

DATED \_\_\_\_\_ 2018

**ELECTRALINK LIMITED**  
as the Service Controller

- and -

**The persons named herein**

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**AGREEMENT FOR THE PROVISION  
OF A DATA TRANSFER SERVICE**

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**THIS AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 2018

**BETWEEN:**

- (1) **ELECTRALINK LIMITED**, a company incorporated in England and Wales (registered no. 3271981), whose registered office is at Third Floor, Northumberland House, 303-306 High Holborn, London, WC1V 7JZ (the "**Service Controller**"); and
- (2) **THE PERSONS** whose name, registered numbers and registered or principal offices are set out in Schedule 1.

**WHEREAS:**

- A) In order to provide an effective data transfer service for use by relevant electricity industry participants after the introduction of full supply competition, currently planned for 1998, the 14 Public Electricity Suppliers ("PESs") have made preparations to procure, implement, manage, operate and support the proposed data transfer service, notwithstanding the fact that revised licence conditions in respect of data transfer service and further supply competition, more generally, have not yet been settled.
- B) In November 1996, the 14 PESs began a competitive tendering process in order to procure the Data Transfer Service, which resulted in the selection of a service provider at the beginning of February 1997.
- C) In November 1996, the Service Controller was acquired by two of the PESs (with the support of all of the PESs) to enter into the arrangements associated with the satisfaction of each of the obligations expected to be imposed on them under the revisions to the Supply Licences in respect of the data transfer service.
- D) The Service Controller entered into a contract with the Network Service Provider on 14 March 1997.
- E) The Authority has issued to the PESs draft modifications to their Licence conditions, which contemplate the imposition of an obligation on each of the 14 PESs, through the Service Controller, to provide the Data Transfer Service.
- F) Following the passing of the Utilities Act 2000 the functions of the PESs were divided into functions of a distribution and a supply company, each of which requires a licence under S6(1) of the Electricity Act 1989. The obligation to procure, implement, manage, operate and support a data transfer service is now placed upon distribution licence holders rather than upon the PESs.
- G) The Green Deal programme was established in the Energy Act 2011 and has been designed to finance improvements to the energy efficiency of properties in the UK. DECC has chosen to mandate the energy industry to use the Data Transfer Network for data transfers associated with the Green Deal programme. Green Deal parties acceded to the DTSA for testing purposes from June 2012 and Green Deal processes are expected to go live from January 2013.
- H) In order to support delivery of low carbon energy and reliable electricity supplies, the Energy Act 2013 introduced the mechanisms of the Capacity Market and Contracts for Difference. DECC has approved the use of the Data Transfer Network to provide a secure method of transfer for data associated with Contracts for Difference and the Capacity Market.

- I) In order to remove unnecessary costs, inefficiencies and reduce the risk of data protection issues arising from the use of multiple data exchange mechanisms for certain gas supplies, use of the Data Transfer Network as a secure method of transfer of certain data flows is being made compulsory under the Supply Point Administration Agreement.

**THE PARTIES AGREE** as follows:

1. **INTERPRETATION**

1.1 **Definitions**

In this Agreement, including the recitals and the Schedules, except where the context otherwise requires:

<b>"Access Point"</b>	means the node on the Network Service Provider's infrastructure excluding the Local Communications Link and Gateway by which the Network Service Provider provides the Data Transfer Network;
<b>"Accession Agreement"</b>	means an agreement substantially in the form set out in Schedule 2;
<b>"Accession Agreement Fee"</b>	means the sum of £100 payable by an Applicant for the preparation of an Accession Agreement by the Service Controller, or on execution of this Agreement;
<b>"Accreditation Authority"</b>	means the committee, panel or other body appointed pursuant to the relevant Settlement Agreement from time to time to accredit certain systems;
<b>"Additional Services"</b>	means those services set out in Part B of Schedule 3;
<b>"Applicant"</b>	means a person who has completed an Application Form to apply to become a New Party and has delivered the same to the Service Controller;
<b>"Application Form"</b>	means a form prepared from time to time by the Service Controller to be completed by a person who wishes to become a Party;
<b>"Authorised Area"</b>	means the Distribution Services Area defined by the Authority in accordance with condition 2 of the Electricity Distribution Licence;
<b>"Authority"</b>	means the gas and electricity markets authority established by section 1(1) of the Utilities Act

2000;

<b>"Back to Back Agreement"</b>	means an agreement in a form approved by the Service Controller (acting reasonably) from time to time pursuant to which a Party may subcontract obligations imposed on that Party pursuant to this Agreement or may allow another party or parties to use the Data Transfer Network, subject to clause 5.3.2;
<b>"Balancing and Settlement Code" or "BSC"</b>	means the code as modified from time to time setting out the electricity balancing and settlement arrangements in England and Wales;
<b>"Basic Services"</b>	means those services to be provided by the Service Controller, from time to time, as set out in Part A of Schedule 3;
<b>"BEIS"</b>	means the government Department for Business, Energy & Industrial Strategy;
<b>"Breach of Security"</b>	means: <ul style="list-style-type: none"><li>(a) a failure of a Party to detect or prevent the introduction of viruses, Trojan horses, logic bombs and analogous macros, programs or sub routines, as the same are known in the computing industry; or</li><li>(b) the failure of a Party to comply with any one or more of Clauses 5.1.7, 5.1.18, 5.3.13(C), 5.3.15, 5.3.16, 5.3.18, 5.3.19 or 5.3.22 of this Agreement, as applicable;</li></ul>
<b>"Brexit"</b>	means the actual date of withdrawal of the United Kingdom from the European Union;
<b>"BSC Auditor"</b>	means the person appointed pursuant to the terms of the BSC to perform certain audit and other functions in respect of the BSC;
<b>"BSC Co"</b>	means the company of that name set up pursuant to the terms of the BSC;
<b>"BSC Party"</b>	has the meaning given to the term 'Party' in the Balancing and Settlement Code
<b>"Business Agreement"</b>	means in respect of any User any Meter Operator Agreement, Data Aggregator

	Agreement, Data Collector Agreement, Master Registration Agreement, Prepayment Infrastructure Agreement, Use of System Agreement, Settlement Agreement, the Green Deal Arrangements Agreement (or such other agreement as the Service Controller nominates from time to time) to which that User is a party from time to time;
<b>"Capacity Agreement"</b>	has the meaning given to that term in Regulation 30(1) of the Electricity Capacity Regulations 2014;
<b>"Capacity Market Rules"</b>	means rules established from time to time by the Secretary of State pursuant to Regulation 34(1) of the Energy Act 2013;
<b>"Capacity Market Settlement Services Provider"</b>	means the party appointed by the Secretary of State from time to time pursuant to Regulation 80 of the Electricity Capacity Regulations 2014 to be the Settlement Body (as such term is defined in the Electricity Capacity Regulations 2014);
<b>"Capacity Provider"</b>	means a person to whom a Capacity Agreement has accrued or been transferred in accordance with Regulation 30 of the Electricity Capacity Regulations 2014 and the Capacity Market Rules;
<b>"CfD"</b>	means: <ul style="list-style-type: none"> <li>(a) a contract for difference (as such term is defined in section 6(2) of the Energy Act 2013); or</li> <li>(b) an investment contract (as such term is defined in Schedule 2 to the Energy Act 2013);</li> </ul>
<b>"CfD Counterparty"</b>	means a person designated by the Secretary of State from time to time as an eligible person to be a counterparty for CfDs pursuant to section 7 of the Energy Act 2013;
<b>"CfD Generator"</b>	means an electricity generator which operates generating facilities the generation output of which is subject to a CfD;
<b>"CfD Settlement Services Provider"</b>	a person appointed by a CfD Counterparty, or designated by the Secretary of State, from time to time to carry out any of the following

	activities: the calculation, invoicing, recalculation and settlement of payments to be made pursuant to a CfD and the calculation of collateral requirements and the provision of collateral in accordance with a CfD;
<b>"Change"</b>	means a change, modification, variation, addition or amendment;
<b>"Change Dispute"</b>	means a dispute that relates to a Change or proposed Change made pursuant to Clause 7, to this Agreement, the Data Transfer Handbook, Services, the Data Transfer Network or the Technical Standards, or to the application of the Change Procedures including any refusal pursuant to Clause 7.3.6 or Clause 7.4.8 by the Service Controller to abide by a decision of the User Group;
<b>"Change Procedures"</b>	means the procedures for approving, rejecting or implementing a Change as set out in Clause 7;
<b>"Change Request"</b>	means a request for a Change and "Change Requests" shall be construed accordingly;
<b>"Charges"</b>	means the charges for use of the Data Transfer Service published by the Service Controller from time to time and includes any charges for Additional Services (and excludes any charges or costs in relation to Data Analysis Services, save for Industry Data Analysis Services where approved in accordance with paragraph 5.2 of Schedule 9);
<b>"Charging Principles"</b>	means the principles set out in Schedule 8;
<b>"Client PC"</b>	means a computer or computer system provided by a Remote User for connection to a Remote Gateway over a virtual private network across a connection to the public internet procured by the Remote User;
<b>"Connection and Use of System Code" or "CUSC"</b>	means the Connection and Use of System Code that is provided for in the standard condition C10 (Connection and Use of System Code) of the Transmission Licence;
<b>"Competent Authority"</b>	means the Secretary of State, the Authority and any local or national agency, authority,



department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of the government of the United Kingdom or the European Union;

**"Connection Date"**

means:

- (a) for Users that are Users as at 14 September 2003, the relevant date shall be 14 September 2003;
- (b) for all Parties that become or became Users after 14 September 2003, the relevant date shall be the date on which that Party completes their User Preconnection Acceptance Test to the satisfaction of the Service Controller.

**"Connection Form"**

means a questionnaire to be completed by a New Party prior to preparation of the relevant Local User Agreement by the Service Controller in the form set out from time to time in the Data Transfer Handbook;

**"Connection Procedures"**

means the procedures set out in paragraph 1 of Schedule 5;

**"Contract Manager"**

in relation to each New Party means that person appointed by it from time to time pursuant to Clause 10.1 of this Agreement to manage all matters arising under or in connection with this Agreement and to monitor the general operation of this Agreement;

**"DAS Customers"**

has the meaning given to it in Schedule 9;

**"Data Analysis Services"**

has the meaning given to it in Schedule 9;

**"Data Controller"**

means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data;

**"Data Processor"**

means any natural or legal person, public authority, agency or other body which Processes Personal Data on the instructions of the Data Controller;

**"Data Protection Legislation"**

means:

- (a) any legislation in force from time to time in the United Kingdom which

implements the European Community's Directive 95/46/EC and Directive 2002/58/EC, including the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003;

- (b) from 25 May 2018 only, Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data (the "General Data Protection Regulation"); and
- (c) any other legislation in force from time to time in the United Kingdom relating to either or both privacy or the Processing of Personal Data;

**"Data Sub-processor"**

means any natural or legal person, public authority, agency or other body which who processes Personal Data on the instructions of the Data Processor;

**"Data Sub-sub-processor"**

means any natural or legal person, public authority, agency or other body which processes Personal Data on the instructions of a Data Sub-processor;

**"Data Transfer Catalogue"**

means the catalogue of data flows, data definitions and data formats in the form annexed to the Master Registration Agreement, and as amended from time to time pursuant to that agreement;

**"Data Transfer Handbook"**

means the handbook published and amended by the Service Controller as amended, from time to time including those facts, details and procedures required to facilitate a New Party working under this Agreement;

**"Data Transfer Network" or "DTN"**

means the electronic Network provided as part of the Data Transfer Service which has been procured by the Distributors through the Service Controller;

**"Data Transfer Service" or "DTS"**

means the Service:

- a) to be provided by each Distributor as described in the proposed revision of

Condition 37 of the Electricity Distribution Licence; or

- b) in respect of transfers of data using the Data Transfer Flows,

as applicable, which in each case is provided by the Service Controller to relevant Users pursuant to this Agreement;

<b>"Data Transfer Service Name and Address Book"</b>	means the document of that title issued and amended by the Service Controller from time to time containing the name and contact details of the Contract Managers and Technical Managers;
<b>"Data Transfer Times"</b>	means those times to which Service Levels apply, which are described in paragraph 1 of Schedule 7;
<b>"DECC"</b>	means the government Department of Energy and Climate Change;
<b>"Dedicated Connection"</b>	means the dedicated Local Communications Link and ancillary equipment, but does not include the User's equipment or the Gateway;
<b>"Disconnect"</b>	in relation to any Gateway means permanently to block and/or remove a User's Gateway and "Disconnected" and "Disconnection" shall be construed accordingly;
<b>"Disconnection Procedures"</b>	means the procedures for Suspension or Disconnection of a Gateway set out in paragraph 3 of Schedule 5;
<b>"Dispute Resolution Procedures"</b>	means the procedure for resolving any dispute or difference as set out in Clause 20 of this Agreement;
<b>"Distribution Business"</b>	shall have the meaning given to that term in the Electricity Distribution Licence;
<b>"Distributor"</b>	means a person who is authorised by an Electricity Distribution Licence or exemption to distribute electricity;
<b>"Documentation"</b>	means the documentation set out in paragraph 3 of Part A of Schedule 3;
<b>"DSL"</b>	means a digital subscriber line connection to the

	public internet;
<b>"EDIFACT"</b>	means Electronic Data Interchange Format for Administration, Commerce and Transport;
<b>"EEA"</b>	means the European Economic Area made up of Member States of the European Union, Iceland, Liechtenstein and Norway;
<b>"Electricity Act"</b>	means the Electricity Act 1989, as amended from time to time;
<b>"Electricity Distribution Licence"</b>	means a licence to distribute electricity granted by the Authority in accordance with Section 6(1)(c) of the Act;
<b>"Electricity Supplier"</b>	means a User who holds an Electricity Supply Licence or is entitled to supply electricity pursuant to an exemption under the Electricity Act and who trades through the Balancing and Settlement Code;
<b>"Electricity Supply Licence"</b>	means an electricity supply licence granted by the Authority in accordance with Section 6(1)(d) of the Electricity Act;
<b>"Electronic File Transfer Protocols"</b>	means those protocols specified from time to time by the Service Controller and described in the Data Transfer Handbook;
<b>"Enable" or "Enabled"</b>	means the Service Controller has approved the relevant Gateway for connection to the Data Transfer Network pursuant to the Connection Procedures so that the Gateway may be used for the receipt or transmission of Traffic or Local Traffic;
<b>"End Consumer"</b>	has the meaning given to it in Schedule 9;
<b>"Event of Default"</b>	means any of the events set out in Clause 14.1;
<b>"First Invoice"</b>	means an invoice issued by the Service Controller in accordance with Clause 9.1;
<b>"First Level User Training"</b>	means the training set out in Part A, paragraph 6, of Schedule 3;
<b>"Force Majeure"</b>	means any event or circumstance which is beyond the reasonable control of a Party and which results in or causes the failure of that Party to perform any of its obligations under this

Agreement including act of God, strike, lockout or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, explosion, fault or failure of plant or apparatus which could not have been prevented by Good Industry Practice, governmental restraint, Act of Parliament, other legislation, bye law and Directive (not being any order, regulation or direction under Section 32, 33, 34 or 35 of the Act) provided that lack of funds shall not be interpreted as a cause beyond a Party's reasonable control;

- "Gas Act"** means the Gas Act 1986, as amended from time to time;
- "Gas Supplier"** means a User who holds a Gas Supply Licence or is entitled to supply gas pursuant to an exemption under the Gas Act and, in each case, supplies gas to premises wholly or mainly for domestic purposes;
- "Gas Supply Licence"** means a gas supply licence granted by the Authority in accordance with section 7A(1) of the Gas Act;
- "Gas Transporter Licence"** means a licence granted by the Authority in accordance with section 7(2) of the Gas Act;
- "Gateway"** means the combination of Gateway Hardware and Gateway Software;
- "Gateway Accommodation"** means in relation to a Gateway other than a Remote Gateway, the physical environment provided by the User within which Gateway Hardware is installed;
- "Gateway Hardware"** means, in relation to a Gateway Option, the hardware which is installed by the Network Service Provider:
- c) (in the case of Gateway Options which are not Remote Gateways), at User sites;

and

- d) (in the case of Remote Gateways), at the Network Hub,

in each case for the operation of the Data Transfer Network;

**"Gateway Interface Specification"**

means the interface specifications relating to the Gateway Options as notified by the Service Controller to other Parties from time to time, and which are described in the Data Transfer Handbook;

**"Gateway Options"**

means any or each of the High Volume Gateway, Low Volume Gateway, Virtual High Volume Gateway, Virtual Low Volume Gateway, Remote Virtual High Volume Gateway, Remote Virtual Low Volume Gateway and Remote User Gateway, or such other options as are provided by the Service Controller from time to time;

**"Gateway Software"**

means the software to be provided and/or developed by the Network Service Provider and installed on the Gateway Hardware to provide the logical linkage between each User's respective systems and the Data Transfer Network;

**"General Manager"**

means the general manager from time to time of the Service Controller;

**"Good Industry Practice"**

means in relation to:

- (a) the Service Controller, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced provider and operator of a secure community wide-area data transfer network under the same or similar circumstances; and
- (b) a User the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced user of a secure community wide-area data transfer network under the same or similar circumstances;

**"Green Deal Arrangements"** means the agreement referred to and providing

<b>"Agreement" or "GDAA"</b>	for such matters as are set out in standard condition 38 (Green Deal Arrangements Agreement) of the Electricity Supply Licence, in the form approved by the Secretary of State from time to time;
<b>"Helpdesk"</b>	means the helpdesk to be provided pursuant to the terms of paragraph 2, Part A of Schedule 3;
<b>"Helpdesk Services"</b>	means the helpdesk services set out in paragraph 2, Part A of Schedule 3;
<b>"High Volume Gateway"</b>	means the Gateway Option which: <ul style="list-style-type: none"> <li>a) has a client-side server;</li> <li>b) is designed to be connected to the Network Hub by a Dedicated Connection (with a back-up DSL connection); and</li> <li>c) is intended for use by Users transferring more than 3.5 Mbytes of Traffic plus Local Traffic per day;</li> </ul>
<b>"Issue Date"</b>	means the last Working Day of each calendar month;
<b>"Licences"</b>	means the Electricity Distribution Licences, Electricity Supply Licences, Gas Supply Licences or Gas Transporter Licences, as applicable, and 'Licence' shall be construed accordingly;
<b>"Local Communications Link"</b>	means the telecommunications link from the User's Gateway to an Access Point or the Network Hub as appropriate, when provided by the Network Service Provider, over which the Data Transfer Service is provided;
<b>"Local Traffic"</b>	means Messages which enter and leave the same Gateway without being transmitted over the Network;
<b>"Local User Agreement"</b>	means an agreement substantially in the form set out in Schedule 6;
<b>"Low Volume Gateway"</b>	means the Gateway Option which: <ul style="list-style-type: none"> <li>a) has a client-side server;</li> <li>b) is designed to be connected to the Network Hub by a Dedicated Connection (with a back-up DSL</li> </ul>

- connection); and
- c) is intended for use by Users transferring less than 3.5 Mbytes of Traffic and Local Traffic per day;
- "Management Information"** means that information set out in paragraph 4, Part A of Schedule 3;
- "Market Domain I.D"** means a unique role identifier published by ISRA and/or SVAA which identifies a person by role and name and which can only exist on one Gateway at any one time;
- "Market Participant"** means:
- (a) those parties who are involved in the supply of electricity in the post-1998 electricity market, and who enter into any one or more Business Agreements and/or become a BSC Party;
  - (b) the service providers of parties who are involved in the supply of electricity in the post-1998 electricity market who are entitled to use a Market Domain I.D;
  - (c) any party to the Green Deal Arrangements Agreement;
  - (d) any person whom a Green Deal Provider wishes to designate as a Remittance Processor, as confirmed in writing by the Panel Secretary to the Service Controller in accordance with clause 12.6.2(b) of the GDAA (such terms as defined in the GDAA);
  - (e) the Capacity Market Settlement Services Provider;
  - (f) a Capacity Provider;
  - (g) a CfD Settlement Services Provider;
  - (h) a CfD Generator; or
  - (i) those parties who are involved in the supply of gas in the UK gas market pursuant to a licence or an exemption under the Gas Act and are parties to the Supply Point Administration Agreement;



<b>"Master Registration Agreement"</b>	means the agreement of that title dated 1st June 1998 as amended from time to time;
<b>"Message"</b>	means a file which contains one or more instances of a data flow described in the Data Transfer Catalogue and is in one of the formats specified in the Data Transfer Handbook;
<b>"Minimum Service Levels"</b>	means certain Service Levels identified as such in Schedule 7;
<b>"Net Book Value"</b>	means the original, historical purchase price less depreciation calculated on the normal historic accounting basis of the Network Service Provider;
<b>"Network"</b>	means the Local Communications Links, where provided by the Network Service Provider, the Access Points and any other equipment and software, excluding the Gateways, to be installed or used by the Network Service Provider to enable it to operate the Data Transfer Network;
<b>"Network Hub"</b>	means the facility provided by the Network Service Provider for the central operations of the Data Transfer Network;
<b>"Network Service Provider"</b>	means any sub-contractor of the Service Controller who has been appointed from time to time to implement, operate and support all or part of the DTN on behalf of the Service Controller;
<b>"New Party"</b>	means a Party, other than the Service Controller and <b>"New Parties"</b> shall be construed accordingly;
<b>"Non-Payment Disconnection Request"</b>	has the meaning given to it in paragraph 3.8(A) of Schedule 5;
<b>"Non-Payment Disconnection Notice"</b>	has the meaning given to it in paragraph 3.2(E) of Schedule 5;
<b>"Ofcom Regulated Services"</b>	means any telecommunications services which Ofcom requires the provider(s) of such services to make available on standard terms and conditions of supply approved by Ofcom;

<b>"Panel Secretary"</b>	has the meaning given to it in the GDA;
<b>"Party"</b>	means a party to this Agreement or a party having acceded to this Agreement and <b>"Parties"</b> shall be construed accordingly;
<b>"Performance Assurance Board"</b>	has the meaning given to that term in the Balancing and Settlement Code;
<b>"Personal Data"</b>	means personal data as defined in the Data Protection Legislation;
<b>"Phase Two"</b>	means the second tranche of deliverables to be provided by the Network Service Provider to the Service Controller, which is scheduled to be completed on or before 1 October 1997;
<b>"PIA"</b>	means Privacy Impact Assessment which is an assessment that sets out a process for evaluating the potential effects on privacy;
<b>"Potential DAS Customers"</b>	has the meaning given to it in Schedule 9;
<b>"Priority"</b>	means levels of priority that can be assigned to a Change indicating the importance or relevance of a Change and relating to the consequential level of response appropriate as a result of such considerations. The various levels of priority are described in the Data Transfer Handbook;
<b>"Problem Management Procedures"</b>	means the procedures set out in paragraph 2 of Schedule 5;
<b>"Processing"</b>	has the meaning given to it under the Data Protection Legislation and "Processed" and "Process" shall be construed accordingly;
<b>"PSA"</b>	means the Pooling and Settlement Agreement dated 30th March 1990, as amended from time to time;
<b>"Public Electricity Supplier" or "PES"</b>	means the holder of a Supply Licence;
<b>"Quarter"</b>	means a period of three months being a calendar quarter and <b>"Quarterly"</b> shall be construed accordingly;
<b>"Reconnect" or "Reconnection"</b>	means, in relation to a Suspended Gateway, reinstating Services to that Gateway;

**"Relevant Agreement and/or Instrument"** means:

- (a) the Electricity Act, the Gas Act and all subordinate legislation made thereunder from time to time;
- (b) the Data Protection Legislation and all subordinate legislation made under it from time to time;
- (c) each Licence, any modification thereto and any determination or notice made or issued by the Authority pursuant to the terms thereof from time to time;
- (d) the Settlement Agreement and/or Balancing and Settlement Code;
- (e) the Master Registration Agreement;
- (f) the Connection and Use of System Code;
- (g) the Supply Point Administration Agreement;
- (h) the Smart Energy Code; and
- (i) the Uniform Network Code,

and whether under any of the foregoing or otherwise, all authorisations, approvals, licences, exemptions, filings, registrations, notarisations, consents and other matters, which are required, or which the relevant User acting in accordance with Good Industry Practice would obtain, in connection with the provision of the Services, of or from any Competent Authority as at the date of the Agreement;

**"Reporting Services"**

means the Services set out in paragraph 4 of Schedule 3;

**"Remote Gateway"**

means a Gateway Option which is located at the premises of the Network Service Provider;

**"Remote User"**

means a User who uses a Remote Gateway;

**"Remote User Gateway"**

means the Gateway Option which:

- a) is located at the premises of the Network Service Provider;

- b) is designed to be accessed by Remote Users via the public internet;
- c) provides access to the Network Hub via an element of the leveraged internet service provided by the Network Services Provider which is shared with all Users who use a Remote User Gateway;

**"Remote Virtual High Volume Gateway"** means the Gateway Option which:

- a) is located at the premises of the Network Service Provider;
- b) is designed to be accessed by Remote Users via the public internet;
- c) provides access to the Network Hub via a reserved element of the leveraged internet service provided by the Network Services Provider; and
- d) is intended for use by Users transferring more than 3.5 Mbytes of Traffic plus Local Traffic per day;

**"Remote Virtual Low Volume Gateway"** means the Gateway Option which:

- a) is located at the premises of the Network Service Provider;
- b) is designed to be accessed by Remote Users via the public internet;
- c) provides access to the Network Hub via a reserved element of the leveraged internet service provided by the Network Services Provider; and
- d) is intended for use by Users transferring less than 3.5 Mbytes of Traffic and Local Traffic per day;

**"Restricted Country"** means any country outside the EEA save that the UK shall never be a Restricted Country;

**"Scheduled Maintenance"** means maintenance scheduled to be carried out in relation to the Data Transfer Network and notified to Users in advance from time to time by the Service Controller;

**"Secretary of State"** means Her Majesty's Principal Secretary of State referred to in the Electricity Act or the Gas Act, as applicable;

<b>"Security Procedures"</b>	means that part of the Data Transfer Handbook relating to the secure use of the Data Transfer Service;
<b>"Service Levels"</b>	means service levels applicable to the Services as set out in Schedule 7, including Minimum Service Levels and Target Service Levels;
<b>"Service Procedures"</b>	means those procedures for the provision of the Services set out in Schedule 5;
<b>"Service Standing Charges"</b>	means those charges with respect to the specific Gateway Options that are provided to that User.
<b>"Services"</b>	means the Basic Services, and if appropriate, Additional Services to be provided by the Service Controller (but not the Data Analysis Services);
<b>"Settlement Agreement"</b>	means, as appropriate: <ul style="list-style-type: none"> <li>(i) in England and Wales, the PSA including all Service Lines and Agreed Procedures (as therein defined) made under it; or</li> <li>(ii) in Scotland, the agreement to be entered into among Scottish Electricity Settlements Limited, Scottish Power plc, Scottish Hydro-Electric PLC and others to establish the rules for the trading of electricity in Scotland including all Service Requirements and Market Procedures (as therein defined) made under it;</li> </ul>
<b>"Settlement Auditor"</b>	means the person appointed under the relevant Settlement Agreement to perform certain audit and other functions in respect of that Settlement Agreement;
<b>"Settlement Requirements"</b>	means the Agreed Procedure or Market Procedure, as appropriate, under the relevant Settlement Agreement or the BSC Procedure under the BSC which sets out the timetable for the settlement processes under that Agreement;
<b>"Sharing User"</b>	means a User who, pursuant to an authorisation granted to it by the Service Controller under paragraph 1.10 of Schedule 5 or clause 4.2 of its

	Local User Agreement, uses another User's Gateway for the purpose of sending or receiving Messages in accordance with this Agreement;
<b>"Site"</b>	means in relation to a User, that User's premises where the Gateway Accommodation is, or is to be, located;
<b>"Smart Energy Code"</b>	means the code of that name as set out in the smart meter communication licence granted by the Secretary of State in accordance with section 6(1A) of the Electricity Act and section 7AB(2) of the Gas Act;
<b>"SPAA Data Transfer Flows"</b>	means data flows, in relation to gas supplies set out in the schedules to the Supply Point Administration Agreement, in respect of which the use of the Data Transfer Network has been mandated as a secure method of transfer of such data and as amended from time to time pursuant to that agreement;
<b>"Standalone Trading Station"</b>	means the Gateway Option identical to the Low Volume Gateway, except that it has additional User Applications to support trading functions;
<b>"Supply Point Administration Agreement"</b>	means the agreement of that name dated 11 June 2004 governing the operational arrangements between suppliers and transporters of gas in the UK retail market as amended from time to time;
<b>"Suspend"</b>	in relation to any Gateway means temporarily to disable or block Service to or from a User's Gateway and <b>"Suspended"</b> and <b>"Suspension"</b> shall be construed accordingly;
<b>"Supply Business"</b>	shall have the meaning given to that term in the Electricity Supply Licence;
<b>"Supply Licence"</b>	means an electricity supply licence granted to a relevant User pursuant to section 6 of the Electricity Act which includes authorisation pursuant to section 6(1)(d) of the Electricity Act;
<b>"SVAA"</b>	means the Supplier Volume Allocation Agent appointed pursuant to the BSC from time to time;
<b>"Target Service Levels"</b>	means certain Service Levels identified as such

	in Schedule 7;
<b>"Technical Manager"</b>	means, in relation to a User, the person nominated by it as being responsible for the day to day operation of the Gateway;
<b>"Technical Standards"</b>	means those technical standards applicable to the Data Transfer Network as notified from time to time by the Service Controller and which are described in the Data Transfer Handbook;
<b>"Termination Charge"</b>	means those charges payable by a User whose Gateway is disconnected in accordance with this Agreement as specified in the Data Transfer Handbook;
<b>"Total Units"</b>	means the total of all Units across all Electricity Suppliers or all Gas Suppliers, as applicable, in any year of account;
<b>"Traffic"</b>	means Messages traversing the Data Transfer Network which relate to Messages sent by Users;
<b>"Transfer Time"</b>	means the elapsed time between the time at which the Message arrives at the sending Gateway for transmission over the Data Transfer Network and the time the relevant Message is available for dispatch from the receiving Gateway to the receiving User's systems;
<b>"Uniform Network Code"</b>	means the code of that name required to be prepared pursuant to Standard Special Condition A11 of Gas Transporter Licences;
<b>"Unit"</b>	means: <ul style="list-style-type: none"> <li>(a) the number of MPAN days that are attributed to an Electricity Supplier; or</li> <li>(b) the number of MPRN days that are attributed to a Gas Supplier,</li> </ul> as the context requires;
<b>"Unit Charge"</b>	means the rate applicable to: <ul style="list-style-type: none"> <li>(a) Electricity Suppliers, calculated in accordance with Schedule 8, paragraph B6; or</li> <li>(b) Gas Suppliers, calculated in accordance with Schedule 8,</li> </ul>

			paragraph C6, as the context requires;
<b>"User"</b>			means a New Party who has complied with the requirements set out in Clause 4.4;
<b>"User Applications"</b>			means those computer systems operated by a User which are capable of generating Traffic or Local Traffic;
<b>"User File Design Specification"</b>			means that specification of the User file design that is notified from time to time by the Service Controller and which are described in the Data Transfer Handbook;
<b>"User Group"</b>			means the representative group of Users constituted pursuant to the terms of Schedule 4;
<b>"User Manager"</b>			means a person appointed from time to time by the Service Controller to act in this position;
<b>"User Planning Guide"</b>			means the document so named which has been prepared by the Service Controller and which is contained as amended from time to time in the Data Transfer Handbook;
<b>"User Preconnection Acceptance Test"</b>			means the test carried out by the Network Service Provider as part of the Connection Procedures verifying successful installation of the Gateway;
<b>"Virtual Gateway"</b>	<b>High</b>	<b>Volume</b>	means the Gateway Option which: <ul style="list-style-type: none"> <li>a) does not have a client-side server;</li> <li>b) is designed to be connected to the Network Hub by a Dedicated Connection (with a back-up DSL connection); and</li> <li>c) is intended for use by Users transferring more than 3.5 Mbytes of Traffic plus Local Traffic per day;</li> </ul>
<b>"Virtual Low Volume Gateway"</b>			means the Gateway Option which: <ul style="list-style-type: none"> <li>a) does not have a client-side server;</li> <li>b) is designed to be connected to the Network Hub by a Dedicated Connection (with a back-up DSL connection); and</li> <li>c) is intended for use by Users transferring</li> </ul>



less than 3.5 Mbytes of Traffic and Local Traffic per day.

**"Working Day"**

means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971;

- 1.2 In this Agreement, unless the context requires otherwise, any reference to:
- (a) a "person" includes a reference to a body corporate, association or partnership;
  - (b) the singular shall include the plural and vice versa;
  - (c) "Agreement" shall mean this agreement and the Schedules;
  - (d) subject to Clauses 1.5 and 1.6, any reference to an Electricity Distribution Licence, Electricity Supply Licence, Gas Supply Licence or Gas Transporter Licence shall mean a reference to the relevant document in force, and as amended, from time to time;
  - (e) a Clause or Schedule is a reference to a Clause of or Schedule to this Agreement;
  - (f) writing includes all methods of reproducing words in a legible and non-transitory form; and
  - (g) any enactment or statutory provision shall be deemed to include references to such an enactment or statute as extended, re-enacted, consolidated or amended and to any subordinate legislation made under it.
- 1.3 The headings in this Agreement are for the ease of reference only and shall not affect its construction or interpretation.
- 1.4 In this Agreement, references to "include" or "including" are to be construed without limitation.
- 1.5 The Parties acknowledge that as at the date of this Agreement there will be a number of documents or amendments to documents which are referred to in this Agreement which will not have been finalised or may not exist or may be modified (whether with the consent of Parties or otherwise), including Electricity Distribution Licences, Electricity Supply Licences, Gas Supply Licences, Gas Transporter Licences, Relevant Agreements and/or Instruments and the agreements relating to the PSA. Any reference in this Agreement to such documents or amendments to documents shall include a reference to those documents as finally agreed or established or modified and to any successor arrangements established for the purposes of the introduction of further supply competition in the supply of electricity, during the term of this Agreement. To the extent that this Agreement governs matters occurring or requiring to be done prior to the finalisation or modification of such agreements or arrangements, the Parties agree that reference shall be had to the draft or version (if any) of that document current at the time in question. For this purpose, in deciding what version of a Licence is for the time being current, such Licence shall be deemed to embody the most recent draft modifications for the time being issued by the Authority.

- 1.6 Where the version of any Licence required by Clause 1.5 to be referred to in respect of any matter imposes an obligation, after the date of this Agreement, to provide additional services that are not provided pursuant to this Agreement, nothing in this Agreement shall be taken to imply that they shall be provided under this Agreement, without the Change Procedures being undertaken by the Parties.
- 1.7 Subject to Clauses 1.5 and 7, in the event of any inconsistency between the Licences, as finalised, and this Agreement, the Parties shall be relieved from the obligation to comply with such inconsistent provision of this Agreement and the Parties agree that they will use all reasonable endeavours to amend this Agreement, in accordance with the Change Procedures contained in Clause 7.3, in order to ensure consistency between this Agreement and the Licences as they are finally agreed.

## **2. COMMENCEMENT AND DURATION**

- 2.1 This Agreement shall commence on the date hereof.
- 2.2 In respect of each Party, this Agreement shall commence on execution of this Agreement by that Party, or on Accession to this Agreement.
- 2.3 This Agreement shall continue in respect of a Party until terminated in respect of that Party or all Parties in accordance with this Agreement.
- 2.4 This Agreement shall continue until terminated in respect of all Parties in accordance with Clause 13.

## **3. ADDITIONAL PARTIES**

- 3.1 The Parties shall admit, pursuant to the Connection Procedures, as a New Party to this Agreement any Applicant who signs this Agreement or an Accession Agreement, and has paid the Accession Agreement Fee. For the avoidance of doubt, the Accession Agreement Fee shall also be payable by Applicants who execute this Agreement.
- 3.2 The Accession Agreement will be prepared by the Service Controller, and shall be executed by the Service Controller for itself and on behalf of all Parties. Any costs incurred by an Applicant in completing the Accession Agreement shall be borne by that Applicant.
- 3.3 Upon execution of this Agreement or if appropriate, the Accession Agreement, by the Service Controller and the relevant Applicant, that Applicant will become a New Party.
- 3.4 Each Party hereby authorises and instructs the Service Controller to sign any Accession Agreement or Local User Agreement on its behalf and undertakes not to withdraw, qualify or revoke any such authority or instruction at any time.
- 3.5 Except in the case of any Applicant that executes this Agreement, the Service Controller shall notify all New Parties that an Applicant has been admitted as a New Party in the next update of the Data Transfer Service Name and Address Book.

## **4. CONNECTION TO THE DATA TRANSFER NETWORK**

- 4.1 The Service Controller and New Parties shall comply with the Connection Procedures.

- 4.2 A New Party shall only be entitled to enter into a Local User Agreement with the Service Controller where it has satisfied the Service Controller of its continuing status as a Market Participant.
- 4.3 In the event that a New Party fails to satisfy the Service Controller under Clause 4.2 and fails to complete all of the steps under paragraphs 1.6 to 1.9 (inclusive) of the Connection Procedures within 120 Working Days of either executing this Agreement or an Accession Agreement, the Service Controller may terminate this Agreement in respect of that New Party forthwith by notice to such New Party. From the date of such notice the New Party shall cease to be a Party to this Agreement. Where a person ceases to be a Party pursuant to this Clause 4.3 the provisions of Clauses 17, 20 and 22 shall continue to apply in respect of such person.
- 4.4 A New Party shall become a User upon:
- 4.4.1 executing a Local User Agreement; and
  - 4.4.2 for a New Party who has selected a Gateway Option, paying the amounts contained in the First Invoice by a New Party; or
  - 4.4.3 for a New Party who is to become a Sharing User, having received (i) the written consent of another User to use its Gateway, and (ii) written authorisation from the Service Controller to become a Sharing User using that Gateway.
- 4.5 If a User and one or more Sharing User use the same Gateway pursuant to an authorisation granted by the Service Controller under paragraph 1.10 of Schedule 5 or clause 4.2 of a Sharing User's Local User Agreement:
- 4.5.1 for each such User, such Gateway shall be "its Gateway" for the purpose of this Agreement; and
  - 4.5.2 save as expressly provided in this Agreement, such Users shall be jointly and severally liable for all obligations and liabilities under this Agreement in respect of such Gateway.
- 4.6 A User who is not a Sharing User will have a representative present at the time that the User Preconnection Acceptance Test is conducted.
- 4.7 The Service Controller shall Enable a Gateway for the relevant User who is not a Sharing User in respect of such Gateway following satisfactory completion of the User Preconnection Acceptance Test and the Service Controller being satisfied that the Connection Procedure has been fully completed.
- 4.8 If a Gateway is to be shared by a Sharing User, the Service Controller shall Enable such Gateway for the Sharing User following satisfactory completion of the necessary configuration activities and the Service Controller being satisfied that the Connection Procedure has been fully completed.
- 4.9 Where a New Party has previously been a User of the Data Transfer Service, but ceased to be a User by virtue of being Disconnected under paragraphs 3.2 to 3.6 of the Disconnection Procedures, the Service Controller may require payment of any outstanding sums prior to preparation of a Local User Agreement and may require the New Party to provide reasonable assurance (including the payment of a bond or deposit) that default shall not recur, in accordance with the Reconnection Procedure.

- 4.10 The Service Controller may require the payment of a bond or deposit as assurance by any New Party, at the time of entering into the Local User Agreement, where it is reasonably believed by the Service Controller to be necessary in order to protect against potential default by that New Party on its becoming a User.
- 4.11 For the purposes of Clause 4.10, any bond or deposit payable shall not exceed an amount estimated by the Service Controller as being equal to one Quarter's Charges in respect of such Gateways to be provided to a User.

## **5. PROVISION AND USE OF THE DATA TRANSFER NETWORK**

### **5.1 Service Controller Responsibilities**

The Service Controller will in relation to each User subject to and, where applicable, in accordance with the relevant Service Levels:

- 5.1.1 operate and support the Data Transfer Network in accordance with Good Industry Practice;
- 5.1.2 ensure the compliance of the Data Transfer Network with the Technical Standards;
- 5.1.3 provide the Basic Services;
- 5.1.4 provide such Additional Services as are offered by it to all Users and requested by an individual User;
- 5.1.5 ensure the provision of the Services in accordance with Schedule 7;
- 5.1.6 provide a Gateway or Gateways and arrange for provision of Local Communications Links to those Gateways chosen by a User in its Local User Agreement;
- 5.1.7 ensure that any Messages properly delivered by a User to that User's Gateway for transmission are properly delivered, ensuring security and integrity of Messages, to the addressed recipient's Gateway on the Data Transfer Network;
- 5.1.8 provide Helpdesk Services and respond to queries made by Users to the Helpdesk in accordance with the Problem Management Procedures;
- 5.1.9 provide any relevant Documentation;
- 5.1.10 provide Reporting Services;
- 5.1.11 carry out Scheduled Maintenance of the Data Transfer Network, giving, where practical, at least 5 Working Days' notice to Users of any proposed Scheduled Maintenance which affects the availability of the Service to any User or Users;
- 5.1.12 facilitate the User Group and carry out such functions as are assigned to it in the User Group constitution;
- 5.1.13 supply, inspect, operate and maintain each User's Gateway in accordance with the procedures set out in the Data Transfer Handbook;
- 5.1.14 on entering a User's Site, comply with that User's Site safety rules and regulations notified in accordance with the Data Transfer Handbook;

- 5.1.15 provide information about Gateway Options;
- 5.1.16 take all action it reasonably considers necessary in the performance of its obligations under this Agreement for the efficient operation of the Data Transfer Service, whether such action is planned or taken as an emergency measure;
- 5.1.17 promptly issue invoices which are accurate and reasonable and in accordance with Clause 9 and ensures all amounts correctly invoiced to a User are collected from that User;
- 5.1.18 procure that reasonably appropriate security measures are taken for secure delivery of messages to and from Users' Gateways to ensure the ability to authenticate a message, prevent unauthorised use of the Data Transfer Service and prevent unauthorised interception and reading of Messages;
- 5.1.19 report to the Users, or relevant User, as appropriate, as soon as reasonably possible after becoming aware of any instance of:
  - (A) a suspected or expected degradation of the Data Transfer Network performance; or
  - (B) a suspected Breach of Security;
- 5.1.20 use all reasonable endeavours not to allow any Trojan horses, viruses, logic bombs or other analogous macros, programs or sub-routines, as the same are known in the computing industry, onto the Data Transfer Network;
- 5.1.21 ensure that, insofar as it is reasonably practicable the provision of the Data Transfer Service is undertaken in a cost-effective manner and that it shall use all reasonable endeavours to minimise costs to Users;
- 5.1.22 ensure all Changes are approved and implemented pursuant to Clause 7;
- 5.1.23 implement changes to the:
  - (A) Data Transfer Catalogue which have been agreed pursuant to the terms of the Master Registration Agreement, in accordance with the Change Procedures; or
  - (B) SPAA Data Transfer Flows which have been agreed pursuant to the terms of the Supply Point Administration Agreement, in accordance with the change control procedures set out therein;
- 5.1.24 comply with the Data Transfer Handbook; and
- 5.1.25 monitor and enforce the provisions of Clause 5.3.

## 5.2 **Right to Inspect and Access**

- 5.2.1 The Service Controller has the right to inspect, or to have inspected on its behalf, a User's Gateway Accommodation (if any, and excluding for the avoidance of doubt the Gateway Accommodation for a Gateway in respect which the User is a Sharing User) at reasonable times, on giving to a User not less than 5 Working Days' notice, or some lesser period as agreed between the Service Controller and the relevant User, of its intention to inspect the Gateway Accommodation.

- 5.2.2 Where the inspection by the Service Controller or on its behalf pursuant to Clause 5.2.1 identifies that the Gateway Accommodation does not comply with the relevant requirements in the Data Transfer Handbook, and such non-compliance is notified by the Service Controller to the relevant User, the relevant User shall have 20 Working Days, or such other period agreed in writing with the Service Controller, to rectify the Gateway Accommodation. The notice of non-compliance issued by the Service Controller shall specify the remedial action that is required of a User.
- 5.2.3 Until the deficiencies in the Gateway Accommodation identified pursuant to Clause 5.2.2 are rectified by a User, Service Levels relating to that Gateway shall not apply. Upon rectifying the Gateway Accommodation, the Service Levels will reapply to that User's Gateways.
- 5.2.4 The notice periods specified in Clause 5.2.1 shall not apply where the Service Controller requires access to a User's Site in the case of an emergency or as otherwise provided pursuant to the Disconnection Procedures. In such circumstances the Service Controller shall be given all reasonable access to a User's Site.

### 5.3 User Responsibilities

Each User shall ensure that:

- 5.3.1 it uses the Data Transfer Service in accordance with Good Industry Practice and the Technical Standards;
- 5.3.2 any Messages that it places on its Gateway for delivery by the Data Transfer Network are Messages derived from the Data Transfer Catalogue or the SPAA Data Transfer Flows, as applicable, and are specified in a Business Agreement to which it is a party, the BSC or the Supply Point Administration Agreement, as applicable, or are otherwise agreed to in writing by the Service Controller;
- 5.3.3 it uses all reasonable endeavours not to do anything which may prevent, impair or otherwise adversely affect access to or the operation of the Data Transfer Network or the reliability of data transferred via the Data Transfer Network or otherwise allow onto the Data Transfer Network anything or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any software, hardware, network, telecommunications service forming part of or connected to the Data Transfer Network including but not limited to Trojan horses, logic bombs, viruses or analogous macros, programs or sub-routines, as the same are known in the computing industry;
- 5.3.4 it complies with the procedures in the Data Transfer Handbook including the Security Procedures;
- 5.3.5 it reports to the Helpdesk, using the Problem Management Procedures, any instance of:
  - (A) a suspected degradation of the Data Transfer Network performance;  
or
  - (B) a suspected Breach of Security;

- 5.3.6 it pays the Charges promptly in accordance with the provisions of Clause 9;
- 5.3.7 it uses all reasonable endeavours to participate in or contribute to the operation of the User Group, and where necessary support or assist its representative Members of the User Group, and in particular, where required by the User Group it will participate in any industry wide testing of Changes which impact on the Data Transfer Service as an industry service, or in relation to testing of Changes which impact it as an individual User, or a member of a group of Users, as required by the Service Controller or any Competent Authority, for the maintenance and continued operation of the Data Transfer Service;
- 5.3.8 except in the case of (i) a Remote Gateway or (ii) (for a Sharing User) a Gateway at another User's Site which it shares, it maintains insurance cover for its Gateway as set out in its Local User Agreement for the duration of its Local User Agreement and for such reasonable period thereafter to cover insurable risks until the Gateway is Disconnected and removed from its Site. In respect of such insurance and on request by the Service Controller, the User shall procure the Service Controller's interest is noted on such policy of insurance. The User will provide evidence that such insurance is in force to the Service Controller as soon as possible, but no more than 10 Working Days after receipt of a request for such evidence from the Service Controller;
- 5.3.9 it promptly advises the Service Controller forthwith on its ceasing to be a Market Participant;
- 5.3.10 it uses its Gateway solely for access to the Data Transfer Network, unless otherwise agreed with the Service Controller;
- 5.3.11 it operates and supports its Gateway in accordance with any procedures notified to it by the Service Controller from time to time;
- 5.3.12 it provides the Service Controller with any required reasonable access, pursuant to the terms of this Agreement, both physical access and through the Data Transfer Network, to its Gateway for the purposes of inspection, removal, operation and maintenance of its Gateway in accordance with the procedures notified to it by the Service Controller from time to time;
- 5.3.13 throughout the term of its Local User Agreement:
  - (A) its equipment directly connected to the Gateway complies with relevant Technical Standards;
  - (B) the Gateway Accommodation complies with Good Industry Practice;
  - (C) in particular the Gateway Accommodation is physically secured so that only the User's authorised personnel have access. The level of physical security should be at least to the highest standard that applies to the User's own network and main computer equipment;
- 5.3.14 it does not access, amend, copy or in any way tamper with its Gateway except as part of routine operations in accordance with procedures in the Data Transfer Handbook;

- 5.3.15 it implements appropriate restrictions or security measures on the User's side of the Gateway to prevent unauthorised access into the Data Transfer Network from the User's network;
  - 5.3.16 it implements appropriate restrictions or security measures on the User's side of the Gateway to maintain the security and integrity of its systems in relation to use of the Data Transfer Network and the security, integrity and confidentiality of Messages sent to the Gateway;
  - 5.3.17 where a Dedicated Connection is provided to the User for the purposes of the Data Transfer Network, it will not use that Dedicated Connection for any other purpose unless agreed in writing by the Service Controller;
  - 5.3.18 it maintains the physical safety of the Dedicated Connection (including any cabinets or ducts enclosing it) except in relation to acts of the Service Controller, and ensures its proper use within the boundary of the Site.
  - 5.3.19 it shall not interfere with the Dedicated Connection and will procure that neither it nor any other person will be permitted to do so. If the Dedicated Connection is lost, destroyed or damaged (except by fair wear and tear) ("loss"), other than as a result of any act or failure to act by the Service Controller, and such loss occurred on the User's site, the User shall pay any relevant charges for its replacement and/or repair, such charges not exceeding an amount equalling the cost of full replacement of a new Gateway and its installation;
  - 5.3.20 it allows only the Gateway Hardware to be connected to the Dedicated Connection and only by means of sockets installed and maintained by the Service Controller unless otherwise agreed in writing;
  - 5.3.21 it will not attach any equipment to the Gateway or Dedicated Connection unless it is approved in writing for the purpose by the Service Controller, such approval not to be unreasonably withheld;
  - 5.3.22 it will not use the Data Transfer Network nor allow any other person to use the Data Transfer Network:
    - (A) to send a message or communication which is offensive, abusive, indecent, obscene or menacing; or
    - (B) to cause annoyance, inconvenience or needless anxiety or for any other improper purpose; or
    - (C) in breach of reasonable instructions the Service Controller has given in the interests of safety, security or confidentiality.
- If the Service Controller Suspends use of the Data Transfer Network to a User for contravention of this Clause 5.3.22 the Service Controller can refuse to restore it until the Service Controller receives a reasonable assurance that there shall be no further contravention;
- 5.3.23 it uses all reasonable endeavours to remove or process all Messages delivered to its Gateway in such a manner that the Gateway is able to continue to process Traffic and Local Traffic;
  - 5.3.24 it chooses a Gateway or Gateways that will allow the User to meet its



commercial obligations under all applicable Business Agreements and/or the BSC. To the extent that a User chooses a Gateway Option that does not take reasonable account of the information provided by the Service Controller pursuant to Clause 5.1.15, the measurement of Service Levels will not include such Gateway or Gateways; and

5.3.25 it shall not procure any other services or facilities directly or indirectly from the Network Service Provider relating to or which will be provided through use of the Gateways without the prior written consent of the Service Controller, such consent not to be unreasonably withheld. The Service Controller will consider any such request for consent and notify the User accordingly within 40 Working Days of receipt by the Service Controller of a request for consent.

#### 5.4 **Ofcom Regulated Services**

Any Ofcom Regulated Services provided by the Service Controller (or the Network Services Provider) to a User as a component of the Data Transfer Service shall (to the extent applicable) be governed by and subject to the relevant standard terms and conditions which Ofcom mandates for the provision such Ofcom Regulated Services (and, to the extent that such terms and conditions are inconsistent with the terms of this Agreement, the former shall prevail). Users may have to pay separately for Ofcom Regulated Services in accordance with the Charging Principles.

#### 5.5 **Service Levels**

5.5.1 The Service Levels (including the Data Transfer Times) shall apply to the Data Transfer Network as a whole, and to each User in respect of its use of the Data Transfer Service. The Parties acknowledge that the measurement by the Service Controller of performance against the Minimum Service Levels relating to the Data Transfer Times is not specific to a particular Gateway, but relates to the Data Transfer Service as a whole. All other Service Levels are Gateway specific.

5.5.2 Subject to Clauses 5.5.3 and 5.5.4 a feature of the Data Transfer Network will fail to meet a Minimum Service Level where the performance of that feature over a month, or a Target Service Level over a Quarter, is less than the measurement relating to that Minimum Service Level or Target Service Level in Schedule 7.

5.5.3 Measurement of performance against Service Levels for the purposes of this Agreement shall exclude:

- (A) failures caused directly or indirectly by any breach by any User of this Agreement; or
- (B) failures caused directly or indirectly by the failure of any components, software, hardware or systems used in connection with the Data Transfer Service but not provided or approved by the Service Controller under this Agreement.

5.5.4 Any Scheduled Maintenance is also excluded from the measurement of Service Levels.

- 5.5.5 Service Levels shall be measured under the terms of this Agreement from the completion of Phase Two.
- 5.5.6 The Service Controller shall publish a monthly report, not later than 10 Working Days after the end of each month detailing the performance of the Data Transfer Service against Target Service Levels over the immediately preceding three months.
- 5.5.7 The Service Controller shall publish monthly reports, not later than 10 Working Days after the end of the month detailing the performance of the Data Transfer Service against Minimum Service Levels over the immediately preceding month.
- 5.5.8 Where:
- (A) in any month, a Minimum Service Level is not met the Service Controller shall report such failure to the Network Service Provider;
  - (B) in any one Quarter, a Target Service Level is not achieved any User may require the Service Controller to escalate the report of such failure to the User Manager and to convene a meeting with the User Manager to discuss such failure;
  - (C) in any two consecutive Quarters, Target Service Levels are not achieved any User may require the Service Controller to escalate the report of such failure to the General Manager and to convene a meeting with the User Manager to discuss such failure; or
  - (D) in any period Service Levels are not met, the Service Controller shall escalate such failure with the Network Service Provider in accordance with the terms of any agreement existing between the Service Controller and Network Service Provider.
- 5.5.9 The Contract Manager of the relevant User referred to in Clause 5.5.8 shall be entitled to attend the escalation meeting held pursuant to Clause 5.5.8.
- 5.5.10 At any such escalation meetings the parties present shall use all reasonable endeavours to resolve the particular concerns highlighted by a User's Contract Manager.
- 5.5.11 The Service Controller will invite the Network Service Provider to attend any escalation meeting held pursuant to Clause 5.5.8 where in the opinion of the Service Controller this may assist with the resolution of any particular concerns highlighted by a User's Contract Manager.
- 5.5.12 Where a User has notified the Service Controller that it believes that the Minimum Service Levels are not being met in relation to its use of the Data Transfer Service, and that User reasonably requests that the actual Traffic and Local Traffic through its Gateway be monitored, the Service Controller will arrange such Traffic and Local Traffic to be monitored for an appropriate period, being a period not exceeding a month, to determine the nature or existence of a problem.
- 5.5.13 After monitoring a User's Gateway for a month, or for such shorter period as will allow the Service Controller to determine the existence or nature of the problem with the performance of the Service, the Service Controller

shall, within 5 Working Days of the end of that period, report the results to the relevant User.

- 5.5.14 If the report indicates that such Gateway has failed to meet the Minimum Service Levels where the performance is measured pursuant to clause 5.5.12 over the relevant period, the Service Controller shall use all reasonable endeavours to procure that any identified problem, not being a problem with the User's own systems, is rectified. Where such rectification requires a Change, the Service Controller shall initiate the Change Request.
- 5.5.15 Following such rectification the Service Controller shall arrange monitoring of the relevant Gateway for a further appropriate period, not exceeding a month to ensure the problem has been rectified and that the Service Levels are being met. If after such monitoring a problem still exists, the Service Controller shall prepare and if requested by that User, implement a plan for resolution of the relevant problem.
- 5.5.16 Where it is not possible to identify a problem pursuant to Clause 5.5.12 with the User's Gateway or the Data Transfer Service, the Service Controller shall use all reasonable endeavours to assist the User, where possible, by suggesting an alternative solution.
- 5.5.17 A User may, after implementing the escalation procedure outlined in Clauses 5.5.8 to 5.5.14, as applicable, refer any matter concerning Service Levels to the Authority for review. The Service Controller agrees that it will implement any determination made by the Authority pursuant to this Clause 5.5.17.
- 5.5.18 The procedures set out in this Clause 5.5 shall be the only remedies available to Users from the Service Controller for failure to meet the Service Levels but shall be without prejudice to any rights or remedies available to a User in seeking a determination of the Authority.
- 5.5.19 Prior to completion of Phase Two, the Service Controller shall use all reasonable endeavours to resolve difficulties relating to a User's Gateway or use of the Data Transfer Network. The Parties shall at all times comply with the Problem Management Procedures.
- 5.5.20 If the Service Controller receives service credits from the Network Service Provider in relation to the operation of the Data Transfer Network, the Service Controller will take such service credits into account when calculating the total charges invoiced or to be invoiced by the Network Service Provider to the Service Controller in the relevant year for the purposes of calculating the Charges pursuant to Schedule 8.

## 5.6 Risk and Title

- 5.6.1 Title in the Gateway Hardware shall not pass to a User unless and until the User purchases the Gateway Hardware installed at the User's Site pursuant to Clause 13.5, and all sums payable in respect of the purchase of the Gateway Hardware are paid by a User.
- 5.6.2 The Service Controller shall, notwithstanding anything in this Agreement remain responsible for maintaining the Gateway Hardware in good repair

for the operation of the Data Transfer Network in accordance with the Service Levels.

- 5.6.3 In relation to loss or damage howsoever caused or arising to the Gateway Hardware at a User's Site, other than damage or deterioration of the Gateway by reason of fair wear and tear or caused by the Service Controller or its sub-contractors, risk in the Gateway Hardware passes to a User on delivery of Gateway Hardware to that User's Site.
- 5.6.4 Nothing in this Agreement shall or shall be taken to pass title in all or any part of the Gateway Software to a User.
- 5.6.5 Nothing in clauses 5.6.1, 5.6.3 or 5.6.4 shall apply to a Remote User or (in respect of Gateway at another User's Site which it shares) a Sharing User.

## 5.7 Security

- 5.7.1 The Parties acknowledge that they understand the nature and level of threats to security in relation to the Data Transfer Network.
- 5.7.2 The Parties agree that notwithstanding the provisions of the Data Transfer Handbook that they shall act in such a way as to mitigate the risks to security.

## 5.8 Data Analysis Services

- 5.8.1 The Service Controller shall develop, and offer to Users (and other Potential DAS Customers), Data Analysis Services in accordance with Schedule 9.
- 5.8.2 The Parties agree that the Service Controller may:
  - (A) use the Data Transfer Network; and
  - (B) process Messages,to provide Data Analysis Services in accordance with Schedule 9.

## 6. DATA TRANSFER SERVICE NAME AND ADDRESS BOOK

- 6.1 The Service Controller shall change the entries in the Data Transfer Service Name and Address Book once those changes are received from the Users in accordance with Clause 6.3.
- 6.2 On each Issue Date the Service Controller shall make available any amendments to the Data Transfer Service Name and Address Book to all Contract Managers.
- 6.3 Each User shall ensure that the entries relating to that User contained in the Data Transfer Service Name and Address Book are kept up-to-date. Where any changes are required to be made, the relevant User shall ensure that such changes are submitted to the Service Controller on the standard form contained in the Data Transfer Service Name and Address Book so that they are received by the Service Controller at least 5 Working Days in advance of the relevant Issue Date for inclusion in the set of amendments on that Issue Date. Any amendments so received shall take effect on that Issue Date. Any amendments not so received shall be deemed to take effect on the immediately subsequent Issue Date following the Issue Date first specified in this Clause 6.3.
- 6.4 The Service Controller shall require each User to confirm the accuracy of its entries

in the Data Transfer Service Name and Address Book by 1st of April in each year. Following such confirmation, the Service Controller shall make available the complete updated Data Transfer Service Name and Address Book to all Contract Managers, at the next Issue Date.

- 6.5 The Service Controller shall maintain a log of all changes made to the Data Transfer Service Name and Address Book.

## 7. VARIATIONS

### 7.1 General

The Parties acknowledge and agree the desirability of achieving and maintaining consistency and the absence of conflict between the provisions of this Agreement and each of the Relevant Agreements and/or Instruments. However, the Parties recognise that, due principally to the different functions and objectives of this Agreement and those of the Relevant Agreements and/or Instruments and that not every Relevant Agreement and/or Instrument binds the Parties to the same variation procedures as those contained herein, it will not in all circumstances be possible to avoid inconsistency or conflict between the provisions of this Agreement and Relevant Agreements and/or Instruments.

### 7.2 Change Requests

7.2.1 Change Requests in respect of Changes to this Agreement, the Data Transfer Handbook, Services or the Data Transfer Network or the Technical Standards may be raised by a User or by the Service Controller pursuant to the Change Procedures.

7.2.2 All Change Requests raised by Users must be sent to the Service Controller.

7.2.3 Change Requests will be considered by the User Group pursuant to Clauses 7.3 and 7.4.

7.2.4 A Change to the provisions of this Agreement or to the procedures contained in the Data Transfer Handbook that are also contained in Schedule 5 of this Agreement shall be made pursuant to the terms of Clause 7.3.

7.2.5 A Change to the nature of the Services, the Data Transfer Network or the Technical Standards shall be made pursuant to the terms of Clause 7.4.

7.2.6 Change Requests raised or received by the Service Controller not less than 5 Working Days before any particular User Group meeting will be circulated by the Service Controller to all Contract Managers prior to the relevant User Group meeting.

### 7.3 Changes to this Agreement or the Data Transfer Handbook

7.3.1 The Parties acknowledge and agree that no Change to this Clause 7.3.1, Schedule 4, Schedule 8 or any Clause of this Agreement that permits any Party to refer a matter to the Authority for determination, or which provides for the consent of the Authority to be obtained or otherwise gives any right to the Authority, shall take effect without the prior written consent of the Authority.

- 7.3.2 Change Requests under this Clause 7.3 shall be registered by the Service Controller who shall undertake an impact analysis of the effect of such a Change. The analysis to be conducted pursuant to this Clause 7.3.2 shall be completed within 10 Working Days of the receipt of the Change Request.
- 7.3.3 The Service Controller shall report to the User Group meeting next following the completion of any impact analysis conducted pursuant to Clause 7.3.2, the results of that analysis and shall make a recommendation to the User Group to either approve or reject the Change Request. The Service Controller shall at all times act reasonably in making any recommendation pursuant to this Clause 7.3.3.
- 7.3.4 The Service Controller shall document the grounds for its recommendation of approval or rejection of a Change Request made pursuant to Clause 7.3.3 and shall notify the relevant User making the Change Request and all Contract Managers of its recommendation accordingly, 5 Working Days prior to the relevant User Group meeting.
- 7.3.5 The User Group shall resolve at the User Group meeting after the Service Controller makes its recommendation either to approve or reject the Change Request or to seek further details or information from the Service Controller.
- 7.3.6 The Service Controller shall abide by the decision of the User Group in accepting or rejecting the Change Request unless the Change will result in:
- (A) a breach of the obligations of any Party to the Agreement;
  - (B) an inability to comply with directions from the Authority;
  - (C) an obligation on the Service Controller which is not technologically feasible to implement;
  - (D) the introduction of provisions dealing with matters not then dealt with in or expressly contemplated by this Agreement;
  - (E) a breach of any Relevant Agreement and/ or Instrument;
  - (F) any other legal or regulatory requirements being breached by a Party;  
or
  - (G) an increase in Service Controller costs that is not recoverable by it under this Agreement.
- 7.3.7 The Service Controller may make Changes to the Agreement to take account of any changes to or the coming into force of any Relevant Agreement and/or Instrument insofar as such Changes are in the opinion of the Service Controller (acting reasonably) necessary to comply with any obligation or requirement imposed on any of the Parties by virtue of the Relevant Agreement and/or Instrument. Such Change Requests shall not be required to be considered by the User Group pursuant to this Clause 7.3 and the Parties each authorise and instruct the Service Controller to make such Change on its behalf and each undertake not to withdraw, qualify or revoke such authority or instruction at any time. Except to the extent the Service Controller (acting reasonably) considers it impractical, it shall, consult User Group Members about and notify all Contract Managers of the proposed change to be made pursuant to this Clause 7.3.7 before making any such

Change, and shall allow a reasonable period of time for comment and review.

- 7.3.8 In consultation with the User Group, the Service Controller shall make any Change required to give effect to any determination made by the Authority pursuant to condition 35C of the Electricity Distribution Licence in relation to this Agreement.
- 7.3.9 Changes required to a User's Local User Agreement shall not be subject to approval or implementation pursuant to this Clause 7.3, but shall be agreed between the relevant User and the Service Controller.
- 7.3.10 Where a Change has been approved by the User Group pursuant to this Clause 7.3, and is not the subject of a Change Dispute, the Parties each authorise and instruct the Service Controller to make such Change on its behalf and each undertake not to withdraw, qualify or revoke such authority or instruction at any time. Where a Change Dispute has been resolved, this Clause 7.3.10 shall apply.

#### **7.4 Changes to the Services or the Data Transfer Network**

- 7.4.1 Change Requests relating to the Services, the Data Transfer Network or the Technical Standards received by the Service Controller from a User shall be registered by the Service Controller. Users will indicate in a Change Request the Priority that they assign the Change, in line with the guidelines defined in the Data Transfer Handbook. The Service Controller will undertake a preliminary impact evaluation of the Change Request within 10 Working Days of its receipt and will also assign a Priority to that Change Request as a result of such evaluation and having regard to the Priority proposed by the User. A copy of each preliminary impact assessment shall be sent to each User Group Member as soon as it is completed.
- 7.4.2 The User Group will, at each meeting, consider all Change Requests received not later than 10 Working Days before the date of the relevant meeting, and evaluated by the Service Controller pursuant to Clause 7.4.1. The User Group shall finally determine the Priority to be given to a Change Request, taking into account the Priorities assigned to the Change by the relevant User and the Service Controller pursuant to Clause 7.4.1. If the User Group does not resolve that a Change Request shall be taken to the detailed evaluation stage, the Change Request shall be rejected. The Secretary of the User Group shall document the grounds for rejection.
- 7.4.3 The Service Controller shall notify the User making the relevant Change Request and all Contract Managers whether or not the Change Request has been rejected.
- 7.4.4 For each Change Request not rejected by the User Group at this stage, the Service Controller will undertake a detailed evaluation, and shall consult with the User Group Members, a representative sample of Users who would be impacted by the Change and such other interested parties as the Service Controller (acting reasonably) considers appropriate. This evaluation shall be carried out according to the assigned Priority, within 15 Working Days of the relevant User Group meeting. A copy of each detailed evaluation

shall be sent to each User Group Member as soon as it is completed.

- 7.4.5 The purpose of the detailed evaluation to be carried out by the Service Controller pursuant to Clause 7.4.4 is to confirm the impact, cost and feasibility of the Change Request and the timescale over which it could or should be implemented if approved.
- 7.4.6 As part of the detailed evaluation of each Change Request, the Service Controller shall recommend approval or rejection of each Change Request.
- 7.4.7 The Service Controller shall document the grounds for its recommendation of approval or rejection of a Change Request and notify the relevant User making the Change Request and all Contract Managers accordingly of its recommendation in relation to the Change at least 5 Working Days before the next User Group meeting.
- 7.4.8 The User Group shall resolve at the User Group meeting after the Service Controller has made its recommendation either to approve or reject the Change Request. The Service Controller shall abide by the decision of the User Group in approving or rejecting its recommendation, or seeking further details or information from the Service Controller in relation to the Change Request unless the Change will result in:
- (A) a breach of the obligations of any Party to the Agreement;
  - (B) an inability to comply with directions from the Authority;
  - (C) an obligation on the Service Controller which is not technologically feasible to implement;
  - (D) the introduction of provisions dealing with matters not then dealt with or expressly contemplated by this Agreement;
  - (E) a breach of any Relevant Agreement and/or Instrument;
  - (F) any other legal or regulatory requirements being breached by a Party;
  - (G) an increase in Service Controller costs that is not recoverable by it under this Agreement;
  - (H) the continuing ability of the Service Controller to provide the Data Transfer Service being adversely affected; or
  - (I) an impairment of the integrity or availability of the Services.
- 7.4.9 The Service Controller shall have the right to make a Change, notwithstanding anything contained in this Clause 7.4, in an emergency, or where necessary to resolve Gateway Software or Gateway Hardware faults, errors or bugs, or reflect a change made to the Data Transfer Catalogue or the SPAAData Transfer Flows, and in each case if considered by the Service Controller to be appropriate, to embark on a detailed evaluation of a Change Request and if considered by the Service Controller to be appropriate to approve a Change Request without prior discussion at a User Group meeting where it arises from:
- (A) an impairment of the integrity of the Data Transfer Network;
  - (B) a substantial impairment of the Services in relation to the Service



- Levels and availability of the Data Transfer Network;
  - (C) breaches of the obligations of any Party to the Agreement;
  - (D) directions from the Authority;
  - (E) any other matter which the Service Controller in his reasonable opinion considers requires urgent attention;
  - (F) a Change to the Data Transfer Catalogue already agreed or determined under the terms of the Master Registration Agreement;  
or
  - (G) a Change to the SPAA Data Transfer Flows already agreed or determined under the terms of the Supply Point Administration Agreement.
- 7.4.10 The Service Controller shall not make a Change pursuant to Clause 7.4.9 in circumstances where it is reasonably possible to make such a Change pursuant to the other procedures set out in Clause 7.4. Except to the extent the Service Controller (acting reasonably) considers it impractical, it shall notify all Contract Managers of the proposed Change to be made pursuant to Clause 7.4.9 before making such Change. In considering whether to make any Change pursuant to Clause 7.4.9, the Service Controller shall use all reasonable endeavours to take account of the Settlement Requirements. The Service Controller shall report to the User Group any Change made pursuant to Clause 7.4.9 in respect of which the Service Controller did not both consult the User Group and notify the Contract Managers pursuant to Clause 7.
- 7.4.11 In consultation with the User Group, the Service Controller will plan and co-ordinate the implementation of each Change Request approved pursuant to this Clause 7.4, unless this is not reasonably practicable in relation to any proposed Change to be made pursuant to Clause 7.4.9.
- 7.4.12 For the purposes of Clause 7.4.11, the Service Controller shall provide all impacted Users with a detailed specification of the Change and consult with their Contract Manager regarding the timing of the implementation of the Change.
- 7.4.13 Following the consultation process in Clauses 7.4.11 and 7.4.12, the Service Controller shall publish the implementation timetable agreed with the User Group (or, in relation to any proposed Change to be made pursuant to Clause 7.4.9, determined by the Service Controller (acting reasonably)) which all Users and the Service Controller shall follow to implement the Change. A Change to the implementation timetable (other than a timetable determined by the Service Controller) as so published, shall be considered as a Change for the purposes of this Clause 7.4, and shall be construed accordingly.
- 7.4.14 Changes to the Data Transfer Network and Services will be tested by the Service Controller and/or a representative sample of Users in accordance with the testing procedures developed in consultation with the User Group.

- 7.4.15 The testing procedures shall include the following principles:
- (A) the Service Controller shall test any Change and any costs incurred by the Service Controller shall form part of the Service Controller's costs;
  - (B) Where a Change is approved by the User Group, or determined by the Authority, the User Group shall determine the principles of testing set out in Clause 7.4.14, including the nature and scope of testing as well as the way in which costs of such testing should be met. The User Group shall, where a representative sample of Users are required, invite such Users as it considers fair and appropriate to participate in such testing;
  - (C) in relation to a Change that impacts on an individual User the Service Controller and the relevant User shall agree the minimum level of testing required, which shall be conducted at that User's cost, unless otherwise agreed by the User Group; and
  - (D) the Service Controller shall not be obliged to implement and test procedures unless the way in which costs of such testing are to be made have been agreed or determined.

7.4.16 Testing of Changes shall be undertaken in accordance with the implementation timetable referred to in Clause 7.4.13.

7.4.17 Where a Change to be made has been approved pursuant to this Clause 7.4 and requires an amendment to this Agreement, other than an amendment to Schedule 8 or any Clause of this Agreement that permits any Party to refer a matter to the Authority for determination, the Parties each authorise and instruct the Service Controller to make such Change on its behalf and each undertake not to withdraw, qualify or revoke such authority or instruction at any time.

## **7.5 Change Disputes and Determination by the Authority**

7.5.1 Any User or the Service Controller may refer a Change Dispute at any time to the Authority for determination.

7.5.2 A User shall forthwith notify the Service Controller of any Change Dispute referred by it to the Authority and the Service Controller shall notify all Users of any Change Dispute so notified to it and any Change Dispute referred by it to the Authority.

7.5.3 The Service Controller shall as soon as reasonably practicable following notification by the Service Controller to all Users under Clause 7.5.2:

- (A) provide the Authority with copies of any information generated pursuant to Clauses 7.2 to 7.4;
- (B) other than in relation to a Change pursuant to Clauses 7.3.7 or 7.4.9, or unless otherwise impossible, suspend implementation of a Change or the Change Procedure pending determination by the Authority; and
- (C) provide such other information, material or assistance as may be

requested by the Authority in order to make a determination.

7.5.4 On receipt of the information outlined provided pursuant to Clauses 7.5.3(A) and 7.5.3(C), the Authority shall consider the Change Dispute and advise the Service Controller of his determination.

7.5.5 The Parties shall give effect to any determination made by the Authority in relation to any Change Dispute referred to him pursuant to this Clause 7.5. Each Party hereby authorises and instructs the Service Controller to make such amendments as are in the opinion of the Service Controller (acting reasonably) necessary to give effect to any such determination on its behalf and undertakes not to withdraw, qualify or revoke such authority or instruction at any time.

## 8. **CHARGING**

8.1 Each User agrees to pay all Charges incurred by it in relation to its connection to and termination of its use of the Data Transfer Network, in accordance with the Charging Principles.

8.2 Subject to Clauses 8.4 to 8.8 (inclusive), the Service Controller shall publish from time to time a schedule of Charges payable in relation to the Data Transfer Service. Such schedule shall include details of all Charges payable by Users, Electricity Suppliers and Gas Suppliers. Any such Charges will be set by the Service Controller acting reasonably, and in accordance with the Charging Principles.

8.3 The Charges payable by a User shall relate to the Gateway Option provided to the User, from time to time.

8.4 Not later than 30th September each year, the Service Controller shall use reasonable endeavours to circulate to the User Group and all Users indicative price information for the forthcoming calendar year which shall set out the price increase or otherwise to be applied to the Charges for the forthcoming calendar year.

8.5 Not less than 30 Working Days and no earlier than 60 Working Days prior to the commencement of each calendar year or prior to any mid-year review period (as applicable), the Service Controller shall use reasonable endeavours to circulate to the User Group and all Users a draft budget for the forthcoming calendar year or mid-year review period (as applicable), which shall set out the Service Controller's good faith estimate of the costs that are anticipated to be incurred pursuant to the Charging Principles during that period.

8.6 All draft budgets circulated by the Service Controller must be accompanied by a detailed work plan showing the activities and projects to which the relevant costs and expenses set out in the draft budget relate.

8.7 The Service Controller shall invite comments on its proposed draft budget from all Users which must be submitted by the Users to the Service Controller within 10 Working Days of the proposed draft budget's circulation.

8.8 The Service Controller shall arrange for publication of all comments received from Users regarding the draft budget and/or the accompanying work plan for review (subject at all times to the right of any User to make a referral to the Authority under Clause 8.9) by the User Group no less than 15 Working Days following their circulation.

- 8.9 A User may refer any Change to the Charges for determination by the Authority, as a Change Dispute, where the User believes the Charge is not consistent with the Charging Principles.
- 8.10 The Service Controller will arrange for the Charges to be audited for compliance with the Charging Principles pursuant to Clause 21.6 and shall publish to the User Group and all Users such auditor's report and any recommendations.
- 8.11 The Service Controller shall give effect to any determination made by the Authority in respect of any Change to the Charges pursuant to Clause 8.9.
- 8.12 Where any User believes that the Service Controller's forecast or actual administration costs have increased unreasonably, they may refer the matter for determination to the Authority as a Change Dispute.
- 8.13 This clause 8 shall not require the Service Provider to disclose any information in respect of which it owes a duty of confidence.

## 9. **BILLING AND PAYMENT**

- 9.1 The Service Controller shall forward the First Invoice to a New Party on preparation of its Local User Agreement for the Charges for the first Quarter in respect of the relevant Gateways.
- 9.2 Payment of the First Invoice shall be offset against the next issued invoice from the Service Controller in relation to the relevant User.
- 9.3 The next invoice to be issued to a User following the First Invoice shall be issued at the end of the calendar month following successful completion of the User Preconnection Acceptance Test of that User's Gateway or Gateways.
- 9.4 Within 15 Working Days after the end of each calendar month the Service Controller shall submit to the User an invoice specifying the payment due from the User under this Agreement in respect of Charges payable in that month and any VAT payable thereon. The invoice shall be sufficiently detailed or accompanied with any reasonable and available supporting information, so as to allow a User to verify the accuracy of the invoice.
- 9.5 Within 28 days ("Payment Period") of receipt of an invoice in accordance with Clauses 9.1, 9.3 and 9.4, the User shall pay to the Service Controller all sums due in respect of such invoice in pounds sterling either by electronic transfer of funds to such bank account (located in the United Kingdom) as is specified in the invoice or by cheque made payable to the Service Controller provided that cleared funds in pounds sterling are available in respect of the cheque within the Payment Period, in either case quoting the invoice number against which payment is made.
- 9.6 Where any sum included in an invoice submitted in accordance with Clauses 9.1, 9.3 and 9.4 is disputed by the User in good faith, the User shall within 5 Working Days of such invoice provide the Service Controller with a statement of the amount in dispute. The User shall only be entitled to withhold payment of such sums as are in dispute.
- 9.7 If a statement is served by the User pursuant to Clause 9.6, the Service Controller and the relevant User shall use reasonable endeavours to resolve the dispute in question within 20 Working Days of it arising, failing which the provisions of Clause

20 shall apply. Following resolution of the dispute, any amount agreed or determined to be payable by the User shall be paid within 10 Working Days after such agreement or determination or the due date of the invoice, whichever is later, and interest shall accrue on such amount from the date such amount was originally due until the date of payment at the rate of 3% per annum above the base rate during such period of Barclays Bank plc compounded annually.

- 9.8 If upon the request of the User, pursuant to Clause 20, it is determined that the Charges (including any variations thereof) paid by the User under this Agreement have not been calculated strictly in accordance with the Charging Principles, the Service Controller shall pay to the User an amount in respect of each charging period equal to the amount, if any, by which the User has been overcharged during such month or any relevant period. Any such correction shall not include any allowance for interest.
- 9.9 Should the User fail to make payment on or before the due date of any sum due in accordance with an invoice in respect of this Agreement, other than an amount in dispute pursuant to Clause 9.6, interest on the amount unpaid shall accrue from the date such amount was due until the date of payment at the rate of 3% per annum above the base rate during such period of Barclays Bank plc compounded annually.
- 9.10 Subject to Clause 9.6, all payments to be made by the User under this Agreement shall be made without any set-off or deduction in respect of any claims or disputes or otherwise but shall be without prejudice to any claims or rights which the User may have against the Service Controller.
- 9.11 Where the Service Controller or a User discovers an over or under charging or a calculation error in an invoice issued in the previous six months, the Service Controller shall adjust the Charges payable by a User in order to correct such error in any subsequent invoice or invoices. Any such correction shall not include any allowance for interest.

## 10. **CONTRACT MANAGEMENT**

- 10.1 Each New Party shall appoint a Contract Manager.
- 10.2 The Service Controller and each Contract Manager shall hold meetings at such venues and at such intervals as may be agreed between them from time to time.
- 10.3 Each New Party shall notify the Service Controller in accordance with the provisions of Clause 6 of the name and contact details of the Contract Manager appointed by it for the purposes of this Agreement from time to time.

## 11. **WARRANTIES**

- 11.1 Each User warrants to the Service Controller and other Users that:
- (A) it is a Market Participant;
  - (B) it shall at all times refer to and use the Data Transfer Handbook as an indication of requirements, responsibilities and Good Industry Practice;
  - (C) it shall perform its obligations under this Agreement with reasonable care and skill and in accordance with Good Industry Practice; and
  - (D) it shall obtain, maintain and comply with all necessary licences, registrations

or consents necessary to use the Data Transfer Service and will comply with all applicable legal requirements. To the extent that the Service Controller is notified by the Network Service Provider or any other external body of a new applicable regulatory requirement in respect of the Data Transfer Service, it shall notify all Users as soon as reasonably practicable.

11.2 The Service Controller warrants that:

- (A) it will perform its obligations under this Agreement with reasonable care and skill and in accordance with Good Industry Practice;
- (B) the Services will continue to function correctly as the date changes from 31 December 1999 to 1 January 2000 and at all dates after 1 January 2000;
- (C) it will obtain and comply with all necessary licences to perform the Data Transfer Services and the Services and will comply with all applicable legal requirements;
- (D) it has the right to use the Gateway Software and Documentation for the provision of the Data Transfer Service; and
- (E) its provision of the Services will not infringe any third party's intellectual property rights.

## 12. **LIMITATION OF LIABILITY**

12.1 Save as provided in this Clause 12 and save where any provision of this Agreement provides for an indemnity, no Party (the "**Party Liable**") nor any of its officers, employees or agents shall be liable to any other Party for loss arising from any breach of this Agreement other than for loss directly resulting from such breach and which at the date hereof was reasonably foreseeable as likely to occur in the ordinary course of events from such breach in respect of:

12.1.1 physical damage to the property of any other Party, its officers, employees or agents; and/or

12.1.2 the liability of such other Party to any other person for loss in respect of physical damage to the property of any person,

provided that the total liability of the Service Controller in respect of all losses suffered under this Agreement by all of the other Parties in any one calendar year shall not exceed £1,000,000 (one million pounds) in aggregate, and provided further that the total liability of each User in respect of all losses suffered under this Agreement, other than in respect of Charges incurred by that User in relation to the Data Transfer Service, in any one calendar year shall not exceed £100,000.

12.2 For the purposes of this Clause 12, a Party Liable shall be required to make payment in relation to a loss suffered, in the following circumstances and manner:

12.2.1 a Party who has suffered a loss in a calendar year shall notify the Party Liable by the 31st of March of the year following the relevant calendar year. All claims in respect of any losses incurred in a calendar year must be notified by 31st March of the year following the relevant calendar year and any loss not so notified shall not be recoverable;

12.2.2 where all of the losses notified by all Parties under Clause 12.2.1 are undisputed, and the aggregate of all such notified losses does not exceed the

relevant limit of liability contained in Clause 12.1, then payments to the full extent of the losses suffered shall be made by 30 April of the relevant calendar year;

- 12.2.3 where the aggregate of all of the losses notified by all Parties under Clause 12.2.1 does not exceed the relevant limit of liability contained in Clause 12.1, but any one or more losses so notified are disputed, then payments to the full extent of all the undisputed losses shall be payable by 30 April of the year following the relevant calendar year. All disputed losses shall be paid within one week of settlement of the relevant dispute or in accordance with the terms of any order of the court or binding arbitration award made in relation to such loss;
- 12.2.4 where all of the losses notified by all Parties under Clause 12.2.1 are undisputed and the aggregate of all of the losses exceeds the relevant limit of liability contained in Clause 12.1, then the amounts payable in respect of all losses shall be reduced pro-rata so that the aggregate of the amount payable in respect of all losses equals the relevant limit of liability contained in Clause 12.1;
- 12.2.5 subject to 12.2.6 where any of the losses notified under clause 12.1 are disputed and the aggregate of all such notified losses exceeds the relevant limit of liability contained in clause 12.1 then:
  - (a) the amounts payable in respect of all losses shall be reduced pro-rata so that the aggregate of the amount payable in respect of all losses (undisputed and disputed) equals the relevant limit of liability contained in clause 12.1.
  - (b) payment of the reduced amount calculated in accordance with Clause 12.2.5(a) applicable to all undisputed losses shall be made by 30 April of the year following the relevant calendar year.
  - (c) payment of the reduced amount calculated in accordance with 12.2.5(a) applicable to disputed losses shall be made within one week of settlement of the relevant dispute or in accordance with the terms of any order of the Court or binding arbitration award made in relation to such loss.
- 12.2.6 insofar as any loss notified under clause 12.1 is disputed and the settlement of the dispute results in, or the finding of the court or arbitrator determines that the quantum of the loss incurred differs from the quantum that was taken into account in calculating the pro-rating pursuant to 12.2.5(a) the pro-rating shall be recalculated and all amounts paid or received or payable or receivable under clauses 12.2.5(b) and 12.2.5(c) shall be adjusted accordingly and to the extent that any under or over payment has occurred the relevant Parties shall effect the necessary adjustment payments so as to ensure that all amounts paid correspond to the re-calculated pro-rated amounts.
- 12.3 Nothing in this Agreement shall exclude or limit the liability of the Party Liable for:
  - 12.3.1 death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents and the Party Liable shall indemnify

and keep indemnified all other Parties, their officers, employees or agents, from and against all such and any loss or liability which such other Parties may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents;

- 12.3.2 any liability for fraud or fraudulent misrepresentation by a Party; or
  - 12.3.3 any other liability to the extent which it cannot be lawfully excluded.
- 12.4 Without prejudice to Clause 12.1 and save where any provision of this Agreement provides for an indemnity no Party, nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to any other Party for:
- 12.4.1 any loss of profit, loss of revenue, loss of data, loss of use, loss of contract or loss of goodwill; or
  - 12.4.2 any indirect or consequential loss; or
  - 12.4.3 loss resulting from the liability of such other Party to any other person howsoever and whensoever arising save as provided in Clauses 12.1 and 12.2.
- 12.5 The rights and remedies provided by this Agreement to the Parties are exclusive and are not additional to, 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 any Party may possess in tort which shall include actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute, and releases the Party Liable, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein.
- 12.6 Save as otherwise expressly provided in this Agreement, this Clause 12 insofar as it excludes or limits liability shall override any other provision in this Agreement provided that nothing in this Clause 12 shall exclude or restrict or otherwise prejudice or affect any of:
- 12.6.1 the rights, powers, duties and obligations of any Party which are conferred or created by the Electricity Act, any licence granted pursuant to the Electricity Act, the Gas Act, any licence granted pursuant to the Gas Act, or by any other Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of royal prerogative, any enforceable community right within the meaning of section 2 of the European Communities Act 1972 or any other applicable law; or
  - 12.6.2 the rights, powers, duties and obligations of the Authority or the Secretary of State, howsoever arising.
- 12.7 Each of the sub-clauses of this Clause 12 shall:
- 12.7.1 be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise



unenforceable the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the Parties; and

12.7.2 survive termination of this Agreement.

12.8 Each Party hereby acknowledges and agrees that each other Party holds the benefit of Clauses 12.1 and 12.2 and 12.3 for itself and as trustee and agent for its officers, employees and agents.

12.9 Each Party hereby acknowledges and agrees that the provisions of this Clause 12 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof.

12.10 For the avoidance of doubt, nothing in this Clause 12 shall prevent or restrict any Party enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Agreement.

12.11 The Service Controller shall indemnify the Users and keep the Users fully and effectively indemnified against all costs, claims, expenses and liabilities of whatever nature arising directly out of or in connection with any claim that the normal use of the Gateway Software infringes the Intellectual Property Rights of a third party provided that:

(a) the User indemnified shall promptly notify the Service Controller in writing of all claims of infringement of which it has notice and not make any admissions without the Service Controller's prior written consent;

(b) the User indemnified, at the Service Controller's request and expense shall allow the Service Controller to conduct and settle all negotiations and litigation resulting from any such claim;

(c) the conduct by the Service Controller of any such negotiations or litigation referred to in paragraph (b) above shall be conditional upon the Service Controller taking over such conduct within a reasonable time after being notified of the claim in question; and

(d) the User indemnified shall, at the request of the Service Controller, afford all reasonable assistance with such negotiations or litigation, and shall be reimbursed by the Service Controller for any reasonable expenses incurred.

12.12 Without prejudice to the Service Controller's obligations under this Agreement, if the Service Controller's or User's normal use of the Gateway Software is held by a court of competent jurisdiction to constitute an infringement of a third party's Intellectual Property Rights or if the Service Controller is advised by appropriately experienced and qualified leading counsel that such use is likely to constitute such an infringement, then the Service Controller shall promptly use reasonable endeavours to:

(a) procure for the Users the right to continue using the Gateway Software; or

(b) modify or replace that part of the Gateway Software which is, or is likely to constitute, an infringement (without detracting from its overall performance) so as to avoid the infringement, in accordance with the provisions of Clause 7.4.

12.13 For the avoidance of doubt, the Service Controller shall not be liable for any loss

caused to any Party as a result of any inaccuracy in the information contained in the Documentation, Data Transfer Catalogue, SPAA Data Transfer Flows, Data Transfer Service Name and Address Book or Data Transfer Handbook.

### 13. **TERMINATION**

- 13.1 A New Party shall cease to be a Party to this Agreement in accordance with Clause 4.3, and this Agreement shall terminate in respect of that Party.
- 13.2 A User shall cease to be a Party to this Agreement upon:
  - 13.2.1 Disconnection pursuant to Clause 15 and the Disconnection Procedures; or
  - 13.2.2 voluntarily terminating pursuant to the Disconnection Procedures by giving the Service Controller 20 Working Days' notice in writing (or such lesser period as may be agreed by the User and the Service Controller in writing) of its intention to cease being a Party to this Agreement.
- 13.3 The Service Controller shall be entitled to terminate this Agreement in relation to all Parties by giving 20 Working Days' notice in writing to all Parties where the Service Controller has demonstrated to the Authority and the Authority has confirmed in writing to the Service Controller that there is no continuing reasonable need for the Data Transfer Service or any replacement service.
- 13.4 Following termination of this Agreement in relation to any User or all Users, Clauses 12, 13.7, 17, 20, 22 and 23 shall remain in full force and effect as regards that User or Users.
- 13.5 On termination of this Agreement in relation to any User the Service Controller may, at its discretion, offer to sell to that User its Gateway Hardware. Such offer shall be on no less favourable terms than those available to the Service Controller in its agreement with the Network Service Provider.
- 13.6 On termination of this Agreement in respect of a User pursuant to Clause 13 the Service Controller shall issue an invoice in respect of any outstanding Charges, and such invoice shall be payable in accordance with Clause 9. Such Charges shall include any Termination Charges relating to any Gateway.
- 13.7 Termination of this Agreement shall be without prejudice to the accrued rights and liabilities of the Parties prior to the date of termination and shall not affect any continuing obligations of any Party under this Agreement.

### 14. **EVENTS OF DEFAULT**

- 14.1 It shall be an Event of Default if:
  - 14.1.1 a User is in material or persistent breach of any of the material terms or conditions of this Agreement and if the breach is or was capable of remedy, it fails to remedy the breach within 20 Working Days of receipt of a notice from the Service Controller, giving full details of the breach, requiring the relevant User to remedy the breach and stating that failure to remedy the breach may give rise to termination and Disconnection;
  - 14.1.2 a User is in breach of Clause 5.3.22;

- 14.1.3 a User passes a resolution for its winding-up, or a court of competent jurisdiction makes an order for the winding-up or dissolution of the User;
  - 14.1.4 an administration order is made in relation to a User or a receiver is appointed over, or an encumbrancer takes possession of or sells any substantial part or parts of the User's assets, rights or revenues;
  - 14.1.5 a User makes an arrangement or composition with its creditors generally or makes an application to a court for the protection from its creditors generally;
  - 14.1.6 a User is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, but as if in that Section the sum of £10,000 is substituted for the sum of £750; or
  - 14.1.7 without prejudice to Clause 16, a circumstance of Force Majeure affecting the performance of a User of substantially all of its obligations under this Agreement continues for more than 180 days;
  - 14.1.8 a User ceases to be a Market Participant; or
  - 14.1.9 in circumstances where a User has entered into a Back to Back Agreement, such agreement has terminated without a replacement or substituted Back to Back Agreement in respect of those Gateways. For the avoidance of doubt, it shall not be an Event of Default for the purposes of this Clause 14.1.9 where a Back to Back Agreement has terminated and the User will undertake the functions that had been subcontracted under the Back to Back Agreement.
- 14.2 Where an Event of Default occurs in relation to a User the provisions of Clause 15 shall apply.

## 15. **DISCONNECTION**

- 15.1 The Service Controller may elect to commence the Disconnection Procedures in order to Suspend a Gateway without notice where it reasonably believes it to be necessary to so do in order to preserve the integrity of the Data Transfer Network.
- 15.2 The Service Controller may elect to commence the Disconnection Procedures in order to Disconnect any Gateway or Gateways of a User where:
  - 15.2.1 that User has not paid all outstanding Charges within 45 Working Days of its receipt of an invoice from the Service Controller, raised in accordance with Clause 9, in any given invoiced period;
  - 15.2.2 there has been an Event of Default in respect of that User;
  - 15.2.3 there is or has been, in the reasonable opinion of the Service Controller, a Breach of Security or potential Breach of Security, or other threat to the integrity of the Data Transfer Service; or
  - 15.2.4 in the reasonable opinion of the Service Controller such action is necessary in order to preserve or maintain the Service Controller's continuing ability to provide the Data Transfer Service.
- 15.3 If a User and one or more Sharing User use the same Gateway pursuant to an

authorisation granted by the Service Controller under paragraph 1.10 of Schedule 5 or clause 4.2 of the Sharing User's Local User Agreement, each such User acknowledges and agrees that, if the Service Controller Suspends or Disconnects such Gateway in accordance with this Agreement in respect of one such User, the Gateway may (at the Service Controller's discretion) be Suspended or Disconnected for all such Users.

- 15.4 Not used.
- 15.5 In certain circumstances the Service Controller may, pursuant to the Disconnection Procedures, require the payment of a deposit or bond or giving of some other assurance by the User. Payment of a bond or deposit shall only be required for default pursuant to Clause 15.2.1 where there have been three separate occasions of such default within any 36 consecutive calendar months. Where the Service Controller is not reasonably satisfied with the assurances provided or such assurance, or payment, is not provided within the period specified in the Disconnection Procedure the Service Controller may proceed to Disconnect the User without further notice.
- 15.6 Where the Service Controller has Suspended a User's Gateway in accordance with this Clause 15 and the Disconnection Procedure and the Dispute Resolution Procedure concludes in favour of the User or the User remedies the relevant Event of Default prior to the date of Disconnection included in any notice from the Service Controller's notice issued pursuant to Schedule 5, the Service Controller shall within 1 Working Day of final determination of the matter or within 1 Working Day of the User remedying the Event of Default enable Messages to reach the User via the Data Transfer Network or Reconnect the User as appropriate. The Service Controller and Users agree that they shall follow the Disconnection Procedures in this respect.
- 15.7 Where a User notifies the Service Controller of its intention to cease to be a Party to this Agreement pursuant to Clause 13.2.2, the Service Controller and that User shall comply with the Disconnection Procedures.
- 15.8 For the avoidance of doubt, where Suspension or Disconnection occurs as a result of Force Majeure, no bond or assurance shall be required by the Service Controller in relation to a User's Reconnection.

## 16. **FORCE MAJEURE**

If any Party (the "**Non-Performing Party**") shall be unable to carry out any of its obligations under this Agreement due to a circumstance of Force Majeure this Agreement and any relevant Local User Agreement shall remain in effect but:

- (A) the Non-Performing Party's obligations under this Agreement;
- (B) the obligations of each of the other Parties owed to the Non-Performing Party under this Agreement and/or any relevant Local User Agreement as the case may be; and
- (C) any other obligations of such other Parties under this Agreement owed between themselves which the relevant Party is unable to carry out directly as a result of the suspension of the Non-Performing Party's obligations;

shall be suspended for a period equal to the circumstance of Force Majeure provided

that:

- (i) the Non-Performing Party gives the other Parties prompt notice describing the circumstances of Force Majeure including the nature of the occurrence and its expected duration and where reasonably practicable continues to furnish regular reports with respect thereto during the period of Force Majeure;
- (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the circumstance of Force Majeure;
- (iii) no obligations of any Party that arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure;
- (iv) the Non-Performing Party uses all reasonable efforts to remedy its inability to perform as quickly as possible; and
- (v) immediately after the end of the circumstance of Force Majeure the Non-Performing Party notifies the other Parties in writing of the same and resumes performance of its obligations under this Agreement.

## 17. CONFIDENTIALITY

- 17.1 Save where a New Party has given its consent in writing, the Service Controller undertakes to each New Party not to use, otherwise than as required for the purpose of performing its obligations under this Agreement or as required by any law or regulation, any confidential information obtained as a result of this Agreement and not to disclose any such confidential information to any third party save as permitted by Clause 17.3.
- 17.2 Save where the Service Controller has given its consent in writing, each New Party undertakes to the Service Controller not to use, otherwise than as required for the purpose of performing its obligations under this Agreement or as required by any law or regulation, any confidential information obtained as a result of this Agreement and not to disclose any such confidential information to any third party save as permitted by Clause 17.3.
- 17.3 Confidential information may be disclosed by any Party (the "**Disclosing Party**"):
- 17.3.1 to such of the employees, agents and contractors of the Disclosing Party as may be required to be informed thereof for the effective performance by the Disclosing Party of its obligations under this Agreement provided that the Disclosing Party takes all reasonable steps to ensure that the recipient of the confidential information does not use the same for any purpose other than that for which it was provided and does not disclose the same otherwise than in accordance with the provisions of this Clause 17.3;
  - 17.3.2 to DAS Customers in relation to Data Analysis Services provided in accordance with Schedule 9;
  - 17.3.3 to the Disclosing Party's legal, financial and other professional advisers provided that the Disclosing Party takes all reasonable steps to ensure that the recipient of the confidential information does not use the same for any purpose other than that for which it was provided and does not disclose the

- same otherwise than in accordance with the provisions of this Clause 17.3;
- 17.3.4 to the Authority;
- 17.3.5 to the extent that the confidential information is in the public domain otherwise than by breach of this Agreement by the Disclosing Party;
- 17.3.6 in circumstances where the Disclosing Party is required or permitted to make disclosure:
- (A) in compliance with any requirement of a Competent Authority;
  - (B) in compliance with the provisions of any Relevant Agreement and/or Instrument;
  - (C) in compliance with any other law or regulation;
  - (D) to the Settlement Auditor and/or BSC Auditor;
  - (E) in response to a requirement of any Stock Exchange or regulatory authority or the Panel on Takeovers and Mergers; or
  - (F) pursuant to the rules of the London Court of International Arbitration or any judicial or other arbitral process or tribunal of competent jurisdiction.
- 17.4 For the purposes of this Agreement, "**confidential information**" includes:
- 17.4.1 any information comprising, or relating to, the name or address of any consumer of electricity or gas, details of the premises at which that electricity or gas is consumed, information as to that consumer's usage of electricity or gas, information as to the prices that are, have been or will be paid for electricity or gas supplied, information as to amounts that are, have been or will be owed by that consumer for electricity or gas or as to the payment of any such amounts;
  - 17.4.2 any information relating to the business or activities of any Party; and
  - 17.4.3 any information relating to the business or activities of any party to a Back to Back Agreement.
- 17.5 The Parties acknowledge that confidentiality provisions of other Business Agreements entered into between them, the BSC and the Supply Point Administration Agreement apply to the contents of Messages transmitted under this Agreement, and that nothing in this Clause 17 shall alter, reduce or remove the confidentiality obligations imposed under those Business Agreements, the BSC or the Supply Point Administration Agreement.
- 17.6 The Service Controller shall use its reasonable endeavours to maintain the confidentiality of information placed on the Data Transfer Network by each User by using its reasonable endeavours to ensure that:
- 17.6.1 any messages placed on the Data Transfer Network are only delivered to the destination included in the message;
  - 17.6.2 no unauthorised messages are allowed onto the Data Transfer Network; and
  - 17.6.3 the integrity of messages held on the Gateways and in transit over the Data Transfer Network is maintained.

- 17.7 Subject always to Clause 18 and Data Protection Legislation, each New Party hereby consents to the Service Controller using any confidential information that it places on the Data Transfer Network for the purposes of problem diagnosis and for management and audit. The Service Controller hereby agrees that where such information is no longer required it shall destroy all copies of such information.
- 17.8 For the avoidance of doubt, the Service Controller reserves its right to publish any information other than confidential information relating to each New Party provided that it has given the affected New Party reasonable prior notice thereof.
- 17.9 Each Party shall indemnify any other Party against any loss or damage which that Party may sustain or incur as a result of any breach by that Party of the provisions of this Clause 17.

## 18. DATA PROTECTION

- 18.1 The Parties acknowledge and agree that Messages transmitted under this Agreement may contain the Personal Data identifying End Consumers and the Service Controller may Process any such Personal Data for the purpose of: (i) providing the Services and the Data Analysis Services to Users; and (ii) the Data Analysis Services to DAS Customers until the termination of the Agreement (the "**Permitted Purpose**").
- 18.2 With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge and agree that:
- 18.2.1 a New Party is a Data Controller and the Services Controller is a Data Processor; or
- 18.2.2 a New Party is a Data Processor (processing Personal Data on behalf of a Data Controller) and the Service Controller is a Data Sub-processor,
- in relation to any Personal Data contained in Messages Processed as part of the Data Transfer Service under this Agreement. To the extent that a New Party Processes Personal Data contained in Messages on behalf of a Data Controller, the relevant parties shall enter into a direct 'controller-processor' agreement with each another and any such Processing shall be subject to that direct agreement and not this Agreement.
- 18.3 Each Party shall at all times comply with the provisions and obligations imposed by the Data Protection Legislation as amended from time to time, and the data protection principles set out in the Data Protection Legislation in storing and Processing Personal Data.
- 18.4 Each New Party warrants that it will effect and undertakes that it will during the term of this Agreement effect and maintain all such registrations as it is required to effect and maintain under the Data Protection Legislation to enable it lawfully to perform the obligations imposed on it by this Agreement. Each New Party undertakes to comply with the Data Protection Legislation in the performance of this Agreement.
- 18.5 Each New Party undertakes that it will provide, or if the New Party is a Data Processor pursuant to Clause 18.2.2 it shall ensure that the relevant Data Controller provides, all necessary notices to the End Consumer to whom Personal Data under this Agreement relates and, in any case where Personal Data to be disclosed under this Agreement may lawfully be disclosed only with the prior consent of the End Consumer to whom the Personal Data relates, it will obtain, or ensure that the

relevant Data Controller obtains, such prior consent or otherwise take steps to legitimise the Processing of Personal Data so as to enable it or the Service Controller as the case may be promptly to perform its obligations under this Agreement in compliance with the Data Protection Legislation without needing any further consent, approval or authorisation.

- 18.6 The Service Controller undertakes that it will during the term of this Agreement
- 18.6.1 use Personal Data only for the Permitted Purpose and/or as otherwise instructed in writing from time to time, and shall not Process such Personal Data for any other purpose;
  - 18.6.2 implement and ensure compliance with appropriate technical and organisational measures to protect the security of Personal Data Processed by the Service Controller in performance of its obligations under this Agreement, and to protect Personal Data against unauthorised or unlawful Processing, accidental or unlawful destruction and damage or accidental loss, alteration, unauthorised disclosure, or access;
  - 18.6.3 take reasonable steps to ensure the reliability and trustworthiness of employees or agents which have access to any Personal Data, and ensure that such employees or agents are aware of and comply with the Service Controller's obligations under Clauses 17 (Confidentiality) and 18 (Data Protection);
  - 18.6.4 not disclose Personal Data outside of its organisation except to:
    - (A) a Data Sub-processor or a Data Sub-sub-processor as is necessary to deliver the Services and/or the Data Analysis Services, subject to Clause 18.6.9;
    - (B) a third party where such disclosure of Personal Data is required by law; or
    - (C) a DAS Customer, subject to Paragraph 4.3.3 of Schedule 9 (*Data Analysis Services*);
  - 18.6.5 promptly notify a New Party if it receives in respect of that New Party:
    - (A) a request from a data subject relating to the New Party or relevant Data Controller's obligations under the Data Protection Legislation;
    - (B) any communication from any competent data protection or privacy authority; or
    - (C) a request from any third party for disclosure of Personal Data where compliance with such request is required by law.
  - 18.6.6 notify a New Party without undue delay and in any event within 24 hours by written notice with all relevant details reasonably available of any actual or suspected Personal Data breach, breach of security or breach of this



Agreement in relation to Personal Data including unauthorised or unlawful access or Processing of, or accidental loss, destruction or damage of any Personal Data to the extent that a New Party is affected by such breach, and keep the New Party properly and regularly informed consequently and provide the New Party with all co-operation and information reasonably required by the New Party in relation to the Personal Data breach, including in relation to advising End Consumers of a Personal Data breach;

- 18.6.7 on termination of this Agreement, destroy all copies of Messages or other files containing Personal Data;
- 18.6.8 make available to each New Party and any competent data protection or privacy authority upon request all necessary information regarding the Service Controller's data processing activities and information reasonably required to demonstrate the Service Controller's compliance with this Clause 18 and allow a New Party to audit the Service Controller's compliance by requesting information about and inspecting the premises, facilities and equipment used by the Service Controller to Process Personal Data, subject to reasonable prior notice;
- 18.6.9 assist a New Party with undertaking an assessment of the impact of processing of the Personal Data, and with any consultations with any regulatory authority in connection with the Personal Data, if and to the extent any such assessment or consultation is required to be carried out under Data Protection Legislation;
- 18.6.10 to the extent that the Service Controller engages any Data Sub-processors or Data Sub-sub-processors (and each New Party consents to the Service Controller engaging such Sub-processors), the Service Controller shall:
  - (A) maintain a list of sub-processors which it shall make available to each New Party from time to time;
  - (B) notify each New Party fourteen (14) days in advance before engaging any sub-processor not included in such list and if a New Party wishes to object to the engagement of a new sub-processor on reasonable grounds that the new sub-processor is unlikely to be able to comply with the terms of this Agreement, then the Service Controller shall take all reasonable steps to address such New Party's reasonable objections, providing a reasonable written explanation of the steps taken and will not engage the proposed sub-processor if the Service Controller considers that it will be potentially detrimental to any or all of the New Parties to do so; and
  - (C) ensure that there is a written agreement in place with such sub-processor which contains terms and conditions which require the sub-processor only to Process Personal Data in accordance with the Permitted Purpose and comply with obligations equivalent to those

set out in this Clause 18,

and the Service Controller shall be liable for the Processing of Personal Data by each of its Sub-processors as if such Processing were undertaken by the Service Controller; and

18.6.11 not transfer Personal Data to a Restricted Country without ensuring that there is a lawful basis for the transfer, such as ensuring that the recipient of the Personal Data is subject to a data transfer agreement containing the then current standard contractual clauses for the transfer of Personal Data to Restricted Countries, as approved by the European Commission (or following Brexit, an equivalent body or replacement in the UK, if any).

18.7 Each Party agrees to indemnify each other Party in respect of any unauthorised disclosure of Personal Data.

18.8 Each Party shall indemnify any other Party against any loss or damage which that Party may sustain or incur as a result of any breach by that Party of the provisions of this Clause 18.

## 19. **SUBCONTRACTING**

19.1 Subject to Clause 19.2, any Party may subcontract or delegate the performance of all or any of its rights and/or obligations under this Agreement to any third party, but shall at all times remain liable to the other Parties in relation to all subcontracted or delegated rights and/or obligations, provided that the Gateway shall at all times remain at that third party's premises.

19.2 Where a Party has sub-contracted some or all of its rights and/or obligations under this Agreement, and the Gateways which are to be supplied to the Party are to be located at the subcontractor's premises, the Gateway shall not be installed unless the Party has entered into a Back-to-Back Agreement with that sub-contractor.

19.3 The Service Controller shall at all times be entitled to receive an executed copy of such Back to Back Agreement. Where any Back to Back Agreement is contained within or forms part of any other agreement, the Service Controller shall be entitled to receive a certified true copy of the relevant parts of that agreement only.

19.4 Each Party, other than the Service Controller, agrees that it shall not enter into any contract or arrangement directly with any sub-contractor of the Service Controller relating to the provision of services using any facilities or services which form part of the Data Transfer Network, without the prior written approval of the Service Controller, such approval shall not be unreasonably withheld or delayed.

19.5 The Service Controller shall comply with its obligations set out in Clause 18.6.10 if it subcontracts any of its obligations under this Agreement to a Data Sub-processor to Process Personal Data on the Service Controller's behalf.

19.6 A Party shall not give consent under a Back to Back Agreement, in relation to any matter where the consent of the Service Controller is required under this Agreement, without first obtaining the Service Controller's consent, which consent shall not be unreasonably withheld or delayed.

19.7 A User shall not be entitled to allow another Market Participant to use its Gateway unless that party has acceded to this Agreement and enters into a Local User

Agreement in relation to that Gateway.

20. **DISPUTES**

- 20.1 Subject to Clause 7.5, any dispute or claim arising out of or in connection with this Agreement or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes) shall initially be referred to the Service Controller and the relevant New Party's Contract Manager who shall attempt to resolve the matter. If not resolved within 10 Working Days of being so referred, then subject to any contrary provision of the Electricity Act, the Gas Act, any licence issued pursuant to the Electricity Act or the Gas Act or any other applicable legislation, rules or regulations, or the rights, powers, duties and obligations of the Authority or Secretary of State thereunder, the matter shall be and is hereby referred to arbitration pursuant to the arbitration rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference into this Clause. The seat, or legal place of arbitration, shall be London and the language to be used in the arbitration shall be English.
- 20.2 Whatever the nationality residence or domicile of either Party and wherever the dispute or difference or any part thereof arose the law of England shall be the proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the seat of any such arbitration shall be England and Wales and the provision of the Arbitration Act 1996 shall apply to any such arbitration wherever the same or any part of it shall be conducted.
- 20.3 Subject always to Clause 20.5, if any person (the "**Claimant**") brings any legal proceedings in any court against any Party (the "**Defendant Party**") and the Defendant Party wishes to make a third party claim (as defined in Clause 20.4) against another which would but for this Clause 20.3 have been a dispute or difference referred to arbitration by virtue of Clause 20.1 then, the provisions of Clause 20.1 shall not apply and the court in which the legal proceedings have been commenced shall hear and completely determine and adjudicate upon the legal proceedings and the third party claim not only between the Claimant and the Defendant Party but also between either or both of them and any other party whether by way of third party proceedings or otherwise as may be ordered by the court.
- 20.4 For the purposes of this Clause 20 "**third party claim**" shall mean:
- 20.4.1 any claim by a Defendant Party against a party (whether or not already a party to the legal proceedings) for any contribution or indemnity; or
- 20.4.2 any claim by a Defendant Party against such other party for any relief or remedy relating to or connected with the subject matter of the legal proceedings and substantially the same as some relief or remedy claimed by the Claimant; or
- 20.4.3 any requirement by a Defendant Party that any question or issue relating to or connected with the subject matter of the legal proceedings should be determined not only as between the Claimant and the Defendant Party but also as between either or both of them and the other party (whether or not already a part to the legal proceedings).
- 20.5 Clause 20.3 shall apply only if at the time the legal proceedings are commenced no

arbitration has been commenced between the Defendant Party and the Claimant raising or involving the same or substantially the same issues as would be raised by or involved in the third party claim. The tribunal in any arbitration which has been commenced prior to the commencement of legal proceedings shall determine the question, in the event of dispute, whether the issues raised or involved are the same or substantially the same.

## **21. MISCELLANEOUS**

### **21.1 Entire Agreement**

21.1.1 This Agreement and any document referred to herein represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereof and without prejudice to the generality of the foregoing excludes any warranty, condition or other undertaking implied at law or by custom.

21.1.2 Each Party confirms that, except as provided in this Agreement and without prejudice to any liability for fraudulent misrepresentation, no Party has relied on any representation, warranty or undertaking which is not contained in this Agreement or any document referred to herein.

### **21.2 Severability**

If any provision of this Agreement shall be held to be invalid or unenforceable by a judgment or decision of any court of competent jurisdiction or any Competent Authority whose decisions shall have the force of law binding on the Parties, the same shall be deemed to be severable and the remainder of this Agreement shall remain valid and enforceable to the fullest extent permitted by law. In any such case, the Parties shall use all reasonable endeavours to negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid or unenforceable provision in order to give effect, so far as practicable, to the spirit of this Agreement.

### **21.3 Waiver**

The failure by any Party to exercise, or the delay by any Party in exercising, any right, power, privilege or remedy provided by this Agreement or by law shall not constitute a waiver thereof nor of any other right, power, privilege or remedy. No single or partial exercise of any such right, power, privilege or remedy shall preclude any further exercise thereof or the exercise of any other right, power, privilege or remedy.

### **21.4 Compliance with Other Requirements**

Each of the Parties undertakes to comply with the Relevant Agreements and/or Instruments to the extent necessary to enable each Party to perform its obligations under this Agreement.

### **21.5 Notices**

21.5.1 Unless otherwise stated in this Agreement, any notice, request or other

communication to be made by one Party to another under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first class post, courier or fax to that other Party (marked for the attention of the relevant Contract Manager) to the addresses included for that Party in the Data Transfer Service Name and Address Book.

21.5.2 Unless otherwise stated in this Agreement, a notice, request or other communication under or in connection with this Agreement shall be deemed received:

- (A) if delivered personally, when left at the address referred to above; or
- (B) if sent by post, 2 Working Days after the date of posting by First Class Post; or

Any such notice, request or other communication sent by facsimile shall be effective only when received by the Party to whom it is sent.

## 21.6 **Audit**

21.6.1 The Service Controller shall from time to time appoint such persons as it considers appropriate to act as an independent auditor (the "**DTN Auditor**") to carry out an audit of the processes associated with the Data Transfer Service including the correct application of the Charging Principles. The scope and frequency of each such audit shall be determined by the Service Controller in consultation with the User Group. The Service Controller shall provide each User with a copy of any report or recommendations prepared by the DTN Auditor.

21.6.2 The terms of engagement shall be as determined from time to time by the Service Controller. The Service Controller shall have the right at any time and from time to time to remove from office as DTN Auditor any person.

21.6.3 In carrying out an audit pursuant to Clause 21.6.1 the DTN Auditor shall be requested to:

- (A) report any material concerns with respect to matters that are the subject of the audit;
- (B) make such recommendations as to changes in the procedures and/or audit coverage as the DTN Auditor considers appropriate; and
- (C) provide appropriate security and confidentiality undertakings in respect of any access to a Party's equipment, personnel, premises and records.

21.6.4 Each User shall, upon reasonable notice being given, permit the DTN Auditor such access to its equipment, personnel, premises and records as is necessary to enable the DTN Auditor to carry out its audit.

21.6.5 The Service Controller shall provide all reasonable assistance or access to the Settlements Auditors, the BSC Auditor and any auditors appointed pursuant to the terms of the Supply Point Administration Agreement in the performance of their audit functions under the relevant Settlement Agreement, Balancing and Settlement Code or Supply Point Administration Agreement, as applicable.

## 21.7 **Business Plans**

21.7.1 The Service Controller shall publish its annual business plans, including estimates of all Service Controller costs for the following twelve months, to the User Group and all Users.

21.7.2 The business plans may be reviewed by the User Group, but will not be subject to any approval by the User Group.

## 21.8 **Intellectual Property Rights**

Notwithstanding anything contained in this Agreement, no Intellectual Property Rights shall vest in any Party. Each Party must obtain the Service Controller's written consent or approval before copying any Gateway Software from the Gateway or Network Hub or any Documentation.

## 22. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

No term of this Agreement is enforceable under the Contract (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

## 23. **GOVERNING LAW AND JURISDICTION**

23.1 This Agreement is governed by, and shall be construed in accordance with, English law.

23.2 Each Party agrees that without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other Party notice) may be served on any Party by being delivered to or left for that Party at its address for service of notices under Clause 21.5 and each Party undertakes to maintain such an address at all times in the United Kingdom and to notify the Service Controller, who shall advise all other Parties, in advance of any change from time to time, of the details of such address in the manner prescribed in Clause 21.5.

23.3 Subject to Clause 20, the Parties irrevocably agree that the Courts of England shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this Agreement and any matter arising therefrom (including non-contractual disputes and claims).

23.4 Each Party irrevocably waives any right it may have to object to an action being brought in those Courts, to claim that the action has been brought in an inconvenient forum, or to claim that those Courts do not have jurisdiction.

## 24. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts of which when executed and delivered shall be an original, but all the counterparts together shall constitute the same document.

IN WITNESS whereof the parties have executed this Agreement on the day and year first hereinbefore mentioned.

**SIGNED BY** .....(print name)

duly authorised on behalf of **EASTERN  
GROUP PLC**

.....

**SIGNED BY** .....(print name)

duly authorised on behalf of **EAST  
MIDLANDS ELECTRICITY PLC**

.....

**SIGNED BY** .....(print name)

duly authorised on behalf of **LONDON  
ELECTRICITY PLC**

.....

**SIGNED BY** .....(print name)

duly authorised on behalf of **MANWEB  
PLC**

.....

**SIGNED BY** .....(print name)

duly authorised on behalf of **MIDLANDS  
ELECTRICITY PLC**

.....

**SIGNED BY** .....(print name)

duly authorised on behalf of **NORTHERN  
ELECTRIC PLC**

.....

**SIGNED BY** .....(print name)

duly authorised on behalf of **NORWEB PLC**

.....

**SIGNED BY** .....(print name)  
duly authorised on behalf of **SCOTTISH  
HYDRO-ELECTRIC PLC**

.....  
**SIGNED BY** .....(print name)  
duly authorised on behalf of **SCOTTISH  
POWER PLC**

.....  
**SIGNED BY** .....(print name)  
duly authorised on behalf of **SEEBOARD  
PLC**

.....  
**SIGNED BY** .....(print name)  
duly authorised on behalf of **SOUTHERN  
ELECTRIC PLC**

.....  
**SIGNED BY** .....(print name)  
duly authorised on behalf of **SOUTH  
WALES ELECTRICITY PLC**

.....  
**SIGNED BY** .....(print name)  
duly authorised on behalf of **SOUTH  
WESTERN ELECTRICITY PLC**

.....  
**SIGNED BY** .....(print name)  
duly authorised on behalf of **YORKSHIRE  
ELECTRICITY GROUP PLC**

.....



**SIGNED BY .....**(print name)  
duly authorised on behalf of **PRECIS**  
**(1487) LIMITED (THE SERVICE**  
**CONTROLLER)**

## **SCHEDULE 1**

**Persons, other than the Service Controller, who execute this Agreement**

- (1) EASTERN GROUP PLC**
- (2) EAST MIDLANDS ELECTRICITY PLC**
- (3) LONDON ELECTRICITY PLC**
- (4) MANWEB PLC**
- (5) MIDLANDS ELECTRICITY PLC**
- (6) NORTHERN ELECTRIC PLC**
- (7) NORWEB PLC**
- (8) SCOTTISH HYDRO ELECTRIC PLC**
- (9) SCOTTISH POWER PLC**
- (10) SEEBOARD PLC**
- (11) SOUTHERN ELECTRIC PLC**
- (12) SOUTH WALES ELECTRICITY PLC**
- (13) SOUTH WESTERN ELECTRICITY PLC**
- (14) YORKSHIRE ELECTRICITY GROUP PLC**

## SCHEDULE 2

### Form of Accession Agreement

**THIS SUPPLEMENTAL AGREEMENT** is made on [ ]

**BETWEEN:**

- (1) [ ], a company incorporated [with limited liability] under the laws of [ ] [(registered number [ ])] and having its [registered] [principal] office at [ ] (the "**Applicant**"); and
- (2) ElectraLink Limited (the "**Service Controller**") on behalf of all the Parties to the Data Transfer Service Agreement referred to below.

**WHEREAS:**

- A) by an agreement dated [ ] made between (1) The Service Controller and (2) the persons whose name, registered numbers and registered or principal offices are set out in Schedule 1 therein (as amended, varied, supplemented, modified or suspended), (the "**Data Transfer Service Agreement**" or "**DTSA**") the Parties thereto agreed to implement operate and support a service known as the Data Transfer Service; and
- B) the Applicant has requested that it be admitted as a New Party pursuant to Clause 3 of the Data Transfer Service Agreement and each of the Parties to that agreement have authorised the Service Controller to enter into this Agreement, pursuant to Clause 3.4 of the DTSA.

**NOW IT IS HEREBY AGREED** as follows:

1. Unless the context otherwise requires, words and expressions defined in the Data Transfer Service Agreement shall bear the same meanings respectively when used herein.
2. The Service Controller (acting on behalf of each of the Parties) hereby admits the Applicant as a New Party under the Data Transfer Service Agreement on the terms and conditions hereof and with effect from [*insert effective date of admission*].
3. The Applicant hereby accepts its admission as a New Party and undertakes with the Service Controller (acting on behalf of each of the Parties) to perform and to be bound by the terms and conditions of the Data Transfer Service Agreement as a New Party as from the [*insert effective date of admission*] ("**Accession Date**").
4. For all purposes in connection with the Data Transfer Service Agreement the Applicant shall as from the Accession Date be treated as if it had been a signatory of the Data Transfer Service Agreement, and as if this Agreement were part of the Data Transfer Service Agreement, and the rights and obligations of the Parties and the Applicant shall be construed accordingly.
5. This Accession Agreement and the Data Transfer Service Agreement shall be read and construed as one document and references in the Data Transfer Service Agreement to the Data Transfer Service Agreement (howsoever expressed) shall be read and construed as references to the Data Transfer Service Agreement and this

Accession Agreement.

6. This Agreement shall be governed by and construed in all respects in accordance with the provisions of the Data Transfer Service Agreement which shall also apply to this Agreement.
7. No term of this Agreement is enforceable under the Contract (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

**AS WITNESS** the hands of the duly authorised representatives of the Applicant and the Service Controller hereto the day and year first above written

Applicant

By:

Notice details

Address:

Facsimile number:

Attention:

[The Service Controller]

(for and on behalf of each of the Parties to the Data Transfer Service Agreement)

By:

## SCHEDULE 3

### Services

#### A. BASIC SERVICES

##### 1. Transfer of Messages

A network which allows for the transfer of messages contained in the Data Transfer Catalogue or the SPAA Data Transfer Flows presented to it in the format defined in the Technical Standards. Such service shall include the provision of appropriate Gateways to effect the transfer of Messages. It shall also include Gateway Software which will encrypt all Traffic, save that, if a User who uses a Virtual High Volume Gateway or a Virtual Low Volume Gateway and has not elected to use the encryption software made available by the Service Controller for such Gateways, then Traffic sent or received via that Gateway will not be encrypted.

##### 2. Helpdesk Services

Helpdesk Services will be available to Users 24 hours per day, 7 days a week. A Helpdesk will be provided by the Service Controller between 09.00 and 17.00 hours Monday to Friday inclusive, on Working Days. At all other times the Service Controller will make arrangements for call logging and escalation, such that the total availability of a Helpdesk Service will be 24 hours, 7 days a week.

##### 3. Documentation

The documentation shall consist of:

- (a) the Data Transfer Handbook, which will be maintained and published from time to time by the Service Controller in accordance with this Agreement; and
- (b) the Data Transfer Name and Address Book.

##### 4. Reporting Services

Management Information reports will be provided from the completion of Phase Two as follows:

- 4.1 An "end of day" summary report pertaining to each Gateway. The historical "end of day" summary reports will be retained for a period of three years and will be made reasonably available to the User by the Service Controller. The "end of day" summary report for each Gateway will be sent as file transfers to the nominated "host" on that Gateway.
- 4.2 An "end of month - availability" report for the whole Data Transfer Network will be generated from the Data Transfer Network and shall be published by the Service Controller, not later than 10 Working Days after the end of the month.
- 4.3 An "end of month - utilisation" report for the whole Data Transfer Network will be generated from the Data Transfer Network and shall be published by the Service Controller, not later than 10 Working Days after the end of the month.

## 5. **Problem Management Services**

These are:

- 5.1 the monitoring of a User's usage of the Data Transfer Network where the Service Controller reasonably believes that such monitoring is required. Such monitoring may include:
  - 5.1.1 checking that that User's Messages sent on the Data Transfer Network are contained in the Data Transfer Catalogue or the SPAA Data Transfer Flows;
  - 5.1.2 checking that the User is not using the Data Transfer Network for any unauthorised purpose or in any manner not approved by the Service Controller;
- 5.2 giving advice on the Technical Standards or on Message tracking;
- 5.3 the monitoring of the usage of the Data Transfer Network in general. If such monitoring leads to the Service Controller expecting a degradation in the performance of the Data Transfer Network it shall inform the Users thereof and shall provide guidance on how to manage the transmission of Messages during this period.
- 5.4 the monitoring of the Data Transfer Network to identify and notify degradation of the Data Transfer Service, 24 hours per day, 7 days per week.

## 6. **Disaster Recovery and Business Continuity Planning**

- 6.1 The Service Controller will keep the Users informed at all times of any incidents the Service Controller is aware of which will or are reasonably likely to prevent the Service Controller from meeting the Service Levels.
- 6.2 If the Service Controller becomes aware that a Service Level is not being met it shall inform the Parties as soon as reasonably practicable.
- 6.3 Should a critical fault or major fault occur and remain unresolved for more than any single 24 hour period the Service Controller will provide the Parties with a daily update summarising:
  1. details of the critical fault or major fault;
  2. details of the Service Controller's plan to rectify the fault; and
  3. anticipated timescales for the resolution of the critical or major fault, until the critical or major fault is resolved.
- 6.4 The Service Provider shall maintain a disaster recovery plan and business continuity plan in relation to the Data Transfer Service and in particular such plan shall:
  1. include specific provisions relating to the continued provision of the Data Transfer Service;
  2. have the objective of minimising disruption or interruption to the performance by the Service Controller of the Data Transfer Service caused by any matter constituting a Force Majeure as referred to in Clause 16; and
  3. describe arrangements for the Parties to access the Service Controller's

IT development work in progress in the event of cessation of the Data Transfer Service.

- 6.5 The Service Controller shall provide a copy of such disaster recovery plan and business continuity plan to a User as soon as reasonably practicable following a written request for the same and a User shall be entitled to audit the Service Controller's compliance with such plan and the Service Controller's ability to implement such plan. The Service Controller shall notify the Users of any material amendments to such plan from time to time.

7. **First Level User Training**

First Level User Training includes the aspects outlined below and may take several forms, including the provision of self-training material where appropriate, namely:

- 7.1 Services provided by the Data Transfer Network;
- 7.2 Gateway operation monitoring and audit; and
- 7.3 Helpdesk interface, including fault management, identification, resolution and escalation, and User support responsibilities.

First Level User Training is equivalent to 0.5 Working Days of Site specific training, provided prior to a User being connected to the Data Transfer Service.

**B. ADDITIONAL SERVICES**

- 1. Reports may be customised or additional reports generated in relation to the Data Transfer Service at an additional separate Charge to the relevant User.
- 2. Additional training may be made available at an additional Charge.
- 3. Particular additional services or information may be requested from time to time by a User or Users, and may be provided by the Service Controller, in its discretion, at a reasonably appropriate Charge, provided that where an item has been provided to one User as an Additional Service, it shall be available to all Users.

## SCHEDULE 4

### CONSTITUTION OF THE DATA TRANSFER SERVICE USER GROUP

#### 1. Objects

The purpose of the User Group is to act as a forum for representing the views of Users on any matter relating to the Services, this Agreement, the Data Transfer Handbook, the Data Transfer Network and the Technical Standards, including, where the User Group is given the relevant powers, considering, approving or rejecting Change Requests.

#### 2. Membership

2.1 The User Group shall consist of the following number of representatives ("**Members**") from the following categories, namely:

- (A) five (5) Members appointed by the Electricity Suppliers;
- (B) four (4) Members appointed by the Distributors who have received a Distribution Services Direction (as defined in Condition 3 of the Electricity Distribution Licence) from the Authority requiring the procurement of the DTN;
- (C) one (1) Member appointed by Gas Suppliers that do not also hold an Electricity Supply Licence;
- (D) one (1) Member appointed by the Green Deal Providers;
- (E) one (1) Member appointed by the BSC Co;
- (F) one (1) non-voting Member appointed by MRASCo; and
- (G) one (1) Member appointed by those Users that are not Distributors, Electricity Suppliers, Gas Suppliers, parties to a Settlement Agreement, or otherwise represented in categories (A) to (F) above.

2.2 All Members shall be the Contract Manager of a User or such other person notified by the persons entitled to appoint such Member to the Service Controller and the Secretary, provided that:

- (A) in respect of the Members appointed by the Suppliers pursuant to paragraph 2.1(A):
  - (1) one of the Members shall be the Contract Manager of a User who is a Supplier with 250,000 or fewer customers (a "**Small Supplier**") unless no Contract Manager of a User who is a Small Supplier is available to be a Member, in which case the Suppliers may appoint a Contract Manager of a User who is a Supplier with more than 250,000 customers (a "**Large Supplier**") in place of the Contract Manager of a Small Supplier; and
  - (2) one of the Members shall be the Contract Manager of a User who is a Large Supplier unless no Contract Manager of a User who is a Large Supplier is available to be a Member, in which case the Suppliers may appoint a Contract Manager of a User who is a Small Supplier in place



of a Contract Manager of a User who is a Large Supplier.

- (B) in respect of the Members appointed by the Distributors pursuant to paragraph 2.1(B):
- (1) one of the Members shall be the Contract Manager of a User who is an independent distribution network operator (an "iDNO") unless no Contract Manager of a User who is an iDNO is available to be a Member, in which case the Distributors may appoint a Contract Manager of a User who is a distribution network operator (a "DNO") in place of a Contract Manager of a User who is a iDNO; and
  - (2) one of the Members shall be the Contract Manager of a User who is a DNO unless no Contract Manager of a User who is a DNO is available to be a Member, in which case the Distributors may appoint a Contract Manager of a User who is an iDNO in place of a Contract Manager of a User who is a DNO.
- 2.3 The User Group Member referred to in the category in paragraphs 2.1(E) and 2.1(F) shall not be subject to the election procedures contained in this Schedule.
- 2.4 From execution of this Agreement until the first election of User Group Members held pursuant to paragraph 2.5, the User Group shall be made up of such persons representing the categories of User Group Members as are described in paragraph 2.1 and as may be proposed from among the signatories to this Agreement and all Accession Agreements from time to time, provided that the User Group Members to be appointed pursuant to this paragraph 2.4 shall be appointed in the same proportions as those set out in paragraph 2.1. The process for such appointment will be that the Users represented by each of the categories in paragraph 2.1(A) to 2.1(G) shall agree the persons to be appointed as their respective representatives. If agreement is not reached after 14 days, then paragraph 2.7 shall apply. The Authority shall appoint the representative for Category 2.1(G).
- 2.5 No later than 40 Working Days before 1st of April each User may propose to the Service Controller candidates to be a Member for the forthcoming year within the category of which the User is a part. The first election for the appointment of User Group Members shall be held no later than 20 Working Days before 1st April 1998. In respect of the Users referred to in the category in paragraph 2.1(A) up to two Members shall retire each year by rotation commencing on 1 April 2006 with each Member serving no more than 3 consecutive years before retiring. In respect of the Users referred to in the category in paragraph 2.1(B) only one Member shall retire each year by rotation commencing on 1 April 1999. The order for rotation shall be determined by that category of Members by agreement or by drawing lots at the first meeting of the User Group. Each Member in the category in paragraphs 2.1(D) and 2.1(G) shall retire each year. Each retiree may become a candidate in the then current election. No later than 30 Working Days before that 1st April the Service Controller shall notify the list of candidates to those Users that the candidate might represent. Where there is more than one candidate for each category, the Users in that category shall be invited to vote for their favoured nominee within 10 Working Days of being so notified. Each User shall have one vote. Votes not received by that date shall not be valid. The candidates chosen in this way, or where there is only one candidate that person shall be deemed to be the Member for that category of User from 1 April.

The Member that the candidate is replacing shall be deemed to retire from that date.

- 2.6 If during an election pursuant to Paragraph 2.5 there is a vacancy or vacancies as well as normal retirement, such vacancies will be filled by extension of the balloting process to secure votes for the appropriate number of candidates.
- 2.7 If at any time any category of User shall not have made an appointment and/or shall be in disagreement as to whom to appoint, the Service Controller shall request the Authority to make such appointment and the Authority shall have the right, until the relevant category of User has decided upon an appointment and notified the Authority accordingly, to appoint a Member on behalf of that category of User or to remove any such person appointed by it.

### 3. **Alternates**

- 3.1 Each Member shall have the power to appoint any individual to be his alternate and may at his discretion remove an alternate so appointed. Any appointment or removal of an alternate shall be effected by notice in writing executed by the appointer and delivered to the Secretary or tendered at a meeting of the User Group. If his appointer so requests, an alternate shall be entitled to receive notice of all meetings of the User Group of which his appointer is a Member. He shall also be entitled to attend and vote as if a Member at any such meeting at which the Member appointing him is not personally present and at the meeting to exercise and discharge all the functions, powers and duties of his appointer as if a Member and for the purpose of the proceedings at the meeting the provisions of this Schedule shall apply as if he were a Member.
- 3.2 Every person acting as an alternate shall have one vote for each Member for whom he acts as alternate, in addition to his own vote if he is also a Member. Execution by an alternate of any Resolution in writing of the User Group shall, unless the notice of his appointment provides to the contrary, be as effective as execution by his appointer.
- 3.3 An alternate shall automatically cease to be an alternate if his appointor ceases for any reason to be a Member.
- 3.4 References in this Schedule to a Member shall, unless the context otherwise requires, include his duly appointed alternate.

### 3A **Proxy Voting**

- 3.1A If a voting Member is unable to attend a meeting of the User Group, the Member is entitled to appoint another Member or the Chairman as his proxy to vote on his behalf at that meeting. The Member acting as a proxy shall have one vote for the Member for whom he acts as a proxy in addition to his own vote. The Member acting as a proxy may only vote on behalf of the Member for whom he acts as a proxy as directed by that Member in advance of the meeting. Any appointment of a proxy shall be effected by notice in writing executed by the appointing Member, setting out the appointing Member's direction to his proxy in relation to the relevant vote(s) and delivered to the Secretary in advance of the relevant meeting of the User Group or tendered at that meeting. Execution by a proxy of any Resolution in writing of the User Group shall, unless the notice of his appointment provides to the contrary, be as effective as execution by his appointor.

#### 4. **Representation and Voting**

- 4.1 The Service Controller and each Member shall be entitled to attend and be heard at every meeting of the User Group. The Authority shall be entitled to send a representative to any meeting who shall be entitled to speak but not to vote on any issue.
- 4.2 The Service Controller may, or if required in writing by four or more Members, shall invite a representative of the Network Service Provider to attend part or all of any particular meeting. That representative shall be entitled to speak but not vote on any issue.
- 4.3 At any meeting of the User Group, a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll of the Members who are present is demanded.
- 4.4 Each Member present shall have one vote, save that the Member appointed pursuant to paragraph 2.1(F) will not have a vote.
- 4.5 A Resolution of the User Group will be carried by simple majority. In the event of an equality of votes of the User Group, whether on a show of hands or on a poll, the relevant resolution shall not be passed.
- 4.6 Neither the Chairman nor any Deputy Chairman shall be entitled to a vote in their capacity as Chairman or Deputy Chairman.
- 4.7 The User Group shall from time to time be entitled to adopt such procedures as it deems fit for the purpose of administering matters brought before it, including how votes that result in an equality of votes should be dealt with.
- 4.8 If:
  - (A) there is no Contract Manager of a User who is a Small Supplier appointed as a Member in the category described in paragraph 2.1(A), at least one of the Members in such category appointed shall be responsible for considering the interests of the Small Supplier population;
  - (B) there is no Contract Manager of a User who is a Large Supplier appointed as a Member in the category described in paragraph 2.1(A), at least one of the Members in such category appointed shall be responsible for considering the interests of the Large Supplier population;
  - (C) there is no Contract Manager of a User who is an iDNO appointed as a Member in the category described in paragraph 2.1(B), at least one of the Members in such category appointed shall be responsible for considering the interests of the iDNO population;
  - (D) there is no Contract Manager of a User who is a DNO appointed as a Member in the category described in paragraph 2.1(B), at least one of the Members in such category appointed shall be responsible for considering the interests of the DNO population; and
  - (E) the Green Deal Providers do not appoint a Contract Manager of a User who is a Member in the category described in paragraph 2.1(D), the Member appointed pursuant to paragraph 2.1(G) shall be responsible for considering the interests of the Green Deal Provider population.

## 5. **The Chairman and Deputy Chairman**

5.1 Subject to paragraph 5.2 the Service Controller shall appoint a representative to be the Chairman of each meeting of the User Group. The Chairman shall preside at each meeting of the User Group at which he is present. If the Chairman is unable to be present the Service Controller shall appoint a Deputy Chairman who shall act as Chairman.

5.2 A User Group Member may ask the Chairman to cease to act as Chairman of a meeting or leave for part of a meeting where the User Group Member wishes to question the behaviour or conduct of the Service Controller. In such circumstances, the Deputy Chairman or his alternate shall chair the meeting while such matters are discussed.

## 6. **The Secretary**

6.1 The Service Controller shall have power to appoint and dismiss a Secretary. The Secretary shall be entitled to speak but not vote on any issue at a User Group meeting. The Secretary will be a Member or any other person.

6.2 The Secretary's duties shall be to facilitate the User Group and in particular to:

- (A) attend to the requisition of meetings and to serve requisite notice;
- (B) maintain a register of names and addresses of Members and Alternates as appointed from time to time; and
- (C) keep minutes of all meetings.

## 7. **Meeting**

7.1 The User Group shall hold meetings quarterly and at other times as agreed by the User Group. A list of dates for the next four meetings shall be circulated by the Secretary at the end of each meeting.

7.2 The venue for meetings will generally be the offices of the Service Controller. If a different venue is required for any reason the Service Controller will propose an alternative venue in England, Scotland or Wales.

7.3 The Chairman or any other four Members may, by giving notice in writing to the Secretary, request the Secretary to requisition further meetings. The notice given to the Secretary shall contain a list of matters to be included in the agenda of the meeting to be convened pursuant to this paragraph. The Secretary shall proceed to convene meetings of the User Group within 10 Working Days of such notice and shall circulate a copy of the agenda which shall contain such items as are contained in the notice of meeting.

7.4 The quorum for a meeting shall be met if the Members present at the meeting are together entitled to cast at least seven (7) votes (taking into account any votes such Members are entitled to cast as alternatives or proxies for other Members in accordance with paragraph 3 and 3A).

7.5 Expenses incurred by attending meetings will be met by the persons attending.

## 8. **Notice of Meetings**

8.1 All meetings shall be convened by the Secretary on at least 5 Working Days' notice.

- 8.2 The notice of each meeting shall contain the time, venue and confirmation of date of the meetings and an agenda and any available supporting papers which shall be given to each User.
- 8.3 By notice to the Secretary, any Member may request matters to be considered at a meeting, other than meetings convened under paragraph 7.1, and provided that such notice is given at least 15 Working Days before the date of the meeting, those matters will be included in the agenda for the meeting. If necessary, the Secretary shall circulate a revised agenda to each User as soon as practicable.
- 8.4 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by a person entitled to receive notice shall not invalidate the proceedings of that meeting.

9. **Proceedings of Meetings**

The User Group may meet for the transaction of business, and adjourn and otherwise regulate its meetings as it thinks fit, but shall at all times act reasonably.

10. **Minutes**

- 10.1 The Secretary shall circulate copies of the minutes of each meeting of the User Group to each Member and all Users as soon as practicable (and in any event within 15 Working Days) after the relevant meeting has been held.
- 10.2 Each Member shall indicate his (i) approval; or (ii) disapproval (together with supporting comments) of the minutes at the User Group meeting immediately following the meeting to which the minutes relate and a Member who fails to do so will be deemed to have approved the minutes. The approval or disapproval of the minutes will not affect the validity of decisions taken by the User Group at the meeting to which the minutes relate.
- 10.3 If the Secretary receives any comments on the minutes, he shall circulate the revised minutes as soon as practicable following the meeting referred to in paragraph 10.2 at which the minutes were discussed, incorporating those comments which are of a typographical nature and indicating, where necessary, where Members disagree with certain aspects of the minutes. The Secretary shall then incorporate those aspects of the minutes upon which there is disagreement into the agenda for the next following meeting of the User Group as the first item for resolution.

11. **Vacation of Office**

11.1 The office of a Member shall be vacated forthwith if:

- (A) he resigns his office by notice delivered to the Secretary; or
- (B) the User for which he is the Contract Manager ceases to be a User.

11.2 In the event that the Member fails to attend two (2) or more consecutive meetings of the User Group in person or by sending an alternate in accordance with paragraph 3 or a proxy in accordance with paragraph 3A, the Service Controller will contact the Member to discuss the reasons for non-attendance and agree the next steps, which may include the nomination of an alternate, or the resignation of the Member.

11.A.1 Where a Member vacates his office pursuant to paragraph 11 of this Schedule,

then within 5 Working Days of the date of the vacation of office ("**Nomination Period**") each User from the category of Users which had been represented by the vacating Member in accordance with paragraph 2.1 may propose to the Service Controller a new candidate or candidates to take over the position of the vacating Member for the remainder of the term of appointment of the vacating Member.

11.A.2 The Service Controller shall notify the Users in the relevant category within 7 Working Days from the end of the Nomination Period of the candidates proposed pursuant to paragraph 11A.1.

11.A.3 Where more than one candidate is nominated pursuant to paragraph 11A.1 the Service Controller shall conduct a ballot in accordance with the election procedures outlined in paragraph 2.5, mutatis mutandis.

## 12. **Member Responsibilities**

12.1 In the exercise of his powers and the performance of his duties and responsibilities as a Member, a Member shall represent the interests of the category of Users by whom he is for the time being appointed.

12.2 Each Member shall perform his duties in such a way as to enable the Service Controller to perform its role and responsibilities on behalf of all Users and in particular to ensure that it is economically capable of such performance.

## **SCHEDULE 5**

### **SERVICE PROCEDURES**

#### **1. CONNECTION PROCEDURES**

- 1.1 Where the Service Controller has received a completed Application Form from an Applicant, the Service Controller shall use all reasonable endeavours to process such Application Form as quickly as possible, but not later than 15 Working Days after the receipt of such Application Form.
- 1.2 On receiving a completed Application Form the Service Controller shall examine whether or not the Applicant satisfies the Service Controller of its status as a Market Participant.
- 1.3 Where the Service Controller is not satisfied under paragraph 1.2, the Service Controller shall notify the Applicant.
- 1.4 Where the Service Controller is satisfied under paragraph 1.2, the Service Controller will prepare an Accession Agreement and forward the Accession Agreement with a copy of this Agreement to the Applicant.
- 1.5 On the Applicant completing the Accession Agreement and returning it and the Accession Agreement Fee, the Service Controller will sign the Accession Agreement and the Applicant shall become a New Party.
- 1.6 As soon as reasonably practicable following the receipt of an executed Accession Agreement, the Service Controller shall forward to the relevant New Party a copy of the Data Transfer Handbook with a list of all available Gateway Options and Connection Form. The New Party shall also receive a copy of the Data Transfer Service Name and Address Book.
- 1.7 On receipt of a Connection Form which is reasonably acceptable to the Service Controller, the Service Controller shall review the details included in the relevant New Party's Connection Form and shall discuss with the relevant New Party the Gateway Option and Local Communications Link chosen.
- 1.8 On completion of a Connection Form to the satisfaction of the Service Controller, the Service Controller shall prepare and execute the Local User Agreement and prepare the First Invoice and forward these to the relevant New Party for execution of the Local User Agreement by the New Party.
- 1.9 Upon:
  - 1.9.1 receipt by the Service Controller of the Local User Agreement executed by the New Party and a cheque from the New Party for the payment of the First Invoice; and
  - 1.9.2 the Service Controller providing written confirmation to the New Party, that, as at the date of such execution, the Service Controller is satisfied that the New Party is a Market Participant,the New Party shall become a User.
- 1.10 A New Party may in its Connection Form request that the Service Controller authorise the New Party to use another User's Gateway for the purpose of sending and receiving Messages in accordance with this Agreement. Subject to receiving such other User's prior written consent, the Service Controller may (in its absolute discretion) grant such

authorisation and, following such authorisation:

- 1.10.1 when such New Party becomes a User it shall be a Sharing User;
- 1.10.2 paragraphs 1.11 to 1.16 shall not apply to such New Party, but the New Party shall co-operate with and undertake such Gateway configuration activities as may be reasonably required by the Service Controller.
- 1.11 Upon a New Party becoming a User, the Service Controller shall as soon as reasonably practicable arrange for the installation of the User's Gateway or Gateways in accordance with the Service Levels. In relation to a Remote Gateway, the Service Controller shall as soon as reasonably practicable arrange for the relevant steps to be taken to enable use of the Remote Gateway by the User in accordance with the Service Levels.
- 1.12 The Service Controller shall other than for a Remote User give the User 10 Working Days' notice of the installation of its Gateway at its Site. The Parties shall also agree a suitable time and place for First Level User training to be conducted.
- 1.13 In order to assist the Service Controller in accordance with paragraph 1.9 the User shall:
  - (A) provide other than in relation to a Remote Gateway physical access to the Service Controller to the User Gateway and the User's Site during normal working hours for the purposes of testing and connecting the User Gateway to the Data Transfer Network; and
  - (B) provide a suitably qualified representative to the Service Controller to assist in the installation and connection of its Gateway to the User's own network and electrical power supply.
- 1.14 On installation of a Gateway or conclusion of the necessary steps for connection of a Remote User, the Service Controller shall arrange as soon as possible thereafter to run the User Preconnection Acceptance Tests. A representative of the User shall be present for such testing.
- 1.15 Provided that the Connection Form has been fully completed, and the User Preconnection Acceptance Tests have been satisfactorily completed, the Service Controller shall then arrange for the User's Gateway or Gateways to be Enabled.
- 1.16 Where the User's Gateway fails the whole or part of the User Preconnection Acceptance Tests the Service Controller shall as soon as possible following such failure arrange for the relevant part or parts of such tests to be re-run until successfully completed. If successfully completed, the User's Gateway will be Enabled.
- 1.17 In respect of a Sharing User who has been authorised pursuant to paragraph 1.10 to use another User's Gateway, such Gateway shall be Enabled for the Sharing User once the configuration activities referred to in Clause 4.8 have been successfully completed.
- 1.18 The Service Controller shall notify the relevant Accreditation Authority and/or Performance Assurance Board of any User that it has Enabled pursuant to these procedures.

## 2. **Problem Management Procedures**

- 2.1 Save as set out in this paragraph 2 where a User experiences a problem with the Data Transfer Service it shall take all reasonable steps to determine the nature or existence of a problem prior to contacting the Helpdesk. Where, for example, a User does not receive an expected in bound Message from another User, the User shall first contact that other User to ascertain whether the Message was in fact sent.



- 2.2 Where a User suspects that an outbound Message has failed it shall first confirm that the Message was logged as received at its own Gateway, will note the file type, the intended destination, the Message size and the reference number. The User should then contact the intended recipient to determine whether the Message was in fact received. If it has not been received it shall then report that problem to the Helpdesk and set out these details. Dependent on the nature and operational impact of the reported problem, the Helpdesk will call the relevant User back in a timely manner to advise on the nature of the problem, the action being taken to resolve it, whether or not to re-transmit the data and when a normal service will be resumed.
- 2.3 Where a User believes that the Data Transfer Network in respect of its transmissions is not performing to the Minimum Service Levels, he shall contact the Service Controller with details. If reasonably satisfied that there is a potential problem with the Data Transfer Network, the Service Controller will monitor that User's Gateway for such period (as is necessary in order to establish the existence and nature of a problem, being for a period not longer than one month) as the Service Controller may select. Where the Service Controller believes that the performance being achieved is within the statistical limits expected from the specified Minimum Service Level, it will advise the User of the measurements of performance obtained. Where the Service Controller agrees that the performance is below the standard to be expected in respect of that Minimum Service Level, it will advise the User of the measures of performance obtained. The Service Controller will also advise the User of the corrective action that will be taken, with timescales for implementation.
- 2.4 Where a User receives a Message which is clearly identifiable as relating to a particular Data Transfer Catalogue or a particular SPAA Data Transfer Flow, and has been properly transmitted under a Business Agreement, the BSC or the Supply Point Administration Agreement, as applicable, but the content of the Message cannot be understood, not being due to a problem related to the Data Transfer Service, the User will contact the sending User, and attempt to resolve the problem. If the problem cannot be resolved with the sending User the User will invoke any problem management procedure available under the relevant Business Agreement, the BSC or the Supply Point Administration Agreement. The Service Controller will not be involved in this process.
- 2.5 Where a User receives unnecessary or corrupt Messages or the sending User can not be identified, the process will depend on the nature of the problem, as set out below:
- (A) where the Message involved is unnecessary and is not properly sent under a Business Agreement and/or the BSC, the User shall notify the Helpdesk with details of the unnecessary Messages. The Service Controller will determine the source of the Message, and will inform that source User involved of the details of the original complaint. If the Service Controller receives a satisfactory explanation for the unnecessary Messages, and is satisfied that it will not recur, he will inform the original complainant of the resolution of the problem. If the Service Controller is not satisfied with the explanation for the problem, or believes that the problem may persist, he will inform that source User of his intention to monitor the pattern and nature of the Message sourced from that source User for a period of up to one month. At the end of the period of monitoring, the Service Controller will inform the complainant and the source User either that the problem no longer exists, or that unnecessary Messages have been detected, and the action to be taken, which may include giving notice of an Event of Default under Clause 14.1.1 on that source User and Disconnection

pursuant to Clause 15 of this Agreement;

- (B) where in relation to a Message, the receiving User cannot identify the sending User, the receiving User shall contact the Helpdesk. The Service Controller shall make all reasonable enquiries to identify the source of the Message. When the Service Controller has identified the source of the Message, it shall inform the receiving and sending Users and shall advise them of any appropriate corrective measures to be taken to resolve the problem; or
- (C) where the User suspects a Breach of Security it shall forthwith contact the Helpdesk to notify the Service Controller. The Service Controller shall take all appropriate measures relating to resolving such a problem, including notifying all Users in accordance with the Security Procedures.

2.6 In all respects, the Service Controller shall manage and seek to resolve all problems reported in accordance with Good Industry Practice.

### 3. **Disconnection Procedures**

For the purposes of this paragraph 3 of Schedule 5, any reference to removing equipment from the Site shall not apply to circumstances where the User is a Remote User.

3.1 This paragraph 3.1 applies to Disconnection for a User's voluntary termination pursuant to Clause 15.6.

- (A) The User will write to the Service Controller stating the date Disconnection is required, but giving not less than 20 Working Days' notice in writing.
- (B) The Service Controller will contact the User at least 15 Working Days before the Disconnection date to acknowledge receipt of the request to Disconnect and to arrange for the removal of its equipment from the User's Site.
- (C) The User will provide access and on site facilities to enable the Service Controller to remove its equipment from the User's Site on the agreed date.
- (D) The Service Controller will advise all Users of the Disconnection date in relation to that User at least 10 Working Days prior to the date of Disconnection.
- (E) The Service Controller will Suspend a User's Gateway or Gateways from midday on the Disconnection date.
- (F) The Service Controller will remove any equipment from the Site on the Disconnection date agreed with the User.

3.2 The Disconnection Procedure contained in this paragraph 3.2 applies to Suspension and Disconnection related to non-payment by a User pursuant to Clause 15.2.1.

- (A) Where all the Charges for any period which has been invoiced have not been paid, the Service Controller may give a User a notice requiring payment of all outstanding sums including any payment or deposit required by the Service Controller by way of deposit required or bond pursuant to Clause 15.5, within 20 Working Days of that notice.
- (B) Where payment in full is not received by the date specified in the notice, the Service Controller may Suspend a User's Gateway or Gateways forthwith without further notice, provided that the amounts demanded under paragraph 3.2(A) are not the subject of a dispute notified under Clause 9.6. Where the relevant amounts are the subject of such a dispute, the Service Controller shall

not Suspend or Disconnect a User until the dispute is settled under Clauses 9.6 to 9.8. On Suspending a User's Gateway under this paragraph 3.2(B), the Service Controller shall notify the User concerned.

- (C) If a User's Gateways have been Suspended the Service Controller shall as soon as possible, but not later than 5 Working Days of such Suspension notify all other Users of the relevant User's Suspension.
- (D) If, following Suspension, a User pays all sums invoiced and outstanding the User may be Reconnected.
- (E) Following Suspension the Service Controller may issue a notice to the relevant User stating the sum of the Charges invoices to the User and outstanding and further stating that if payment of such sum is not received within 20 Working Days from the date of such notice, the Service Controller shall Disconnect the relevant User's Gateways (a "**Non-Payment Disconnection Notice**").
- (F) Having issued a Non-Payment Disconnection Notice to a User, the Service Controller shall, subject to paragraph 3.8, Disconnect the User's Gateways if the Service Controller has not received from the User payment in full of the outstanding sum specified in the Non-Payment Disconnection Notice and any other Charges invoiced to the User which are outstanding by the date specified in such notice.
- (G) Where payment in full is not received, following a notice given under paragraph 3.2(E), by the specified date, the Service Controller may Disconnect the relevant User's Gateways.
- (H) The User shall, in such circumstances, provide access and on Site facilities to enable the Service Controller to remove its equipment from the User's Site at any time reasonably specified by the Service Controller.
- (I) The Service Controller shall, as soon as reasonably practicable, but not later than 5 Working Days following such Disconnection, advise all Users of a User's Disconnection.

3.3 This paragraph 3.3 applies to Suspension and for Events of Default set out in Clauses 14.1.3 to 14.1.6 (inclusive), 14.1.8 and 14.1.9.

- (A) When the Service Controller becomes aware of an Event of Default pursuant to Clauses 14.1.3 to 14.1.6, 14.1.8 or 14.1.9, the Service Controller may immediately, and without providing notice to the relevant User Suspend that User's Gateways.
- (B) The Service Controller shall, as soon as reasonably practicable, but not later than 5 Working Days following such Suspension, notify all Users of a User's Suspension under paragraph 3.3(A).
- (C) Within 7 Working Days of Suspension under paragraph 3.3(A) the Service Controller may notify the User of a proposed Disconnection date or, if appropriate, give a period for an opportunity to remedy the Event of Default.
- (D) Where the Event of Default is remedied to the satisfaction of the Service Controller and the Service Controller is satisfied that there is no significant further risk of another Event of Default in relation to that User, the Service Controller may Reconnect the User.
- (E) Where a Disconnection date has been set and the User has not remedied the

Event of Default or satisfied the Service Controller under paragraph 3.3(D) the Service Controller may Disconnect the User.

- (F) The User shall, in such circumstances, provide access and on Site facilities to enable the Service Controller to remove its equipment from the User's Site at any time reasonably specified by the Service Controller.
- (G) The Service Controller shall, as soon as reasonably practicable, but not later than 5 Working Days following such Disconnection, advise all Users of a User's Disconnection.

3.4 This paragraph 3.4 applies to Disconnection or Suspension for the Events of Default set out in Clauses 14.1.1 and 14.1.7.

- (A) Where the Service Controller becomes aware of a relevant Event of Default, the Service Controller may give a User 20 Working Days' notice to rectify its default.
- (B) Where the User has not remedied the default by the date specified in the notice referred to in paragraph 3.4(A) the Service Controller may Suspend the User's Gateways.
- (C) The Service Controller shall, as soon as reasonably practicable, but not later than 5 Working Days following such Suspension, notify all Users of a User's Suspension under paragraph 3.4(B).
- (D) A User may before that specified date require the matter to be heard pursuant to the Dispute Resolution Procedures. In such circumstances the Service Controller shall not Suspend the Gateways concerned.
- (E) In the event of the Dispute Resolution Procedure finding in favour of the Service Controller, the Service Controller shall be entitled to immediately Suspend or, in its discretion Disconnect the Gateway.
- (F) Where a Gateway is Suspended under paragraph 3.4(B) the User shall have a further period determined by the Service Controller of not less than 7 Working Days to remedy the relevant Event of Default and, if required by the Service Controller other than in relation to an Event of Default under Clause 14.1.7, pay such additional amount pursuant to Clause 15.5 or give any other relevant assurance.
- (G) Subject to paragraph 3.4(E), on payment of any amount or giving any assurance or on the Service Controller being otherwise satisfied of there not being any risk of a further or continued Event of Default, the Service Controller shall Reconnect the User's Gateways.
- (H) However where the Service Controller is not satisfied in accordance with paragraph 3.4(E), the Service Controller may at its discretion Disconnect the relevant Gateways.
- (I) The User shall, in such circumstances, provide access and on Site facilities to enable the Service Controller to remove its equipment from the User's Site at any time reasonably specified by the Service Controller.
- (J) The Service Controller shall, as soon as reasonably practicable, but not later than 5 Working Days following such Disconnection, advise all Users of a User's Disconnection.

3.5 This paragraph 3.5 applies to Suspension or Disconnection pursuant to an Event of

Default outlined in Clause 14.1.2 or pursuant to Clauses 15.1 or 15.2.3.

- (A) The Service Controller on becoming aware of a potential or actual Breach of Security or other relevant actual or potential breach may immediately and without notice Suspend a User's Gateways.
- (B) As soon as reasonably practicable, following Suspension, the Service Controller shall contact the relevant User's Contract Manager and notify them of the relevant breach and require that the breach be remedied. The Service Controller shall also advise all Users of a User's Suspension.
- (C) In the event that the breach is remedied by the date agreed with the Service Controller, the Service Controller shall, subject to being satisfied that there is no further risk of a further or continuing breach Reconnect the User.
- (D) Where the breach is not remedied by the date agreed with the Service Controller, the Service Controller may immediately Disconnect the User's Gateways.
- (E) The User shall in such circumstances provide access and on Site facilities to enable the Service Controller to remove its equipment from the User's Site at any time reasonably specified by the Service Controller.
- (F) The Service Controller shall, as soon as reasonably practicable, advise all Users of a User's Disconnection.

3.6 This paragraph 3.6 applies to Suspension or Disconnection pursuant to Clauses 15.2.4.

- (A) The Service Controller may immediately Suspend a User's or Users' Gateways without notice.
- (B) The Service Controller shall as soon as reasonably practicable inform all Users of the relevant Suspensions.
- (C) The Service Controller shall use all reasonable endeavours to Reconnect such Users as quickly as possible.
- (D) Where it is not possible for the Service Controller to Reconnect a User and preserve or maintain its ability to continue to provide the Data Transfer Service, the Service Controller may give notice to the User of its intention to Disconnect the relevant Gateways.
- (E) The User shall in such circumstances provide access and on Site facilities to enable the Service Controller to remove its equipment from the User's Site at any time reasonably specified by the Service Controller.
- (F) The Service Controller shall, as soon as reasonably practicable, advise all Users of a User's Disconnection.

3.7 Procedures relating to Reconnecting a User's Gateway pursuant to Clause 15.5:

If pursuant to one of the procedures contained in this paragraph 3 a User's Gateway is Suspended, but the relevant User subsequently remedies any Event of Default, or the reason for Suspension has been removed, then prior to Disconnection the User may be required to submit a prepayment amounting to 3 months of its usage of the Data Transfer Service before the User is Reconnected as a guarantee against future payments. Such usage will be judged by the Service Controller in good faith by reference to the User's actual usage over the prior 12 months or such shorter actual period of usage by that User.

3.8 Requests for Disconnection for non-payment of Charges

- (A) If, having issued a Non-Payment Disconnection Notice to a User, the Service Controller has not received from the recipient User the outstanding amount set out in the notice within the 20 Working Days after the date of the notice, the Service Controller shall submit a request to the User Group to Disconnect the User (a "**Non-Payment Disconnection Request**").
- (B) The User Group shall resolve at the User Group Meeting immediately following its receipt of the Non-Payment Disconnection Request to either approve or reject the Non-Payment Disconnection Request and shall notify the Service Controller of its decision, save that if a Non-Payment Disconnection Request is received by the User Group less than 5 Working Days prior to a User Group meeting, the User Group may elect to defer its decision in relation to the Non-Payment Disconnection Request until the following User Group meeting.
- (C) If the User Group approves a Non-Payment Disconnection Request, the Service Controller shall Disconnect the User within 120 Working Days of such approval, unless the Service Controller has received from the User the outstanding amount set out in the Non-Payment Disconnection Notice and any other Charges invoiced to the User which are outstanding, in which case the User shall be Reconnected.
- (D) If the User Group rejects a Non-Payment Disconnection Request, the Service Controller shall maintain the Suspension of the User and shall submit a further Non-Payment Disconnection Request to the User Group at least 5 Working Days prior to the next User Group Meeting. This paragraph 3.8(D) shall apply to each rejection by the User Group of a Non-Payment Disconnection Request until the Service Controller has received from the User the outstanding sum set out in the Non-Payment Disconnection Notice and any other Charges invoiced to the User which are outstanding. If the User has paid such outstanding sums in full it shall be Reconnected.

## SCHEDULE 6

### FORM OF LOCAL USER AGREEMENT

**THIS LOCAL USER AGREEMENT** is made the        day of [Month] [Year].

#### **BETWEEN**

- (1) **ELECTRALINK LIMITED**, a company incorporated in England and Wales (registered no. 3271981), whose registered office is at 40 Grosvenor Place, Victoria, London, SW1X 7EN (the "**Service Controller**"); and
- (2) [Company], a company incorporated under the laws of England and Wales (registered number [number] and having its registered office at [address] (the "**New Party**").

#### **WHEREAS:**

- A) The Service Controller and the New Party are Parties to the Data Transfer Service Agreement dated 30th July 1997 ("**DTSA**").
- B) This Local User Agreement is entered into pursuant to the terms of the DTSA.

#### **THE SERVICE CONTROLLER AND THE NEW PARTY AGREE AS FOLLOWS:**

##### **1. DEFINITIONS, INTERPRETATION AND CONSTRUCTION**

Unless the context otherwise requires, terms and expressions defined in the DTSA have the same meaning, interpretations or constructions in this Local User Agreement.

##### **2. CONDITION PRECEDENT**

2.1 This Local User Agreement is effective on and from the date which is the later of:

2.1.1 The date on which it is executed by the Service Controller and the New Party; and

2.1.2 The date on or after the date referred to in Clause 2.1.1 on which the Service Controller confirms in writing to the New Party pursuant to paragraph 1.9.2 of Schedule 5 of the DTSA that the Service Controller is satisfied that the New Party is a Market Participant.

##### **3. GATEWAY**

3.1 The Gateway as selected, from time to time, by the New Party to be supplied by the Service Controller and the Gateway Accommodation to be provided by the New Party for that Gateway or Gateways are more particularly described in Appendix A.

##### **4. CHARGING**

The New Party shall pay the Charges from the date on which the Gateway has passed the User Preconnection Acceptance Test.

##### **5. VARIATIONS**

5.1 Save as otherwise provided in this Clause 5, the terms of this Agreement shall be

subject to the Change Procedures set out in the DTSA.

- 5.2 The New Party may request (i) additional Gateways, (ii) to migrate from its current Gateway to another Gateway Option (iii) to share another User's Gateway (subject to that other User's prior written consent), in each case subject the agreement of the Service Controller. The Service Controller and the New Party shall agree any change to the Charges paid pursuant to Clause 4 of this Agreement as a result of such change to the Gateway.
- 5.3 Except as provided in the foregoing provisions of this Clause 4 of this Agreement, no amendment to this Local User Agreement shall be effective unless in writing signed by both the Service Controller and the New Party.

6. **TERM**

- 6.1 This Local User Agreement shall continue until the New Party ceases to be a Party to the DTSA.
- 6.2 Termination shall not affect any rights or obligations of either party which may have accrued prior to the date of termination.

7. **DTSA**

- 7.1 This Agreement shall be governed by and construed in all respects in accordance with the provisions of the DTSA (including for the avoidance of doubt clause 23 of the DTSA, which shall also apply to this Agreement).

8. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

No term of this Agreement is enforceable under the Contract (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

**AS WITNESS** the hands of the duly authorised representatives of the New Party and the Service Controller hereto the day and year first above written.

**New Party**

Signed \_\_\_\_\_

Printed \_\_\_\_\_

Dated \_\_\_\_\_

Notice details

Address:

Facsimile number:

Attention:

**The Service Controller**

(for and on behalf of each of the Parties to the Data Transfer Service Agreement)

By:



**APPENDIX A**  
**[Completed Application and Connection Forms]**

**Gateway Option chosen**

Please tick as appropriate:

Remote User Gateway

Remote Virtual Low Volume Gateway

Virtual Low Volume Gateway

Low Volume Gateway

Remote Virtual High Volume Gateway

Virtual High Volume Gateway

High Volume Gateway

Gateway identifier (to be completed by the  
Service Controller following receipt of application) \_\_\_\_\_

OR

Sharing User<sup>1</sup>

Market participant identifier, MPID, to be shared  
(to be completed by the New Party) \_\_\_\_\_

**New Parties choosing the Gateway Option of Sharing User**

In accordance with Clause 4.4.3 of the DTSA, a New Party who is to become a Sharing User must receive:

- (i) the written consent of another User to use its Gateway, and
- (ii) written authorisation from the Service Controller  
to become a Sharing User using that Gateway.

**User enabling the New Party to share their Gateway**

I hereby provide consent for the New Party to use Gateway \_\_\_\_\_  
(please enter Gateway ID).

Signed \_\_\_\_\_

Printed \_\_\_\_\_

<sup>1</sup> If electing to be a "Sharing User" please ensure the section entitled "New Parties choosing the Gateway option of Sharing User"

## SCHEDULE 7

### SERVICE LEVELS AND TARGET SERVICE LEVELS

The Service Controller will use all reasonable endeavours to ensure that the Data Transfer Network adheres to the following Service Levels:

#### 1. SPEED OF DATA TRANSFER ("DATA TRANSFER TIMES")

##### 1.1 Definitions

For the purposes of this Schedule 7, the following words and expressions shall bear the following meanings, unless the context otherwise requires:

**"Loading Profile"** means:

- (a) in relation a Low Volume Gateway:
  - (i) the total data volume of Messages Sent from the Gateway in any Time Period must be less than or equal to 225 Mbytes; and
  - (ii) the total number of Messages Sent in that Time Period must be less than or equal to 1800;
- (b) in relation to a High Volume Gateway:
  - (i) the total data volume of Messages Sent from the Gateway in any Time Period must be less than or equal to 750 Mbytes; and
  - (ii) the total number of Messages Sent in that Time Period must be less than or equal to 4500; and
- (c) in relation to the Network Hub,
  - (i) the total data volume of Messages being presented to the Network Hub in any contiguous two-hour period starting at midnight must be less than or equal to 720 MB; and
  - (ii) the total number of Messages presented to the Network Hub in any contiguous two-hour period starting at midnight must be less than or equal to 24,000;

and, for each of the above thresholds, the data volume of a Message shall be measured in its user file format.

**"Message"** means a file Sent to the Gateway from a user host in user file format.

**"Received"** means the moment when a file has been received by the recipient Gateway from the Network and is located on the Gateway:

**"Sent"** means the moment when a file has been transferred across the User/MDNS service boundary and is located on the Gateway:

**"Time Period"** means consecutive intervals of 120 minutes measured using the MDNS time source. For the avoidance of doubt, the first Time Period commences at 00:00:00 (H:M:S), and ends at 01:59:59. The second Time Period is therefore 02:00:00 to 03:59:59 and the measurement continues on this basis throughout each day.

## 1.2 **Data Transfer Times**

For Gateways with a client-side server connected by Dedicated Connection these Service Levels shall apply at all times. Where other Local Communications Links are used these Service Levels shall only apply when the sending Gateway is connected to the Network and the measurement shall relate to that point on the Network where the Messages would be available for collection or sending to the receiving Gateway.

For each Gateway measurements will be made of the Transfer Times for the Messages across the MDNS and the Service Levels will be that in 99% of cases such Messages must, subject to the relevant Loading Profile, be successfully transferred from sender Gateway to recipient Gateway in a Transfer Time of 2 hours.

Across all Gateways, measurements will be made of the Transfer Times for Messages across the MDNS and the Minimum Service Level will be that in 100% of cases such Messages must, subject to the relevant Loading Profiles, be successfully transferred from sender Gateway to recipient Gateway in a Transfer Time of 4 hours.

Across all Gateways, measurements will be made of the Transfer Times for the Messages across the MDNS and the Service Levels will be that in 90% of cases such Messages must be, subject to the relevant Loading Profile, successfully transferred from sender Gateway to recipient Gateway in 300 seconds.

The above Service Levels and associated requirements for Transfer Times shall only apply if the sender Gateway and the Network Hub are both operating within their Loading Profile in the Time Period in which the Message is Sent.

Where the Loading Profile is exceeded then the excess load will be carried forward and added into the load for the next Time Period to determine whether that Time Period is valid for service level calculations. This process will continue until the load on the sender Gateway and the load on the Network Hub are both within the relevant Loading Profile.

If the Loading Profile is exceeded at the sender Gateway and/or the Network Hub, the Network Service Provider shall use all reasonable endeavours to transfer Messages in the Transfer Time plus the equivalent number of Time Periods required until the cumulative volumes and numbers of Messages again meet the Loading Profile for both the sender Gateway and the Network Hub in accordance with the previous paragraph. Any Messages which fall outside of the Loading Profile shall not be included in the measurement and reporting of the Service Level.

The Data Transfer Times Service Level shall only apply when the sender Gateway, recipient Gateway and Network Hub are available.

Users shall not take malicious or negligent action to force or cause failures of the Speed of Data Transfer Service Level.

## 2. **AVAILABILITY**

### 2.1 **Availability of Gateways**

A Gateway will be deemed to be available if it is able to accept data from local User systems and transfer data to those systems (assuming those local systems are able to send and receive data) and if it is able to transfer data to and from another Gateway

via the Network Hub.

After completion of a 30 day "bedding in" period per Gateway, for each High Volume Gateway and Low Volume Gateway measurements will be made of when they are each available and the Minimum Service Level and Target Service Levels will be:

<b>Gateway Option</b>	<b>Target Service Level</b>	<b>Minimum Service Level</b>
High Volume Gateway Virtual High Volume Gateway Remote Virtual High Volume Gateway	99.9%	99.6%
Low Volume Gateway Virtual Low Volume Gateway Remote Virtual Low Volume Gateway	99.7%	99.6%

## 2.2 Availability of Network Hub

The Network Hub will be available 24 hours per day, 365 days per year with a Minimum Availability level of 99.6% and a Target Availability of 99.95% excluding scheduled maintenance periods. The Network Hub is considered "Available" if it is performing with functionality to take and process files end to end in the DTS service.

## 3. RELIABILITY

### 3.1 Number of Gateway Outages

There shall be no more than 2 outages per High Volume Gateway per calendar month, no more than 10 High Volume Gateways impacted per the calendar month.

There shall be no more than 3 outages per Low Volume Gateway per calendar month, no more than 12 Low Volume Gateways impacted per the calendar month.

## 4. TIME TO RECTIFY FAULTS

The following areas of fault rectification will be covered by the following Service Levels:

### 4.1 Gateway Hardware Faults

For Gateway Hardware faults, the Target Service Levels are that in 95% of cases:

- (A) there must be a response within 4 hours of the fault being reported to the Service Controller as defined in a procedure issued by the Service Controller from time to time; and
- (B) it must be rectified or replaced within 8 hours, that is, after a further 4 hours. This rectification time will include the time required to

restore the Gateway Software and configuration if necessary.

The corresponding Minimum Service Level is that in 100% of cases faults will be rectified or replaced within 12 hours of the reporting of the fault.

#### 4.2 Gateway Software Faults

Gateway Software faults will be categorised according to the following guidelines:

Category	Description
1	Critical fault – production system down
2	Major fault – impact on service performance
3	Moderate problem – Service Controller inconvenience
4	Minor impact – work around may be acceptable
5	No service impact - Desirable feature / enhancement

For each of these categories of faults, resolution will follow procedures maintained by the Service Controller with advice from the User Group.

The following times are the Target Service Levels for the start and completion of a fix, where times are measured from the time the fault is reported:

Severity	Description	Target Resolution Period
1	Critical fault	Within 4 working hours
2	Major fault	Within 8 working hours
3	Moderate problem	Within 2 Working Days
4	Minor impact	Within 1 week
5	No service impact	Reviewed monthly

For Gateway Software faults the Minimum Service Levels will be the Target Service Levels.

#### 5. CONNECTION AND DISCONNECTION

The following Service Levels shall apply to connection of a Gateway, assuming any due Charges are paid:

Item	Implementation Time
Connection of a High Volume Gateway, a Low Volume Gateway, a Virtual High Volume Gateway or a Virtual Low Volume Gateway	60 Working Days after notification
Disconnection of a User - blocking Usage	60 minutes

Disconnection of a User - full disconnection	1 Working Day
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## SCHEDULE 8

### CHARGING PRINCIPLES

In setting the level of any Charges the Service Controller shall have reference to the following principles:

#### A. User Charges

1. Each User will be charged:
  - (i) Service Standing Charges relating to one or more Gateway Options that are provided to that User (save that Service Standing Charges shall not apply to a Sharing User in respect of another User's Gateway which it shares pursuant to an authorisation granted by the Service Controller under paragraph 1.10 of Schedule 5 or clause 5.2 of its Local User Agreement);
  - (ii) Charges for Traffic and Local Traffic sent by that User;
  - (iii) Charges for any Additional Services provided to that User from time to time;
  - (iv) Charges for Industry Data Analysis Services; and
  - (v) an appropriate share of the Service Controller's administration costs.

Charges in categories (i) to (ii) above shall be calculated on the basis of an apportionment of the total charges, excluding any charges which relate to Additional Services, invoiced or to be invoiced by the Network Service Provider to the Service Controller in each year. Charges in category (iii) above shall be calculated on the basis of Charges invoiced or to be invoiced by the Network Service Provider to the Service Controller in respect of the relevant Additional Service(s) in each year. Charges in category (iv) shall be calculated on the basis of an apportionment of the costs (internal and external) incurred by the Service Controller in relation to each Industry Data Analysis Service. The appropriate share in category (v) to be applied to each Charge in categories (i) to (iii), shall be calculated as 10% of the aggregate Charges calculated under each of categories (i) – (iii) and shall be a contribution to the Service Controller's costs for providing the Data Transfer Service.

2. The Service Standing Charges shall be invoiced quarterly in advance.
3. Traffic Charges will be calculated on the basis of the volume of Traffic and Local Traffic as measured on input to a User's Gateway in Kbytes, from the User's side of the Gateway, and shall be invoiced monthly in arrears.
4. In relation to Industry Data Analysis Services, Charges will include all costs incurred in developing, testing, implementing, providing and reporting on such Industry Data Analysis Services, and any other related costs. Charges for Industry Data Analysis Services will be charged to Users in the same proportions as the Traffic Charges allocated in the immediately preceding month in accordance with paragraphs 1 and 3 above.
5. Users will pay a Termination Charge on any Gateway terminated within 36 months of the Connection Date. The rate of Termination Charge payable in the event of premature termination of the DTSA is set out in the Schedule of Charges published within the Data Transfer Handbook. The Users agree and acknowledge that these amounts are liquidated damages which represent a true and fair estimate of the

probable cost to Service Controller of early termination by a User of its participation in the DTSA.

6. Any Service Credits received by the Service Controller under its agreement with the Network Service Provider shall be credited against the total cost of the Service.

**B. Electricity Supplier Charges**

1. In addition to User Charges, Electricity Suppliers will also pay Electricity Supplier Charges that will enable the Service Controller to recover the costs of setting up and continuing to provide the Data Transfer Service to Electricity Suppliers (for clarity, excluding any costs associated with the Service Controller's provision of Data Analysis Services in accordance with Schedule 9).
2. Electricity Supplier Charges will be levied monthly in arrears based on the Unit Charge and the Units attributed to an Electricity Supplier in relation to the preceding month.
3. The total amount to be recovered from all Electricity Suppliers in any year will be the aggregate of:
  - (i) any charges from the Network Service Provider to the Service Controller in respect of Services provided to Electricity Suppliers which are not recovered as a User Charge;
  - (ii) any operating costs of the Service Controller in respect of Services provided to Electricity Suppliers which are not recovered as a User Charge;
  - (iii) charges consistent with full recovery over a five year period of the costs of procuring and setting up the Data Transfer Service in respect of Services provided to Electricity Suppliers and an appropriate rate of return.
4. The total Charges across all Electricity Suppliers in any year of account will be calculated as:

$$SC = P_s + C_s + A_s$$

5. The calculation will follow the principles set out below:

$$P_s = P + P^1 - P_u$$

where:

$P_s$  is the revenue to be recovered to cover Network Service Provider charges in respect of Services provided to Electricity Suppliers;

$P$  is the total estimated charge from the Network Service Provider in respect of Services provided to Electricity Suppliers for the year of account;

$P_u$  is the estimate of Network Service Provider charges to be recovered in total as User Charges from Electricity Suppliers; and

$P^1$  is the adjustment necessary to reflect the difference between estimated and actual costs for previous years in respect of Services provided to Electricity Suppliers.

$$C_s = C + C^1 - C_u$$

where:

$C_s$  is the revenue to be recovered to cover the costs of operating the Service Controller



function in respect of Services provided to Electricity Suppliers;

C is the estimate of the total Service Controller operating costs in respect of Services provided to Electricity Suppliers for the year of account;

C<sup>1</sup> is any adjustment necessary to reflect the difference between estimated costs and actual costs for previous years in respect of Services provided to Electricity Suppliers; and

C<sub>u</sub> is the estimate of Service Controller Charges to be recovered as User Charges from Electricity Suppliers.

**A<sub>s</sub>**

where A<sub>s</sub> is the capital recovery element including an appropriate rate of return on PES investment, based on full recovery over a five year period of the costs of procuring and setting up the Data Transfer Service in respect of Services provided to Electricity Suppliers.

6. The Unit Charge for an Electricity Supplier in any year of account will be calculated as:

$[SC / (\text{Service Controller's forecast of Total Units})] + K$

where K adjusts for any error in estimating Total Units for previous years.

### **C. Gas Supplier Charges**

1. In addition to User Charges, Gas Suppliers will also pay Gas Supplier Charges that will enable the Service Controller to recover the costs of setting up and continuing to provide the Data Transfer Service to Gas Suppliers (for clarity, excluding any costs associated with the Service Controller's provision of Data Analysis Services in accordance with Schedule 9).
2. Gas Supplier Charges will be levied monthly in arrears based on the Unit Charge and the Units attributed to a Gas Supplier in relation to the preceding month.
3. The total amount to be recovered from all Gas Suppliers in any year will be the aggregate of:
  - (i) any charges from the Network Service Provider to the Service Controller in respect of Services provided to Gas Suppliers which are not recovered as a User Charge;
  - (ii) any operating costs of the Service Controller in respect of Services provided to Gas Suppliers which are not recovered as a User Charge;
  - (iii) charges consistent with full recovery over a three year period of the costs of procuring and setting up the Data Transfer Service in respect of Services provided to Gas Suppliers and an appropriate rate of return.
4. The total Charges across all Gas Suppliers in any year of account will be calculated as:

$$SC = Ps + Cs + As$$

5. The calculation will follow the principles set out below:

$$Ps = P + P1 - Pu$$

where:

Ps is the revenue to be recovered to cover Network Service Provider charges in respect of Services provided to Gas Suppliers;

P is the total estimated charge from the Network Service Provider in respect of Services provided to Gas Suppliers for the year of account;

Pu is the estimate of Network Service Provider charges to be recovered in total as User Charges from Gas Suppliers; and

P1 is the adjustment necessary to reflect the difference between estimated and actual costs for previous years in respect of Services provided to Gas Suppliers.

$$Cs = C + C1 - Cu$$

where:

Cs is the revenue to be recovered to cover the costs of operating the Service Controller function in respect of Services provided to Gas Suppliers;

C is the estimate of the total Service Controller operating costs in respect of Services provided to Gas Suppliers for the year of account;

C1 is any adjustment necessary to reflect the difference between estimated costs and actual costs for previous years in respect of Services provided to Gas Suppliers; and

Cu is the estimate of Service Controller Charges to be recovered as User Charges from Gas Suppliers.

**As**

where As is the capital recovery element including an appropriate rate of return on the Service Controller's investment, based on full recovery over a three year period of the costs of procuring and setting up the Data Transfer Service in respect of Services provided to Gas Suppliers.

6. The Unit Charge for a Gas Supplier in any year of account will be calculated as:

$$[SC/(\text{Service Controller's forecast of Total Units})] + K$$

where K adjusts for any error in estimating Total Units for previous years.

**D. Adjustment of Charges**

1. The above Charging Principles are based on the assumption that the Service Controller will amend the Charges on an annual basis to reflect a balance between revenues and costs.
2. Without prejudice to the Service Controller's ability to vary charges at any time under Clause 8.4 in accordance with the Charging Principles, following discussions with the Authority, the Service Controller will endeavour to maintain the Charges at consistent levels for periods of longer than one year. The Service Controller will keep the Charges under review with a view to achieving the investment recovery over a five year period.

## SCHEDULE 9

### DATA ANALYSIS SERVICES

#### 1. INTRODUCTION

- 1.1 This Schedule 9 sets out the basis on which the Service Controller may develop and offer such services within the framework of this Agreement.
- 1.2 The relationship between the Service Controller and those parties to whom the Service Controller provides such services shall be governed by a separate agreement between such parties. This Schedule 9 sets out:
  - 1.2.1 the basis on which the Service Controller is instructed to process other Users' Messages in support of such services;
  - 1.2.2 certain requirements and restrictions for such services; and
  - 1.2.3 certain requirements for any such other separate agreements.

#### 2. INTERPRETATION

For the purposes of this Schedule 9 the following additional terms are defined:

- |                                |  |
|--------------------------------|--|
| <b>"Approved DAS Proposal"</b> | means a DAS Proposal which meets the criteria set out in section 4.1 of Annex A of Schedule 9 or section 8 of Annex A of Schedule 9;   |
| <b>"Commercial Consumer"</b>   | means a person (but not a natural person, End Consumer or User) who operates a business in relation to which Messages are transmitted over the Data Transfer Network;  |
| <b>"Copied Message Data"</b>   | means copies of Messages (excluding Vulnerable Customer Messages), data extracted from such copied Messages and copies of metadata associated with such Messages for the purpose of transmitting Messages over the DTN;  |
| <b>"Custom Databases"</b>      | has the meaning given to it in paragraph 6.1.4 of this Schedule 9;   |
| <b>"DAS Catalogue"</b>         | has the meaning given to it in paragraph 3.3 of this Schedule 9;   |
| <b>"DAS Contract"</b>          | means an agreement between the Service Controller and one or more Potential DAS Data Transfer Catalogue Customers or Potential DAS SPAA Data Transfer Flows Customers setting out the terms on which a Data Analysis Service will be provided to such Potential DAS Data Transfer Catalogue Customer(s) or Potential |

	DAS SPAA Data Transfer Flows Customer(s), as applicable;
<b>"DAS Customer"</b>	means a DAS Data Transfer Catalogue Customer and/or a DAS SPAA Data Transfer Catalogue Customer, as the context requires or permits;
<b>"DAS Proposal"</b>	means a proposal to: <ul style="list-style-type: none"> <li>(i) add a new Data Analysis Service to the DAS Catalogue;</li> <li>(ii) change the description of a Data Analysis Service already included in the DAS Catalogue in any material respect;</li> <li>(iii) provide a Data Analysis Service to a Potential DAS Customer who is not a User;</li> <li>(iv) provide a Data Analysis Service as an Industry Data Analysis Service;</li> <li>(v) provide a Data Analysis Service on the basis of paragraph 4.1.5 of this Schedule 9; or</li> <li>(vi) provide a Data Analysis Service on the basis of paragraph 4.3.3(C) of this Schedule 9;</li> </ul>
<b>"DAS Data Transfer Flows Customer"</b>	means a Potential DAS Data Transfer Flows Customer who has entered into a DAS Contract with the Service Controller for Data Analysis Services in respect of the Data Transfer Flows;
<b>"DAS Report"</b>	means any report or other product provided to a DAS Customer pursuant to a DAS Contract;
<b>"DAS SPAA Data Transfer Catalogue Customer"</b>	means a Potential DAS SPAA Data Transfer Flows Customer who has entered into a DAS Contract with the Service Controller for Data Analysis Services in respect of the SPAA Data Transfer Flows;
<b>"Data Analysis Service"</b>	means a data analysis service which involves the analysis of Copied Message Data;
<b>"Data Services Development Environment"</b>	has the meaning given to it in paragraph 6.1.1 of this Schedule 9;
<b>"End Consumer"</b>	means a natural person whose Personal Data is contained in a Message;
<b>"Industry Data Analysis Service"</b>	means a Data Analysis Service designated as such by the User Group and charged for by the Service Controller on the basis described in

	paragraph 5.2 of this Schedule 9;
<b>"Permitted Purposes"</b>	has the meaning given to it in paragraph 4.2;
<b>"Potential DAS Customer"</b>	means a Potential DAS Data Transfer Catalogue Customer and/or a Potential DAS SPAA Data Transfer Flows Customer, as the context requires or permits;
<b>"Potential DAS Data Transfer Catalogue Customer"</b>	means any User, BEIS, Ofgem, End Consumer, Commercial Consumer or other entity;
<b>"Potential DAS SPAA Data Transfer Flows Customer"</b>	means any User, BEIS, Ofgem, End Consumer, Commercial Consumer or other entity;
<b>"Production Environment"</b>	has the meaning given to it in paragraph 6.1.2 of this Schedule 9; and
<b>"Vulnerable Customer Message"</b>	means Messages of type D0225.

### 3. **PROVISION OF DATA ANALYSIS SERVICES**

- 3.1 The Service Controller shall use reasonable endeavours to consider and investigate potential Data Analysis Services which could be made available to one or more Users and other Potential DAS Customers and will develop test and demonstration models in relation to such potential services.
- 3.2 Subject to paragraphs 3.4 and 3.6 of this Schedule 9, the Service Controller shall from time to time propose to Users and other Potential DAS Customers (on either a bilateral or multilateral basis) such Data Analysis Services identified pursuant to paragraph 3.2 of this Schedule 9 which may be commercially advantageous to such parties.
- 3.3 The Service Controller shall from time to time publish in such manner and format as it reasonably determines a catalogue listing all Data Analysis Services which have been developed by the Service Controller and are available to DAS Customers, (the "**DAS Catalogue**") and the DAS Catalogue shall set out the following information in respect of each such Data Analysis Service:
- (A) the name of the Data Analysis Service;
  - (B) a description of the Data Analysis Service; and
  - (C) a description of how the Data Analysis Service fulfils one or more of the Permitted Purposes; and
  - (D) whether the Data Analysis Service has been or is currently being provided to one or more DAS Customers as an Industry Data Analysis Service.
- 3.4 The latest User Group approved DAS Catalogue is appended to this Agreement as Annex B of this Schedule 9. The Service Controller shall not add a Data Analysis Service to the DAS Catalogue or change in any material respect the description of a Data Analysis Service included in the DAS Catalogue unless:

- 3.4.1 in accordance with the process set out in Annex A of this Schedule 9, a PIA and DAS Proposal Notice have been circulated to the User Group which set out a DAS Proposal to make the relevant changes to the DAS Catalogue, such notice to include:
- (A) the name of the Data Analysis Service;
  - (B) the description of the Data Analysis Service; and
  - (C) a summary of how the Data Analysis Service fulfils one or more of the Permitted Purposes; and
- 3.4.2 such DAS Proposal is an Approved DAS Proposal,
- and in such circumstances the Service Controller shall update the DAS Catalogue accordingly.
- 3.5 Not Used.
- 3.6 The Service Controller may only provide Data Analysis Services which are included in the DAS Catalogue, as amended in accordance with this Agreement.
- 3.7 Subject to paragraph 3.8 of this Schedule 9, any Data Analysis Service to be provided to a DAS Customer shall be subject to an appropriate DAS Contract which requires that:
- 3.7.1 the relevant DAS Contract complies with the requirements set out in paragraph 4.1 of this Schedule 9;
  - 3.7.2 such services are provided in support of one or more of the purposes set out in paragraph 4.2 of this Schedule 9;
  - 3.7.3 such services comply with the restrictions set out in paragraph 4.3 of this Schedule 9; and
  - 3.7.4 the processing of Copied Message Data in support of such services is limited to the activities set out in paragraph 6 of this Schedule 9.
- 3.8 The Service Controller shall not enter into a DAS Contract for the provision of a Data Analysis Service to a Potential DAS Customer who is not a User, BEIS, Ofgem, End Consumer or Commercial Consumer unless:
- 3.8.1 the Service Controller has issued a DAS Proposal Notice and PIA in accordance with the process set out in Annex A of this Schedule 9 to the User Group which sets out a DAS Proposal as follows:
    - (A) the full legal name, company number, registered address and website of the Potential DAS Customer; and
    - (B) the Data Analysis Service (by reference to the DAS Catalogue), without disclosing any other information associated with the request, including the proposed charges in relation thereto; and
  - 3.8.2 such DAS Proposal is an Approved DAS Proposal.
- 3.9 Prior to providing a Data Analysis Service to a Potential DAS Customer, the Service Controller shall require the Potential DAS Customer to confirm in writing that it has the right to receive data associated with MPAN-specific inputs or outputs of the relevant Data Analysis Service in accordance with paragraph 4.1.1(B) of this

Schedule 9.

#### 4. **DATA ANALYSIS SERVICE REQUIREMENTS**

##### 4.1 **DAS Contracts**

4.1.1 The Service Controller shall ensure that all DAS Contracts include:

- (A) to the extent that a DAS Report contains data derived from Copied Message Data in relation to other User's Messages:
  - i. subject to paragraph 4.1.4 of this Schedule 9, an obligation on the DAS Customer, to keep the DAS Report confidential on terms equivalent to those set out in Clause 17 of this Agreement; and
  - ii. an obligation on the DAS Customer, not to use DAS Reports other than for the purposes set out in paragraph 4.2 of this Schedule 9;
- (B) confirmation from:
  - i. the DAS Data Transfer Catalogue Customer that, to the extent the DAS Data Transfer Catalogue Customer requests Data Analysis Services with MPAN-specific outputs, the MPAN numbers in respect of which it requests such services are MPAN numbers for which the DAS Data Transfer Catalogue Customer has the right to receive associated Copied Message data (either by law or by contract); or
  - ii. a DAS SPAA Data Transfer Flows Customer that, to the extent the DAS SPAA Data Transfer Flows Customer requests Data Analysis Services with MPRN-specific outputs, the MPRN numbers in respect of which it requests such services are MPRN numbers for which the DAS SPAA Data Transfer Flows Customer has the right to receive associated Copied Message data (either by law or by contract); and
- (C) save as described in paragraph 4.1.5, an indemnity from the DAS Customers in favour of the Service Controller allowing the Service Controller to recover any losses suffered by the Service Controller as a result of use by the DAS Customer of DAS Reports or other data provided pursuant to the Data Analysis Services in a manner which breaches the relevant DAS Contract, up to an aggregate cap of £1,000,000.

4.1.2 If a DAS Customer is in breach of a DAS Contract, the Service Controller shall use all reasonable endeavours to enforce its rights and mitigate its losses under that DAS Contract accordingly.

4.1.3 The Service Controller shall not agree to any variation of, or waiver to, any term of the DAS Contract to the extent that such variation or waiver would be inconsistent with the requirements of this Schedule 9.

4.1.4 A DAS Customer who is a User, BEIS or Ofgem may publish anonymised

and aggregated DAS Reports provided that:

- (A) such DAS Reports do not explicitly identify or reference an End Consumer (other than the DAS Customer) or another User; and
- (B) the DAS Customer does not charge for accessing such DAS Reports; and
- (C) the DAS Contract permits such publication,

and all other DAS Customers may only publish such information where approval has been granted by the DTS Users Group in accordance with the process set out in Annex A of this Schedule 9 and the DAS Contract permits such publication;

4.1.5 Where approved in accordance with Annex A to this Schedule 9, a DAS Contract with DAS Customer who is Ofgem may be entered into on the basis of any or all of the following:

- (A) that no indemnity shall be required from the DAS Customer in favour of the Service Controller in respect of any losses suffered by the Service Controller as a result of use by the DAS Customer of DAS Reports or other data provided pursuant to the Data Analysis Services in a manner which breaches the relevant DAS Contract; or
- (B) that the DAS Customer may publish specified DAS Reports which identify or reference Users if such DAS Report identifies and reports on an equivalent basis on all Users to whom the reported metrics in the DAS Report could meaningfully be applied.

## 4.2 Purposes

The Service Controller shall only provide Data Analysis Services and conduct associated activities in relation to Copied Message Data on instructions from the Users and other Potential DAS Customers as contained herein and for the following purposes:

- 4.2.1 the improvement or enhancement of efficiency in the energy market;
- 4.2.2 the improvement or enhancement of efficiency in the relevant DAS Customers' operations;
- 4.2.3 the benchmarking of the:
  - (A) DAS Data Transfer Catalogue Customer against overall electricity industry performance; or
  - (B) DAS SPAA Data Transfer Flows Customer against overall gas industry performance,
- 4.2.4 in each case to observe their respective comparative performance against (on a combined basis) all relevant electricity industry participants or gas industry participants, as applicable, (such combined performance measures to include averages, medians, variances, highest/lowest values and/or other statistical measures on the combined set of underlying industry performance parameters); or



4.2.5 the identification and development of candidate Data Analysis Services to be offered to DAS Customers.

(together, the "**Permitted Purposes**").

#### 4.3 **Restrictions**

The Service Controller shall ensure that in providing Data Analysis Services:

4.3.1 it does not process any Vulnerable Customer Messages;

4.3.2 the information disclosed to a DAS Customer does not include information which explicitly references or identifies another User, unless the DAS Customer has a right to receive such information, whether:

(A) at law; or

(B) pursuant to a contract between the DAS Customer and the relevant User;

4.3.3 the information disclosed to a DAS Customer does not include information which explicitly references or identifies an End Consumer, unless the DAS Customer has a right to receive such information, whether:

(A) at law;

(B) pursuant to a contract between:

(1) the relevant DAS Data Transfer Catalogue Customer and the relevant End Consumer or that End Consumer's Electricity Supplier;

(2) the relevant DAS SPAA Data Transfer Flows Customer and the relevant End Consumer or that End Consumer's Gas Supplier; or

(C) on the basis of a legitimate ground under Data Protection Legislation, (including that the processing of such information is in the legitimate interests of the relevant Suppliers (and any other relevant Data Controller)), and the DAS Customer is approved as the recipient of such Data Analysis Service on this basis pursuant to Annex A of this Schedule 9;

4.3.4 it complies with all applicable laws and regulations;

4.3.5 it will continue to meet the Service Levels under this Agreement; and

4.3.6 it complies in all other respects with this Agreement.

The restrictions in paragraphs 4.3.2 and 4.3.3 of this Schedule 9 shall not prevent the Service Controller from providing DAS Reports which contain aggregated, anonymised data in relation to Users and/or End Consumers.

#### 5. **SERVICE CHARGES**

5.1 The costs associated with the Service Controller's provision of a Data Analysis Service other than an Industry Data Analysis Service, will be borne by the Service Controller and/or the relevant DAS Customer(s) and shall not be included in the

Charges.

- 5.2 If a DAS Proposal to provide a Data Analysis Service as an Industry Data Analysis Service is approved in accordance with Annex A of this Schedule 9, the costs associated with the Service Controller's provision of the Industry Data Analysis Service will be charged in accordance with Part A of Schedule 8.
- 5.3 For the avoidance of doubt, if a DAS Proposal to provide a Data Analysis Service as an Industry Data Analysis Service is not approved in accordance with Annex A of this Schedule 9, but the DAS Proposal is subsequently approved in accordance with Annex A of this Schedule 9 as a Data Analysis Service that is not provided as an Industry Data Analysis Service, then the costs associated with the Service Controller's provision of such Data Analysis Service will be borne by the Service Controller and/or the relevant DAS Customer(s) and shall not be included in the Charges.
- 5.4 The charges and terms of payment applicable for each Data Analysis Service shall be set out in the individual DAS Contracts.

## 6. SERVICE CONTROLLER ACTIVITIES

- 6.1 In order to provide the Data Analysis Services to DAS Customers, the Service Controller shall:
  - 6.1.1 construct a master development environment database of Copied Message Data, each of which will be stored for a maximum of 96 months (the "**Data Services Development Environment**");
  - 6.1.2 use the Data Services Development Environment to construct one or more production environment databases ("**Production Environments**") to the extent required to deliver requested Data Analysis Services;
  - 6.1.3 use the Data Services Development Environment and Production Environments to develop and test candidate Data Analysis Services;
  - 6.1.4 construct custom databases using Copied Message Data stored in the Data Services Development Environment and the Production Environments, together with other data ("**Custom Databases**"), as appropriate to deliver requested Data Analysis Services; and
  - 6.1.5 use the Production Environments and Custom Databases to provide Data Analysis Services.
- 6.2 In order to fulfil its obligations under paragraphs 6.1.1 and 6.1.2 of this Schedule 9, the Service Controller is, to the extent necessary, instructed to:
  - 6.2.1 Copy Messages to the Data Services Development Environment;
  - 6.2.2 transfer Copied Message Data from the Data Services Development Environment to Production Environments;
  - 6.2.3 store Copied Message Data in its own computer systems (for up to 96 months in relation to each Message);
  - 6.2.4 delete or extract data from Copied Message Data;
  - 6.2.5 re-format Copied Message Data; and

- 6.2.6 organise and arrange Copied Message Data into different structures and orders.
- 6.3 In order to fulfil its obligations under paragraphs 6.1.3 to 6.1.5 of this Schedule 9, the Service Controller is, to the extent necessary, instructed to:
  - 6.3.1 create copies of Copied Message Data stored in the Data Services Development Environment, Production Environments and Custom Databases;
  - 6.3.2 store such Copied Message Data in the Data Services Development Environment, Production Environments and Custom Databases (for up to 96 months in relation to each Message);
  - 6.3.3 organise and arrange Copied Message Data into different structures, orders and new databases;
  - 6.3.4 delete or extract Copied Message Data;
  - 6.3.5 aggregate Copied Message Data;
  - 6.3.6 count volumes and frequencies of Copied Message Data transmissions;
  - 6.3.7 modify Copied Message Data (for example to conduct analyses on hypothetical facts); and
  - 6.3.8 analyse Copied Message Data.

## 7. **INTELLECTUAL PROPERTY**

- 7.1 Subject to paragraph 7.2 of this Schedule 9, the Users acknowledge that any database rights, copyright or other intellectual property rights in any databases, DAS Reports or other data generated by the Service Controller in its provision of the Data Analysis Services shall be owned by (and as necessary assigned to) the Service Controller to the fullest extent permitted by law.
- 7.2 In relation to any intellectual property rights in Messages, this Schedule 9 shall not operate to transfer ownership of such intellectual property rights to the Service Controller.

## 8. **AUDIT**

- 8.1 As a result of the confidentiality provisions which will be included in DAS Contracts, the Parties acknowledge that the Service Controller is not required to disclose to Users any details in relation to specific DAS Customers or the Data Analysis Services provided to them including confirming the identity of such DAS Customers.
- 8.2 Users may, via the User Group, require an audit to be conducted of the DAS Contracts and the Data Analysis Services provided thereunder to ensure that they comply with this Schedule 9 (except for the Service Controller's requirements in paragraph 5 of this Schedule 9 which will be audited in accordance with paragraph 8.4 of this Schedule 9). Upon receiving such request, the Service Controller shall appoint an independent third party to perform such audit and shall at the User Group meeting following such audit make the summary, anonymised conclusions of the audit available to the Users.
- 8.3 The costs arising from any audits carried out pursuant to paragraph 8.2 of this

Schedule 9 will be included in the Charges.

- 8.4 The Service Controller's compliance with the charging provisions set out in paragraph 5 of this Schedule 9 in relation to the Data Analysis Services will be audited as part of the audit provisions in clause 21.6 of this Agreement.

**9. NO LIABILITY FOR USERS**

- 9.1 Users shall not have any liability to a DAS Customer or the Service Controller in relation to the DAS Customer's receipt or use of a Data Analysis Service pursuant to a DAS Contract.

**10. AMENDMENT TO DAS REGIME**

- 10.1 The Parties agree that any amendments to this Schedule 9 shall be effected in a manner which does not prohibit or restrict the Service Controller's ability to comply with the terms of a DAS Contract which it has previously entered into in accordance with the terms of this Agreement.

**Annex A**  
**DAS Proposal approval process**

1. The Parties shall follow the process set out in this Annex to determine whether or not a DAS Proposal is an Approved DAS Proposal.
2. If a User or the Service Controller wishes to propose a DAS Proposal, the Service Controller shall send a notice (a "**DAS Proposal Notice**") and an associated PIA to the User Group via e-mail to convene a meeting of the User Group, to take place either in person or via conference call within 15 Working Days of such notice, to decide whether the DAS Proposal should be approved.
3. Each Member of the User Group shall within 15 Working Days of the date of the DAS Proposal Notice, notify the Service Controller via e-mail of its approval of or objection to the DAS Proposal and:
  - 3.1 if a Member of the User Group does not provide such notification within 15 Working Days of the date of the DAS Proposal Notice, it shall be deemed to have approved the DAS Proposal;
  - 3.2 if a Member of the User Group notifies the Service Controller of an objection to the DAS Proposal, its notice must set out reasonable and objective grounds for such objection; and
  - 3.3 the Service Controller shall acknowledge receipt of any such objection or approval by return e-mail.
4. If, in response to the DAS Proposal Notice, the Service Controller receives:
  - 4.1 approvals (or deemed approvals) of the DAS Proposal from all of the Members of the User Group pursuant to section 3 of Annex A of this Schedule 9, the Service Controller shall cancel the meeting of the User Group convened pursuant to section 2 of Annex A of this Schedule 9;
  - 4.2 an objection to the DAS Proposal from one or more Members of the User Group pursuant to section 3 of Annex A of this Schedule 9:
    - 4.2.1 the Service Controller shall, as soon as reasonably practicable notify the User Group via e-mail of each objection it has received and the grounds for objection provided by the relevant Member(s) pursuant to section 3.2 of Annex A of this Schedule 9 together with any observations which the Service Controller considers it appropriate to make; and
    - 4.2.2 the User Group meeting convened pursuant to section 2 of Annex of this Schedule 9 shall proceed and:
      - (A) paragraph 8 of Schedule 4 (Notice of Meetings) shall not

apply in respect of such meeting;

(B) the quorum for such meeting shall be as set out in paragraph 7.5 of Schedule 4; and

(C) each Member shall provide a proxy vote in accordance with paragraph 3A of Schedule 4 if they are unable to attend in person; and

(D) the approval or rejection of the DAS Proposal will be carried by simple majority of those Members who vote at the meeting or by proxy.

5. If a Member of the User Group who voted at the User Group meeting described in section 4.2.2 of Annex A of this Schedule 9 wishes to appeal the decision reached pursuant to section 4.2.2 of Annex A of this Schedule 9, it shall set out its grounds for appealing the decision in an email to the Service Controller within 5 Working Days of the date of publication of the minutes of the User Group meeting and the Service Controller shall send a notice to the User Group via e-mail to convene an extraordinary User Group meeting, to take place either in person or via conference call within 10 Working Days of such notice, to decide whether the DAS Proposal shall be approved.

6. If the Service Controller itself wishes to appeal the decision of the User Group meeting, the Service Controller shall as soon as reasonably practicable, and in any event within 5 Working Days of the date of publication of the minutes of the User Group meeting, send a notice to the User Group via e-mail setting out the Service Controller's grounds for appealing the decision of the User Group meeting and to convene an extraordinary User Group meeting, to take place either in person or via conference call within 10 Working Days of such notice, to decide whether the DAS Proposal shall be approved.

7. In relation to an extraordinary User Group Meeting convened pursuant to section 5 or 6 of Annex A of this Schedule 9:

7.1 paragraph 8 of Schedule 4 shall not apply in respect of such meeting;

7.2 the quorum for such meeting shall be as set out in paragraph 7.5 of Schedule 4;

7.3 Members of the User Group or the Service Controller may provide the reasons for appealing the previous User Group decision;

7.4 each Member shall provide a proxy vote in accordance with paragraph 3A of Schedule 4 if they are unable to attend in person;

7.5 the approval or rejection of the DAS Proposal will be carried by simple

majority of those Members who vote at the meeting or by proxy; and

7.6 the decision at this User Group meeting shall be final.

8. If the User Group approves the DAS Proposal:

8.1 via email pursuant to section 4.1 of this Annex A to Schedule 9;

8.2 at the User Group meeting held pursuant to section 4.2.2 of this Annex A to Schedule 9 and no Member of the User Group nor the Service Controller itself appeals the decision in the 5 Working Days of the User Group meeting; or

8.3 at the User Group meeting held pursuant to section 7 of this Annex A to Schedule 9,

the DAS Proposal shall be an Approved DAS Proposal.

9. For the avoidance of doubt, all information provided by the Service Controller to a User and to a User Group Member pursuant to this Annex A in relation to a DAS Proposal shall be Confidential Information.

### Annex B – DAS Catalogue

Service Name	Service Description	How the service fulfils the purposes of the DTSA	Approval Date
Smart Meter Installation Dataset (SMID)	Provision of property level predictions based on both DTS data and external data including information from Energy Saving Trust and Ordnance Survey, giving key data for use in planning and executing the smart meter rollout. The	<p><b>Purpose 1: the improvement or enhancement of efficiency in the energy market</b></p> <p>Enables the improvement in the energy market’s efficiency by reducing cost and risk to the smart meter rollout, and enables as the rollout continues the sharing of knowledge between the different participants.</p> <p><b>Purpose 2: the improvement or enhancement of efficiency in DAS Customers' operations.</b></p> <p>By having better understanding of the likely issues the DAS customer can more effectively deploy its workforce</p>	21/2/12



Service Name	Service Description	How the service fulfils the purposes of the DTSA	Approval Date
Smart Meter installations	Reporting on the aggregated location of smart meter installations, including if required benchmarking of individual DAS Customers activities against the market	<p><b>Purpose 1: the improvement or enhancement of efficiency in the energy market</b></p> <p>The service allows central organisations involved in the smart meter programme to monitor the progress of the smart meter rollout, providing insight into the details of where meters are being installed.</p> <p><b>Purpose 2: the improvement or enhancement of efficiency in DAS Customers' operations and</b></p> <p><b>Purpose 3: the benchmarking of the DAS Customer against overall industry performance to observe its comparative performance against (on a combined basis) all relevant industry participants (such combined performance measures to include averages, medians, variances, highest/lowest values and/or other statistical measures on the combined set of underlying industry performance parameters)</b></p> <p>Enable DAS Customers to plan their sales and marketing activities where the extent to which smart meters have been installed in an area is of relevant to their plans.</p>	21/2/12

Service Name	Service Description	How the service fulfils the purposes of the DTSA	Approval Date
MAP efficiency	Reporting on events impacting MAPs estates and identifying discrepancies between MAPs view of their estate and information communicated across the DTS	<p><b>Purpose 2: the improvement or enhancement of efficiency in DAS Customers' operations.</b></p> <p>Enable Meter Asset Providers to have better information as to the status and ownership of their meters so as to ensure they maximise their revenue and reduce their operational costs.</p>	21/2/12
Elexon Reporting	Providing messages and analysis to support the operation and audit of the BSC	<p><b>Purpose 1: the improvement or enhancement of efficiency in the energy market.</b></p> <p>Reduce the costs and improve the quality of the auditing and monitoring process of the BSC by using actual message data rather than relying on self-reported information, by having the data in a more easily analysable format, and enabling dashboards and more specific reports to highlight or investigate particular issues.</p>	21/2/12
Ofgem Reporting	Providing messages and analysis to support Ofgem's regulation of the market	<p><b>Purpose 1: the improvement or enhancement of efficiency in the energy market.</b></p> <p>Reduce the costs and improve the quality of the auditing and monitoring by Ofgem of the industry by using actual data rather than relying on self-reported information, by having the data in a more easily analysable format, and enabling dashboards and more specific reports to highlight or investigate particular issues.</p>	

Service Name	Service Description	How the service fulfils the purposes of the DTSA	Approval Date
BEIS Reporting	Providing messages and analysis to support BEIS policy identification, investigation and monitoring	<p><b>Purpose 1: the improvement or enhancement of efficiency in the energy market.</b></p> <p>Reduce the costs and improve the quality of the provision of information for policy making and monitoring by BEIS by using actual data rather than relying on self-reported information, by having the data in a more easily analysable format, and enabling dashboards and more specific reports to highlight or investigate particular issues.</p>	21/2/12

Service Name	Service Description	How the service fulfils the purposes of the DTSA	Approval Date
COS Insight	Provide insight into the quantity of consumer gains and losses, either at aggregated level or benchmarking an individual DAS Customer's performance against the whole of the rest of the market. This insight can be broken down as appropriate, for instance by location, to provide more actionable insight.	<p><b>Purpose 2: the improvement or enhancement of efficiency in DAS Customers' operations.</b></p> <p>Enables the improvement in the efficiency of sales and marketing activities of the DAS Customer by better identifying the areas to target and the success of their sales and marketing activities, or enables the assessment of the relative churn risk of particular Suppliers to more accurately price MAP contracts.</p> <p><b>Purpose 3: the benchmarking of the DAS Customer against overall industry performance to observe its comparative performance against (on a combined basis) all relevant industry participants (such combined performance measures to include averages, medians, variances, highest/lowest values and/or other statistical measures on the combined set of underlying industry performance parameters)</b></p> <p>The DAS Customer can benchmark the success of their sales and marketing activities against the industry</p>	21/2/12

Service Name	Service Description	How the service fulfils the purposes of the DTSA	Approval Date
Customer Switching Transaction Support	Provision of specific information with consumer's explicit permission to provide on-boarding information and status of the customer switching process	<p><b>Purpose 1: the improvement or enhancement of efficiency in the energy market</b></p> <p>Improves the operation of the market by smoothing the customer switching through improving the quality of the information used, and providing greater visibility to consumers of the progress of their switch.</p> <p><b>Purpose 2: the improvement or enhancement of efficiency in DAS Customers' operations.</b></p> <p>Enable the DAS Customer to improve the quality of the customer switching process for an individual consumer and give them greater visibility of its progress</p>	21/2/12
Embedded Generation Tracking	Identification and reporting of the type and quantity of embedded generation occurring in a geographical area	<p><b>Purpose 1: the improvement or enhancement of efficiency in the energy market. and Purpose 2: the improvement or enhancement of efficiency in DAS Customers' operations.</b></p> <p>Through the better understanding of the occurrence type and quantity of distributed generation, be able to understand the impact on the market and network assets and using this operation improve the DAS Customer operations and investments.</p>	21/2/12

Service Name	Service Description	How the service fulfils the purposes of the DTSA	Approval Date
DNO Network Planning Support	Provide use and insight into the load on the network and predict the occurrence of network issues through the use of predictive analytics and insight into the changes in energy consumption.	<p><b>Purpose 2: the improvement or enhancement of efficiency in DAS Customers' operations.</b></p> <p>Enable DAS Customers to better manage their investments in their networks through improved understanding of the potential location of issues and changes in network usage</p>	21/2/12
Consumption Pattern Changes	Identify the change in consumption by comparing the change over time in estimated annual consumption in target customer sets based for instance on location or other demographic identification	<p><b>Purpose 1: the improvement or enhancement of efficiency in the energy market.</b></p> <p>Understanding of the impact of different interventions, or the change in usage of different customer sets through the relative change in consumption so as to target the most effective intervention.</p>	21/2/12

Service Name	Service Description	How the service fulfils the purposes of the DTSA	Approval Date
Churn Propensity	Identify churn propensity of suppliers' customers based on predictive analytics of market performance	<p><b>Purpose 2: the improvement or enhancement of efficiency in DAS Customers' operations and</b></p> <p><b>Purpose 3: the benchmarking of the DAS Customer against overall industry performance to observe its comparative performance against (on a combined basis) all relevant industry participants (such combined performance measures to include averages, medians, variances, highest/lowest values and/or other statistical measures on the combined set of underlying industry performance parameters)</b></p> <p>The services enable DAS customers to improve their customer retention by comparing their performance against the market and identifying the key customers to focus their retention activities on</p>	21/2/12
Gateway Audit information	Provide DTS Users with additional insight into the activity on their gateway through analysis of the audit information	<p><b>Purpose 2: the improvement or enhancement of efficiency in DAS Customers' operations</b></p> <p>Improve the operation of DTS Users by enabling them to analyse the traffic on their gateway over a longer time period than provided by the DTS Webtools reports</p>	21/2/12

Service Name	Service Description	How the service fulfils the purposes of the DTSA	Approval Date
Commercial Customer Energy Management Service Data Provision	The provision of message data for individual commercial customers' estates to enable an appointed energy service company to process the data and provide services such as invoice reconciliation	<p><b>Purpose 1: the improvement or enhancement of efficiency in the energy market.</b></p> <p>These services thus enable the appointed agent, for the specific commercial customers, to improve the quality of their interactions with their suppliers as well as improving the accuracy of their energy use and forecasting.</p>	21/2/12
Distributed Generation Insight	The provision of aggregated distributed generation information	<p><b>Purpose 1: the improvement or enhancement of efficiency in the energy market.</b></p> <p>These services enable the better understanding of and forecasting of the distributed generation on the network to enable better planning by those involved in system balancing and trading, thus enabling a more efficient and cost effective operation of the network.</p>	21/2/12