
**THE RENEWABLE ENERGY
COMPANY LIMITED**

**CONDITIONS OF SUPPLY
(April 2006)**

**HALF HOURLY METERED
CUSTOMERS**

1. Definitions

1.1 In this Agreement the following expressions have (unless the context otherwise requires) the following meanings:

"**Act**" means the Electricity Act 1989 as amended by the Utilities Act 2000 and or any amendment or re-enactment thereof and includes any rules, regulations, order or direction given thereafter;

"**Agent**" means an agent appointed by the Customer or REC to act as Meter Operator, Data Aggregator and/or Data Collector;

"**Balancing and Settlement Code**" means the document bearing that name dated 21 March 2001 and "BSC" shall be construed accordingly;

"**Agreement**" means these terms and conditions of supply together with the Schedules and any agreed attachments, appendices or endorsements;

"**Balancing Services Use of System Charges**" means charges of the same name defined by and levied under the CUSC and "BSUoS Charges" shall be construed accordingly;

"**Climate Change Levy**" means the tax defined in Appendix 6 of the Finance Act 2000;

"**Charges**" means the charges payable by the Customer for the Supply calculated in accordance with Schedule 1, as varied from time to time in accordance with this Agreement;

"**Contract Overrun Charges**" means the charges payable by the customer for the supply calculated in accordance with schedule 1, as varied from time to time in accordance with this agreement;

"**Connection Agreement**" means the agreement between the Customer and the Local Distribution Company to connect the Customer to its Distribution System as referred to in clause 21;

"**Connection Terms**" means the terms under which the licensed electricity distributor provides to the Customer connection through which the Supply is to be delivered to the Meter;

"**Commencement Date**" means the date referred to in Schedule 1;

"**Competent Authority**" means the Secretary of State, the Gas and Electricity Markets Authority, any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person of the Government of the United Kingdom or of the European Union;

"**Data Aggregator**" means a person appointed to provide data aggregation services in connection with this Agreement;

"**Data Collector**" means a person appointed to provide data retrieval and/or data processing services in connection with this Agreement;

"**De-energise**" means the taking of any step whereby no electrical current can flow from the Distribution System through the meter to the Premises ;

"**Director**" means the Director General of Electricity Supply appointed under the Act;

"**Distribution Losses**" has the meaning given to that expression by a DUoS Agreement;

"**DUoS Agreement**" means an agreement known as the Distribution and Use of System Agreement between the Supplier and a Local Distribution Company;

“DUoS Charges” means the charges levied pursuant to a DUoS Agreement;

“Disconnect” means the permanent electrical disconnection of the Premises from the Distribution System;

“Distribution System” means any system for the distribution of electricity through which the Supply is provided or passed to the Point of Supply;

"Ecotricity" means electricity derived from sources which are significantly less polluting and more sustainable than conventional fuel sources;

“Equipment” means all or any of the switchgear, Metering Equipment or other equipment cables or other property or rights of REC’s or the Local Distribution Company;

“Expiry Date” means the date specified in Schedule 1 or, if not specified, a year from the Commencement Date;

"Force Majeure" means any event or circumstance which is beyond the reasonable control of either party to the agreement in question, including (without limitation) act of God, strike, lock-out or other industrial disturbance, war, riot, civil commotion, malicious damage, compliance with a law or governmental order, rule, regulation or direction (not being any order, regulation, or direction under Section 32 or 33 of the Act), accident, breakdown of plant or machinery (including that belonging to a third party), fire, flood and storm, provided that lack of funds shall not constitute Force Majeure;

"Initial Term" means the period from the Commencement Date up to and including the Expiry Date.;

“Installation” means any structure switchgear equipment line or device used by the Customer at the Premises;

“Licence” means REC’s licence to supply electricity granted under the Act;

“Load Shape” means a profile showing the relative proportions of each half hourly period of electricity consumption in any 24 hour period;

“Local Distribution Company” means the company(s) licensed as a public electricity supplier(s) whose authorised area(s) includes the Premises;

“Maximum Demand” means twice the largest number of kilowatt-hours (kWh) or kilovolt-ampere-hours supplied during any half hour in any of the preceding 12 months as measured by the Metering Equipment;

“Maximum Power Requirement” means that amount which is agreed by the Customer with the Local Distribution Company and notified by them to REC from time to time;

"Meter" means the meter at the Site;

"Metering Equipment" means the Meter and any associated transformer, data communications metering equipment and ancillary equipment installed at the Premises which are configured to measure and record the flow of electricity in each half hour period ;

"Meter Operator" means the person appointed, pursuant to clause 5.3, to provide install and/or maintain the Metering Equipment and “Meter Operator Agreement” shall be the agreement by which such Meter Operator is appointed;

"Metering Point" means the point at which a supply from, or to, a distribution system:

(a) is, or is intended to be measured; or

(b) where metering equipment has been removed, was or was intended to be measured;

(c) in the case of unmetered supply is deemed to be measured;

“Metering Point Administration Service” means as defined in the Local Distribution Company’s public electricity supply licence;

“Meter Point Administration Number” means the number issued by the Local Distribution Company and notified to the Customer by REC and “MPAN” shall be construed accordingly.

“NGC” means the National Grid Company plc;

“Party” means each person who is a party to the Agreement and any successor(s) in title to such person;

“Payment Terms” means the payment terms as specified as a number of days;

“Point of Supply” means as agreed between the Customer and the Local Distribution Company in the Standard Connection Agreement;

“Premises” means the Customer premises as set out in Schedule 2;

“Reactive Power” means the product of voltage and current and the sine of the phase angle between them, which is measured in kVA-reactive and “kVAr” shall be construed accordingly;

“Reactive Power Charges” has the meaning given to it in CUSC;

“Register” means the successful completion of the registration by REC (or where the context requires, another supplier) as supplier of electricity to the Point(s) of Supply with the Metering Point Administration Service operated by the Local Distribution Company;

“Regulations” means the Electricity Supply Regulations 1988 SI 1988/1057 and any regulations or orders issued under the Act or any modification, extension or re-enactment thereof from time to time in force;

“Relevant Instrument” means the Industry Agreements, the Electricity Act, the Licence, any European Commission Directive and whether under the foregoing or otherwise all authorisations, approvals, licences, exemptions, filings, registrations, notarisations, consents and other matters which are required in connection with this Agreement or from any Competent Authority from time to time;

“Renewables Obligation” means the obligation imposed on licensed electricity suppliers by the Renewables Obligation Order 2002, as amended from time to time;

“Settlement Period” means as defined in BSC;

“Standard Connection Agreement” means the agreement (as amended from time to time) between the Customer and the Local Distribution Company governing the terms on which the Customer Installation is connected to its Distribution System as approved by the Director under condition 8B of its public electricity supply licence and shown below;

“Supply” means any electricity supplied from time to time by REC to the Customer under this Agreement;

“Transmission Use of Charges” means those charges raised by NGC for the use of their Transmission System apportioned for each **System** customer as defined in CUSC. Payment will be in staged payments with reconciliation each March. To enable calculation of these amounts half-hourly data which will be adjusted to take account of losses on the Local Distribution Company’s Distribution System must be made available to REC by the Meter Operator; and

“Use of System Agreement” means the agreement between REC and the Local Distribution Company for use of its Distribution System.

“VAT” means Value Added Tax.

1.2 References to Clauses and Schedules are to clauses of and schedules to this Agreement.

1.3 Words importing the singular include the plural and *vice versa*, words importing a gender include every gender and references to persons include bodies corporate or unincorporated.

1.4 The headings to the Clauses are for convenience only and have no legal effect.

2 Condition Precedent

2.1 REC’s obligation to supply Ecotricity shall not come into effect until (and shall only remain in effect for so long as) there is in force (i) a Connection Agreement; (ii) a Meter Operator Agreement and the installation of Metering Equipment (if any) under that Meter Operator Agreement has been completed and commissioned (including communications link); and (iii) REC have been Registered. Until then, the Agreement shall at REC’s discretion have no effect. Both Parties shall each use their reasonable endeavours to procure fulfilment of these Conditions Precedent and keep them fulfilled throughout the duration of this Agreement.

3 The Supply

3.1 Subject to the terms of this Agreement:

(a) REC shall, with effect from the Commencement Date or fulfilment of the Conditions Precedent (whichever is the later) supply to the Customer at the Premises such electricity as the Customer requires up to the Maximum Power Requirement for the Initial Term, the Supply. All electricity passing through the Point(s) of Supply shall be treated as having been supplied under the Agreement;

(b) subject to clauses 3.3 and 12, the Supply during the Initial Term shall be Ecotricity;

(c) the Customer shall:

(i) take the Supply from REC at the Meter; and

(ii) pay the Charges to REC.

3.2 The Customer hereby acknowledges to REC that REC is not responsible for the physical delivery of the Supply.

3.3 REC hereby undertakes with the Customer to use its reasonable endeavours to supply the Customer with a Supply which is produced from renewable sources, up to the agreed level as set out in Schedule 1, during the Initial Term. The Customer hereby acknowledges to REC that there may be times when it is not possible to meet this aim, in which event REC shall have no liability to the Customer by reason of the fact that some of the Supply may not have been generated from renewable sources. For the avoidance of doubt it is hereby acknowledged by REC and the Customer that in such circumstances the charges will be the same as they would have been had the Supply been produced entirely from renewable sources.

3.4 The Agreement, if not subject to earlier termination shall (subject to Clauses 6.4 and 7.3) terminate on the expiry date.

3.5 If the Conditions Precedent have not been fulfilled on or before the Commencement Date, REC may by notice to the Customer defer the Expiry Date by one calendar month for each month or part of a month that REC’s obligation to supply is extended beyond the Commencement Date.

4 Term

4.1 Subject to clause 4.2 this Agreement shall take effect immediately after midnight on the Commencement Date.

4.2 REC will use all reasonable endeavours to register as supplier to the Metering Point at the Site so that the Supply can commence under this Agreement on the Commencement Date but in the event that registration has not been completed by the Commencement Date the Supply will commence as soon as reasonably practicable after that date. If REC is unable to become Registered in respect of a Metering Point within 20 working days after the Commencement Date REC's obligation to supply to that Metering Point, and the agreement it has provided to the Customer in respect of that Metering Point shall lapse automatically.

4.3 Either party in accordance with clauses 6.4 and 7 may terminate the Agreement.

4.4 REC's obligation to make available the Supply under clause 3.1(a) shall end on the Expiry Date.

4.5 In the event that the Customer wishes REC to continue to make available the Supply after the Initial Term the Customer shall give notice to REC to that effect by no less than 2 calendar months prior to the Expiry Date and REC will amend the Charges accordingly.

4.6 In the event that the Customer fails to give notice to REC in accordance with clause 4.5 that it wishes REC to continue to make available the Supply after the Initial Term but nevertheless continues to take the Supply from REC at the Meter after the Initial Term the Customer shall pay the Contract Overrun Charges to REC.

5 Metering Equipment

5.1 The Supply shall be measured by Metering Equipment which (pursuant to the Act) it is agreed need not be certified.

5.2 Unless the accuracy of the Metering Equipment is disputed by notice (a "Dispute Notice") given by either Party to the other the Metering Equipment shall be deemed to be accurate. If a Dispute Notice is given (unless otherwise agreed) the Metering Equipment shall as soon as practicable be examined in accordance with the Act and if in such test:-

5.2.1 it shall be found that the inaccuracy of the registration of any kWh meter at normal loads exceeds the statutory limits of 2.5% plus or 3.5% minus or the inaccuracy of the registration of any demand indicator at normal loads exceeds 5% suitable adjustment shall be made in the accounts rendered by REC and the Metering Equipment shall be re-calibrated or replaced and the cost of the test and re-calibration or replacement shall be paid by the Customer.

5.2.2 the Metering Equipment is found to be accurate within the said limits the Metering Equipment shall be deemed to be accurate and the cost of moving testing and replacing the Metering Equipment shall be paid by the Party who issued the Dispute Notice.

5.3 The Customer may appoint a Meter Operator to provide, install and/or maintain the Metering Equipment and act as meter operator in respect thereof. If the Customer does not appoint an approved Meter Operator then REC will do so at the Customers' expense. No Meter Operator may be appointed unless accredited. The Customer will use its best endeavours to procure that REC or its agents, has access to the Metering Equipment at all reasonable times in order to check the meter readings.

5.4 If the Customer chooses to appoint their own Agent: -

5.4.1 the Customer shall procure that their Agent delivers to REC an indemnity in a satisfactory form that will cover REC against any loss or expense (including penalties imposed under the BSC) suffered by REC as a result of the Agent's failure to satisfactorily provide, install or maintain the Metering Equipment in accordance with all relevant Codes of Practice and Agreed Procedures set out under the terms of the BSC and the requirements of the Local Distribution Company. If the Customers' Agent is to act as Data Collector and/or a Data Aggregator the Customer shall also procure that they enter into an agreement with REC (a copy of which will be made available to the Customer on request). If a required agreement and/or indemnity is not effected then REC may appoint an alternative Agent. The Customer shall pay REC the cost of such Agent and all costs associated with that appointment which are reasonably incurred by REC;

5.4.2 if an agreement and/or indemnity is effected and the Customers' Agent fails to comply with such requirements, the Customer shall indemnify REC at REC's request, The Customer shall require their Agent to de-register its responsibility for the

Customers' Supply Point and REC may appoint an alternative Agent. The Customer shall pay REC the cost of such Agent and all costs associated with that appointment which are reasonably incurred by REC;

- 5.4.3 if any Metering Equipment is defective REC may at the Customers' expense remove it or REC may De-energise the Customers' installation;
- 5.4.4 if the Customer chooses to replace their Agent with an alternative Agent the Customer shall give REC at least 28 days notice. If this also involves the replacement of Metering Equipment and/or equipment used for communicating data then in order to adjust to those changes REC may require an additional period before they take effect; and
- 5.4.5 if the Customer chooses to appoint their own Agent and the agreement with that Agent terminates, the Customer shall notify REC no later than the date of such termination and REC shall be entitled to appoint an Agent for the Customer. The Customer shall pay REC the costs of such Agent and all other associated costs reasonably incurred by REC.

5.5 REC shall be entitled at its discretion to include in any Charges a charge for services provided by an Agent in addition to the obligatory service specified in the BSC.

5.6 If during the period of this Agreement the terms of the BSC insofar as they relate to the activities of an Agent, are replaced with alternative arrangements (the "Replacement Arrangements") then the references in this clause 5 to the BSC shall be deemed to include a reference to the Replacement Arrangements.

5.7 If it is discovered that any metering information has been inaccurate or the translation of metering information into Charges (or Contract Overrun Charges as the case may be) has been incorrect then the amount of money due by way of correction from or to the Customer or REC (as the case may be) shall be paid forthwith. If REC's representative or the representative of the Meter Operator (as the case may be) cannot gain access to read the Metering Equipment, or the Metering Equipment fails to register correctly the amount of electricity supplied, or the readings are not communicated to REC for whatever reason, REC shall reasonably estimate the quantity of electricity consumed and the Maximum Demand and the Customer shall pay the charges for the estimated amounts subject to any adjustment which may be necessary following the next reading.

5.8 The Customer shall notify REC of any dispute or query regarding the Metering Equipment made by either the Customer or the Local Distribution Company under the Connection Agreement or by the Customer or the Meter Operator under the Meter Operator Agreement.

6 Calculation and Payment of Charges

6.1 As soon as practicable after the end of each month REC shall render to the Customer an invoice showing the amount payable by the Customer to REC for the Supply in respect of that month calculated in accordance with the Charges (or the Contract Overrun Charges as the case may be). The Customer shall pay Value Added Tax (if applicable) and any other applicable tax, duty, levy or impost on all charges. The Customer shall pay each account in full within the number of days specified in the Payment Terms following the date of invoice or notify REC within 10 days there from if the Customer disputes any part of the invoice together with their reasons but the undisputed part shall remain payable within 14 days by direct debit. Following resolution of the dispute any amount found payable shall be paid forthwith.

6.2 The Customer shall pay any amount due to REC under any invoice rendered under clause 6.1 within 14 days of receipt of the relevant invoice by direct debit.

6.3 In the event that the Customer fails to make any payment by the date referred to in clause 6.2 (including any disputed amount withheld which is subsequently found to have been payable) REC shall be entitled (in addition to any other remedies including those contained in Clause 7) to charge interest on a daily basis on the amount unpaid from the date it was originally invoiced at the annual rate of 3 per cent. over the base rate from time to time of National Westminster Bank plc. In addition REC may charge the Customer for reasonable expenses incurred in seeking to recover such outstanding amounts. REC may at any time request reasonable security from the Customer for payment to which the provisions of s20 of the Act shall apply.

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- 6.4 If this agreement is terminated for any reason (save where the Customer terminates in accordance with Clause 7.2) or the Premises being supplied under this Agreement is vacated prior to the expiry date and the Customer does not arrange for a new supply contract with REC or another supplier nor arrange to be supplied under tariff by the Local Distribution Company, or if the Customers' new supplier is not Registered, REC may (in addition to any other remedies) charge the Customer for any electricity used at the Premises at the Contract Overrun Charges. If the Customer terminates in accordance with Clause 7 and these circumstances apply then the Charges will apply until the Expiry Date. After that the Contract Overrun Charges will apply. This sub-clause shall survive termination of this Agreement. In addition the Customer shall pay to REC, as liquidated damages, an additional charge equal to £100 plus an amount equivalent to one tenth of the estimated Charges that would have been payable by the Customer from the date of termination to the original Expiry Date, calculated by extrapolating the Charges paid up to the date of termination. The Customer acknowledges that this additional charge represents a genuine pre-estimate of REC's loss.
- 6.5 If the Customers' payment is dishonoured by the Customers' bank, without prejudice to any other remedies available, REC will be entitled to increase the charges by 3%.
- 6.6 In the event that the amount payable by REC under any contract for the purchase of electricity by REC is altered directly as a result of the imposition or variation in the rate of any tax or other imposition REC may, provided that REC has given not less than 7 days' notice in writing to the Customer, vary the Charges (or Contract Overrun Charges as the case may be) to take such charges into account.
- 6.7 In the event that any charges payable by REC in connection with the Supply are raised directly as a consequence of the imposition or variation in the rate of tax or other Government levy, REC may, provided that REC has given not less than 7 days' notice in writing to the Customer, vary the Charges (or the Contract Overrun Charges as the case may be) to take such charges into account.
- 6.8 In the event that REC is required to pay any reactive power charges by the distributor, REC may, provided that REC has given not less than 7 days' notice in writing to the Customer, vary the Charges (or the Contract Overrun Charges as the case may be) to take such payment into account.
- 6.9 A certificate by REC as to the amount of any variation pursuant to sub-clauses 6.6 to 6.8 shall subject to manifest error be final and binding on the Customer.
- 6.10 If the information provided to REC by the Customer or their agent about the Customers total electricity consumption or the Customers Load Shape is not true, or materially changes during the term of the Agreement, REC may increase the Charges provided for in the Agreement by the amount of the resulting additional costs incurred by REC.
- 6.11 If a Premises is De-energised, or the Customer leaves a Premises, or the Customer ceases to take electricity at such Premises for any other reason, then for as long as it continues to be registered with REC and these circumstances apply the Customer shall continue to pay REC the relevant Standing Charge and Availability Related Charge specified in Schedule 1 or any charges incurred by REC on behalf of the Customer.
- 6.12 The Customer shall indemnify REC against any penalty, liquidated damages or fine levied by a Competent Authority or pursuant to the provisions of the BSC resulting from a breach by the Customer of its obligations under this Agreement which causes REC to be in breach of its licence obligations or its obligations under a Relevant Instrument. REC shall notify the Customer as soon as reasonably practicable after becoming aware that any Competent Authority is considering levying any penalty, liquidated damages or fine and shall use its reasonable endeavours to resolve any dispute and to minimise the penalty, liquidated damages or fine proposed.

7 Power to Terminate the Agreement in Certain Events

- 7.1 If (i) the Customer fails to pay any sum due under this Agreement within 7 days of the due date; or (ii) the Customer materially breaches the Agreement and (where it is capable of remedy) have failed to remedy such breach within 14 days of REC requesting its remedy; or (iii) the Connection Agreement or the Meter Operator Agreement is suspended or terminated; or (iv) an interim order a bankruptcy order or an administration order is made or a voluntary arrangement is proposed in respect of the Customer or the Customer enters into proposed liquidation or a receiver or administrative receiver is appointed over any part of the Customers' undertakings or assets or the Customer is unable to pay its debts (within the meaning of the Insolvency Act 1986) or the Customer ceases or threatens to cease to pay its debts as

they fall due or make or seek to make any composition or arrangement with its creditors; then without prejudice to any of its then subsisting rights REC may De-energise until satisfied the circumstances described above are remedied or REC may terminate the Agreement forthwith by notice and the Customer will pay REC all reasonable costs of De-energising and/or Disconnecting.

- 7.2 If REC materially breach the Agreement and (where it is capable of remedy) have failed to remedy such breach within 14 days of the Customer requesting its remedy then without prejudice to any of their then subsisting rights the Customer may terminate this Agreement forthwith by notice.
- 7.3 No termination of this Agreement for whatsoever reason shall be effective in respect of a Premises until either (i) the Customer has entered into a contract with a new supplier for the supply of electricity to such Premises (or the Customer has arranged a tariff supply with its Local Distribution Company) and that supplier has been Registered; or (ii) the Customer has entered into a renewal contract with REC for such Premises.
- 7.4 On termination (irrespective of whether that termination has become effective in accordance with Clause 7.3) all monies owed shall become due and REC shall be entitled to De-energise and/or remove the Equipment. However a termination by the Customer in accordance with Clause 7.2 which does not become effective in accordance with Clause 7.3 will not give rise to REC's right to De-energise and/or remove the Equipment until the Expiry Date.
- 7.5 If the Customer enters into another electricity supply contract for the Premises or otherwise authorise (expressly or impliedly) another supplier to register the relevant Supply Point(s) with the operator of the relevant Metering Point Administration System before this Agreement has expired or been terminated, such action shall be treated as wrongful termination by the Customer and the provisions of the final phrase of clause 6.4 shall apply.

8 Limitation of Demand

- 8.1 The Customer shall not at any time take electricity exceeding the Maximum Power Requirement without the agreement of REC. If the Customer does, then in addition to REC's right to De-energise and/or terminate:-
- 8.1.1 the Customer shall pay REC the full amount of all costs losses and expenses thereby caused to REC by reason of the provision of the additional electricity; and
- 8.1.2 the Customers' liability to REC pursuant to this clause 8 shall not be limited by virtue of clause 11.

9 Failure or Temporary Discontinuance of Supply

- 9.1 The Supply may be De-energised in the event of Force Majeure in respect of this Agreement; or if at REC's sole discretion it considers it necessary to do so either:-
- 9.1.1 to avoid danger; or because failure to De-energise the Supply would or might involve REC being in breach of the Regulations; or to avoid interference with the supply of electricity to another person which REC reasonably believes may be caused or result from the Customers' Installation; or to enable REC or its representatives to inspect maintain or repair any part of the Equipment or the Distribution System; or in case of accident or other emergency affecting or likely to affect the Distribution System or any other system through which (directly or indirectly) REC receives or supply electricity; or
- 9.1.2 pursuant to the Use of System Agreement or for so long as the Point of Supply is De-energised or Disconnected under the Connection Agreement; or
- 9.1.3 in the event that the Conditions Precedent are no longer satisfied.

10 The Equipment

- 10.1 The Customer shall not interfere with or permit any interference with the Metering Equipment nor with any other Equipment.

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- 10.2 If any part of the Metering Equipment or other Equipment at the Premises is lost or damaged the Customer shall pay REC the full amount of any loss damage and expenses sustained by REC as a result unless the loss or damage was caused by fair wear and tear or by REC's act or default.
- 10.3 The Customer shall ensure that REC and/or the Local Distribution Company and its agents or invitees (who shall observe such reasonable site safety and security arrangements as shall be communicated to them prior to each entry) shall at all times be able to enter the Premises and be given safe and unobstructed access to the Equipment. This right of access shall continue for a reasonable period following the termination of this Agreement.
- 10.4 The Customer shall be responsible for ensuring that the Installation is compatible with the Distribution System. If any such Installation (or modification thereof) results in costs or expenses being charged to REC by the Local Distribution Company (or otherwise) the Customer shall indemnify REC. The Customer shall bear all costs and expenses incurred by it in respect of any modification to the Distribution System.

11 Limitation of Liability

- 11.1 Neither party shall be liable for any breach of this Agreement directly or indirectly caused by Force Majeure.
- 11.2 Subject to sub-clause 11.8 and save as provided in clause 6, this sub-clause 11.2 and 11.5 and save where any provision of this Agreement expressly provides for an indemnity or payment of costs or charges, a Party (the "Party Liable") shall only be liable for loss directly resulting from any breach of the Agreement which results from physical damage to the property of the other Party and which at the date hereof was reasonably foreseeable as likely to result in the ordinary course of events from such breach provided that the liability of either Party for such loss or damage shall not exceed the lesser of six times the average of the Monthly payments made by the Customer under the Agreement or £1 million per incident or series of related incidents.
- 11.3 Where electricity is to be supplied under the Agreement to two or more Premises the liability of either Party for the loss described in sub-clause 11.2 shall for each Premises not exceed the lesser of six times the average of the Monthly payments made for that Premises by the customer under the Agreement or £1 million per incident or series of related incidents at that Premises.
- 11.4 From any compensation payable by REC to the Customer REC can deduct any compensation payable to the Customer by the Local Distribution Company under the Connection Agreement. If the Local Distribution Company's compensation was paid after REC had compensated the Customer then the Customer shall refund to REC up to and including the amount paid by REC any amount so recovered.
- 11.5 Nothing in this Agreement shall exclude or limit the liability of either party for death or personal injury resulting from its negligence or the negligence of any of its officers, employees or agents.
- 11.6 Neither party, nor its respective officers, employees or agents shall in any circumstances whatsoever be liable to the other party for:
- (a) any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or
 - (b) any special indirect or consequential loss; or
 - (c) any loss resulting from the liability of that other party to any other person howsoever and when so ever arising save as provided in sub-clause 11.5; or
 - (d) any loss resulting from loss or corruption of or damage to data stored electronically and/or computer software;
- save that if the Customer wrongly terminates the Agreement REC may claim loss of profit.
- 11.7 The rights and remedies provided by this Agreement to the parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject

matter of this Agreement, including any rights in tort which either party may possess now or at any time including actions brought in negligence and/or nuisance.

11.8 Save as otherwise expressly provided in this Agreement, this clause 11 insofar as it excludes or limits liability shall override any other provision of this Agreement, provided that nothing in this clause 11 shall exclude or restrict or otherwise prejudice or affect any of:

- (d) the rights, powers, duties and obligations of either party which are conferred or created by the Act, REC's supply licence granted under the Act or the Regulations; or
- (e) the rights, powers, duties and obligations of the Director or the Secretary of State under the Act, any licence or otherwise howsoever.

11.9 Each of the paragraphs of this clause 11 shall:

- (f) be construed as a separate and several contract term, and if one or more of such paragraphs is held to be invalid, unlawful or otherwise unenforceable the other paragraphs shall remain in full force and effect and shall continue to bind the parties; and
- (g) survive termination of this Agreement.

11.10 Each party holds the benefit of clauses 11.2, 11.3 and 11.4 for itself and as trustee and agent for its respective officers, employees and agents.

11.11 REC accept no liability in respect of any modification made to the Installation or the Distribution System and notwithstanding the foregoing provisions of this clause 11 the Customer shall indemnify REC against all costs, losses, claims, demands and expenses which REC suffer or incur as a result of any modification to the Installation.

12. Force Majeure

12.1 If either party shall be prevented or delayed from carrying out any of its obligations under this Agreement because of an event of Force Majeure this Agreement shall remain in effect but save as otherwise provided herein both parties' obligations other than any obligation as to payment under clause 6 shall be suspended without liability for a period equal to the period of the event of Force Majeure provided that:

- (h) the suspension of performance is of no greater scope and of no longer duration than is required by the event of Force Majeure;
- (i) no obligation of either party that arose before the event of Force Majeure causing the suspension of performance is excused as a result of the Force Majeure; and
- (j) the non-performing party gives to the other party prompt notice of Force Majeure describing the event and describing its proposals for overcoming the same and uses all reasonable efforts to remedy its inability to perform.

12.2 In the event of Force Majeure affecting REC's ability to provide the Supply, for the period of such Force Majeure the Customer shall be relieved of its obligations to purchase the Supply to the extent necessary to mitigate the effects of such Force Majeure.

12.3 If either party is prevented in whole or in part from performing its obligations by reason of Force Majeure or is aware of the likelihood of being so prevented, it shall notify the other party in writing forthwith of the cause and the extent of such non-performance or likely non-performance, the date or likely date of commencement thereof and the means proposed to be adopted to remedy or abate the Force Majeure; and the parties shall without prejudice to the other provisions of this clause consult with a view to taking such steps as may be appropriate to mitigate the effects of such Force Majeure.

12.4 The party prevented from performing its obligations under this agreement by reason of Force Majeure shall:

- (k) use all reasonable endeavours to remedy or abate the Force Majeure as expeditiously as possible;

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- (l) keep the other party regularly informed during the period of Force Majeure as to when resumption of performance shall or is likely to occur;
 - (m) notify the other party when the Force Majeure has ceased or the circumstances have changed to an extent which permits resumption of performance to occur;
 - (n) resume performance as expeditiously as possible after the end of the period of Force Majeure or the circumstances have changed to an extent which permits resumption of such performance.

13 Notices

- 13.1 A notice or other communication under or in connection with this Agreement shall be in writing in the English language and may be delivered personally or by facsimile transmission or sent by first class pre-paid post to the party due to receive the notice or communication, to its address set out in this Agreement or another address specified by that party by written notice to the other.
- 13.2 A notice is deemed given, if delivered personally, when left at the address referred to in clause 13.1 and, if sent by first class pre-paid post, the day after it is posted.

14 Assignment

- 14.1 The Customer may not assign this Agreement without the prior written consent of REC (such consent not to be unreasonably withheld or delayed).
- 14.2 REC shall be entitled to assign, novate or transfer any or all of its rights and obligations under the Agreement without the consent of the Customer (provided that the proposed assignee or transferee holds a suitable electricity licence or is exempt from doing so).

15 Publicity

- 15.1 The Customer shall neither during the term of this Agreement nor thereafter make any use or allow any use to be made of any trade or service marks or other materials owned by REC, without first receiving prior written consent from REC.
- 15.2 REC shall neither during the term of this Agreement nor thereafter make any use or allow any use to be made of any trade or service marks or other materials owned by the Customer, without first receiving prior written consent from the Customer.

16 Confidentiality

- 16.1 The Customer shall keep secret and confidential and shall not disclose to any third parties any information relating to the business or affairs of REC which it acquires in the course of receiving the Supply.
- 16.2 The obligation set out in 16.1 shall not apply to:
 - (o) information which is in or enters the public domain otherwise than as a result of a breach by the Customer of its confidentiality obligations hereunder; or
 - (p) any information which the Customer is required to disclose by reason of any legal or regulatory requirement.

17 Conversion to Euro

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

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- (q) to the extent relevant, invoiced amounts shall be calculated in Sterling and converted from Sterling to Euro and shall be stated in the invoice in Euro;
- (r) payment of those invoices and all other payments falling due under this Agreement on or after the Euro Effective Date shall be made by the payer to the relevant Euro account of the recipient in Euro in accordance with the provisions of clause 6;
- (s) no payments of invoices falling due after the Euro Effective Date which would have been payable in Sterling under this Agreement but for the adoption of the Euro by England as its lawful currency shall be made in Sterling or national currency units; and
- (t) the rate of interest referred to in clause 6.3 shall be the equivalent rate of National Westminster Bank plc for Euro.
- (u) For the purposes of this clause 17:

conversions from Sterling to Euro will be at the fixed conversion rate provided for by English law; and

"Euro" means the lawful currency of the member states of the European Union that adopt the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on European Union.

18. Miscellaneous Provisions

- 18.1. The Customer shall ensure that REC and/or Our invitees (who shall observe such reasonable site safety and security arrangements as shall be communicated to them prior to each entry) are at all times able to enter the Premises for any reason in connection with REC's statutory or contractual rights including (but not limited to) the right to De-energise, and are given safe and unobstructed access to any equipment belonging to REC or the Local Distribution Company. This right of access shall continue for a reasonable period following the termination of this Agreement.
- 18.2. The Customer warrants that the information supplied by them or their agent is true and correct and shall remain so throughout the term of the Agreement unless varied by agreement.
- 18.3. The Customer warrants that they have not been in breach of any other arrangement for the supply of electricity such that they could have been liable to De-energisation. Notwithstanding sub-clause 11.7 breach of this warranty shall entitle REC in addition to other rights to all those rights contained in clause 7.
- 18.4. Any waiver by either Party of a breach of the Agreement must be in writing and shall not be construed as a waiver of any further breach of the same or any other provision.
- 18.5. Each of the Parties undertakes to comply with the Distribution Code as defined in the PSA.
- 18.6. Nothing in the Agreement shall prejudice or affect REC's rights or powers under any statute statutory instrument regulation or order for the time being in force.
- 18.7. The Agreement shall constitute the entire agreement between the Parties.
- 18.8. Any variations to the Agreement must be in writing and signed by both Parties. Both the Customer and REC shall effect any amendment required to be made to the Agreement by the Director.
- 18.9. If any provision of the Agreement is or becomes invalid this will not affect the remaining provisions.
- 18.10. All notices are to be sent by first class post or facsimile to the address indicated in this Agreement or such other address as may from time to time be notified in writing.

19 Rights of third parties

19.1 No person may enforce any of the terms of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

20 Governing Law

20.1 This Agreement is governed by and construed in accordance with English law and is subject to the exclusive jurisdiction of the English courts.

21 Standard Connection Agreement

21.1 The Customer agrees that by entering into this contract with REC, they are also entering into a standard Connection Agreement (the terms of which have been made known to them) with the Customers' Local Distribution Company.