

**TERMS AND
CONDITIONS**



Terms and Conditions of a Deemed Contract for Supply of Power

Schedule 3 - Terms and Conditions of Supply

1. General Terms and Conditions of this *Agreement*

- 1.1 Italicised words and expressions used in this *Agreement* shall have the meanings ascribed to them in the *Definitions* (attached hereto).
- 1.2 References within a Schedule to a Clause are, unless expressly stated, reference to a Clause within the Schedule of this *Agreement* in which they appear.
- 1.3 Clause headings in this *Agreement* are for ease of reference only and shall not be taken into account in construing this *Agreement*.
- 1.4 References to a statute, by-law, regulation, rule, delegated legislation or order, or to a provision of it, is to the same as amended, modified, consolidated or re-enacted from time to time and to any by-law, regulation, rule, delegated legislation or order made thereunder.
- 1.5 This *Agreement* is the entire agreement between the *Parties* with respect to the subject matter of this *Agreement* and supersedes and extinguishes any oral or written contract, representation, negotiations and understanding previously made or given relating to that subject matter. In addition, save in respect of any warranties expressly set out herein, all conditions, warranties and other statements of whatsoever nature, whether express or implied by statute, at common law or otherwise, are hereby excluded except insofar as such exclusion is prevented by law. The *Parties* confirm that they have not entered into this *Agreement* on the basis of any representation that is not expressly incorporated into this *Agreement*, except in the case of fraud.
- 1.6 This *Agreement* and any non-contractual obligations arising from or connected with this *Agreement* shall be construed and governed in all respects in accordance with English Law and subject to Clauses 1.14 and 12.9, the *Parties* agree that the English Courts shall have exclusive jurisdiction, except where this *Agreement* covers *Exit Point(s)* located in Scotland and the *Parties* agree to substitute “Scottish Law” for “English Law” and the “Scottish Courts” for “English Courts” in the foregoing. For such *Exit Point(s)*, the *Parties* hereby consent to the registration of this *Agreement* for preservation and execution.
- 1.7 If any provision or part of a provision of this *Agreement* is or becomes invalid, unenforceable or illegal, such invalidity, unenforceability or illegality shall not prejudice the remainder of the affected provision or remaining provisions, which shall continue in full force and effect.
- 1.8 Except as permitted under Clauses 1.12, 1.16 and Clause 21 and the *Form of Agreement*, this *Agreement* may not be released, discharged, supplemented, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the *Parties*.
- 1.9 No waiver by either *Party* of any provision of this *Agreement* shall be binding unless made by an instrument in writing signed by a duly authorised officer or representative of the *Party* making the waiver hereto. Furthermore, any such waiver shall relate only to the matter, non-compliance or breach to which it expressly relates and to the extent expressly stated and shall not apply to any subsequent or other matter, non-compliance or breach.
- 1.10 Unless specifically provided for under this *Agreement*, no provision of this *Agreement* shall be construed as creating any right(s) or benefit(s) enforceable by a *Third Party* and all *Third Party* rights implied by law, including those under the Contracts (Rights of Third Parties) Act 1999, are, to the extent permissible by law, excluded from this *Agreement*. This clause shall not apply to the extent that this *Agreement* is governed by Scottish Law.
- 1.11 The consent of a *Third Party* shall not be required for any variation or the termination of this *Agreement* even if that variation or termination affects the benefit conferred on that *Third Party*.
- 1.12 Notwithstanding Clause 1.8, DONG Energy may amend this *Agreement* by giving not less than sixty (60) days’ prior written notice to the *Buyer*, which notice shall detail the amendments to be made and the date of their effect.

- 1.13 The *Buyer* may terminate this *Agreement* by giving not less than thirty (30) days' prior written notice to *DONG Energy* following service of any such notice of an amendment by *DONG Energy* issued pursuant to Clause 1.12 in which case Clause 22 shall apply.
- 1.14 Any dispute between the *Parties* arising out of or in connection with this *Agreement* or the performance, validity or enforceability of it ("*Dispute*") shall be resolved in the following manner.
- (a) Either *Party* may give written notice to the other *Party* of the *Dispute*, such notice to include reasonable details of the nature of the *Dispute* and any relevant supporting documentation. A senior representative of *DONG Energy* and a senior representative of the *Buyer* shall each use reasonable endeavours to resolve the *Dispute*. If the *Dispute* is not resolved within ten (10) *Business Days* of a *Party* giving written notice of the *Dispute*, either *Party* may refer the *Dispute*:
 - (i) if the *Dispute* relates to an *Industry Code* or *Legal Requirement*, to be finally settled by arbitration pursuant to the arbitration rules of the *Electricity Arbitration Association* in force from time to time. The provisions of the Arbitration Act 1996 shall apply to any such arbitration subject to any permitted exceptions thereto agreed by the *Parties*. The seat for arbitration shall be England and Wales and the law of England shall be the proper law of reference to arbitration. The decision of the arbitrator shall be final and binding on the *Parties*, except in the case of fraud or manifest error;
 - (ii) if the *Dispute* relates to Clause 12.8, to be finally settled by an expert in accordance with Clause 12.9; or
 - (iii) in all other circumstances, to the English or Scottish Courts in accordance with Clause 1.6.
- 1.15 No delay or omission by either *Party* in exercising any right, power or remedy shall impair or be construed as a waiver of such right, power or remedy and any single or partial exercise thereof shall not preclude any future exercise of the same.
- 1.16 Both *Parties* shall effect any amendment required to this *Agreement* (including an addition to or other variation of the *Charges*) as a result of any change in *DONG Energy's Supply Licence*, any order made pursuant to the *Act* or *Regulations*, any direction of a *Competent Authority* or any variation of any *Industry Code*, or agreement, licence, code, authorisation or consent necessary to permit *DONG Energy* to supply electricity to the *Buyer* at the *Exit Point(s)*. *DONG Energy* shall give the *Buyer* written notice of such changes, such notice to state the date from which such changes shall take effect. For the avoidance of doubt, the *Buyer* is not permitted to terminate this *Agreement* under Clause 1.13 (or otherwise) as a result of any amendment required to be made to this *Agreement* under this Clause 1.16.
- 1.17 The word "including" when used in this *Agreement* shall be construed without limitation.
- 1.18 Unless specified otherwise, any reference in this *Agreement* to (i) a "day" shall mean a calendar day (ii) a "month" shall mean a calendar month; and (iii) a time of day shall mean London time.
- 1.19 Any reference to an *Industry Code* or licence, including *DONG Energy's Supply Licence*, shall mean such *Industry Code* or licence as amended and as in force from time to time.

2. Requirements in respect of *Exit Points*

- 2.1 *DONG Energy* shall be under no obligation to supply electricity to any *Exit Point* unless and until the following conditions are satisfied in relation to such *Exit Point*:
- (a) *DONG Energy* is *Registered* in respect of such *Exit Point*;
 - (b) there is a *Meter Operator* appointed in respect of such *Exit Point* pursuant to the applicable *Industry Codes* and there is a *Meter Operator Agreement* applicable to such *Exit Point* in full force and effect;
 - (c) there is a *Data Collector* and *Data Aggregator* appointed in respect of such *Exit Point* pursuant to the applicable *Industry Codes* and there is a *Data Collector Agreement* and *Data Aggregator*

Agreement applicable to such *Exit Point*, each of which are in full force and effect;

- (d) there is an *Advanced Meter Installation* installed at such *Exit Point*, which is certified (except to the extent that such *Advanced Meter Installation* is not required to be certified under the *Act*), installed, registered, operating and complying with any applicable *Legal Requirement* (including the *Act*) and *Industry Code* (including the *BSC* and *MRA*);
 - (e) there is a *Use of System Agreement* in full force and effect in relation to such *Exit Point*; and
 - (f) there is a *Connection Agreement* in full force and effect in relation to such *Exit Point*.
- 2.2 The *Buyer* shall ensure that the conditions in Clause 2.1(d) (subject to Clause 3.2) and Clause 2.1(f) are satisfied by the *Indicative Contract Start Date*, and shall provide *DONG Energy* with such information and other assistance that it reasonably requires to allow *DONG Energy* to satisfy the conditions in Clauses 2.1(a), (c) and (e) by the *Indicative Contract Start Date* (or such earlier date required by Clause 2.4), including, historic half-hourly consumption data (for at least twelve (12) months), line loss factor and, in respect of any *NHH Exit Point(s)*, the standard settlement configuration and profile class of metering equipment used at such *NHH Exit Point(s)*. *DONG Energy* shall ensure that the condition in Clause 2.1(b) is satisfied by the *Indicative Contract Start Date* unless it agrees to the *Buyer* contracting with the *Meter Operator* in accordance with Clause 3.5, in which case the *Buyer* shall ensure that such condition is satisfied by the *Indicative Contract Start Date*.
- 2.3 *DONG Energy* shall not be liable to the *Buyer* for any charges, costs, losses, expenses or liabilities suffered by the *Buyer* arising from or connected with any delay in the satisfaction of the conditions in Clauses 2.1 (a), (b), (c), (e) or (f) except to the extent such loss was caused by an act or omission of *DONG Energy*. *DONG Energy* shall not be liable to the *Buyer* for any loss suffered by the *Buyer* arising from or connected with any delay in the satisfaction of the condition in Clause 2.1(d).
- 2.4 If as at the day immediately following the *Effective Date* (the “*Relevant Date*”) any *Electricity Supplier* (other than *DONG Energy*) is *Registered* in respect of any *Exit Point*, *DONG Energy* shall, in accordance with *DONG Energy’s Supply Licence*, ensure that the condition in Clause 2.1 (a) (being that *DONG Energy* is *Registered* in respect of each *Exit Point*) is satisfied in respect of such *Exit Point* by the date which is twenty-one (21) days after the *Relevant Date* unless:
- (a) the *Buyer* requests that the condition be satisfied at a later date;
 - (b) the *Buyer* notifies *DONG Energy* that it does not wish the *Registration* to take place (in which case, Clause 5 shall apply); or
 - (c) one or more of the conditions in Clause 2.5 applies.
- 2.5 The conditions referred to in Clause 2.4(c) are that, on or after the *Relevant Date*:
- (a) the previous *Electricity Supplier* has prevented the *Registration* because it has raised an objection to the transfer in accordance with relevant provisions of its *Supply Licence*;
 - (b) a Supply Exemption Holder (as defined in the *Supply Licence*) is currently supplying electricity to the relevant *Exit Point* and has objected to the proposed *Registration* under paragraph 2 of Schedule 2ZB to the *Act*;
 - (c) *DONG Energy* does not have all of the information it requires in order to complete the *Registration*, despite having taken all reasonable steps to obtain the missing information from the *Buyer*, and it cannot readily obtain that information from another source;
 - (d) the *Buyer* is currently taking a supply of electricity at the *Exit Point* through an Exempt Distribution System (as defined in the *Supply Licence*) and *DONG Energy* is unable to start supplying electricity to the relevant *Exit Point* because:
 - (i) of a connection which *DONG Energy* or the *Buyer* requires to be made in accordance with paragraph 7(2) of Schedule 2ZA of the *Act*, and that physical connection has not yet been made; or

- (ii) the distribution exemption holder has specified, in a notice under paragraph 1(6)(a)(i) of Schedule 2ZA to the *Act*, a metering arrangement which it considers would be required for access to be given to a third party supplier (within the meaning of that schedule) and that metering arrangement is not yet in place; or
 - (e) *DONG Energy* is prevented from complying with the *Registration* due to any other circumstance which is outside its control and which it has taken all reasonably practicable steps to resolve.
- 2.6 Where any of the conditions referred to in Clause 2.5 applies, *DONG Energy* shall complete the *Registration* as soon as reasonably practicable and, in any event, within twenty-one (21) days of the date on which the relevant condition ceases to apply (or, if more than one condition applies, when all relevant conditions cease to apply). For the avoidance of doubt, the *Buyer* acknowledges that, if the condition in Clause 2.5 (b) applies, *DONG Energy* cannot complete the *Registration* before the objection by the Supply Exemption Holder is resolved in accordance with paragraph 1(8) of Schedule 2ZB of the *Act*.
- 2.7 The *Buyer* accepts for the purposes of this *Agreement* full responsibility for the electricity consumed at each *Exit Point* by itself or any other person whether or not authorised by the *Buyer*. All electricity discovered or reasonably determined to have been consumed at an *Exit Point* shall be deemed to be supplied under the terms of this *Agreement*.
- 2.8 Electricity shall be delivered to the *Buyer* at each *Exit Point* and the risk and title in the electricity so delivered shall pass at the *Exit Point*.
- 2.9 If, in relation to any *Exit Point*, any of the conditions in Clause 2.1 cease to be satisfied, or either *Party* reasonably anticipates that any such conditions may cease to be satisfied, such *Party* shall promptly notify the other *Party* and *DONG Energy* may, without prejudice to any other rights or remedies available to it, terminate this *Agreement* in respect of such *Exit Point* by notice to the *Buyer* in which case the *Buyer* shall be deemed to have given notice to remove such *Exit Point* from this *Agreement* and Clause 5 shall apply.
- 2.10 The *Buyer* shall give prior written notice to *DONG Energy* of any proposed changes to any details of an *Exit Point* (including any change to the address or *MPAN* associated with such *Exit Point*), such notice to specify the date on which such changes shall take effect. For the avoidance of doubt, any change in the occupier or owner of an *Exit Point* or any proposed addition or removal of an *Exit Point* must be notified to *DONG Energy* in accordance with Clause 5.
- 2.11 The *Buyer* represents and warrants to *DONG Energy* as at the *Effective Date* and throughout the *Term* that:
 - (a) the electricity supplied to each *Exit Point* under this *Agreement* is to be used wholly or mainly for non-domestic purposes;
 - (b) there is no electricity generating equipment installed at any *Exit Point*;
 - (c) there are no pre-payment meters installed at any *Exit Point*; and
 - (d) it is not a party to any agreement for the provision of *Ancillary Services* and/or triad avoidance.

The *Buyer* shall promptly notify *DONG Energy* if any of the representations and warranties in this Clause 2.11 cease to be satisfied, or if the *Buyer* reasonably believes that any such representations and warranties will cease to be satisfied. *DONG Energy* may, without prejudice to any other rights or remedies available to it, terminate this *Agreement* following receipt of such notice in which case Clause 22 shall apply.
- 2.12 *DONG Energy* represents and warrants that *DONG Energy's Supply Licence* entitles it to supply electricity to the *Exit Point(s)* and that it shall be a party to applicable *Industry Codes*, to the extent necessary to provide an electricity supply to the *Exit Point(s)*.
- 2.13 The *Buyer* shall comply with the *Regulations*, the relevant *Distribution Code*, *Grid Code* and the *CUSC*,

in each case to the extent applicable to it.

2.14 *DONG Energy* gives no warranty or guarantees whatsoever as to the reliability or quality of the supply of electricity to the *Exit Point(s)*.

3. Meter Installation and Maintenance

3.1 *Subject to Clause 3.2, the Buyer shall ensure that the supply of electricity at each Exit Point is measured by an Advanced Meter Installation satisfactory to DONG Energy and installed at each such Exit Point. For the avoidance of doubt, where an Exit Point comprises one or more Metering Points (as defined in the BSC) the Buyer shall ensure that there is an Advanced Meter Installation satisfactory to DONG Energy at each Metering Point (as defined in the BSC) associated with an Exit Point.*

3.2 *If, as at the Effective Date, there is any Exit Point for which there is no Advanced Meter Installation satisfactory to DONG Energy installed, DONG Energy shall use reasonable endeavours to appoint a Meter Operator to install and commission an Advanced Meter Installation at each Exit Point by the Indicative Contract Start Date, and the costs of such installation and commissioning shall be borne by DONG Energy.*

3.3 *The Buyer shall allow safe and unobstructed access to each Exit Point at all reasonable times, and in any event always between 08.00 and 17.00 hours on any Business Day, to allow DONG Energy or any employee, agent or sub-contractor appointed by DONG Energy, to attend such Exit Point and install and commission an Advanced Meter Installation pursuant to Clause 3.2. If, in respect of an Exit Point:*

- (a) *all the conditions set out in Clause 2.1 have been satisfied as at a date, other than the condition to have an Advanced Meter Installation as set out in Clause 2.1(d);*
- (b) *metering equipment satisfactory to DONG Energy is certified (unless it is not required to be certified under the Act), installed, registered, operating and complying with any applicable Legal Requirement (including the Act) and Industry Code (including the BSC and MRA) at such Exit Point,*

DONG Energy shall use reasonable endeavours to commence the supply of electricity to such Exit Point. The Buyer shall provide DONG Energy with such reasonable information and assistance as is necessary to enable DONG Energy to commence and record the supply of electricity to such Exit Point, including by providing daily meter reads to DONG Energy, until such Advanced Meter Installation is installed and commissioned. DONG Energy shall not have any liability to the Buyer for any delay in installing and commissioning an Advanced Meter Installation at each Exit Point.

3.4 *Unless requested by the Buyer pursuant to Clause 3.5, DONG Energy will appoint a Meter Operator, Data Collector and Data Aggregator in respect of each Exit Point and enter into a Meter Operator Agreement, Data Collector Agreement and Data Aggregator Agreement with respect to each such Exit Point.*

3.5 *The Buyer may contract with a Meter Operator in respect of any HH Exit Point provided that:*

- (a) *it gives DONG Energy written notice of the details of such Meter Operator and evidence that it has entered into a Meter Operator Agreement with such Meter Operator, no less than twenty-eight (28) Business Days prior to the Indicative Contract Start Date; and*
- (b) *such Meter Operator is, in the reasonable opinion of DONG Energy, Qualified to carry out the functions of a meter operator.*

If such notice is given DONG Energy shall appoint the Meter Operator identified by the Buyer. If no such notice is given, or the proposed Meter Operator is not, in DONG Energy's reasonable opinion, Qualified to carry out the functions of a meter operator, DONG Energy shall appoint and contract with the Meter Operator in accordance with Clause 3.4. If at any time the Meter Operator Agreement between the Buyer and its appointed Meter Operator terminates or becomes invalid or unenforceable, DONG Energy may appoint and contract with a Meter Operator in respect of each relevant Exit Point. The Buyer shall indemnify DONG Energy for any loss, cost, expense or liability incurred by DONG Energy as a result of the termination, invalidity or unenforceability of any

Meter Operator Agreement entered into by the *Buyer*.

- 3.6 *DONG Energy* or, if the *Buyer* appoints the *Meter Operator* or owns or controls an *Advanced Meter Installation*, the *Buyer*, shall ensure that each *Advanced Meter Installation* at each *Exit Point* is specified, operated, maintained and renewed in such manner as *DONG Energy* or the *Meter Operator* may determine, having due regard to the charging structure applicable under this *Agreement*, good industry practice, any applicable *Legal Requirement* or *Industry Code*.
- 3.7 The *Buyer* shall indemnify *DONG Energy* for the acts and omissions of any *Meter Operator* contracted by the *Buyer* pursuant to Clause 3.5, including any failure by the *Meter Operator* to comply with the *Buyer's* obligations in respect of the *Advanced Meter Installations* as set out in this Clause 3. *DONG Energy* shall not be liable to the *Buyer* in respect of any breach of any of its obligations in this *Agreement*, including its obligation to supply electricity to the *Exit Points*, if and to the extent that such breach was caused by any act or omission of a *Meter Operator* contracted by the *Buyer*.
- 3.8 The *Buyer* shall allow safe and unobstructed access to each *Advanced Meter Installation* at all reasonable times, and in any event always between 08.00am and 17.00pm hours on any *Business Day*, for the purposes of allowing *DONG Energy*, or any employee, agent or sub-contractor of *DONG Energy* (including any *Meter Operator*, *Data Collector* or *Data Aggregator* appointed by *DONG Energy*) or the *Distribution System Operator* to:
- (a) install, maintain, inspect, test, repair, replace, upgrade, disconnect or disable any part of the *Advanced Meter Installation*;
 - (b) take any meter readings;
 - (c) *Disconnect* or *De-energise* any *Exit Point* where *DONG Energy*, or the *Distribution System Operator*, is permitted to do so under Clause 21.5; or
 - (d) perform any other obligation, or exercise any other right, of *DONG Energy* under this *Agreement*.
- 3.9 *DONG Energy* shall comply, and shall procure the compliance of its employees, agents and sub-contractors, with any reasonable health, safety and security requirements of the *Buyer* in respect of its *Exit Point(s)* provided *DONG Energy* has been given prior notice of such requirements.
- 3.10 If the *Buyer* fails to provide safe and unobstructed access to an *Advanced Meter Installation* as required under Clause 3.8, whether such requirement for access was pre-planned or not, the *Buyer* shall indemnify and keep indemnified *DONG Energy* from and against any loss, costs, expenses or damage which *DONG Energy* may incur from any *Third Party* as a result of the *Buyer's* failure.
- 3.11 The *Buyer* shall ensure that no *Advanced Meter Installation* is damaged, mistreated or interfered with, and shall inspect each *Advanced Meter Installation* on a regular basis to ensure that no such damage, mistreatment or interference has occurred.
- If, without prejudice to the foregoing, any such damage or mistreatment or interference does occur the *Buyer* shall:
- (a) notify *DONG Energy* of such occurrence as soon as possible; and
 - (b) secure a police crime number if such damage, mistreatment or interference has been undertaken by any person or persons other than the *Buyer*, its employees, agents or sub-contractors.
- 3.12 If any damage, mistreatment or interference does occur to the *Advanced Meter Installation* the *Buyer* shall indemnify and keep indemnified *DONG Energy* from and against any loss, costs, expenses or damage that it may incur as a result, except to the extent that such damage, mistreatment or interference was caused by the negligence of *DONG Energy* or its agents, employees or sub-contractors.
- 3.13 The *Buyer* acknowledges that it must have half hourly metering installed at a *NHH Exit Point* at its own cost if a maximum demand of 100kW is recorded at any time in relation to the supply of

electricity to such *NHH Exit Point*, or half hourly metering is otherwise required under the BSC.

3.14 The *Buyer* shall, or shall procure that any *Meter Operator* contracted by it shall, provide *DONG Energy*, or any employee, agent or sub-contractor acting on *DONG Energy's* behalf, with data in relation to the *Advanced Meter Installations* at each *Exit Point* in the format and timescales required by *DONG Energy*.

4. Metering, Meter Accuracy and Quantities Supplied

4.1 The quantity of electricity supplied by *DONG Energy* and consumed by the *Buyer* at each *Exit Point* shall be determined in accordance with the provisions of this Clause 4.

4.2 The quantity of electricity consumed by the *Buyer* at each *Exit Point* in each *Supply Month* shall be determined as follows:

(a) using meter readings provided by the *Advanced Meter Installation* installed in respect of such *Exit Point* which are received by *DONG Energy* from the *Data Collector* by a date five (5) *Business Days* after the end of such *Supply Month* and which have not been included in any previous *Monthly Electricity Invoice*; or

(b) where meter readings provided by an *Advanced Meter Installation* are unavailable at the required time, because of the failure of the *Advanced Meter Installation* or otherwise, using estimated quantities reasonably determined by *DONG Energy* on the basis of the *Buyer's Aggregated Contracted Consumption* and *Buyer's Contracted Monthly Consumption*.

4.3 If the quantity of electricity consumed by the *Buyer* at any *Exit Point(s)* in respect of any period has been estimated as provided in Clause 4.2(b), the quantities estimated to have been consumed at the relevant *Exit Point(s)* during that period shall, when the next actual meter reading has been provided to *DONG Energy* in accordance with Clause 4.2(a), be reconciled against the actual quantity consumed at those *Exit Point(s)* as confirmed by the meter reading, and *DONG Energy* will debit any resulting under payment or credit any over payment in the *Monthly Electricity Invoice* issued in the month following the month of such reconciliation.

4.4 If either *Party* believes that an *Advanced Meter Installation* is registering the supply of electricity to any *Exit Point* inaccurately, it may require such *Advanced Meter Installation* to be tested by a *Meter Examiner* in accordance with any applicable *Legal Requirement* or *Industry Codes* by giving written notice to the other *Party*. If those tests show:

(a) that such *Advanced Meter Installation* is measuring the supply within the limits allowed by applicable *Legal Requirements* and *Industry Codes*, then the *Meter Examiner's* costs shall be paid by the *Party* that requested the tests; or

(b) that such *Advanced Meter Installation* is not measuring the supply within the limits allowed by applicable *Legal Requirements* and *Industry Codes*, then the *Advanced Meter Installation* or any defective part shall be replaced or recalibrated as soon as reasonably practicable, and the costs of such replacement or recalibration and the *Meter Examiner's* costs shall be borne by the *Party* that is a party to a *Meter Operator Agreement* with the relevant *Meter Operator*.

4.5 If Clause 4.4(b) applies, the inaccuracy of the relevant *Advanced Meter Installation* shall be deemed to have arisen after the date of the meter reading included in the *Monthly Electricity Invoice* for the *Supply Month* immediately prior to the *Supply Month* in which the notifying *Party* gave notice of the inaccuracy and, if a *Monthly Electricity Invoice* has been issued on the basis of inaccurate meter reads, *DONG Energy* shall debit any under payment or credit any over payment determined by *DONG Energy* acting reasonably to have arisen in the next *Monthly Electricity Invoice* issued to the *Buyer* under this *Agreement*.

5. Exit Point additions or removals

5.1 Subject to Clause 5.6, the *Buyer* may remove an *Exit Point* from this *Agreement* or add an *Exit Point* to this *Agreement* by giving not less than thirty (30) days' prior written notice to *DONG Energy*. Such notice shall include:

- (a) if an *Exit Point* is to be added, details of the new *Exit Point*, including the details identified in Schedule 1, the *Maximum Capacity* of such *Exit Point*, and any other information which *DONG Energy* would reasonably require to enable the conditions to supply in Clause 2.1 to be satisfied in respect of such *Exit Point*;
 - (b) if an *Exit Point* is to be removed, details of the new owner, lessee, licensee or occupier of the *Exit Point* (if any);
 - (c) the proposed date that the supply of electricity to such *Exit Point* is required to commence, or cease (as applicable);
 - (d) if an *Exit Point* is to be added, whether the *Exit Point* has an *Advanced Meter Installation* installed and commissioned at such *Exit Point* and, if the *Exit Point* is a *HH Exit Point*, whether the *Buyer* has a *Meter Operator Agreement* with a *Meter Operator* applicable to such *Exit Point*; and
 - (e) a revised *Buyer's Aggregated Contracted Consumption* and revised *Buyer's Contracted Monthly Consumption* in the format requested by *DONG Energy*.
- 5.2 For the avoidance of doubt, the *Buyer* is required to provide a notice under Clause 5.1 in relation to any decision to sell, lease, license or otherwise dispose of any interest in, or cease occupation or ownership of, any *Exit Point* supplied under this *Agreement*.
- 5.3 *DONG Energy* shall, following the receipt of a notice under Clause 5.1 (or deemed receipt of such notice under Clause 2.9), inform the *Buyer*:
- (a) whether it requires the *Buyer* to pay *DONG Energy* its reasonable administrative costs incurred in processing the removal or addition of an *Exit Point*, in which case such costs shall be included in the next *Monthly Electricity Invoice* issued under this *Agreement*; and / or
 - (b) the date from which the addition or removal of the relevant *Exit Point* (as applicable) shall be effective for the purposes of this *Agreement*, without prejudice to *DONG Energy's* rights under Clauses 5.4 and 5.5.
- 5.4 The conditions of supply in Clause 2.1 shall apply to any addition of an *Exit Point* to this *Agreement*, and *DONG Energy* shall not be obliged to provide a supply of electricity to such *Exit Point* until such conditions are satisfied.
- 5.5 For the avoidance of doubt, the removal of an *Exit Point* from this *Agreement* shall only be effective unless and until:
- (a) any subsequent owner, lessee, licensee or occupier of such *Exit Point* enters into an agreement for the supply of electricity to such *Exit Point* with *DONG Energy* or another *Electricity Supplier*; or
 - (b) such *Exit Point* is *Disconnected*,
- and the *Buyer* shall continue to remain bound as the *Buyer* under this *Agreement* and shall be liable for and shall pay for all electricity (including the *Delivered Price* and any additional costs or charges) supplied to such *Exit Point* until termination is effective.
- 5.6 The *Buyer* acknowledges and accepts the right of *DONG Energy* to object, as permitted by *DONG Energy's Supply Licence*, to any purported transfer of any *Exit Point* to another *Electricity Supplier* where:
- (a) such transfer would become effective prior to the *Contract End Date*;
 - (b) the *Electricity Supplier* that initiated such transfer agrees with *DONG Energy* that it was initiated in error;
 - (c) such transfer relates to a *Related Metering Point* (as defined in *DONG Energy's Supply Licence*), and the *Electricity Supplier* has not applied to transfer all the *Related Metering Points* (as defined in *DONG Energy's Supply Licence*) on the same *Business Day* for the same start date; or

- (d) notwithstanding the expiry or termination of this *Agreement*, the *Buyer* has failed to pay any charges for the supply of electricity to such *Exit Point* which are due to *DONG Energy*, have been demanded in writing, and have remained unpaid for twenty-eight (28) days after the making of such demand.

The *Buyer* undertakes not to take any action preventing or interfering with *DONG Energy's* proper exercise of these rights.

- 5.7 *DONG Energy* shall as soon as reasonably practicable notify the *Buyer* if it has objected to any proposed transfer of an *Exit Point*, such notice to include the grounds for the objection and how the *Buyer* may dispute or resolve such grounds.

6. Supply of *Renewable Source Electricity*

- 6.1 *DONG Energy* shall, if agreed with the *Buyer*, supply all, or an agreed percentage of, the electricity to the *Buyer* under this *Agreement* from any *Renewable Source*.
- 6.2 If *DONG Energy* has agreed to provide *Renewable Source Electricity* to the *Buyer*, then for the purposes of the paragraph 19(2) of Schedule 6 Finance Act 2000, *DONG Energy* agrees that, in each averaging period (as defined in the Finance Act 2000) the amount of *Renewable Source Electricity* supplied by *DONG Energy* in the relevant averaging period will not exceed the difference between:
- (a) the total amount of *Renewable Source Electricity* that during that averaging period is either acquired or generated by *DONG Energy*; and
- (b) so much of that total amount as is allocated by *DONG Energy* otherwise than to *Renewable Source Electricity* supplies made by *DONG Energy* in that averaging period.
- 6.3 If the *Buyer* wishes to obtain an exemption or reduction from the *Climate Change Levy*, the *Buyer* must provide *DONG Energy* with a completed relief or supplier PP11 certificate in the format specified by HM Revenue and Customs.
- 6.4 *DONG Energy* shall not be required to supply *Renewable Source Electricity* during any *Extended Contract Period*.

7. Volume Forecasts

- 7.1 The *Buyer's Aggregated Contracted Consumption* and *Buyer's Contracted Monthly Consumption* ("*Volume Forecasts*") and the *Buyer's Forecast Residual Volume* shall be as identified in the *Form of Agreement* and Schedule 2 and shall be fixed for the *Term* of this *Agreement*, except as otherwise provided in this Clause 7.
- 7.2 If the *Buyer* believes that any or all of the *Volume Forecasts* will change from that set out in the *Form of Agreement* and Schedule 2 (or from that subsequently agreed pursuant to this Clause 7), the *Buyer* shall notify *DONG Energy* of such change as soon as possible, such notice to include revised *Volume Forecasts* in the format requested by *DONG Energy*. For the avoidance of doubt, the *Buyer* shall be deemed to have given a notice under this Clause 7.2 if it gives a notice of the addition or removal of an *Exit Point* under Clause 5.1.
- 7.3 Upon receipt (or deemed receipt) of a notice from the *Buyer* pursuant to Clause 7.2, *DONG Energy* shall create a revised *Buyer's Consumption Profile* and *Forecast Residual Volume* using the revised *Volume Forecasts* provided by the *Buyer* and may revise the *Residual Price* and any of the *Charges* as a result.
- 7.4 *DONG Energy* shall no later than three (3) *Business Days* prior to the end of the *Month* in which the *Buyer* gives a notice under Clause 7.2 (provided that such notice is received before the end of the fifth (5th) *Business Day* prior to the end of such *Month*) notify the *Buyer* of its determination of the revised *Buyer's Consumption Profile* and *Forecast Residual Volume* and any resulting changes to the *Residual Price* and / or any of the *Charges*.
- 7.5 The *Buyer* shall, within one (1) *Business Day* of receipt of such notice from *DONG Energy*, notify *DONG Energy* of:

- (a) its acceptance of such revised *Buyer's Consumption Profile*, *Forecast Residual Volume* and changes to the *Residual Price* and any of the *Charges*, in which case:
- (i) such revised *Buyer's Consumption Profile*, *Forecast Residual Volume*, *Residual Price* and *Charges*, and the *Buyer's* revised *Volume Forecasts*, shall, subject to Clause 7.6, apply for the remainder of the *Term*, unless the *Buyer* makes a further change to the *Volume Forecasts* pursuant to this Clause 7; and
 - (ii) the *Buyer* shall make any *Instructions to Fix* or *Instructions to Refloat* which are required by *DONG Energy* in respect of any *Load Block(s)* affected by the revised *Buyer's Consumption Profile*; or
- (b) its rejection of such revised *Buyer's Consumption Profile*, *Forecast Residual Volume* and changes to the *Residual Price* and any of the *Charges*, in which case the *Volume Forecasts*, *Buyer's Consumption Profile*, *Forecast Residual Volume*, *Residual Price* and *Charges* shall not change from those agreed prior to the date of the *Buyer's* notice under Clause 7.2, and the *Buyer* shall be automatically deemed to have withdrawn such notice or automatically deemed to have withdrawn its notice to remove or add an *Exit Point* from this Agreement (as applicable).
- 7.6 If Clause 7.5(a) applies and the *Buyer* notifies a change in the *Volume Forecasts* before the end of the fifth (5th) *Business Day* prior to the end of an *Month*, the changes to the *Volume Forecasts*, *Buyer's Consumption Profile*, *Forecast Residual Volume*, and any change to the *Residual Price* and / or *Charges*, shall be effective from the start of the immediately following *Month*. If the *Buyer* notifies a change after such date, such change shall not be effective until the start of the next following *Month*.
- 7.7 Without prejudice to the foregoing provisions of this Clause 7, the *Buyer* shall provide *DONG Energy* with details of the expected planned maintenance and holiday periods affecting each *Exit Point*, together with estimates of the electricity that will be consumed during those periods no less than seven (7) *Business Days* prior to the relevant period. The *Buyer* shall use reasonable endeavours to provide *DONG Energy* with reasonable notice of any unexpected planned maintenance affecting an *Exit Point*. For the avoidance of doubt, any information provided by the *Buyer* under this Clause 7.7 is for information purposes only and its provision shall not constitute a notice given under Clause 7.2.

8. Supply Quantities and Terms of Connection

- 8.1 The *Buyer* shall ensure that its consumption of electricity at any *Exit Point* shall at no time exceed the *Maximum Capacity* applicable to such *Exit Point*. The *Buyer* shall indemnify *DONG Energy* for any charges, loss, costs, expenses or damage incurred by *DONG Energy* or the *Buyer* as a result of any failure by the *Buyer* to comply with such obligation, including any charges imposed by the relevant *Distribution System Operator* or *Transmission System Operator*.
- 8.2 The *Buyer* shall at all times comply with the terms of the *Connection Agreement* in force in relation to each *Exit Point*.
- 8.3 Except where an *Exit Point* is directly connected to a *Transmission System* (in which case, Clause 8.4 shall apply), or where the *Buyer* has entered into a non-standard *Connection Agreement* with the *Distribution System Operator*, *DONG Energy* is acting on behalf of the *Distribution System Operator*, to make an agreement with the *Buyer*. The agreement is that the *Buyer* and the *Distribution System Operator* both accept the *National Terms of Connection* ("NTC") and agree to keep to its conditions. This will happen from the time that the *Buyer* enters into this *Agreement* and affects the *Buyer's* legal rights. The *NTC* is a legal agreement. It sets out rights and duties in relation to the connection at which the *Distribution System Operator* delivers electricity to, or accepts electricity from, the *Buyer's* business. If the *Buyer* wants a copy of the *NTC* or has any questions about it, it should write to: Energy Networks Association, 6th Floor, Dean Bradley House, 52 Horseferry Road, London SW1P 2AF; phone 0207 706 5137, or see the website at www.connectionterms.co.uk. The *Buyer* agrees that, where this Clause 8.3 applies, the *Distribution System Operator* has the benefit of, and is entitled to enforce, the provisions of the *NTC* by virtue of the Contracts (Rights of Third Parties) Act 1999.

8.4 If any *Exit Point* is directly connected to a *Transmission System*, the *Buyer* shall accede to and comply with the *CUSC* at all times during the *Term* and shall comply with its obligations under the *Connection Agreement* with the *Transmission System Operator*.

9. Supply Planning and Emergencies

9.1 Without prejudice to Clause 18, *DONG Energy* shall not be liable to the *Buyer* for any failure to supply electricity to any *Exit Point* if such supply is shut down, interrupted, reduced or impaired as a result of *De-energisation* of or a reduction in the availability or capability of any *Exit Point* or the exercise of any right by a *Distribution System Operator* or *Transmission System Operator*.

9.2 If *DONG Energy* recovers compensation from the *Distribution System Operator* or the *Transmission System Operator* in respect of any loss suffered by the *Buyer* as a result of the acts or omissions of such *Third Parties*, *DONG Energy* shall pay such compensation to the *Buyer*, less the reasonable costs and expenses incurred by *DONG Energy* in recovering such compensation.

10. Not Used

11. Not Used

12. Price and Payment

12.1 Save as otherwise provided in this *Agreement*, the *Buyer* shall pay the *Commodity Price* plus the *Charges* ("*Delivered Price*") for electricity supplied to each *Exit Point* in each *Supply Month*, as determined in accordance with Clause 13 and Schedule 4 (as may be varied in accordance with this *Agreement*), plus any other amounts due to *DONG Energy* under the terms of this *Agreement*.

12.2 All amounts expressed to be payable by the *Buyer* to *DONG Energy* under this *Agreement* are exclusive of any applicable *Value Added Tax* or other tax, duty or levy of any nature whatsoever (together referred to as "*Taxes*") which may be imposed on or in connection with the supply of electricity to the *Buyer* or in respect of any payments to be made by the *Buyer* to *DONG Energy* under this *Agreement* and such *Taxes* shall be paid in addition by the *Buyer*, and the *Buyer* shall indemnify *DONG Energy* against all and any liability for such *Taxes*. This Clause 12.2 shall also apply to any new *Tax* introduced during the *Term* that is intended by the issuing body to be paid by the *Buyer* and not imposed as a *Tax* on *DONG Energy*.

12.3 Each *Supply Month* *DONG Energy* will send the *Buyer*, or any person that the *Buyer* may reasonably nominate in writing, an invoice for the *Delivered Price* for electricity supplied and any other amounts due to *DONG Energy* under this *Agreement* for the previous *Supply Month* ("*Monthly Electricity Invoice*").

12.4 The *Buyer* will pay or procure the payment of the full amount due in respect of each *Monthly Electricity Invoice* so that payment is received by *DONG Energy* not later than the number of days specified in the form of agreement from the *Monthly Electricity Invoice* date or the twentieth (20th) day of the invoice month, whichever is the later.

12.5 All payments due to be made or procured by the *Buyer* to be made to *DONG Energy* under this *Agreement* shall be made in pounds sterling by means of direct debit or BACS from the *Buyer's* nominated bank account(s) to a bank account designated by *DONG Energy*.

12.6 Without prejudice to any other rights or remedies that *DONG Energy* may have, *DONG Energy* shall be entitled to charge the *Buyer* interest on any amount remaining unpaid by the *Buyer* after the due date for payment until the amount due is actually received by *DONG Energy*.

Interest shall be accrued at the rate equal to three (3) per cent above the *Bank of England Base Rate* prevailing at that time.

DONG Energy shall also be entitled to recover its reasonable administrative costs incurred in calculating and collecting such interest.

12.7 All payments by the *Buyer* under this *Agreement* shall be made free from any restriction or condition and without any deduction or withholding (for *Taxes* or any other purpose), whether by way of set-off or otherwise, unless this is required by law.

12.8 If any amount invoiced under this *Agreement* is disputed:

- (a) the *Buyer* shall pay the full amount invoiced, regardless of whether such amount, or any part thereof is disputed by the *Buyer*;
- (b) the *Buyer* must notify *DONG Energy* of the particulars of any dispute within thirty (30) days of the date of the relevant invoice;
- (c) the *Parties* shall endeavour to resolve the dispute within a period of thirty (30) days from the date of confirmation by *DONG Energy* to the *Buyer* that *DONG Energy* has received all information which *DONG Energy* considers relevant to the dispute (including information from a *Third Party*);
- (d) if, notwithstanding the use of their reasonable endeavours, the *Parties* are unable to resolve the dispute or any part thereof within the period of thirty (30) days referred to in (c) above, either *Party* may refer the matter to an expert for final determination in accordance with Clause 12.9;
- (e) if the dispute is resolved or determined in favour of the *Buyer*, *DONG Energy* shall repay to the *Buyer* the amount agreed or determined to be due together with interest thereon for the period from the date of *DONG Energy's* receipt of payment of the original invoice to the date of repayment (inclusive), calculated on a day to day basis equivalent to *Bank of England Base Rate* plus:
 - (i) one percent (1%), if the *Parties* agree the amount due to be paid; or
 - (ii) three percent (3%) if the matter is determined by an expert;
- (f) any payment due from *DONG Energy* to the *Buyer* under (d) above shall be made by way of credit against the next *Monthly Electricity Invoice* sent to the *Buyer* or if this *Agreement* has terminated by the time the amount due is agreed or determined, on or before the twentieth (20th) day following resolution of the relevant dispute. This Clause 12.8(f) shall survive the expiry or termination of this *Agreement*.

12.9 If any dispute arises under this *Agreement* between the *Parties* with respect to Clause 12.8, then such dispute shall at the instigation of either *Party* be referred to an expert agreed between the *Parties*, and, in the absence of agreement within twenty-one (21) days of notice from either *Party* to the other calling upon the other so to agree, to an independent chartered accountant chosen on application by either *Party* to the President of the Institute of Chartered Accountants in England and Wales. Such person shall be appointed to act as an expert and not as an arbitrator and the decision of such person shall be final and binding. The cost of such an expert shall be borne equally by the *Parties* unless such expert shall decide one *Party* has acted unreasonably, in which case the expert shall have discretion as to costs.

12.10 *DONG Energy* may sub-contract any or all of its obligations under this Clause 12 to an *Affiliate* of *DONG Energy*, provided that *DONG Energy* shall at all times remain liable to the *Buyer* for the acts or omissions of any *Affiliates* to whom *DONG Energy* has sub-contracted its obligations.

13. Pricing

Table of rates

14. Not Used

15. Not Used

16. Not Used

17. Transportation Charges Reconciliation

17.1 The *Charges* include:

- (a) the *Triad Charges* in respect of *HH Exit Point(s)*, which shall be invoiced to the *Buyer* on a monthly basis using the provisional charge set out in Schedule 4;

- (b) a provisional charge as set out in Schedule 4 under the *Assistance for Areas with High Electricity Distribution Costs Scheme* (“*Hydro Levy*”), which shall be invoiced to the *Buyer* on a monthly basis using the *Buyer’s Contracted Monthly Consumption* and the historical *Assistance for Areas with High Electricity Distribution Costs Scheme Energy Consumption Charges* (“*HDCA*”) for the immediately previous *Contract Year*.

17.2 *DONG Energy* shall:

- (a) as soon as possible conduct a reconciliation of the provisional *Triad Charges* paid by the *Buyer* with the actual *Triad Charges* that are payable by the *Buyer* based on the actual *Triad Demand Tariffs* for the relevant *Contract Year* and the *Buyer’s Aggregated Actual Half Hourly Consumption for the relevant Settlement Periods*;
- (b) as soon as possible conduct a reconciliation of the provisional *Hydro Levy* paid by the *Buyer* based on the estimated and historical information and the actual *Hydro Levy* that is payable by the *Buyer* based on the actual *HDCA* for the relevant *Contract Year*.

17.3 If, as a result of the reconciliations under this Clause 17, monies are owed to the *Buyer* then a credit will be issued by *DONG Energy*. If, as a result of the reconciliations, monies are owed to *DONG Energy* then the *Buyer* shall make payment within twelve (12) days of the date of an appropriate invoice. This Clause 17 shall survive the termination or expiry of this *Agreement*.

17.4 For the avoidance of doubt, this Clause 17 is without prejudice to the right of *DONG Energy* to vary any of the *Charges* in the circumstances described in Clause 1.16.

18. Force Majeure

18.1 Neither *DONG Energy* nor the *Buyer* shall be liable for any failure to fulfil any term or condition of this *Agreement* (other than failure to make any payment) if, and to the extent that, such fulfilment is delayed, hindered or prevented in whole or in part by any event or circumstance whatsoever which is beyond the reasonable control of the *Party* concerned and which notwithstanding the exercise by it of reasonable diligence and foresight it was unable to prevent or overcome (“*Force Majeure*”). Without limitation to the generality of the foregoing, it is agreed that *Force Majeure* shall for the purposes of this *Agreement* include suspension, interruption or termination of transmission through any *Transmission System* or *Distribution System*, any exercise of demand control pursuant to any *Grid Code*, *Distribution Code*, and any Act of Parliament or governmental restraint, including a direction of the *Secretary of State* under sections 34(4) or 96 of the *Act*.

18.2 A *Party* intending to seek relief under this Clause 18 shall not be entitled to such relief unless such *Party* shall as soon as practicable (and in any event within thirty (30) days of the first day of the event in respect of which it seeks relief) give notice in writing to the other *Party* of the event or circumstance which have caused the failure to fulfil any terms or conditions of this *Agreement*, giving such details as may be reasonable in all the circumstances.

18.3 Relief under this Clause 18 shall cease to be available to a *Party* if such *Party* fails to take, as soon as reasonably practicable, all such steps to rectify the cause of the failure as may be necessary, reasonably practicable and which may be taken at reasonable cost.

18.4 No period of relief pursuant to this Clause 18 shall extend the *Term*.

19. Liability, Responsibility and Indemnities

19.1 Subject to Clauses 19.3 and 19.4, the *Buyer’s* obligations to make payments of the *Delivered Price* and other amounts to *DONG Energy* pursuant to this *Agreement*, a *Party’s* liability to the other *Party* for any loss, costs, expenses or damage under or in connection with this *Agreement*, whether arising in contract, tort (including negligence), breach of duty (statutory or otherwise) shall not exceed one million pounds sterling (£1,000,000) in respect of any one event or series of connected events giving rise to such liability.

19.2 Clause 19.1 is without prejudice to any provision of this *Agreement* which provides for an indemnity or which provides for a specific limit of liability.

- 19.3 Nothing in this *Agreement* shall exclude or limit the liability of any *Party* for death or personal injury resulting from the negligence of such *Party* or in relation to fraud or fraudulent misrepresentation, or in any circumstances where such liability may not be limited under any applicable *Legal Requirement*.
- 19.4 The rights and remedies provided by this *Agreement* are exclusive of all substantive 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 or actions in tort such as but without limitation negligence and/or nuisance. Accordingly each *Party* hereby waives all such rights and remedies and releases the other from all duties, liabilities, responsibilities or obligations provided by common law or statute and undertakes not to enforce them except as expressly provided in this *Agreement*.
- 19.5 Without prejudice to any other provision of this *Agreement* which provides for an indemnity or which provides for a *Party* to make payment to the other, neither *Party* shall have any liability whatsoever to the other (whether arising in contract, tort (including negligence), breach of duty (statutory or otherwise) for loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill, loss of or damage to reputation, loss of or damage to any software, data, computer equipment or other equipment or plant or increased cost of working, or for consequential or indirect losses or consequential or indirect damages of whatsoever nature and howsoever caused arising out of or in connection with this *Agreement*, whether or not such losses or damages are foreseeable at the date hereof.
- 19.6 Any relief from liability, hold harmless or indemnity or benefits in favour of a *Party* under this *Agreement* shall extend to a *Party's* directors, employees and agents and to their respective *Affiliates* and their *Affiliates'* directors, employees and agents.
- 19.7 The Contracts (Rights of Third Parties) Act 1999 shall apply in respect of any relief from liability; hold harmless, indemnity or benefit created in favour of the persons named in Clause 19.6 of this *Agreement*.
- 19.8 In this Clause 19:
- (a) references to "loss" unless specifically stated to be a reference to "indirect" losses and subject to Clause 19.5, shall include both direct and indirect losses;
 - (b) references to "loss" and "claims" include all associated costs, liabilities and expenses including legal costs;
 - (c) any number of acts or omissions whether successive or concurrent which together result or contribute to substantially the same loss or damage shall be treated as one act or omission.

20. Deterioration of the *Buyer's* circumstances

20.1 If:

- (a) *DONG Energy* has reasonable grounds for believing that:
 - (i) the *Buyer* may be unable to meet its obligations under this *Agreement*; and / or
 - (ii) the financial circumstances of the *Buyer* and / or the ultimate parent company of the *Buyer* have deteriorated to a level unacceptable to *DONG Energy*; [or]

DONG Energy may (but shall not be obliged to) give notice to the *Buyer* requesting adequate financial security for due performance of its obligations under this *Agreement* on such terms as *DONG Energy* may require and such terms shall be incorporated into this *Agreement* and shall have effect from the date of such notice.

- 20.2 If the *Buyer* does not provide adequate security of performance within [thirty (30) days] of *DONG Energy's* notice under Clause 20.1 or if any security provided by the *Buyer* in connection with this *Agreement* prior to or on the *Effective Date* terminates or becomes invalid or unenforceable and the *Buyer* does not provide adequate security of performance within [thirty (30) days] of *DONG Energy* giving the *Buyer* notice of such occurrence, *DONG Energy* may terminate this *Agreement* by

notice with effect from the date that notice was served.

21. Termination

- 21.1 Either *Party* may terminate this *Agreement* with immediate effect by written notice to the other at any time if the other *Party*:
- (a) is unable to pay its debts (within the meaning of Section 123(1) of the Insolvency Act 1986) or has any voluntary arrangement proposed in relation to it under Section 1 of that Act or enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation);
 - (b) has a receiver (which expression shall include an administrative receiver within the meaning of Section 251 of the Insolvency Act 1986) appointed to the whole or any material part of its assets or undertaking;
 - (c) has an administration order under Section 8 of the Insolvency Act 1986 made in relation to it;
 - (d) passes any resolution for winding-up (other than for the purpose of reconstruction or amalgamation);
 - (e) becomes subject to an order for winding-up by a court of competent jurisdiction; or
 - (f) causes or is subject to any event with respect to which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (e) inclusive; or
 - (g) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this Clause 21.1,

(“*Insolvency Event*”).

- 21.2 Without prejudice to any other right or remedy *DONG Energy* may have (whether of termination or otherwise) under this *Agreement*, at law or otherwise, *DONG Energy* at its sole discretion may terminate this *Agreement* in its entirety or in respect of one or more *Exit Point(s)* by notice to the *Buyer* if:

- (a) the *Buyer* fails to make any payment to *DONG Energy* in accordance with this *Agreement*;
- (b) the sites at which any *Exit Point* is located cease to be in the occupation or ownership of the *Buyer*;
- (c) *DONG Energy* is no longer able to supply electricity to the *Buyer* in accordance with the terms of *DONG Energy's Supply Licence*; or
- (d) it is entitled to do so under any other Clause of this *Agreement*.

- 21.3 Either *Party* may terminate this *Agreement* with respect to one or more *Exit Points* or as a whole with immediate effect, or with effect at the expiry of a specified period, by serving a notice (“*Termination Notice*”) on the other *Party* at any time if the other *Party* commits any material breach of its obligations under this *Agreement* or under any applicable *Legal Requirement*. Where termination is stated to take effect on the expiry of a period specified in the *Termination Notice*, that *Termination Notice* may be withdrawn (without such withdrawal constituting a waiver of any rights or remedies or prejudicing a *Party's* right to give a further *Termination Notice*) if the breach in respect of which the *Termination Notice* was given has been rectified to the satisfaction of the *Party* giving the *Termination Notice* and before the expiry of that period.

- 21.4 This *Agreement* shall terminate with immediate effect in relation to any *Exit Point* upon a last resort supply direction coming into effect in relation to such *Exit Point*, being a last resort supply direction given to an *Electricity Supplier* other than *DONG Energy* in pursuance of standard condition 8 of the *Supply Licence* as incorporated into such *Electricity Supplier's Supply Licence*.

- 21.5 Subject to Clause 21.6, and without prejudice to any other rights or remedies available to it,

DONG Energy may procure the *De-Energisation* or *Disconnection* of the supply of electricity to any *Exit Point* by giving notice to the *Buyer* in any of the following circumstances:

- (a) if in the reasonable opinion of *DONG Energy*, a *De-Energisation* or *Disconnection* of such *Exit Point* is necessary to avoid danger or damage to any person or property;
- (b) if the supply of electricity to such *Exit Point* may result in *DONG Energy* being in breach of any applicable *Legal Requirement* or *Industry Code*;
- (c) if the *Buyer* fails to pay any amount owed to *DONG Energy* under this *Agreement*;
- (d) if the *Buyer* is in material breach of this *Agreement* (including a breach of its obligations under Clause 3), *DONG Energy* notifies the *Buyer* of such breach and the *Buyer* fails to remedy such breach within the date specified in such notice;
- (e) if the *Buyer* is subject to an *Insolvency Event*;
- (f) to allow the *Distribution System Operator* to inspect, maintain, repair or alter any part of the *Distribution System*;
- (g) if this *Agreement* has terminated in respect of such *Exit Point*; or
- (h) if the *Buyer* requests *DONG Energy* to *Disconnect* the *Exit Point*.

21.6 *DONG Energy* shall give no less than twenty-eight (28) *Business Days* prior written notice to the *Buyer* of the *Disconnection* of any *Exit Point*.

21.7 *DONG Energy* may procure the re-connection or re-energisation of the supply of electricity to an *Exit Point* if requested by the *Buyer* and provided that the circumstances giving rise to the *De-energisation* or *Disconnection* are no longer continuing.

21.8 The *Buyer* shall be liable for and shall pay to *DONG Energy* any and all loss, costs, expenses or damage incurred by *DONG Energy* or any agent, employee or sub-contractor of *DONG Energy* (before or after termination or expiry of this *Agreement*) in respect of the *Disconnection*, *De-energisation* or re-connection or re-energisation of any *Exit Point* for any reason. This Clause 21.8 shall survive the termination or expiry of this *Agreement*.

22. Early termination

22.1 If this *Agreement* is terminated before the end of the *Term* for any reason, then the *Buyer* shall pay *DONG Energy*, or *DONG Energy* shall pay the *Buyer* (as the case may be), an amount (in £) (“*Termination Cash Out Amount*”) determined according to the following calculation:

$Termination\ Cash\ Out\ Amount = ((CP \times USV) - (MP \times USV)) + Management\ Fee + Outstanding\ Costs$

where:

CP is the weighted average of the *Commodity Prices* for the *Unsupplied Volume*, which were set by the *Buyer* pursuant to *Instructions to Fix* and / or *Instructions to Refloat*;

MP is the price available in the wholesale electricity market at the date which is two (2) *Business Days* after the date of termination of this *Agreement* at which *DONG Energy* can sell (but is not obliged to sell) the *Unsupplied Volume*, including all costs incurred by *DONG Energy* in effecting such sale;

USV or “*Unsupplied Volume*” means the aggregate volume of electricity (in *MW*) that was forecast to be delivered in the period between the date of termination and the *Contract End Date* (“*Unsupplied Period*”) and for which (i) the *Buyer* has set the *Commodity Price* by making *Instructions to Fix* and / or *Instructions to Refloat* and (ii) *DONG Energy* has made forward purchases of electricity in respect of such *Instruction to Fix* or *Instructions to Refloat*;

Management Fee is the aggregate *Management Fee* due in respect of the *Unsupplied Volume* and the *Unsupplied Period*;

Outstanding Costs means (i) all sums due from the *Buyer* to *DONG Energy* under this *Agreement* for any period before the termination of this *Agreement* (regardless of whether such sums have been invoiced to the *Buyer* or not at the date of termination); and (ii) all interest due on any such sums.

22.2 *DONG Energy* shall calculate the *Termination Cash Out Amount* within (20) *Business Days* of the date of notice of termination of this *Agreement* and notify the *Buyer* of the results of the calculation. If the *Termination Cash Out Amount* is a positive amount, the *Buyer* shall pay such amount to *DONG Energy* within ten (10) *Business Days* of receipt of an invoice for such amount or by the date specified in such invoice, whichever is earlier. If the *Termination Cash Out Amount* is a negative amount, *DONG Energy* shall pay the *Buyer* such amount:

- (a) within ten (10) *Business Days* of the date of *DONG Energy's* notice to the *Buyer* informing the *Buyer* that it is entitled to a credit; or
- (b) where *DONG Energy* enters into replacement transactions for the Unsupplied Volume (as defined in Clause 22.4), after *DONG Energy's* receipt of monies from such transactions, whichever is later.

22.3 Both *Parties* hereby acknowledge that the *Termination Cash Out Amount* represents a genuine pre-estimate of loss for any excess loss or profit arising as a result of the *Buyer's* early termination of this *Agreement*. For the avoidance of doubt, this Clause 22 is without prejudice to Clause 7 of the *Form of Agreement* and the *Buyer* shall pay any amounts due under such Clause in addition to any *Termination Cash Out Amount* payment due from the *Buyer*.

22.4 This Clause 22 shall survive the termination of this *Agreement*.

23. Not Used

24. Transfer of Rights and Obligations

24.1 The *Buyer* shall not assign, transfer, novate, create a trust in, sub-contract or deal in any other manner with all or any of their rights or transfer or otherwise sub-contract their obligations under this *Agreement* without the prior written consent of *DONG Energy*, such consent not to be unreasonably withheld.

24.2 *DONG Energy* may assign or novate or otherwise transfer its right and obligations under this *Agreement* provided it gives the *Buyer* not less than one (1) month's prior written notice of the date of such assignment or novation or transfer.

24.3 *DONG Energy* may sub-contract any of its rights or obligations under this *Agreement* without the consent of the *Buyer*.

25. Information and Confidentiality and Data Protection

25.1 Each *Party* undertakes to keep the terms of this *Agreement* and any information relating thereto confidential and not to disclose the same to any *Third Party* while this *Agreement* is in force or for a period of one (1) year thereafter. The obligation of confidentiality under this Clause 25.1 shall not apply to any information that the recipient *Party* can prove:

- (a) was disclosed in compliance with and to the extent of any applicable *Legal Requirement* or any other agreement, regulation, licence, authorisation or *Industry Code* necessary to permit or required in connection with the supply of electricity;
- (b) was made to any director, employee, officer, agent, consultant or professional adviser of a *Party* or their *Affiliates* and their *Affiliates'* directors, officers and employees, all such persons having first been made fully aware of the obligations of confidence in relation to such information and agreeing to be bound by an obligation of confidence not to release that information to any other *Third Party*;
- (c) was obtained from a *Third Party* who is lawfully authorised to disclose such information without breaching any confidentiality undertaking;

- (d) was in the public domain at the time of receipt by the recipient *Party* or has subsequently entered the public domain other than by a breach of this Clause 25.1 or any of the obligations of confidence owed to the disclosing *Party* by the recipient *Party* or by any of the persons listed in Clause 25.1(b) above;
 - (e) was already known to it; or
 - (f) was disclosed in accordance with the prior written consent of the other *Party*.
- 25.2 The *Buyer* shall provide, or shall procure that its employees, agents or sub-contractors shall provide, *DONG Energy* with all assistance, data and other information reasonably required by *DONG Energy* or its agents or sub-contractors to comply with any applicable *Legal Requirement*, or any other agreement, law, regulation, licence, authorisation or *Industry Code* necessary to permit or required in connection with the supply of electricity under this *Agreement*.
- 25.3 The *Buyer* shall indemnify *DONG Energy* against all charges, loss, costs, liabilities, expenses or damage that *DONG Energy* may incur if any information provided by the *Buyer* (including by any employee, agent or sub-contractor of the *Buyer* or the *Buyer's Representative*) is incorrect, incomplete, insufficient or not supplied in a timely fashion.
- 25.4 In addition and without limitation to the exclusions from the obligation of confidentiality under Clause 25.1, *DONG Energy* may disclose data and information relating to the *Buyer* to:
- (a) a credit reference agency, where it may be accessed by other financial institutions to assist assessment of any application for credit made to *DONG Energy* and for occasional debt tracing and fraud prevention;
 - (b) any agent, *Affiliate* or sub-contractor of *DONG Energy*;
 - (c) any person to whom *DONG Energy* proposes to transfer any of its rights, duties or obligations under this *Agreement*;
 - (d) as otherwise required or permitted by law or any *Competent Authority*; or
 - (e) any new *Electricity Supplier* to which an *Exit Point* is to be transferred, or from which an *Exit Point* is to be transferred, to *DONG Energy*.

In each case such persons may be located in countries outside the United Kingdom that do not have laws to protect the *Buyer's* information.

- 25.5 The *Buyer* hereby warrants that to the extent that the contact details provided by the *Buyer* constitute *Personal Data* under the Data Protection Act 1998 and related applicable legislation ("*Data Protection Laws*"), and the applicable *Data Subject* (as defined under the *Data Protection Laws*) consents to the provision of such *Personal Data* to *DONG Energy* to use and store such data for all purposes necessary in relation to (i) this *Agreement* and (ii) *DONG Energy* and the *Buyer's* obligations under this *Agreement*. The *Buyer* agrees that, at *DONG Energy's* request, the *Buyer* will procure from the *Data Subject* their written consent to *DONG Energy* to evidence the foregoing. If the *Buyer* fails to procure such consent, the *Buyer* will indemnify *DONG Energy* against its loss, costs, liabilities, expenses or damage arising from such failure.
- 25.6 *DONG Energy* may use information about the *Buyer* to send the *Buyer* information about other goods or services offered by *DONG Energy* (or by *DONG Energy's Affiliates*) that *DONG Energy* believes may be of interest to the *Buyer*. *DONG Energy* may also provide details of the *Buyer's* name, address and other information as part of a mailing list to *DONG Energy's Affiliates* to enable them to market goods and / or services which *DONG Energy* believes may be of interest to the *Buyer*. The *Buyer* may be contacted about other goods and services by any means, including by telephone and email. If the *Buyer* does not wish to receive information about other goods and services it must notify *DONG Energy*, in which case *DONG Energy* shall comply with the *Buyer's* wishes.
- 25.7 *DONG Energy* may make use of credit reference agencies to supply information relating to the *Buyer* for the purposes of assessment of the *Buyer's* creditworthiness and ability to perform its

obligations under this *Agreement*.

26. Notices

- 26.1 Any notice, except for those given in relation to Clause 13, given under this *Agreement* shall be in writing and may be served by hand, first class mail, registered post, prepaid recorded delivery or electronic mail to the addressee at its address hereinbefore stated or such other address as may be notified in writing to the *Party* concerned and shall be deemed to have been received:
- (a) in the case of delivery by hand at the time of delivery;
 - (b) in the case of first class post, registered post or prepaid recorded delivery the second *Business Day* following the day of posting; or
 - (c) by the *Buyer* in the case of electronic mail the second *Business Day* following the day that such electronic mail was sent by *DONG Energy*.
- 26.2 The address for notices served on *DONG Energy* by hand or sent by first class post, registered post, prepaid recorded delivery or electronic mail shall be:
- DONG Energy Power Sales UK Limited**
1-3 Strand,
London,
WC2N 5EJ
Email: electricitysales@dongenergy.co.uk
- 26.3 The address for notices served on the *Buyer* by hand or sent by first class post, registered post or prepaid recorded delivery shall be their registered address or electronic mail address as detailed in the *Form of Agreement*.
- 26.4 The *Buyer* shall ensure that in all written correspondence with *DONG Energy* in relation to this *Agreement* it will quote the *MPAN* of at least one *Exit Point*.
- 26.5 For the purposes of confirming an *Instruction to Fix* or *Instruction to Refloat* given pursuant to Clause 13 verbal instructions will be followed by an email which shall be considered a recognized form of serving a notice.

Schedule 4 – Charges

1. [The *Delivered Price* shall be the *Commodity Price* determined in accordance with Clause 13, plus the following charges:
 - (a) the *Charges*; as defined in the form of agreement
 - (b) any other amounts due to *DONG Energy* in accordance with this *Agreement*.

2. All *Charges* shall be calculated on the basis that the supply of electricity is delivered to each *Exit Point* and adjusted for *Transmission Losses* and *Distribution Losses*.

Definitions

The following words and expressions shall have the following meanings in this *Agreement* and for the purposes of these *Definitions*, references to a Clause shall, unless otherwise provided, refer to a Clause of Schedule 3:

“**Act**” means the Electricity Act 1989.

“**Advanced Meter Installation**” means the equipment installed (or to be installed) at an *Exit Point* to allow automated meter reads to be taken, including all ancillary equipment such as cables, converters, antennae, optical character readers (OCR), pulse utilisation equipment, batteries and SIM cards, and smart and automated metering functionality installed during the installation of the equipment or subsequently.

“**Affiliate(s)**” means a company which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with a *Party*. For this purpose “control” means the direct or indirect ownership of in aggregate fifty per cent (50%) or more of voting capital.

“**Agreement**” has the meaning given to it in the *Form of Agreement*.

“**Amendment to Agreement Provisions**” means any amendments to the provisions set out in Schedule 3 that are specified in the *Form of Agreement*.

“**Ancillary Services**” has the meaning given to it in the *Grid Code*.

“**Assistance for Areas with High Electricity Distribution Costs Scheme**” means the scheme established pursuant to the Energy Act 2004 (Assistance for Areas with High Distribution Costs) Order 2005.

“**Assistance for Areas with High Electricity Distribution Costs Scheme Energy Consumption Charges**” or “**HDCA**” means the charges in effect for the period from 1 April to 31 March each year, which are imposed by the *National Transmission System Operator* in accordance with the *National Transmission System Operator Licence* and are required to be paid by *Electricity Suppliers* in accordance with standard condition 15 of the *Supply Licence*.

“**Authority**” means the Gas and Electricity Markets Authority established under section 1 of the Utilities Act 2000 and includes the Office of Gas and Electricity Markets (“*Ofgem*”) or any successor to that authority.

“**Balancing Services Use of System Charges**” means the charges payable by *DONG Energy* to the owner of a *Transmission System* for balancing actions performed by them.

“**Bank of England Base Rate**” means the interest rate that the Bank of England charges banks for secured overnight lending.

“**Base Load Block**” means a volume of electricity (in *MWh*) where the number of megawatts is consistent throughout all *Settlement Periods* within the relevant *Period*.

“**BSC**” means the Balancing and Settlement Code, including all Code Subsidiary Documents (as therein defined), established pursuant to the *National Electricity Transmission System Operator Licence* and which may from time to time be modified by the *National Electricity Transmission System Operator* in accordance with such licence.

“**Business Day**” means any day other than a Saturday or a Sunday and which is not Christmas Day, Good Friday or a statutory bank holiday in England and Wales.

[“**Business Hours**” means, in respect of *DONG Energy*, 9:30am to 5:00p] and in respect of the *Trading Desk*, means 09:30am to 4:00pm

- “**Buyer**” has the meaning given to it in the *Form of Agreement*.
- “**Buyer’s Aggregated Actual Half Hourly Consumption**” means the volume calculated in accordance with Clause 15.
- “**Buyer’s Aggregated Contracted Consumption**” means the total volume (in *MW*) of electricity to be supplied under this *Agreement* in the *Term* to all of the *Exit Points*. Such volume shall be as specified in the *Form of Agreement* unless otherwise agreed by the *Parties* in accordance with Clause 7.
- “**Buyer’s Consumption Profile**” means the forecast profile of the *Buyer’s Aggregated Contracted Consumption* over the *Term* prepared by *DONG Energy* and derived from, in respect of *HH Exit Point(s)*, the historical half-hourly data provided by the *Buyer* and, in respect of *NHH Exit Point(s)*, derived from using the estimated annual consumption of the *Buyer* and the *Profile Coefficients* for any given period in the *Term*. The *Buyer’s Consumption Profile* shall be as agreed by the *Parties* prior to or as at the *Effective Date* and shall remain unchanged for the *Term*, unless a revised profile is prepared in accordance with Clause 7.
- “**Buyer’s Contracted Half Hourly Consumption**” means each individual *Settlement Period* within the *Buyer’s Consumption Profile*.
- “**Buyer’s Contracted Monthly Consumption**” means the volume (in *MW*) of electricity to be supplied under this *Agreement* in each month of the *Term* to all of the *Exit Points*. Such volume shall be as specified in Schedule 2 unless otherwise agreed by the *Parties* in accordance with Clause 7.
- “**Buyer’s Representative**” means a representative of the *Buyer* who is authorised to issue or receive *Instructions to Fix* and *Instructions to Refloat* on behalf of the *Buyer* who shall be such person(s) listed in the *Form of Agreement* or such other representative of the *Buyer* as confirmed to *DONG Energy* in writing by the *Buyer* in accordance with Clause 13.12.
- “**Cash Out Amount**” means the amount determined in accordance with Clause 15.1.
- “**Charges**” means the charges for the supply of electricity in addition to the *Commodity Price* as set out in Schedule 4, including the *Management Fee*, and any *Refloat Charge*.
- “**Climate Change Levy**” or “**CCL**” means the levy introduced by Schedule 6 of the Finance Act 2000 and the *Climate Change Levy Regulations*.
- “**Climate Change Levy Regulations**” means the Climate Change Levy (General) Regulations 2001.
- “**Commodity Price**” means the price determined in accordance with Clause 13.
- “**Competent Authority**” means the *Secretary of State*, the *Authority* and any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official court, tribunal or public or statutory body or person (whether autonomous or not) of, or of the government of, the United Kingdom or the European Community, which has jurisdiction over and / or in respect of the *Buyer*, *DONG Energy*, other *Electricity Suppliers*, *Distribution* or *Transmission System Operators*, and / or the subject matter of this *Agreement* and / or any other agreement, *Industry Code*, or *Legal Requirement* relating to the supply of quantities to each and any of the *Exit Point(s)*.
- “**Confirmation**” has the meaning given to it in Clause 13.12
- “**Connection Agreement**” means:
- (i) in respect of any *Exit Point* which is connected to the *Distribution System*, an agreement between the *Buyer* and the relevant *Distribution System Operator* governing the terms of the *Buyer’s* connection of the relevant *Exit Point(s)* to the *Distribution System* which is in the form of a non-standard connection agreement (on such terms as the *Buyer* has agreed or will agree with the *Distribution System Operator*) or, if the *Buyer* chooses not to make a non-standard connection agreement then as specified in the *National Terms of Connection*; or
 - (ii) in respect of any *Exit Point* which is directly connected to a *Transmission System*, the connection agreement between the *Buyer* and the relevant *Transmission System Operator*.

“**Contract End Date**” means the date stated in the *Form of Agreement* (as may be varied under Clause 5 of the *Form of Agreement*).

“**Contract Year**” means a period of twelve (12) months commencing on the *Effective Date* or any anniversary thereof, provided that the final *Contract Year* shall terminate on the date of termination or expiry of this *Agreement*.

“**CUSC**” means the Connection and Use of System Code (and the *CUSC Framework Agreement*) established pursuant to the *National Electricity Transmission System Operator Licence*.

“**CUSC Framework Agreement**” means the agreement of that name, in the form approved by the *Secretary of State*, by which the *CUSC* is made contractually binding between the parties to it.

“**Data Aggregator**” means a *Qualified* person appointed to carry out the aggregation of data from meters for the purposes of the *BSC*.

“**Data Aggregator Agreement**” means in respect of an *Exit Point*, an agreement between *DONG Energy* and a *Data Aggregator* for the provision of data aggregation services.

“**Data Collector**” means a *Qualified* person appointed to retrieve, validate and process data from meters for the purposes of the *BSC*.

“**Data Collector Agreement**” means, in respect of an *Exit Point*, an agreement between *DONG Energy* and a *Data Collector* for the provision of data collection services.

“**Data Protection Laws**” has the meaning given to it in Clause 25.5.

“**Data Subject**” has the meaning given to it in Clause 25.5.

“**Day**” means, in respect of a day, a twenty four hour period commencing at 23:00 on the preceding day and ending at 23:00 on the day.

“**DCUSA**” or “**Distribution Connection and Use of System Agreement**” means the agreement of that name which permits (among other things) *DONG Energy’s* use of the *Distribution System* of a *Distribution System Operator* through which the supply of electricity is delivered to the *Buyer* at an *Exit Point*.

“**De-energise**” means the movement of any switch or the removal of any fuse or the taking of any other step (including such steps that are taken without requiring physical access to the relevant *Exit Point*) which has the effect of no electrical current being able to flow between the *Distribution System* and an *Exit Point*, and the expressions “*De-energised*” and “*De-energisation*”, shall be construed accordingly.

“**Delivered Price**” has the meaning given to it in Clause 12.1.

“**Disconnection**” means the removal of any cable or other equipment such that an *Exit Point* is no longer connected to the *Distribution System*, and the expressions “*Disconnected*” and “*Disconnect*” shall be construed accordingly.

“**Dispute**” has the meaning given to it in Clause 1.14.

“**Distribution Code**” means the distribution code as defined in *DONG Energy’s Supply Licence*.

“**Distribution System**” means the relevant *Distribution System Operator’s* system for distributing electricity to an *Exit Point*.

“**Distribution System Operator**” means, in respect of an *Exit Point*, the holder of a licence under section 6(1)(c) of the *Act* to distribute electricity in the area where the *Exit Point* is located.

“**Distribution Use of System Charges**” means the distribution charges levied by the *Distribution System Operator* for the use of a *Distribution System* (excluding connection charges).

“**DONG Energy**” has the meaning given to it in the *Form of Agreement*.

“**DONG Energy’s Supply Licence**” means the *Supply Licence* granted to *DONG Energy*.

“**EFA Calendar**” means the Electricity Forward Agreement calendar used in the UK wholesale electricity market.

“**Effective Date**” means the date stated in the *Form of Agreement*, being the date that this *Agreement* is signed by both *Parties*.

“**Electricity Arbitration Association**” means the unincorporated members’ club known as the Electricity Supply Industry Arbitration Association formed, among other things, to promote the efficient and economic operation of the procedure for the resolution of disputes within the electricity supply industry by means of arbitration.

“**Electricity Supplier**” means a person holding a licence granted under section 6(1)(d) of the *Act*.

“**Estimated Residual Price**” has the meaning given to it in Clause 13.3.

“**Exit Point**” means a point of connection at which the supply of electricity may flow between a *System* and the *Advanced Meter Installation*, equipment or lines at the *Buyer’s* site at which the *Exit Point* is located, including all Metering Points (as defined in the *BSC*) relevant to an *Exit Point* at which the supply of electricity is intended to be measured. The *Exit Points* to be supplied under this *Agreement* are set out in Schedule 1 (as may be varied by the operation of Clause 5).

“**Extended Contract Period**” has the meaning given to it in Clause 7 of the *Form of Agreement*.

“**Extended Contract Rates**” means the rates published by *DONG Energy* and paid by the *Buyer* for any supplies of electricity made to the *Buyer* after the termination or expiry of this *Agreement*.

“**Force Majeure**” has the meaning given to it in Clause 18.1.

“**Forecast Residual Volume**” means the volume of electricity comprised in the *Buyer’s Aggregated Contracted Consumption* which is not comprised in a *Load Block*. Such volume shall be as agreed by the *Buyer* and *DONG Energy* and set out in the *Form of Agreement*, unless such volume is amended in accordance with Clause 7.

“**Form of Agreement**” means this *Agreement* including these *Definitions* (where applicable) and excluding the Schedules.

“**Grid Code**” means the *Grid Code* as defined in the *Supply Licence*.

“**HH Exit Point**” means an *Exit Point* at which the *Buyer’s* electricity consumption is recorded using half hourly metering.

“**Hydro Levy**” has the meaning given to it in Clause 17.1(b).

“**Indicative Contract Start Date**” means the date stated in the *Form of Agreement*.

“**Industry Code**” means, in each case to the extent applicable to the performance of a *Party’s* obligations under this *Agreement*, the *BSC*, the *Grid Code*, the *DCUSA*, the *Master Registration Agreement*, the *CUSC* and any *Connection Agreement*, the *Distribution Code*, and any other agreement, or code relevant to the sale or purchase of electricity or which affects the ability of *DONG Energy* or the *Buyer* to perform their respective obligations under this *Agreement*.

“**Insolvency Event**” has the meaning given to it in Clause 21.1.

“**Instruction to Fix**” means an email or a telephone call to the *Trading Desk* or *DONG Energy* (as the case may be) specifying the information identified in Clause 13.5

“**Instruction to Refloat**” has the meaning given to it in Clause 13.9.

“**Last Fix Date**” has the meaning given to it in Clause 13.12(g).

“**Legal Requirement**” means any Act of Parliament, statutory instrument, regulation, licence (including a *Supply Licence*) or act or decision of any *Competent Authority*.

“**Load Block**” means a *Base Load Block* or *Peak Load Block*, as the case may be.

“**Load Block Volume**” means the aggregate volume of the *Load Block(s)* derived from the *Buyer’s Consumption Profile*.

“**Lower Tolerance**” shall have the meaning given to it in the Form of Agreement;

“**Management Fee**” means the charge specified in the *Form of Agreement* (unless such charge is revised in accordance with this *Agreement*) for the delivery of electricity excluding the *Commodity Price* and *Charges* imposed by *Third Parties* set out in Schedule 4.

“**Master Registration Agreement**” or **MRA**” means the agreement of that name dated 1 June 1998 which provides (among other things) the procedure for *DONG Energy’s Registration* as supplier in respect of any *Exit Point*.

“**Maximum Capacity**” means (i) in respect of each *Exit Point* which is directly connected to the *Distribution System*, the maximum import capacity notified by the *Distribution System Operator* in the *Distribution Use of System Charges*; or (ii) where an *Exit Point* is directly connected to a *Transmission System*, the Connection Site Demand Capability (as that term is defined in the *CUSC*) of an *Exit Point*.

“**Meter Examiner**” means a meter examiner appointed in accordance with Schedule 7 of the *Act*.

“**Meter Operator**” means a *Qualified* person who has been appointed as a meter operator agent for the purposes of (and as defined in) the *BSC*.

“**Meter Operator Agreement**” means in respect of an *Exit Point* an agreement between *DONG Energy* (or the *Buyer*, in accordance with Clause 3.5) and a *Meter Operator* for the provision of meter operator services.

“**Month**” means either an EFA Month calculated in accordance with the EFA Calendar or a calendar month as applicable to how standard electricity products are marketed.

“**Monthly Electricity Invoice**” has the meaning given to it in Clause 12.3.

“**MPAN**” means a unique meter point administration number associated with an *Exit Point*.

“**MW**” means megawatt.

“**MWh**” means megawatt hour.

“**Pass Through**” means that *DONG Energy* shall calculate any associated cost in accordance with the applicable methodology by which it shall incur such cost and shall replicate this cost to the *Buyer* on the appropriate *Monthly Electricity Invoice*.

“**National Electricity Transmission System**” has the meaning given to it in the *National Electricity Transmission System Operator Licence*.

“**National Electricity Transmission System Operator**” means the holder, from time to time, of the *National Electricity Transmission System Operator Licence*.

“**National Electricity Transmission System Operator Licence**” means a transmission licence granted, or treated as granted, pursuant to Section 6(1)(b) of the *Act* and in which section C of the standard transmission licence conditions applies.

“**National Terms of Connection** or “**NTC**” has the meaning given to it in Clause 8.3.

“**N2EX Spot Price**” means the Spot Price published by N2EX for any *Settlement Period*

“**NHH Exit Points**” means an *Exit Point* at which the *Buyer’s* electricity consumption is recorded using non half hourly metering.

“**Party**” means the *Buyer* or *DONG Energy* as the case may be and “*Parties*” means both of them.

“**Peak Load Block**” means a volume of electricity (in *MW*) where the number of megawatts in each weekday half-hour period from 07:00am to 19:00pm is the same.

“**Period**” means either a *Day* or *Month* or combination of *Months* as applicable to how standard electricity products are marketed.

“**Personal Data**” has the meaning given to it in Clause 25.5.

“**Profile Coefficient Data**” means load profile data for non-half hourly sites provided by ELEXON Limited (or any successor to that company acting in the capacity as the *BSC* company).

“**Qualified**” has, in relation to a *Meter Operator*, *Data Aggregator* or *Data Collector*, the meaning given to that term in the *BSC*.

“**Reactive Power Charge**” means any charge, including an excess reactive power charge, imposed by a *Distribution System Operator* on *DONG Energy* in connection with the supply of reactive power to an *Exit Point*.

“**Refloat Charge**” means the charge to be paid by the *Buyer* in respect of each occasion that it makes an *Instruction* to *Refloat*, as specified in the *Form of Agreement* (as may be varied in accordance with this *Agreement*).

“**Registered**” means in respect of any particular *Electricity Supplier*, including *DONG Energy*, and in respect of any particular *Exit Point*, the date on which such supplier is deemed to be the *Registered* supplier in respect of the *Exit Point* under and in accordance with the terms of the *MRA* and the *BSC* and for the purposes of *DONG Energy’s Supply Licence* and “*Registration*” and “*Register*” shall be construed accordingly.

“**Regulations**” means the Electricity Safety, Quality and Continuity Regulations 2002 or any other regulations made under section 29 of the *Act*.

“**Renewables Obligation**” means the obligation, introduced by the Renewables Obligation Order 2006 (SI 2006/1004), as amended from time to time, on *Electricity Suppliers* in the United Kingdom to ensure a proportion of their supply of electricity is from eligible renewable sources of electricity.

“**Renewable Source**” means electricity generated from renewable sources as defined in regulation 47 of the *Climate Change Levy Regulations*.

“**Renewable Source Electricity**” has the meaning given to it in paragraph 19 of Schedule 6 to the Finance Act 2000.

“**Residual Price**” has the meaning given to it in Clause 13.3.

“**Secretary of State**” means one of Her Majesty’s Principal Secretaries of State as defined in the Interpretation Act 1978.

“**Settlement Period**” has the meaning given to it in the *BSC*.

“**Supply Licence**” means a licence granted under section 6(1)(d) of the *Act*.

“**Supply Month**” means any calendar month in which *DONG Energy* supplies electricity to any *Exit Point* pursuant to this *Agreement* (or any part of a month if *DONG Energy* does not supply *Electricity* for the entire calendar month).

“**Supply Start Date**” has the meaning given to it in Clause 6 of the *Form of Agreement*.

“**System**” means a *Distribution System* or *Transmission System*, as the case may be.

“**Taxes**” has the meaning given to it in Clause 12.2.

“**Term**” has the meaning given to it in Clause 5 of the *Form of Agreement* [(as may be extended by the operation of that Clause).

“**Termination Cash Out Amount**” has the meaning given to it in Clause 22.

“**Termination Notice**” has the meaning given to it in Clause 21.3.

“**Third Party**” means a person other than the *Parties*, the *Parties’ Affiliates*, or their respective directors, employees and agents.

“**Trading Desk**” means the trading desk operated by *DONG Naturgas A/S* acting on behalf of *DONG Energy*.

- “**Transmission Licence**” means a licence granted under section 6(1)(b) of the *Act*.
- “**Transmission System**” means a system of the type described in section 4(4) of the *Act*, including the *National Electricity Transmission System*.
- “**Transmission System Operator**” means the operator of a *Transmission System*, including the *National Electricity Transmission System Operator*.
- “**Triad Charges**” means charges levied on *DONG Energy* by the *National Electricity Transmission System Operator* for use of the *National Electricity Transmission System*.
- “**Triad Demand Tariffs**” means each of the tariffs at the relevant time set out in the column headed “*Demand Tariff*” in the Statement of Use of System Charges issued by the *National Electricity Transmission System Operator*, as more fully described in the *National Electricity Transmission System Operator Licence*.
- “**Unsupplied Period**” has the meaning given to it in Clause 22.
- “**Upper Tolerance**” shall have the meaning given to it in the Form of Agreement.
- “**Use of System Agreement**” means an agreement or arrangement between *DONG Energy* and the *Distribution System Operator* governing *DONG Energy*’s use of the *Distribution System* to provide a supply of electricity to the *Buyer*.
- “**Value Added Tax**” or “**VAT**” means value added tax chargeable under the Value Added Tax Act 1994, and any similar or equivalent tax imposed in the United Kingdom or any other jurisdiction.
- “**Volume Forecasts**” has the meaning given to it in Clause 7.1.