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14<sup>th</sup> September 2007

**Transfer and Trade of System Entry Capacity  
Invitation to participate in the Surrender Process for Capacity period November 2007 to March  
2008 - Terms and Conditions Reference ST01**

Dear Colleague

Pursuant to Uniform Network Code Transition Document Part IIC, Paragraph 1.1.7(b)(iv), National Grid Gas plc ("**National Grid**") invites you to take part in the Surrender Transfer and Trading Buy Back process ("**Surrender Process**") for Firm NTS System Entry Capacity for the Capacity period November 2007 to March 2008 inclusive, that will be conducted via Gemini in accordance with the Transfer and Trading Surrender Tender Rules ("the Rules") and Terms. For your convenience a copy of such rules and Terms are attached to this letter in Appendix C and they can also be viewed from the Gemini system via reference ST01 before entering an offer. These Rules and Terms must be accepted before offers can be made.

National Grid would like to draw your attention to the following:

National Grid will conduct the Surrender process on the following dates:

**Monday 17<sup>th</sup> September 2007**  
**Tuesday 18<sup>th</sup> September 2007**

Users are invited to submit Surrender Offers for the maximum amount of capacity per ASEP per Available Month that they are willing to surrender for each and every day in such Available month. Please note that in respect of any ASEP, Users should not offer to surrender a quantity greater than the Firm NTS Entry Capacity they hold at that ASEP as of Monday 17<sup>th</sup> September 2007. Offers not meeting this criterion will be rejected when offers are processed.

Please note minimum quantities accepted for Surrender Offers will be 100,000kWh.

Available Months in respect of which a Surrender Offer may be made are:

**November 2007**  
**December 2007**  
**January 2008**  
**February 2008**  
**March 2008**

The Surrender Process will take place over two days, with the Offer Window period commencing at 08:00 on Monday 17<sup>th</sup> September and closing at 17:00 on Tuesday 18<sup>th</sup> September. Please note that business support will only be available during normal business hours and that Gemini is unavailable between 04:00 and 06:00 on September 18<sup>th</sup>. A Surrender offer may be withdrawn or amended until, but not after, 17:00 on the 18<sup>th</sup> September. Users may only submit one offer per ASEP per Available Month.

**Please Note: prices are not required for the Surrender Process. Refer to UNC Transition Document Part IIC, Paragraph 1.1.7 (p) for the payment provisions.**

The Tender will be conducted in Gemini and Surrender Offers should be made via the **Deal>Capture>Create Bids** screen.

National Grid may accept Surrender Offers for the whole or part only of any Surrender Amount. Users will be informed as to the quantity of Surrender Amount that has been allocated following each round of the Transfer & Trade System Entry Capacity ("TTSEC") auction. Where possible we have tried to take advantage of existing Gemini functionality in facilitating the Transfer & Trade process, but some workarounds are required, these are as follows:

Following completion of Round One of the TTSEC auction Users will be informed **by fax** what quantity, if any, of the Surrender Amount that has been accepted. In order to enable this, any User who surrenders NTS Entry Capacity in the TTBB Surrender Process is requested to provide National Grid with their contact details via fax & e-mail. Please complete and fax the form in Appendix B to +44 (0) 1926 656612 and follow this up with an email to [box.capacityauctions@uk.ngrid.com](mailto:box.capacityauctions@uk.ngrid.com) in order to confirm submission of the fax. Failure to provide us with contact details will result in us being unable to inform you of any accepted (in whole or in part) surrender offers after Round One of the TTSEC auction.

Following completion of Round Two of the TTSEC Auction Users that have surrendered capacity will be able to view the total quantity of surrender offers that have been accepted across both rounds of the auction via Gemini.

For clarification, the Surrender Amount notified by fax to Users as accepted in Round One (if any) will be included in the total quantity of surrender offers accepted as shown on Gemini following conclusion of the TTSEC auction i.e. Gemini will detail the total (sum of Round One and Round Two) allocation.

Following conclusion of the Surrender Process, National Grid will issue an invitation to participate in the TTSEC auction. It is anticipated that this invitation will be issued on September 25<sup>th</sup> with the first round of the TTSEC auction being held on September 27<sup>th</sup> but confirmation of the actual date of the invitation will be given not less than two business days in advance.

Please note that this invitation is being sent by fax (business hours operational list) and by e-mail via the Joint Office. The delivery notification audit report will be considered as evidence of receipt.

For information regarding the Trade Initiation Process please refer to Appendix A. Please note that at this stage this information is indicative as it is subject to any surrender offers and it will be updated in the TTSEC auction invitation letter.

If you have any queries about the auction process please contact me on + 44 (0) 1926 65 4071 or my colleague Dave Wagstaff on 44 (0) 1926 65 4045. Alternatively you can e-mail the capacity team at [box.capacityauctions@uk.ngrid.com](mailto:box.capacityauctions@uk.ngrid.com)

Yours sincerely,

Chris Gumbley

## Appendix A

**Table 1 - List of Available Months and Recipient ASEPs in which Users have expressed their interest**

ASEP	ASEP ID	Nov'07	Dec'07	Jan'08	Feb'08	Mar'08
Easington	EA	✓	✓	✓	✓	✓
Hatfield Moor OS	HM			✓	✓	
Hatfield Moor Storage	HT	✓	✓	✓	✓	✓
Hornsea	HS		✓	✓	✓	✓
Teesside	TE	✓	✓	✓	✓	

Note: Where a ✓ is shown one or more users have expressed an interest in that Available Month and Recipient ASEP.

Pursuant to the Uniform Network Code transition Document Part IIC, Paragraph 1.1.7 (b) (iii) is hereby notifying users, in respect of each Available Month and Recipient ASEP in which Users have expressed their interest, shown above in table 1, of the following relevant information:

**Table 2 - Nodal Allocation Maximum for each Recipient ASEP**

Zone	Recipient ASEP	Proposed Nodal Allocation maximum (NAM) (kWh/Day)				
		Nov-07	Dec-07	Jan-08	Feb-08	Mar-08
Easington	Easington	1,256,666,667	1,267,500,000	1,267,500,000	1,267,500,000	1,267,500,000
Easington	Hornsea	247,000,000	247,000,000	247,000,000	247,000,000	247,000,000
Easington	Hatfield Moor Onshore	450,000	450,000	450,000	450,000	450,000
Easington	Hatfield Moor Storage	22,350,000	22,350,000	22,350,000	22,350,000	22,350,000
Northern Triangle	Teesside	476,666,667	476,666,667	476,666,667	476,666,667	476,666,667

**Table 3 - Zonal Allocation Maximum for each ASEP Zone in which there is a Recipient ASEP**

Zone	Zonal Allocation Maximum (ZAM) (kWh/Day)				
	Nov-07	Dec-07	Jan-07	Feb-07	Mar-07
Easington	1,077,916,667	1,077,916,667	1,077,916,667	1,077,916,667	1,077,916,667
Northern Triangle	2,307,500,000	2,307,500,000	2,307,500,000	2,307,500,000	2,307,500,000

**Table 4 - ASEP Merit Order(s) for each ASEP Zone in which there is a Recipient ASEP**

Zone	ASEP	Merit Order
North West	Burton Point	1
	Hole House Farm	2
	Partington LNG	3
	Cheshire	4
Easington	Easington	1
	Hatfield Moor Storage	2
	Hatfield Moor On-shore	3
	Hornsea	4
	Garton	5
South East	Isle of Grain	1
	Bacton	2
Northern Triangle	Teesside	1
	St.Fergus	2
	Barrow	3
	Glenmavis LNG	4
West	Milford Haven	1
	Dynevor Arms LNG	2
Theddlethorpe	Theddlethorpe	1
South West	Barton Stacey	1
	Avonmouth LNG	2
	Wytch Farm On-Shore	3

**Table 5 - The Inter-Zone Exchange Rate(s) between the ASEP Zone in which the Recipient ASEP is located and each other related ASEP Zone**

Donor Zone	Recipient Zone	Available Capacity for Allocation in Donor Zone (kWh/Day)	Exchange Rate
South East	Easington	Between 0 & 86,666,667	4:1
		Between 86,666,667 & 173,333,333	1.8:1
		>173,333,333	0
South East	Northern Triangle	Between 0 & 86,666,667	2:1
		Between 86,666,667 & 173,333,333	1:1
		>173,333,333	0

For exchange rates from other zones, we are issuing a “zero” rate based on current capacity holdings.

Please note that at this stage this information is indicative and will be confirmed when the invitation letter is issued for the first round of the Transfer and Trading auction. The information provided may change based on the Surrender Offers received.

**Table 6 - Amount of Unsold NTS Entry Capacity (kWh/d) at each Non-Recipient ASEP**

<b>ASEP</b>		<b>Nov-07</b>	<b>Dec-07</b>	<b>Jan-08</b>	<b>Feb-08</b>	<b>Mar-08</b>
<b>AV</b>	Avonmouth LNG	177,300,000	177,300,000	177,300,000	177,300,000	177,300,000
<b>BA</b>	Bacton	681,523,997	565,291,521	535,350,491	537,723,754	559,968,589
<b>BP</b>	Burton Point	18,500,000	18,500,000	18,500,000	18,500,000	18,500,000
<b>BR</b>	Barrow	0	0	0	0	0
<b>BS</b>	Barton Stacey	66,481,095	61,434,851	51,481,095	51,481,095	51,481,095
<b>CH</b>	Cheshire	256,600,000	256,600,000	256,600,000	256,600,000	256,600,000
<b>DA</b>	Dynevor Arms LNG	3,205,412	0	0	0	0
<b>GM</b>	Glenmavis LNG	26,500,000	26,500,000	26,500,000	26,500,000	26,500,000
<b>HH</b>	Hole House Farm Storage	27,705,316	27,705,316	27,705,316	27,705,316	27,705,316
<b>HM</b>	Hatfield Moor Onshore			0	0	
<b>HS</b>	Hornsea	76,021,352				
<b>IG</b>	Isle of Grain LNG	175,000,000	175,000,000	175,000,000	175,000,000	175,000,000
<b>PR</b>	Partington LNG	154,990,228	154,990,228	154,990,228	154,990,228	154,990,228
<b>SF</b>	St Fergus	182,869,346	181,905,723	226,072,793	228,630,212	251,083,590
<b>TE</b>	Teesside					20,189,700
<b>TH</b>	Theddlethorpe	329,446,932	150,583,224	123,835,001	92,951,536	206,170,743
<b>WF</b>	Wytch Farm	0	0	0	0	0

### Appendix B – Contact Details Fax Proforma

Please note that this proforma is to be completed by any User surrendering capacity in the Surrender (Transfer and Trading Buy Back – TTBB) Auction. Contact details are required in order to allow National Grid to contact Users with details of the amount of surrendered capacity that has been allocated in Round One of the Transfer & Trade System Entry Capacity (TTSEC) Auction.

Capacity Team, Warwick	TEL: +44 (0) 19 26 65 40 45	FAX: +44 (0) 19 26 65 66 12
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BA Code i.e. Gemini 3-Letter Code		TTSEC Transaction Period	01 Nov 07 to 31 Mar 08
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Shipper Name:	
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Shipper Name: “”  
 I confirm that I am hereby providing fax details by which I will receive notification of the amount of capacity that I have surrendered that has been allocated in Round One of the Transfer and Trading auction

Shipper Name:	
Contact Name:	
Fax Number:	
Tel Number:	

Fax Originated By		Fax Received By	
Company		On Behalf Of	National Grid
Signature		Signature	
Position		Position	
Date		Date	
TEL Number		TEL Number	+44 (0) 19 26 65 40 45
FAX Number		FAX Number	+44 (0) 19 26 65 66 12

## Appendix C

### TRANSFER AND TRADING SURRENDER TENDER RULES

#### INTRODUCTION

1. These Transfer and Trading Surrender Tender Rules (“**Transfer and Trading Surrender Tender Rules**”) detail and govern the procedure by which a Surrender User may offer and National Grid may accept the surrender of Firm NTS Entry Capacity from that Surrender User for the purposes of provisions in respect of the Transfer and Trading of Capacity between Aggregate System Entry Points pursuant to Uniform Network Code, Transition Document Part IIC, paragraph 1.1.7.
2. Defined terms used in these Transfer and Trading Surrender Tender Rules shall, unless the context otherwise requires or otherwise defined herein, have the meanings given to them in the Terms (as defined below) or the Uniform Network Code.

#### SURRENDER OFFERS

1. Surrender Offers must be submitted by a Surrender User via the Create Offers Screen in Gemini in accordance with (and are subject to) these Transfer and Trading Surrender Tender Rules, the attached Terms with the above Reference Number (the “**Terms**”) and the Tender Invitation Notice also with the above Reference Number (the “**Tender Invitation Notice**”).
2. In submitting a Surrender Offer a Surrender User is binding itself to the provisions of these Transfer and Trading Surrender Tender Rules, the Terms and the Tender Invitation Notice and shall be deemed to have offered to grant a Forward Contract to National Grid for a specified amount of Firm NTS Entry Capacity.
3. A Surrender Offer must be made in the form set out on the Create Offers Screen in Gemini.
4. All Surrender Offers must be completed and submitted strictly in accordance with the

Tender Invitation Notice, these Transfer and Trading Surrender Tender Rules and the Terms. No amendments or qualifications are permitted to any Surrender Offer.

5. Each and every Surrender Offer shall be separate to, and independent of, every other Surrender Offer.
6. A Surrender User may submit not more than 1 (one) Surrender Offer in respect of an Aggregate System Entry Point for each Available Month pursuant to the Tender Invitation Notice.
7. Every Surrender Offer made shall be given a unique identifying reference number by Gemini. Such unique reference number shall be used to identify the relevant Surrender Offer in any Acceptance Notification.
8. The Forward Value in relation to a Forward Contract shall be determined in accordance with the provisions of the Uniform Network Code, Transition Document Part IIC paragraph 1.1.7 (p).
9. The Forward Delivery Period, Surrender Amount and Aggregate System Entry Point for every Surrender Offer must be in accordance with the requirements of the Tender Invitation Notice and the Uniform Network Code, Transition Document Part IIC paragraph 1.1.7.
10. Surrender Offers must not be made for speculative purposes. The attention of all Surrender Users is drawn to the representations, warranties and undertakings set out in the Terms.
11. In preparing and submitting its Surrender Offer every Surrender User must first:
  - (a) obtain all information necessary for the preparation of its Surrender Offer;
  - (b) ensure that its Surrender Offer is properly completed and satisfy and verify all

matters in relation to its Surrender Offer (each Surrender User being solely responsible and liable for any error or omission in its Surrender Offer);

- (c) carry out all necessary researches, investigations and enquiries in relation to its Surrender Offer;
- (d) satisfy itself as to the nature, extent, volume and character of its Surrender Offer and the Tender Documents;
- (e) satisfy itself as to all other matters which may affect its Surrender Offer and as to the accuracy and sufficiency of its Surrender Offer; and
- (f) obtain all necessary information as to the risks, contingencies and any other circumstances which may reasonably influence or affect its Surrender Offer.

12. Irrespective of whether or not a Tender Acceptance is made in respect of any Surrender Offer(s) National Grid may disclose any information as provided in Clause 11 of the Terms.

## **TENDER ACCEPTANCES**

1. Acceptance Notifications shall be notified by National Grid in accordance with Clause 7.3 of the Terms. National Grid shall be under no obligation to notify Surrender Users of non-accepted Surrender Offers.

## **COSTS, EXPENSES AND PAYMENTS**

1. There is no payment obligation in respect of a Forward Contract or any Tender Document save as expressly set out in the Uniform Network Code, Transition Document Part IIC paragraph 1.1.7 (p).
2. Surrender Users are solely responsible and liable for all costs, expenses and liabilities incurred in connection with their preparation, submission and operation of a Surrender

Offer.

**TERMS AND CONDITIONS**

**relating to a**

**TENDER FOR A FORWARD CONTRACT FOR SURRENDER IN RESPECT  
OF TRANSFER AND TRADING OF CAPACITY BETWEEN AGGREGATE  
SYSTEM ENTRY POINTS**

**with**

**NATIONAL GRID GAS PLC**

## **TERMS AND CONDITIONS**

### **1. DEFINITIONS**

In these terms and conditions (these “**Terms**”) the following words have the meanings set out below:-

“**Acceptance Notification**” means a notification issued by National Grid and served in accordance with Clause 7 and the Transfer and Trading Surrender Tender Rules by which National Grid accepts, whether in whole or in part, a Surrender Offer from the Surrender User and in which it specifies the Forward Capacity;

“**Business Day**” means a Day beginning on a day other than a Saturday, a Sunday or a bank holiday in England and Wales;

“**Day**” means the period from 06:00 hours on one day until 06:00 hours on the following day;

“**Firm NTS Entry Capacity**” has the meaning given to it in the Uniform Network Code;

“**Forward Capacity**” means, in relation to a Forward Contract, the amount in kWh per Day (being a quantity not a rate) of Firm NTS Entry Capacity specified as such in the Acceptance Notification to which the Forward Contract relates;

“**Forward Contract**” means a contract between a Surrender User and National Grid pursuant to which a User surrenders Firm NTS Entry Capacity to National Grid over a forward period of Days in accordance with the provisions of Clause 3;

“**Forward Value**” means in relation to a Forward Contract, the amount payable by National Grid to the Surrender User as determined in accordance with the Uniform Network Code, Transition Document Part IIC paragraph 1.1.7(p);

“**Forward Delivery Period**” means, in relation to a Forward Contract, the period comprising every day in an Available Month during which the Surrender User must surrender Forward Capacity to National Grid pursuant to that Forward Contract as specified in the Surrender Offer for such Forward Contract;

“**Gemini**” means that part of the information exchange system identified as such and forming part of UK Link;

“**National Grid**” means National Grid Gas plc (Company No.2006000) whose registered office is at 1-3 Strand, London WC2N 5EH.

“**Network Code**” means the network code prepared by National Grid pursuant to its gas transporters licence, as such code may be amended from time to time

in accordance with the terms thereof and which incorporates the Uniform Network Code;

**“Offer Window Period”** means the period, specified in the Tender Invitation Notice, during which a Surrender Offer and an Offer Withdrawal Notification may be submitted to National Grid;

**“Offer Withdrawal Notification”** means a notification issued by the Surrender User and served in accordance with Clause 7 by which the Surrender User, during the Offer Window Period, withdraws a Surrender Offer;

**“Round One”** means the first round of the Transfer and Trade System Entry Capacity Auction held pursuant to Uniform Network Code, Transition Document Part IIC paragraph 1.1.7 (c);

**“Round Two”** means the second round of the Transfer and Trade System Entry Capacity Auction held pursuant to Uniform Network Code, Transition Document Part IIC paragraph 1.1.7 (c);

**“Surrender Amount”** means, in relation to a Forward Contract, the amount in kWh per Day (being a quantity not a rate) of Firm NTS Entry Capacity as is specified in the Surrender Offer relating to that Forward Contract;

**“Surrender Offer”** means an offer submitted by or on behalf of a Surrender User served during the Offer Window Period in accordance with Clause 7 pursuant to a Tender Invitation Notice and in accordance with the Transfer and Trading Surrender Tender Rules by which such a Surrender User offers to grant a Forward Contract to National Grid for a specified Surrender Amount of Firm NTS Entry Capacity over a specified Forward Delivery Period and at a specified Aggregate System Entry Point in each case as permitted or determined by the applicable Tender Invitation Notice;

“**Surrender User**” means a User under the Network Code which submits a Surrender Offer;

“**Tender Documents**” means these Terms, the Transfer and Trading Surrender Tender Rules and each applicable Tender Invitation Notice, Surrender Offer, Offer Withdrawal Notification and Acceptance Notification;

“**Tender Invitation Notice**” means the notice (bearing the same Reference Number as these Terms) which is issued by National Grid inviting Users to submit Surrender Offers; and

“**Transfer and Trading Surrender Tender Rules**” means the document described on its face as such and issued by National Grid which relates to and governs the procedure by which a Surrender User may Offer and National Grid may accept an offer for the surrender of Firm NTS Entry Capacity from the Surrender User;

“**Uniform Network Code**” means the uniform network code as defined in Standard Special Condition A11(6) of National Grid’s transporters licence, as such code may be amended from time to time in accordance with the terms thereof.

## **2. INTERPRETATION**

### **2.1 In the Tender Documents:**

- (a) references to Clauses are references to the clauses of these Terms unless otherwise stated; and

(b) the singular shall include the plural and vice versa.

2.2 The headings in these Terms and each Tender Document (where applicable) have been inserted for convenience only and shall not affect their construction or interpretation.

2.3 Words and expressions defined in the Uniform Network Code and which are used in these Terms or in any Tender Document capitalised but not defined herein have the meanings ascribed to them under the Uniform Network Code where the context permits.

### **3. FORWARD CONTRACT**

3.1 Where pursuant to the Tender Invitation Notice a Surrender User submits a Surrender Offer which is received by National Grid during the Offer Window Period and National Grid returns an Acceptance Notification in relation to that Surrender Offer (or to part of it), in each case pursuant to and in accordance with these Terms, the Transfer and Trading Surrender Tender Rules and the Tender Invitation Notice, that Surrender Offer shall have been accepted by National Grid in the terms set out in the Acceptance Notification and such Surrender User shall grant a Forward Contract to National Grid in accordance with these Terms under which:

(a) the Surrender User shall surrender to National Grid the Forward Capacity (as specified in the Acceptance Notification) over the Forward Delivery Period and at the relevant Aggregate System Entry Point as specified in the Surrender Offer and Acceptance Notification relating to that Forward Contract;

(b) on surrender of the Forward Capacity by the Surrender User, National Grid will reduce the amount of Available Firm NTS Entry Capacity held by the Surrender User accordingly; and

(c) National Grid shall be obliged to pay to the Surrender User the Forward Value in accordance with Uniform Network Code, Transition Document Part IIC paragraph 1.1.7(p).

3.2 An Acceptance Notification may be given only in respect of the whole of the Forward Delivery Period specified in the Surrender Offer but may be given in respect of all or part only of the Surrender Amount.

3.3 In respect of any Surrender Offer, where the Acceptance Notification is given in respect of:

(a) all of the Surrender Amount, only one Acceptance Notification may be given;

(b) part only of the Surrender Amount, more than one Acceptance Notification may be given.

3.4 An Acceptance Notification once given may not be withdrawn except with the written consent of the Surrender User which may be given or withheld by Surrender User. A Surrender Offer once given may be withdrawn only during the Offer Window Period and by service of an Offer Withdrawal Notification. An Offer Withdrawal Notification may not be withdrawn.

3.5 National Grid may accept or not accept a Surrender Offer in its absolute discretion and shall not be obliged to give any reason therefore.

#### **4. FORWARD VALUE**

4.1 Subject to Clauses 4.2, following the service of an Acceptance Notification by National Grid, an amount equal to the Forward Value shall be payable by National Grid to the Surrender User in accordance with Uniform Network Code, Transportation Principal Document, Section S by way of an Invoice Credit

adjustment to an Invoice Document issued in the calendar month immediately following the calendar month in respect of which the Forward Capacity relates. For the avoidance of doubt, no such sum shall be payable if National Grid does not serve an Acceptance Notification.

- 4.2 In the event that a Surrender User ceases to be a User, the Tender Documents shall (without prejudice to all and any accrued rights and obligations) terminate on the User Discontinuance Date and no further sums shall be due thereunder in respect of the period following the User Discontinuance Date. All sums under Clause 4.1 shall be pro-rated to the User Discontinuance Date and any necessary apportionments made as appropriate.
- 4.3 There is no payment obligation in respect of any Tender Document save as expressly set out in the Uniform Network Code, Transition Document Part IIC paragraph 1.1.7.

## **5. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS**

- 5.1 Each Surrender User represents, warrants and undertakes to National Grid that:
- (a) it is a User for the purposes of the Network Code has and will have full power and authority to execute, deliver and perform all obligations of it under the Tender Documents and no limitation on its powers will be exceeded as a result of it entering into these Terms or into any of the Tender Documents or the issuance of any of them by or on behalf of it or National Grid;
  - (b) at the date of the Surrender Offer it is and will be the holder of Firm NTS Entry Capacity at the relevant Aggregate System Entry Point of an amount not less than the Surrender Amount in respect of all relevant Days specified in the Surrender Offer and unless an Offer Withdrawal

Notification is served in respect of such Surrender Offer the Surrender User will retain ownership of such Surrender Amount until allocations have been made in accordance with Uniform Network Code, Transition Document Part IIC, paragraph 1.1.7(r); and

- (c) in the event that National Grid issues an Acceptance Notification, all of the Forward Capacity referred to therein shall be surrendered with full title guarantee and free from any charge, lien, equity, third party right, option, right of pre-emption or other encumbrance, priority or security of whatever nature and together with all rights attaching thereto;
- (d) the Surrender Offer submitted by it has been duly authorised and submitted by duly authorised persons in accordance with the constitutional documents of the Surrender User;
- (e) the Surrender Offer and each of the Tender Documents constitute and will constitute the legal, valid, binding and enforceable obligations of the Surrender User in accordance with these Terms; and
- (f) the information in the Surrender Offer submitted by it has not been communicated to any other person or adjusted in accordance with any agreement or arrangement with any other person except as agreed in writing by National Grid;
- (g) it uses Firm NTS Entry Capacity in its business.

5.2 Each of National Grid and the Surrender User represents, warrants and undertakes to the other as follows:

- (a) the sole or main purpose for which it enters into any forward transaction under the Tender Documents (either alone or in combination with any other transactions) is for limiting the extent to which a business (other than a business carrying out any regulated activity (as that term is defined under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)) operated by it or by any one of its affiliates will be affected by any identifiable risk arising other than as a result of carrying out any regulated activity;

- (b) it is purchasing or selling each Forward Contract granted or purchased pursuant to the Tender Documents for commercial purposes or regulatory obligations and not for investment purposes; and
- (c) it is able to surrender (if a seller) or accept (if a buyer) Firm NTS Entry Capacity which is the subject of any Forward Contract transaction under the Tender Documents.

## **6. LIABILITY**

6.1 Subject to the further provisions of this Clause 6, National Grid and the Surrender User agree and acknowledge that:

(a) neither shall be liable to the other for loss arising from any breach of the Tender Documents, other than (but without prejudice to any other provision of the Tender Document which excludes or limits liability in respect of any breach) for loss directly resulting from such breach and which at the relevant date was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:

- (i) physical damage to the property of the other; and/or
- (ii) the liability (in law) of such other to any other person for loss in respect of physical damage to the property of such person;

(b) neither shall in any circumstances be liable in respect of any breach of the Tender Documents to the other for:

- (i) any loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill, or increased cost of working; or
- (ii) any indirect or consequential loss; or

(iii) except as provided in Clauses 6.1(a)(ii) and 6.5, loss resulting from the liability of the other to any person howsoever and whensoever arising;

(c) the rights and remedies of the parties pursuant to the Tender Documents exclude and are in place of any rights or remedies of either party in tort (including negligence and nuisance) or (subject to Clause 8) misrepresentation in respect of the subject matter of these Terms or any Tender Document; and accordingly, but without prejudice to Clause 6.5 and Clause 6.6(b), each party (to the fullest extent permitted by law):

(i) waives any rights or remedies; and

(ii) releases each other from any duties or liabilities,

arising in tort or (subject to Clause 8) misrepresentation in respect of the subject matter of these Terms or any Tender Document.

6.2 For the purposes of Clause 6.1(a), the “**relevant date**” is the date of the relevant Tender Document.

6.3 The amount or amounts for which either National Grid or the Surrender User may be liable to the other pursuant to Clause 6.1(a) in respect of any one event or circumstance constituting or resulting in that first party’s breach of a provision of these Terms or any Tender Document shall not exceed £1,000,000 (one million pounds sterling).

6.4 Clause 6.1 is without prejudice to any provision of these Terms which provides for an indemnity, or which provides for either National Grid or the Surrender User to make a payment to the other.

- 6.5 Nothing in these Terms or in any Tender Document shall exclude or limit the liability of either National Grid or the Surrender User for death or personal injury resulting from its negligence.
- 6.6 Nothing in this Clause 6 shall:
- (a) prevent either National Grid or the Surrender User from or restrict it in enforcing any obligation (including suing for a debt) owed to it under or pursuant to these Terms; or
  - (b) constitute a waiver by National Grid or the Surrender User of any right or remedy it may have (other than pursuant to these Terms or any Tender Document) in respect of a breach by the other of any Legal Requirement.
- 6.7 Each provision of this Clause 6 shall be construed as a separate and severable contract term, and shall as respects any Discontinuing User survive that User's ceasing to be a User under the Network Code.

## **7. NOTICES**

- 7.1 The Tender Invitation Notice shall be sent by National Grid by facsimile to the facsimile number that is notified to National Grid by each User for the purpose of sending notices under the Network Code in relation to Firm NTS Entry Capacity.
- 7.2 Surrender Offers shall be submitted by the Surrender User to National Grid by means of the Create Offers Screen in Gemini.
- 7.3 Acceptance Notifications in respect of:
- (a) Round One shall be submitted by facsimile to the facsimile number provided by the Surrender User pursuant to Appendix B of the Tender Invitation Notice;
  - (b) Round Two shall be submitted by posting them on the Offer Information

Screen in Gemini. No Surrender Offer shall be deemed accepted unless such a Tender Acceptance is so submitted.

7.4 Offer Withdrawal Notifications shall be submitted by the Surrender User to National Grid by means of the Create Offers Screen in Gemini.

7.5 A facsimile shall be deemed to have been received on completion of despatch by National Grid provided that it receives a transmission report showing transmission in full without any error message.

## **8. ENTIRE AGREEMENT**

The Tender Documents shall be read as one and constitute the entire agreement between National Grid and the Surrender User (subject always to the Network Code and Ancillary Agreements thereunder) with respect to the matters referred to herein and therein and shall prevail and supersede all prior agreements, understandings, statements, representations, commitments, warranties, and communications between National Grid and the Surrender User with respect to such matters and neither National Grid nor the Surrender User shall rely on or be bound by any of the foregoing not appearing in or incorporated by specific reference into the Tender Documents. Nothing in the Tender Documents shall operate to exclude either National Grid's or the Surrender User's liability to the other for fraudulent misrepresentation.

## **9. VARIATION AND WAIVER**

9.1 No variation of the Tender Documents shall be effective unless made in writing and signed by or on behalf of both National Grid and the Surrender User.

9.2 None of the provisions of these Terms or of the Tender Documents shall be considered waived by National Grid or the Surrender User unless such waiver is given in writing and signed by a duly authorised representative of the party making the waiver. No such waiver shall be a waiver of any past or future default or breach or modification of any term, provision, condition or covenant of these Terms or of the Tender Documents or any of them unless and to the extent expressly set forth in such waiver.

## **10. ASSIGNMENT**

Neither National Grid nor the Surrender User may assign, trade or transfer any of its rights or obligations under any Forward Contract or under these Terms or under any of the Tender Documents without the prior written consent of the other party provided that National Grid may novate or assign any of its rights or obligations to any company succeeding it with respect to its rights and obligations under the Network Code (or any successor document) without the consent of the Surrender User.

## **11. CONFIDENTIALITY**

Each of National Grid and the Surrender User shall keep confidential and shall not disclose to any third party any information provided by the other party in connection with the performance of the Tender Documents. Provided that:

- (a) this restriction shall not apply to any information which at the time of disclosure is in the public domain or thereafter comes into the public domain otherwise than as a consequence of a breach by National Grid or the Surrender User of its obligations under this Clause 11;
- (b) nothing in the Tender Documents shall prevent the disclosure of information to any government department or any governmental or

regulatory agency having jurisdiction over either National Grid or the Surrender User (including but not limited to the Gas and Electricity Markets Authority), or as required by law or any lawful subpoena or recognised stock exchange or other process in connection with any judicial arbitration or administrative proceeding, or where reasonably necessary to effect the purpose of the Tender Documents;

- (c) nothing in the Tender Documents shall prevent the disclosure by National Grid to third parties of the relevant prices and quantities contained in any Tender Document but only to the extent that such information is disclosed in aggregate with other Users' prices and quantities or in accordance with the Network Code; and
- (d) in the event disclosure to any third party is necessary in order to give effect to the purposes of these Terms or any Tender Document or permissible under this Clause 11, the disclosing party shall use all reasonable endeavours to ensure that such third party shall respect the confidentiality of such information and be bound by the terms of this Clause 11 as if a party thereto.

## **12. THIRD PARTY RIGHTS**

Subject to any rights which may accrue to any successor or permitted assign of National Grid or the Surrender User, no provision of these Terms or of any Tender Document shall, or may, be construed as creating any rights enforceable by a third party and all third party rights as may be implied by law are hereby excluded to the fullest extent permitted by law from the Tender Documents.

## **13. SEVERABILITY**

If any of these Terms or any term or provision of any of the Tender Documents shall be held to be illegal or unenforceable in whole or in part, under any

enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of these Terms or such Tender Document but the validity and enforceability of the remainder of the Tender Documents shall not be affected.

#### **14. GOVERNING LAW AND JURISDICTION**

The Tender Documents shall be governed by and construed in accordance with English law, and National Grid and the Surrender User hereby submit to the exclusive jurisdiction of the courts of England and Wales.

#### **15. GEMINI**

- 15.1 National Grid does not guarantee the availability of the Tender Documents or any part of Gemini (including without limitation screens or pages of and links thereto) and, accordingly, in the event of non-availability or any other communication failure National Grid's sole responsibility shall be to put in place as soon as reasonably practicable such contingency arrangements as it shall in its sole discretion deem appropriate.
- 15.2 Without prejudice to the provisions of Clause 6, the Surrender User agrees and acknowledges that National Grid shall not be liable for any loss (direct or indirect) arising from the non-availability of Gemini or any part thereof or otherwise arising from the Surrender User's use of Gemini (including but not limited to inability to access or use Gemini or any communication failure or breach of security or confidentiality) whether such loss arises in contract, tort (including negligence) or breach of statutory duty or howsoever arising.