1 The Supplier will supply the percentage of Renewable Source Electricity set out in the Offer. It may include Renewable Source Electricity generated outside the UK, unless specifically excluded in the Offer.
- 16.2 The Supplier agrees that in each averaging period, the amount of Renewable Source Electricity that they supply will not exceed the difference between:
  - (a) the total amount of Renewable Source Electricity that during that averaging period is either acquired or generated by the Supplier; and
  - (b) so much of that total amount as is allocated by

## 17. Force Majeure

- 17.1 Neither Party will be liable for failing to keep to any term of this Contract (other than a failure to make any payment) if this is caused by any event or set of circumstances which is outside the Party's reasonable control and which could not be prevented. This will include any event or set of circumstances that qualifies as "Force Majeure" under the CUSC, where "CUSC Party" shall read as a Party to this Contract.
- 17.2 The affected Party must notify the other promptly and no later than 30 days from the first day the event happened and take all reasonable steps to mitigate its effect.

## 18. Liability

- 18.1 Nothing in this Contract, including the rest of this Clause 18, will exclude or limit either Party's liability for death or personal injury resulting from negligence or fraud.
- 18.2 Each Party's liability to the other under this contract for any loss, costs, expenses or damage, whether in contract, tort (including negligence and breach of statutory duty), statute or otherwise will not be more than £1 million for one event or series of connected events. This limit does not apply to the Customer's responsibility to pay the Charges.
- 18.3 The Supplier will only be liable to the Customer for a breach by the Supplier of this Contract to the extent the breach directly results in physical damage to the Customer's property and the damage was reasonably foreseeable.
- 18.4 Unless expressly stated otherwise, neither the Customer nor the Supplier will have any liability to the other for loss of profit, loss of revenue, loss of use, loss of contract, loss of a bargain, loss of savings, loss of goodwill, loss of or damage to reputation, loss of or damage to any software, data, or computer equipment, an increase to the cost of working, or for any consequential or indirect losses or damages.

## 19. Changes in the Customer's Circumstances

- 19.1 If the Supplier reasonably believes that the Customer may not be able to meet the Customer's obligations under this Contract, or if the financial circumstances of the Customer (or the Customer's parent company, ultimate parent company or guarantor) have deteriorated to a level no longer

acceptable to the Supplier, the Supplier may: (i) give the Customer notice to provide suitable financial security for the Customer's payment obligations on the terms the Supplier requires; (ii) apply such financial security to this Contract, to come into force from the date the Supplier gives the Customer the notice; (iii) impose restrictions on the Customer's entitlement to issue Instructions to Fix or Instructions to Refloat; and (iv) require resale of any forward purchases of electricity (in which case the methodology in Clause 21.3 will apply).

19.2 If the Customer does not provide the financial security the Supplier asks for within 30 days of receiving the Supplier's notice, the Supplier may give the Customer notice to end this Contract immediately.

## 20. Termination

20.1 A Party ("Party A") can terminate this Contract immediately by giving written notice to the other Party ("Party B") at any time, in the following circumstances:

- (a) if Party B materially breaches Party B's obligations under this Contract and, if it is capable of remedy, it is not remedied to the reasonable satisfaction of Party A within 30 Business Days of the written notice.
- (b) if Party B cannot pay their debts (as defined in section 123 (1) of the Insolvency Act 1986), if they are asked to consider entering into a voluntary arrangement under section 1 of that act, or if they enter into any scheme of arrangement (other than for the purpose of merging, restructuring or amalgamating their organisation);
- (c) if a receiver or administrative receiver (as defined in section 251 of the Insolvency Act 1986) is appointed to handle all or part of Party B's assets or business;
- (d) if an administration order is passed, under section 8 of the Insolvency Act 1986, in relation to Party B's business;
- (e) if Party B passes any resolution for winding up their business (other than for the purpose of merging, restructuring or amalgamating their organisation);
- (f) if a court passes an order to wind up Party B's business; or
- (g) if the equivalent to an event in (b) to (f) occurs under the laws of another jurisdiction.

20.2 Without affecting any other rights the Supplier may have under this Contract, at law or otherwise, the Supplier can choose to terminate this Contract immediately if:

- (a) the Customer fails to make any payment to the Supplier in line with this Contract;
- (b) the Customer no longer owns, uses or occupies the premises where the Supply Points are based;

- (c) the Supplier is no longer able to supply electricity to the Customer in line with the terms of the Supplier's Supply Licence; or
- (d) the Customer is in breach of the warranties in Clause 7.6 at any time.

20.3 This Contract will terminate immediately if another supplier is appointed by Ofgem as a supplier of last resort to take over responsibility for the Supply Points.

20.4 The following Clauses will continue to have effect after the termination or expiry of this Contract: Clause 1.4 (Basis of the Contract), Clause 2.2 (Calculation of the Amount of Electricity Used), Clause 5 (Supplier, Third Party and Daily Charges), Clause 15 (Disconnection and De-energisation), Clause 18 (Liability), Clause 21 (Consequences of Termination), Clause 23 (Information, Confidentiality and Data Protection), Clause 24 (Notices), Clause 25 (Disputes, Governing Law and Jurisdiction), Clause 27 (Miscellaneous), Clause 28 (Interpretation).

20.5 The termination of this Contract will not affect any accrued rights or obligations under this Contract as at the date of such termination.

## 21. Consequences of Termination

21.1 If this is a Flexible Price Contract and it is terminated or expires, then the Customer's Representative may request on or before the date of termination or expiry that the Supplier transfer all forward purchases of electricity and associated certificates the Supplier has undertaken on the Customer's behalf relating to Settlement Periods after the date of termination or expiry ("Hedges") to a new Electricity Supplier nominated by the Customer's Representative. The Supplier shall use reasonable endeavours to carry out the Customer's request subject always to the new Electricity Supplier having a credit position which is acceptable to the Supplier or DONG Energy Sales & Service A/S.

21.2 If the Supplier for any reason determines that it will not transfer the Hedges then the Supplier may sell (or for the purposes of calculation of the amounts payable by each Party under this Clause 21.2, be deemed to have sold) the Hedges at the prevailing market price for each forward month of delivery on the day which is two (2) Business Days after the date of termination of this Contract. This market price shall have reference to the availability of quotes on both the Intercontinental Exchange and the OTC (Over the Counter) forward markets.

21.3 If the aggregate value of the Hedges on their sale or deemed sale is greater than the aggregate value of the Hedges on their purchase, the Supplier shall pay the Customer the difference. If it is less, the Customer shall pay the Supplier the difference. In each case, the paying Party may set off any sums due from the other Party as at the date of termination.

21.4 Any payments due to the Customer under this

Clause 21 shall only be made by the Supplier after the Supplier has received the money from the sale of the relevant Hedges.

- 21.5 If this Contract is terminated early for any reason other than default of the Supplier, or any Supply Points are removed from the Contract and the Supplier has objected under Clause 13.5, then the Customer will compensate the Supplier for loss of the Management Fee the Supplier would have made in respect of the period from date of termination or removal until the End Date that would otherwise have applied.

## 22. Transfer of Rights and Obligations

- 22.1 The Customer must not transfer or sub-contract the Customer's rights or responsibilities under this Contract without first getting the Supplier's consent in writing. The Supplier will not unreasonably withhold its consent.
- 22.2 The Supplier can transfer or sub-contract the Supplier's rights and responsibilities under this Contract without the Customer's consent.

## 23. Information, Confidentiality and Data Protection

- 23.1 Each Party agrees to keep the terms of this Contract and any information relating to it confidential and not to share the information with anyone else while this Contract is in force or for three years after it has ended. Either Party may disclose information:
- (a) if required by a Legal Requirement or Industry Code;
  - (b) to Affiliates, professional advisers, agents, equity investors or debt funders so long as they are bound by equivalent obligations of confidentiality;
  - (c) which is already generally available and in the public domain otherwise than as a breach of this Clause; or
  - (d) with previous written consent of the other.
- 23.2 The Supplier may disclose the Customer's information:
- (a) to a credit-reference agency, debt collection agency, credit insurer or to a third party detecting theft of electricity; or
  - (b) to any new Electricity Supplier.
- 23.3 The Customer must give the Supplier all the help and information the Supplier (or the Supplier's agents) reasonably need to keep to any Legal Requirement or any other agreement, authorisation or Industry Code required in connection with the supply of electricity.
- 23.4 The Customer is liable for the Supplier's costs if any information the Customer provides is incorrect, incomplete or not supplied on time.
- 23.5 The Supplier or its Affiliates may use the Customer's information to send it details of other goods or

services the Supplier or its Affiliates offer. If the Customer does not want to receive information about other goods and services, the Customer must tell the Supplier this in writing.

## 24. Notices

- 24.1 Any notice a Party gives under this Contract must be in writing and delivered by hand, first-class post, registered post, recorded delivery or email. The addresses for delivery, unless the Supplier or the Customer notify a replacement address, are:

Post: the Supplier and the Customer's registered addresses

Email: notices@dongenergy.co.uk and such email as the Customer may notify to the Supplier.

## 25. Disputes, Governing Law and Jurisdiction

- 25.1 If the Customer is not satisfied with the service the Customer has received, the Customer may use the complaints process on the Supplier Website.
- 25.2 If any dispute arises out of or in connection with this Contract or its formation, either Party may refer the dispute:
- (a) if the dispute relates to an Industry Code, to arbitration under the arbitration rules of the Electricity Arbitration Association, which are incorporated into this Clause. The place of the arbitration shall be London and the tribunal shall consist of a sole arbitrator. The decision of the arbitrator shall be final and binding on the Parties, except in the case of fraud or manifest error;
  - (b) if the dispute relates to Clause 6.6, to be finally settled by an expert in accordance with Clause 6.7; or
  - (c) in all other circumstances, to the Courts of England and Wales or Scotland (in accordance with Clause 25.3).
- 25.3 This Contract and any non-contractual obligations arising from or connected with it shall be construed and governed in accordance with English Law unless at the Start Date the majority of the Forecast Consumption in the first Contract Year (or until the End Date, if sooner) is in Scotland, in which case Scottish law shall apply. Subject to Clause 25.2, the Parties agree that the Courts of England and Wales shall have exclusive jurisdiction if this Contract is governed by English law and the Courts of Scotland shall have exclusive jurisdiction if this Contract is governed by Scottish law.

## 26. Variations

- 26.1 Except as permitted under Clause 26.2 and the Offer, neither Party may amend this Contract unless the Parties' duly authorised representatives sign a written contract of amendment.
- 26.2 If a change in a Legal Requirement, Industry Code or Supply Licence requires the Supplier to amend this Contract or directly affects the Supplier's cost of

complying with this Contract, the Supplier may notify the Customer in writing of the reasonable amendments it requires to the Contract and the amendments will take effect from the date notified by the Supplier.

28.7 References to “costs” includes costs, charges, expenses, losses, damage and liabilities, including professional and legal costs.

28.8 Unless specified otherwise, any reference in this Contract to (i) a “day” shall mean a calendar day (ii) a “month” shall mean a calendar month; and (iii) a time of day shall mean London time.

28.9 If there is a conflict between the provisions contained within the Offer, these Terms and Conditions and any of the Schedules, then the following order of preference shall apply:

- (a) the Offer;
- (b) these Terms and Conditions; and
- (c) the Schedules.

## 27. Miscellaneous

27.1 This Contract is the entire agreement between the Parties and replaces all previous spoken or written contracts, negotiations, representations and understandings between the Parties, relating to its subject matter. The Parties agree that they shall have no remedies in respect of any statement, representation, or promise (whether made innocently or negligently) that is not set out in this Contract.

27.2 If any term (or part of any term) of this Contract becomes illegal, can no longer be enforced, or is no longer valid, this will not affect the rest of this Contract, which will continue in full force.

27.3 A waiver of any right or remedy under this Contract or by law is only effective if given in writing and will not be deemed a waiver of any subsequent breach or default.

27.4 No delay or failure by either Party to exercise any right or remedy, or single or partial exercise by either Party of the right or remedy, will prevent the Party exercising the right or remedy in full in future.

27.5 The operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

27.6 This Contract may be executed in any number of counterparts by the Customer and the Supplier on separate counterparts, each of which is an original but all of which together constitute one and the same instrument. The Contract will be legally binding when signed by both Parties.

## 28. Interpretation

28.1 The definitions in the following document “Electricity Definitions” will apply to this Contract.

28.2 References within these Terms and Conditions to a "Clause" are, unless stated otherwise, to a clause of these Terms and Conditions.

28.3 Clause headings in this Contract are for ease of reference only and shall not be taken into account when interpreting this Contract.

28.4 Reference to a statute or statutory provision is a reference to it as amended or re-enacted from time to time and includes all subordinate legislation.

28.5 Reference to an Industry Code or licence means such Industry Code or licence as amended and in force from to time.

28.6 The word “including” when used in this Contract will be construed without limitation.