

APX RULES

Version 15.0

APX Commodities Limited
3rd Floor
18 King William Street
London
EC4N 7BP
Tel: +44 207 220 3400
Fax: +31 20 305 4002
E-mail: ukoperations@apxgroup.com

CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND INTERPRETATION	1
PART I: POWER TRADING	23
2. INTERPRETATION OF TERMINOLOGY WITH RESPECT TO ORDERS AND POWER BILATERAL TRADES	23
3. ORDERS	26
4. DISPLAY OF ORDERS AND POWER BILATERAL TRADES	27
5. ACCEPTANCE OF ORDERS	28
6. MANIFEST ERRORS IN RELATION TO POWER BILATERAL TRADES	32
7. MARKET CONDUCT	34
8. PAYMENT OF FEES	36
9. POWER MEMBER TRADING OBLIGATIONS	37
10. DELIVERY AGENCY	38
PART II: CLEARING MEMBERS	39
11. CLEARING MEMBER ACCESS CRITERIA	39
12. GENERAL CLEARING PROVISIONS	40
13. CREDIT REQUIREMENTS	41
14. DEFAULT CONTRIBUTIONS	46
15. UTILIZATION	48
16. INVOICING AND PAYMENT	48
PART III: GENERAL PROVISIONS	59
17. ACCESS TO THE OPERATING SYSTEM	59
18. OPERATING SYSTEM	62
19. MARKET	64
20. APX'S OBLIGATIONS	66
21. APX'S REPRESENTATIONS AND WARRANTIES	67
22. MEMBER'S OBLIGATIONS AND REPRESENTATIONS AND WARRANTIES	68
23. LIMITATION OF LIABILITY	70
24. TERMINATION OF MEMBERSHIP AGREEMENT	76
25. TERMINATION IN EVENT OF DEFAULT OR BREACH	77
26. CONFIDENTIALITY	79

27.	REMIT REPORTING.....	ERREUR ! SIGNET NON DEFINI.
28.	ASSIGNMENT.....	85
29.	NOTICES AND APX RULES NOTICES	86
30.	WAIVER.....	88
31.	SEVERANCE.....	89
32.	AMENDMENTS AND CHANGES TO THE APX RULES	89
33.	MISCELLANEOUS	89
34.	JURISDICTION AND DISPUTES	91
35.	GOVERNING LAW.....	92
36.	RETENTION OF RECORDS	92
37.	ACTION IN EVENT OF DEFAULT.....	93
38.	CODE OF CONDUCT	93
	SCHEDULE 1 CREDIT POLICY	95
	SCHEDULE 2 TERMS OF USE OF OPERATING SYSTEM	100
	SCHEDULE 3 RULES CHANGES	105
	SCHEDULE 4 SERVICE LEVEL AGREEMENT.....	107
	ANNEX 1 SPOT POWER TRADING TERMS	110
	ANNEX 2 ECV NOTIFICATION SERVICE TERMS	119

APX MARKET RULES

1. DEFINITIONS AND INTERPRETATION

APX Rules and the Power Trading Member

- 1.1 References to the APX Rules in the context of the Power Trading Member shall mean references to paragraph 1 (*Definitions and Interpretation*) and parts I and III of these APX Rules together with, as the context so admits, the Schedules, Market Specifications and Annexes hereto, all as amended from time to time in accordance with the terms hereof (which Schedule 1, Market Specifications and Annexes shall take effect as if they were fully set out herein), and as given effect in relation to that Power Trading Member by the Membership Agreement between APX and the Power Trading Member.

APX Rules and the Gas Clearing Member

- 1.2 References to the APX Rules in the context of a Gas Clearing Member shall mean references to paragraph 1 (*Definitions and Interpretation*) and parts II and III of these APX Rules together with, as the context so admits, the Schedules and Annexes hereto, all as amended from time to time in accordance with the terms hereof (which Schedules and Annexes shall take effect as if they were fully set out herein), and as given effect in relation to that Gas Clearing Member by the Membership Agreement between APX and the Gas Clearing Member.

APX Rules and the Power Clearing Member

- 1.3 References to the APX Rules in the context of a Power Clearing Member shall mean references to paragraph 1 (*Definitions and Interpretation*) and parts I, II and III of these APX Rules together with, as the context so admits, the Schedules and Annexes hereto, all as amended from time to time in accordance with the terms hereof (which Schedules and Annexes shall take effect as if they were fully set out herein), and as given effect in relation to that Power Clearing Member by the Membership Agreement between APX and the Power Clearing Member.

Defined Terms

- 1.4 For the purposes of the APX Rules, the following words and expressions shall have the meaning or the meanings respectively ascribed to them below:

Agent has the meaning given in paragraph 2.4 of Annex 1;

Affiliate means any parent company or subsidiary undertaking of a Party or any company which is a subsidiary undertaking of the parent company of a Party and the expressions “parent company” and “subsidiary undertaking” shall have the meanings respectively ascribed to them by section 1162 of the Companies Act 2006;

Alternative Quantity Unit means the secondary units, where relevant, in which quantities of the relevant Commodity are expressed in relation to a Product, as specified in the relevant Market Specification;

Annex means an annex to these APX Rules;

Approved Credit Limit means the sum being the Power Member's maximum permitted Net Exposure as determined from time to time in accordance with the rules of the Clearing House which means for Clearing Members only - in accordance with the Credit Policy and, where applicable, paragraph 7.4;

APX means APX Commodities Limited, a company incorporated under the laws of England and Wales, company registration number 03751681, whose registered office is 18 King William Street, London, EC4N 7BP, its successors and/or permitted assigns;

APX Rules means these APX rules together with the Schedules and Annexes hereto and all procedures and other documents issued by APX Rules Notice, all as may be amended, supplemented or replaced from time to time in accordance with the terms thereof;

APX Rules Notice means a notice made in accordance with paragraphs 29.11 to 29.13 of these APX Rules;

APX Website means the internet website maintained by APX on the worldwide web whose URL is <http://www.apxgroup.com> relating to the APX Rules and the Markets;

Auction Algorithm means the algorithm under which Auction Orders are accepted, as set out in the relevant Market Specification;

Auction Order means an Order subject to matching by the relevant Auction Algorithm, as required by the relevant Market Specification, and which is not otherwise capable of acceptance;

Authority means the Gas and Electricity Markets Authority;

Balancing and Settlement Code means the document designated by the relevant Secretary of State and adopted by National Grid Electricity Transmission PLC as the balancing and settlement code pursuant to its transmission licence, as amended from time to time;

Bank Guarantee means a bank guarantee issued for the benefit of APX in a form satisfactory to APX in its sole discretion;

Base Rate means the Official Bank Rate of the Bank of England as published from time to time;

Bid means an indication of willingness to buy;

Bid/Offer Originator means in relation to a Power Bilateral Trade, the Power Member that posted the Originating Bid or, as the case may be, the Originating Offer;

Bilateral Trade means a Power Bilateral Trade or a Gas Bilateral Trade;

BSC Agent means a person or persons appointed as such for the purpose of providing certain services under the Balancing and Settlement Code;

BSC Party means a person who is bound by the Balancing and Settlement Code by virtue of being a party to the Balancing and Settlement Code framework agreement;

Business Day means a day other than a Saturday or a Sunday or a bank holiday in England and Wales;

Buyer means a person who has entered into a Bilateral Trade in relation to which such person is the buyer of the Power Product;

Cash Account means an account established by APX with the Clearing Member Account Bank in the name of APX and designated as an “in re” account for a specific Clearing Member;

Cash Call has the meaning ascribed to that expression in the Network Code;

Central Clearing Party (CCP) means, in relation to centrally cleared contracts, a body that acts as counterparty to the other parties involved;

Clearing means the process whereby the Clearing House becomes the CCP for the settlement of Trade Legs formed as a result of the registration by the Clearing House of Bilateral Trades concluded on the Power Market;

Clearing House means - in relation to a Power Trading Member – ECC and its subsidiaries, which is contracted by APX to execute the Clearing of Bilateral Power Trades or – in relation to a Power or Gas Clearing Member – APX acting as the CCP;

Clearing Member means a Power Clearing Member and/or a Gas Clearing Member, as the context permits;

Clearing Participant means a Power Trading Member that has concluded a participant agreement with ECC either as a clearing member or as a non-clearing member (as defined in the ECC Clearing Conditions);

Clearing Member Access Criteria has the meaning ascribed to that expression in paragraph 11.3;

Code Contingency has the meaning ascribed to that expression in the Network Code;

Code Communication has the meaning ascribed to that expression in the Network Code;

Code Modification has the meaning ascribed to that expression in the Network Code;

Code User means a User, as such expression is defined in the Network Code;

Collateral means the amount of cash held by a Clearing Member in a Member Account, or Collateral Account and/or the amount guaranteed under a Bank Guarantee, provided by the Clearing Member for the purposes of, in the case of a Power Clearing Member, supporting its obligations under these APX Rules, and in the case of a Gas Clearing Member supporting its obligations under these APX Rules and the Gas Trading Rules;

Collateral Account has the meaning ascribed to that expression in paragraph 13.18;

Collateral Bank means the bank with which the Collateral Account is established by APX in its sole discretion from time to time;

Collateral Fee means the fee payable to APX for the processing and management of the Collateral;

Commodity means the underlying physical commodity to which a Product relates;

Companies Act means the Companies Act 1985, the Companies Act 2006 or the Companies Act 2015, each as amended from time to time;

Compatible means in relation to any terms of a Bid and an Offer, the meaning ascribed to that expression by paragraph 2.18;

Competent Authority means the Authority, or any local, national or supra-national agency, authority, department, inspectorate, minister, official, court, tribunal or public or statutory person (whether autonomous or not) of the United Kingdom (or the government thereof) or the member of states of the European Union which has jurisdiction over APX or the Member or the subject matter of the APX Rules;

Complying Party means a Party deemed to be complying party under paragraph 7.1 of Annex 1;

Connection Equipment means computer and telecommunications materials and software including the internet used or to be used by the Member for the purpose of obtaining access to and use of the Operating System, but excluding the Operating System itself;

Connection Failure means a failure of all or any part of the Connection Equipment employed by the Member which results in the Member being unable to access and use the Operating System in the manner normally to be expected;

Continuous Order means an Order other than an Auction Order;

Contract I.D. means in relation to any Trade Leg resulting from a Bilateral Trade, the unique identification code ascribed to that Trade Leg by the Clearing House

Corresponding Bid means in relation to any Power Bilateral Trade, the Bid which gave rise to the acceptance of the Originating Offer;

Corresponding Offer means in relation to any Power Bilateral Trade, the Offer which gave rise to the acceptance of the Originating Bid;

Credit Policy means the rules and procedures set out in Schedule 1;

Currency Unit means the units in which trade monetary values are expressed in relation to a Power Product, as specified in the relevant Market Specification;

Data has the meaning ascribed to that expression in Schedule 2;

Day-ahead-market Market means the market, other than the OCM and the Gas Storage Market, offered by ENDEX for trading natural gas at the National Balancing Point;

Day-ahead-market Order has the meaning ascribed to that expression in the Gas Trading Rules;

Day-ahead-market Trade has the meaning ascribed to that expression in the Gas Trading Rules;

Day-ahead-market Trading Terms has the meaning ascribed to that expression in the Gas Trading Rules;

Debt means any present, future or contingent obligation on a Member to make payment to APX, if the case may be, via a subcontractor of the latter, of any amount specified, or (determined, where relevant, on the basis of the net amount owing to APX in relation to matters to be specified in an Invoice in respect of the relevant Invoice Period at the applicable date or time referred to in (a), (b) or (c) below) due to be specified, in an Invoice as a net amount payable to APX, irrespective of whether or not such payment is due and payable, and for such purposes an obligation shall be deemed to have arisen:

- (a) save as provided in paragraphs (b) and (c) below, on the day immediately following the last day in the Invoice Period;
- (b) save as provided in paragraph (c) below, in relation to any such amount payable in accordance with the provisions of paragraphs 16.39 and 16.40, at the earlier of the time determined in accordance with paragraph (a) above and the time at which APX declares such amount as immediately due and payable pursuant to paragraphs 16.39 and 16.40; and
- (c) in relation to any amount payable in accordance with the provisions of paragraphs 25.6 to 25.13, at the earlier of the time determined in accordance with paragraphs (a) and (b) above, as applicable, and the time of termination of such Member's Membership Agreement;

Deemed Imbalance Charges means for a Settlement Period and an Energy Account, the Energy Imbalance Charges (expressed in pounds sterling) that would be imposed on, or payable to, the Party under the Balancing and Settlement Code, if the Party were deemed responsible for one account energy imbalance volume in isolation, equivalent to the difference between:

- (a) the Expected Energy Contract Volume; and
- (b) the net Energy Contract Volume actually notified by APX (if any) or, otherwise, zero;

Default Contribution the meaning given in paragraph 14.2;

Defaulting Party shall have the meaning given to that expression in the definition of Event of Default;

Delivery means physical delivery of a Commodity at a Hub, or the making of notifications to the Hub Operator such that physical delivery is deemed to have been made including Energy Contract Volume Notifications;

Delivery Agent means the Clearing House in its capacity as the Power Member's Energy Contract Volume Notification Agent;

Delivery Period means in relation to a Bilateral Trade, the shortest period in respect of which Delivery is to be made pursuant to the Spot Power Trading Terms, and as set out in the relevant Market Specification;

Directive means any present or future directive, request, requirement, instruction, code of practice, direction or rule of any Competent Authority only, if not having the force of law, it is reasonable in all the circumstances for it to be treated as though it had the force of law;

Document means in respect of any Member, data transmitted electronically by means of the Operating System carrying the Signature of such Member;

Early Termination Date has the meaning set out in paragraph 25.225.2 of the APX Rules;

ECC means European Commodity Clearing AG and its subsidiaries;

ECC Clearing Conditions means the regulations issued by ECC governing the Clearing for Clearing Participants, as amended from time to time; the ECC Clearing Conditions are binding for all Clearing Participants;

ECV Aggregation Agent means the person appointed as the ECV aggregation agent under the Balancing and Settlement Code;

ECV Notification means, for a Settlement Period, a notification of one or more Energy Contract Volumes made by APX to the ECV Aggregation Agent;

ECV Notification Agent means a person authorised to make an ECV Notification on behalf of a Member with respect to a specified Energy Account Pair under the Balancing and Settlement Code;

ECV Notification Agent Authorisation means the authorisation of the Clearing House as provided in paragraph 5 of Annex 1 for the Clearing House to act as ECV Notification Agent for an Energy Account Pair validated by the ECV Aggregation Agent in accordance with the Balancing and Settlement Code;

ECV Notification Counterparty ID means the unique notification identification given by the Clearing House to the Member to use when identifying another Member and its Energy Account for the purposes of the ECV Notification service;

ECV Notification Service Terms means the terms and conditions from time to time set out in Annex 2 to the APX Rules;

ECV Notification Submission Time means each time by which the Clearing House shall make an ECV Notification if requested in accordance with the timetable advised by the Clearing House from time to time;

Electricity Act means the Electricity Act 1989;

Elexon means Elexon Limited and/or Elexon Clear Limited;

Eligible Trading System Point has the meaning ascribed to that expression in the Network Code;

ENDEX means ICE Endex Gas Spot Ltd, a company incorporated under the laws of England, company registration number 8254731, whose registered office is 6th Floor, Milton Gate, 60 Chiswell Street, London, EC1Y 4SA, United Kingdom, its successors and/or permitted assigns;

Energy Account means an account established and operated under the Balancing and Settlement Code in the name of a BSC Party for the purposes of accounting for quantities of active energy in settlement under the Balancing and Settlement Code;

Energy Account Pair means, with respect to the Member and Second Member or the Member and the Clearing House, as the case requires, an Energy Account of each person for which the Clearing House is or is proposed to be authorised to be the ECV Notification Agent;

Energy Balancing Charges has the meaning ascribed to that expression in the Network Code;

Energy Balancing Credit Rules has the meaning ascribed to that expression in the Network Code;

Energy Contract Volume or **ECV** means, for a Settlement Period and an Energy Account, a volume of electricity (expressed in MWh) notified for the purposes of the Balancing and Settlement Code;

Energy Contract Volume Notification has the meaning ascribed to that expression in the Balancing and Settlement Code;

Energy Contract Volume Notification Agent has the meaning ascribed to that expression in the Balancing and Settlement Code;

Energy Imbalance Charges means in respect of a Settlement Period and an Energy Account of a BSC Party, charges under the Balancing and Settlement Code:

- (a) that are imposed upon that BSC Party, which for imbalance settlement purposes is treated as having bought so as to cash-out its electricity imbalance; or
- (b) that are payable to that BSC Party, which for imbalance settlement purposes is treated as having sold so as to cash-out its electricity imbalance;

Escrow Account means an account established with the Clearing Member Account Bank in respect of which APX, the Clearing Member Account Bank and the Clearing Member have entered into an Escrow Agreement;

Escrow Agreement means an agreement entered into between APX, the Member Account Bank and a Clearing Member in a form satisfactory to APX in its sole discretion;

Event of Default means the occurrence at any time with respect to the Member (the **Defaulting Party**) of any of the following events:

- (a) **(Insolvency)** the Member:
- (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
 - (ii) becomes insolvent or is unable to pay its debts within the meaning of section 123(1) or (2) of the Insolvency Act 1986 (save that such section shall have effect as if for £750.00 there was inserted £50,000.00 and the Member shall not be deemed to be unable to pay its debts if any demand for payment is being contested in good faith by it with recourse to all appropriate measures and procedures);
 - (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
 - (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, that proceeding or petition (aa) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (bb) is not withdrawn, dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation of that proceeding or petition;
 - (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
 - (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
 - (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and that secured party maintains possession, or that process is not withdrawn, dismissed, discharged, stayed or restrained, in each case within 30 days of that event;
 - (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (i) to (vii) (inclusive);
 - (ix) takes any action in furtherance of any of the acts referred to in this paragraph under (a);

each an Insolvency Event

- (b) **(Representation or Warranty)** any representation or warranty made, or deemed to have been made, by the Member in these APX Rules proves to have

been false or materially misleading at the time it was made or was deemed to have been made;

- (c) **(Non-Payment)** the Member fails to pay any amount(s) exceeding £1,000.00 (in total) when due under the APX Rules;
- (d) **(Market Conduct)** the Member fails to comply with any provision of paragraph 7.1, or paragraph 7.2 as it applies with respect to that Member;
- (e) **(APX Rights)** the Member takes any action in derogation of APX's rights in or to the Operating System;
- (f) **(Material Obligations)** the Member fails to perform a material obligation under these APX Rules (other than an obligation referred to in (d) or (e)) and that failure (i) is incapable of remedy or (ii) if capable of remedy is not remedied within 5 Business Days of APX giving the Member notice of that failure;
- (g) **(Breach of other rules)** the Member is in default with respect to the rules of any other exchange, trading platform or Clearing House;
- (h) **(BSC Credit Default)** (i) a level 2 credit default under the Balancing and Settlement Code occurs with respect to the Power Member or (ii) any other default under the Balancing and Settlement Code occurs with respect to the Power Member such that any position notified by the Clearing House is or is likely to be refused or rejected, disapproved or nullified; or
- (i) **(Collateral)** the Clearing Member fails to comply with paragraph 13.2, 13.7 or 13.11;

Execution Condition means the condition of execution applicable to an Order, as specified in the relevant Market Specification;

Expected Energy Contract Volume has the meaning set out in paragraph 7.1 of Annex 1 or paragraph 5.1 of Annex 2;

Financial Assurances Demand has the meaning ascribed to that expression by paragraph 13.11;

Force Majeure means:

- (a) explosions, fires, nuclear radiation contamination, hurricanes, earthquakes, floods, natural disasters, epidemics, other acts of God, and any other similar circumstances;
- (b) war and other hostilities (whether declared or not), revolution, public disorders, insurrection, rebellion, sabotage, or terrorist action;
- (c) strikes, lock-outs or labour disputes;
- (d) any event which prevents an ECV Notification from being submitted to or received by the ECV Aggregation Agent;

- (e) any event which prevents the aggregate Settlement Period Volumes from being received or taken into account by the Settlement Administration Agent in determining the account energy imbalance volume (as defined in the Balancing and Settlement Code) for the relevant Energy Account of that Party for that Settlement Period;
- (f) any event which involves a denial of service attack or a computer virus (which could not have been prevented by taking reasonable anti-virus measures) and prevents the effective operation of a computer system of the ECV Notification Aggregation Agent, any other BSC Agent, Elexon, a Member or the Operating System; or
- (g) Connection Failure;

provided that the act or omission of any agent or contractor of a Party shall not be Force Majeure unless such act or omission is caused by or results from events and/or circumstances which would be Force Majeure if such person were the affected Party; provided further that inability of a Party to pay (howsoever caused) shall not be Force Majeure; and

Gas Act means the Gas Act 1986 as amended by the Gas Act 1995 and as otherwise amended from time to time;

Gas Bilateral Trade means a transaction formed on the Gas Trading Platform pursuant to the Gas Trading Rules and the relevant Gas Trading Terms between one Gas Clearing Member (as seller) and another Gas Clearing Member (as buyer), and, in each case, in relation to which neither ENDEX nor APX is a party;

Gas Clearing Member means a person who has entered into a Membership Agreement with APX by which, as between APX and that person, paragraph 1 (*Definitions and Interpretation*), parts II and III of these APX Rules and the Schedules are made contractually binding and who is also a Gas Trading Member, and/or the successors and permitted assigns of such person;

Gas Emergency means a Network Gas supply Emergency as such expression is defined in the Network Code;

Gas Storage Market has the meaning ascribed to that expression in the Gas Trading Rules;

Gas in Store and Capacity Trading Terms has the meaning ascribed to that expression in the Gas Trading Rules;

Gas Market has the meaning ascribed to that expression in the Gas Trading Rules;

Gas Product means a product trading on the Gas Trading Platform in accordance with the Gas Trading Rules;

Gas Trading Member means the counterparty to the membership agreement with ENDEX by which, as between ENDEX and that person, the Gas Trading Rules are made contractually binding;

Gas Trading Platform means that gas trading platform operated by ENDEX in accordance with the Gas Trading Rules;

Gas Trading Rules means the ENDEX Gas Spot Ltd Trading Rules as may be amended, supplemented or replaced from time to time in accordance with its terms;

Gas Trading Terms means the OCM Trading Terms, the Day-ahead-market Trading Terms and the Gas in Store and Capacity Trading Terms;

Gas Transporter's Licence means a licence granted or treated as having been granted under Section 7(2) of the Gas Act (including standard conditions thereto) as modified from time to time;

Gas Year has the meaning ascribed to that expression in the Network Code;

Gate Closure has the meaning set out in the Balancing and Settlement Code;

Group has the meaning given to that expression in Section 474 of the Companies Act 2006;

Hour means any period of an hour beginning on the hour;

Hub means a virtual point at which a Commodity is delivered for the purposes of the Trading Terms, including the National Balancing Point in relation to natural gas in the UK and the delivery point for ECVs as envisaged by the Balancing and Settlement Code;

Hub Operator means the entity or entities directly responsible for the operation of a Hub according to its Hub Rules, including Elexon in respect of the Balancing and Settlement Code, and National Grid in respect of the Network Code;

Hub Rules means the rules governing the arrangements for, inter alia, delivery of a Commodity at a Hub including the Network Code and the Balancing and Settlement Code;

Hub Security means security provided to a Hub Operator under the Hub Rules, including Network Code Security and BSC credit cover;

Indebtedness means any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money;

Insolvency Act means the Insolvency Act 1986;

Interest Haircut means the interest haircut, set in the sole discretion of APX as indicated in the Statement of Charges;

Invoice means the invoice in respect of any Invoice Period, issued by APX under paragraph 16.1, or as applicable 16.2;

Invoice Delivery Date means the date by which an Invoice is to be delivered, as specified in the relevant Trading Terms;

Invoice Period means the set of Delivery Periods covered by an Invoice, as specified in the relevant Trading Terms;

Invoice Settlement Date means the date by which payment by Members is due in respect of an Invoice, as specified in the relevant Trading Terms;

Irrevocably Delivered has the meaning ascribed to that expression in paragraph 1.3 of Schedule 1;

Joule means the joule as defined in ISO 1000-1981(E);

Laws has the meaning ascribed to that expression in paragraph 33.9;

Lead Time means the period required for any alteration to the rate of delivery or offtake of a Commodity, meeting the criteria in paragraph 3.11;

Legal Requirement means any Act of Parliament, regulation, licence, or Directive of a Competent Authority;

Licence means any licence granted or treated as having been granted pursuant to Sections 7(2) or 7A(2) of the Gas Act or as relevant Section 6 of the Electricity Act;

Location means a point, in relation to a Power Product and Hub, at which a Member may be eligible to make or take Delivery, as specified in the relevant Market Specification;

Log-in Code means an electronic identification assigned by the Member to a person authorised to access and use the Operating System on behalf of the Member;

Loss means as set out in paragraph 25.725.7;

Lot Size means the minimum permitted increment in the Order Quantity of an Order, expressed in the relevant Quantity Unit, as specified in the relevant Market Specification;

Market means a set of Power Product or services which are designated as a “Market” in these APX Rules;

Market Auction Price means the price at which an Auction Order is accepted in accordance with the relevant Auction Algorithm;

Market Coupling means the price coupling process in which European power exchanges and transmission system operators participate;

Market Failure means any failure or malfunction of the Operating System (excluding a Connection Failure) that prevents Members from using the Operating System or which prevents the accurate processing of Orders and the clearing of Bilateral Trades and their associated Trade Legs;

Market Specification means the document, as published by APX from time to time, that defines the parameters for one or more Power Product;

Member means a Power Trading Member, a Power Clearing Member and/or a Gas Clearing Member, as the context permits;

Clearing Member Account means a Cash Account or an Escrow Account;

Clearing Member Account Bank means the bank with which the Clearing Member Accounts are established by APX in its sole discretion from time to time;

Membership Agreement means an agreement entered into by APX with a Member , including an agreement entered into before 31 December 2005 and described as a subscription agreement; and in the context of the Member, the Membership Agreement between APX and the Member;

Membership Criteria means the following criteria that a Member must satisfy:

- (a) the Member is a legal entity and not a natural person and shall possess, to APX's satisfaction, that degree of skill, care, diligence, experience, prudence and foresight as reasonably and ordinarily exercised by professional parties engaged in the trading of power or gas (as applicable) in the wholesale market;
- (b) the Member must be established in a Member State of the European Economic Area. In addition to these states, APX may decide that persons that are not established in Member States of the European Economic Area can also apply to become a Member;
- (c) the Member has provided a postal address and facsimile number for service of written communications, an address for service of electronic communications and a telephone number for the purposes of communications by telephone;
- (d) where a Member is not incorporated in the European Union or an EFTA Member State, it shall have provided APX, in writing, with an address in an EU Member State or an EFTA Member State for the service of process on its behalf in any legal proceedings;
- (e) the Member shall have obtained and shall maintain all licences, authorisations, permits, consents and other approvals necessary to enable it to fulfil all its obligations under the APX Rules and to execute and deliver the relevant Membership Agreement;
- (f) APX must be satisfied that the Member is in an actual good financial situation and has sound financial prospects;
- (g) APX must be satisfied that all those determining or sharing in the determination of the day-to-day policy of the Member have sufficient expertise to conduct the trading business as applicable;
- (h) APX must be satisfied that the intended or past activities of any person or circumstances relating to these persons, will not present a serious risk to the interests of APX or other Members;

Membership Fee Period means the relevant calendar month in question;

Minimum Order Quantity means the minimum permitted Order Quantity for an Order, expressed in the relevant Quantity Unit, as specified in the relevant Market Specification;

National Balancing Point means the notional UK national balancing point for trading in rights pertaining to natural gas, as contemplated by the Network Code;

National Grid means National Grid Gas plc, a company incorporated under the laws of England and Wales, company registration number 2006000, acting as a public gas transporter under National Grid's Licence, its successors and/or permitted assigns;

National Grid Balancing means National Grid, in its capacity as a Gas Clearing Member by virtue of the Membership Agreement established for balancing of the national gas transmission system;

National Grid's Licence means the Gas Transporter's Licence granted or treated as having been granted to National Grid in respect of NTS under Section 7(2) of the Gas Act;

NBP Market means the markets, consisting of the OCM and the Day-ahead-market Market, offered by ENDEX for trading natural gas at the National Balancing Point;

Net Exposure means the sum determined as such with respect to the Member from time to time by the Clearing House, and - for Clearing Members only - in accordance with the Credit Policy;

Net Settlement Period Volume has the meaning set out in paragraph 6.1(b) of Annex 1 or paragraph 4.1(b) of Annex 2 as the case requires;

Network Code means the Uniform Network Code as amended by Code Modifications from time to time;

Network Code Security means security for the Clearing House's indebtedness for Energy Balancing Charges, in one of the forms specified in, and provided and documented in accordance with any applicable requirements of, the Energy Balancing Credit Rules;

Non-Complying Party means the Party deemed to be the non-complying party under paragraph 7.1 of Annex 1;

Notification Condition has the meaning set out in paragraph 6.2 of Annex 1 or paragraph 4.2 of Annex 2 as the case requires;

Notification Request has the meaning given in paragraph 3.1 of Annex 2;

OCM means the On-the-day Commodity Market offered by ENDEX for trading natural gas at the National Balancing Point;

OCM Order has the meaning ascribed to such expression in the Gas Trading Rules;

OCM Trade has the meaning ascribed to that expression in the Gas Trading Rules;

OCM Trading Terms has the meaning ascribed to that expression in the Gas Trading Rules;

Offer means an indication of willingness to sell;

Operating System means the electronic communications system, including all relevant hardware, Service and Data, operated by APX which, amongst other things, facilitates the posting and acceptance of Orders, the Delivery of Trade Legs and the giving of electronic notices or confirmations in relation to Power Bilateral Trades and/or Trade Legs by APX but only to the extent that such system relates to rights and obligations of APX and Members pursuant to the APX Rules;

Order means a Bid or an Offer;

Order Expiry Time means the time, specified by the Power Member making an Order, at which such Order is to be automatically withdrawn;

Order Quantity means in relation to any Order, the quantity expressed in the relevant Quantity Unit, which the person making the Order is offering for trade;

Order Type means the type of an Order, as specified in the relevant Market Specification;

Originating Bid means in relation to any Power Bilateral Trade, the Bid the acceptance of which gave rise to that Power Bilateral Trade;

Originating Offer means in relation to any Power Bilateral Trade, the Offer the acceptance of which gave rise to that Power Bilateral Trade;

Originating Order means in relation to any Power Bilateral Trade, the Originating Offer or, as the case may be, the Originating Bid;

OTC Spot Power Transaction means an over the counter transaction agreed between two Power Members, clearing of which may be requested in accordance with paragraph 2 of Annex 1;

Other Power Member has the meaning given in paragraph 2.1 of Annex 1;

OTC Spot Power Transaction Request means a request as contemplated by paragraph 2 of Annex 1; **Outstanding Spot Power Trade Legs** means, with respect to an ECV Notification Submission Time and Energy Account, a Spot Power Trade Leg, the volumes of electricity of which have not been the subject of a previous ECV Notification;

Party means APX or the Member and **Parties** shall mean both APX and the Member;

Pass-Through Amount means all charges (including balancing charges) and taxes levied or paid by a System Operator, Competent Authority or any other person in connection with (i) the trading, sale, purchase, performance or settlement of any Power

Product; or (ii) the use of any service, which are required to be paid by, or are paid to, APX on behalf of the Member;

Pending ECV Notification has the meaning set out in paragraph 3.2(d) of Annex 2;

Planned Maintenance Period means any period notified to the Member in accordance with paragraphs 19.5 and 19.6;

Position Account means an account maintained by the Clearing House for the Member for the purpose of administering Orders and transactions

Position Limit means the limit that the Power Member's net sell position must not exceed for the purposes of paragraph 5.4;

Potential Event of Default means an event, which with the giving of notice or the passage of time or both would constitute an Event of Default (including, for the avoidance of doubt, any failure in whole or in part of an amount owed under the APX Rules to be paid by the date and time that payment is due);

Power Bilateral Trade means a transaction formed pursuant to the APX Rules and the relevant Power Trading Terms between one Power Member (as seller) and another Power Member (as buyer) (i) as a result of a Bid and an Offer matching, or (ii) otherwise in accordance with the relevant Power Trading Terms, and, in each case, in relation to which the Clearing House is not a party, and which for the avoidance of doubt includes a Spot Power Bilateral Trade;

Power Emergency means an emergency, not constituting a Force Majeure, on the Power Market which has or might have an adverse effect on the integrity, security or functioning of the Power Market as determined by APX in its reasonable discretion;

Power Market means the markets on which Power Product are offered by APX for trading power;

Power Clearing Member means a power exchange established and incorporated in the European Economic Area that facilitates Market Coupling, not being APX, that facilitates Market Coupling by which, as between APX and that power exchange, paragraph 1 (Definitions and Interpretation), parts I, II and III of these APX Rules and the Schedules are made contractually binding, and/or the successors and permitted assigns of such power exchange for the purpose of trading Power Products and the Clearing thereof by APX. An individual Power Clearing Member cannot be a Clearing Participant.

Power Member refers to a Power Trading Member and/or a Power Clearing Member, as the context permits;

Power Product means a defined combination of Commodity, Hub, Delivery Period(s) and other parameters, made available by APX for trading on the Operating System in accordance with the relevant Market Specification;

Power Trading Member means the counterparty to a Membership Agreement with APX by which, as between APX and that person, paragraph 1 (Definitions and Interpretation), parts I and III of these APX Rules and the Schedules are made

contractually binding, and/or the successors and permitted assigns of such person for the purpose of trading Power Products; Power Trading Member category of membership must be a Clearing Participant. An individual Power Trading Member that is a Clearing Participant cannot be a Power Clearing Member.

Power Trading Terms means with respect to any Spot Power Bilateral Trade or Spot Power Trade Leg to which the Power Member is a Party, the Spot Power Trading Terms, and which is a Pending ECV Notification, the ECV Notification Service Terms;

Price means in relation to any Order or Bilateral Trade, the relevant price (excluding VAT and other applicable taxes) expressed in the relevant Price Unit;

Price Unit means the units in which prices are expressed in relation to a Power Product, as specified in the relevant Market Specification;

Product means a Gas Product and/or a Power Product;

Protected Information has the meaning given to that term in paragraph 26.3;

Quantity Unit means the units in which quantities of the relevant Commodity are expressed in relation to a Product, as specified in the relevant Market Specification;

Reason Code means the code notified by a Power Member as the reason code, where required to do so by the Market Specification, when making an Order;

Reasonable and Prudent Operator means a person seeking in good faith to perform its contractual obligations, and in so doing in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced operator complying with the applicable law and engaged in the same type of undertaking in the same or similar circumstances or conditions, and any reference to the standard of a Reasonable and Prudent Operator shall be construed accordingly;

Registration Form means a form to be completed and updated by the Member setting out the detailed information required by APX in order to allow the Member to engage in activities contemplated by these APX Rules;

Related Rights means all or any rights of APX in relation to a Debt (including under any credit insurance maintained under the APX Rules or otherwise any rights to interest and any rights under the APX Rules);

REMIT means Regulation (EU) 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency;

Residual Order shall have the meaning ascribed to that expression at paragraph 3.6;

Residual Quantity means in respect of any Order, the meaning set out in paragraph 5.15;

Rules Change means a change to the APX Rules made pursuant to Schedule 3;

Schedule means a schedule to these APX Rules;

Second Member means any other Power Member on whose behalf APX has been requested to make ECV Notifications relating to an Energy Account of the Power Member under Annex 2;

Security means any charge, security interest, or right of set off;

Seller means a person who has entered into a Power Bilateral Trade in relation to which such person is the seller of the Power Product;

Service has the meaning ascribed to that expression in Schedule 2;

Settlement Account means the account from time to time notified by APX to Clearing Members as the account established under paragraph 16.8;

Settlement Administration Agent means the person appointed as the Settlement Administration Agent under the Balancing and Settlement Code;

Settlement Bank means the bank with which the Settlement Account is established by APX in its sole discretion from time to time;

Settlement Period has the meaning set out in the Balancing and Settlement Code;

Settlement Period Volume means, for a Settlement Period, the volume of electricity the Member and the Second Member have requested the Clearing House to nominate under the Balancing and Settlement Code (expressed in MWh);

Shipper's Licence means a licence granted or treated as having been granted under Section 7A(2) of the Gas Act;

Signature means in relation to any Member, a unique electronic identification consisting of symbol(s) or code(s) assigned to such Member by APX;

Spot Power Auction Order means an Offer or Bid, constituting an Auction Order, by the Power Member to sell, buy or enter into, as the context requires, a Spot Power Bilateral Trade, as specified in the relevant Market Specification;

Spot Power Day-Ahead Afternoon Auction Order means an Offer or Bid, constituting an Auction Order, by the Power Member to sell, buy or enter into, as the context requires, a Spot Power Bilateral Trade, as specified in the relevant Market Specification;

Spot Power Continuous Order means an Offer or Bid, constituting a Continuous Order, by the Power Member to sell, buy or enter into, as the context requires, a Spot Power Bilateral Trade;

Spot Power Contract Amount has the meaning set out in paragraph 3.2 of Annex 1;

Spot Power Market means the market, offered by APX for trading short term power on the UK power Hub;

Spot Power Order means an Offer or Bid by the Power Member to sell, buy or enter into, as the context requires, a Spot Power Bilateral Trade;

Spot Power Bilateral Trade means the rights and obligations, if any, which exist when:

- (a) a Power Member's Spot Power Order is accepted; or
- (b) the Power Member accepts a Spot Power Order of another Power Member;
- (c) a Power Member's OTC Spot Power Transaction Request is logged as confirmed under Annex 1;

Spot Power Trade Leg means an agreement between the Clearing House and a Power Member concerning that Power Member's obligation to deliver or offtake a Power Product and to pay or receive the agreed Price adjusted to reflect Fees and other monetary remunerations pursuant to the relevant Spot Power Trading Terms and any other applicable requirements in the APX Rules as further detailed in paragraph 3.1 of Annex 1;

Spot Power Trading has the meaning given in paragraph 1.2 of Annex 1;

Spot Power Trading Terms means the terms and conditions from time to time set out in Annex 1 to the APX Rules;

Start Time means in relation to any Originating Order for which a Lead Time has been specified, the time at which the Bid/Offer Originator has offered to commence the flow of the Commodity;

Statement of Charges means the statement of charges published by APX for the purposes of these APX Rules, as revised from time to time by APX in accordance with the APX Rules;

Storage Order has the meaning given in the Gas Trading Rules;

Storage Trade has the meaning given in the Gas Trading Rules;

System means the transmission system, system control and other facilities and intangible rights and operations which co-ordinate the generation, transmission and supply of electricity over a discrete geographical area (a System may be interconnected with another System, and the boundary between one System and another shall be that which is generally taken to be that boundary by parties in the wholesale trading of electricity);

System Operator means, with respect to a System, the entity that operates and administers the system operation functions of the System;

System Point has the meaning ascribed to that expression in the Network Code;

Termination Amount has the meaning set out in paragraph 25.6 of the APX Rules;

Terms of Use of Operating System means the rules and procedures set out in Schedule 2;

Therm means 105,505,560 Joules;

Tick Size means the minimum permitted increment in the Price of an Order, expressed in the relevant Price Unit, as specified in the relevant Market Specification;

Trade Leg means a contract between a member and the Clearing House involving, without limitation, either a payment obligation, a delivery obligation or an offtake obligation in respect of a Power Product or a Gas Product of a Member vis-à-vis the Clearing House resulting from the registration of a Bilateral Trade for clearing and its novation to the Clearing House as clearer, for Clearing Members in accordance with paragraph 12, and for the avoidance of doubt includes a Spot Power Trade Leg;

Trade Quantity means in relation to any Bilateral Trade or, as applicable, Trade Leg, the traded quantity of the Commodity, as relevant determined in accordance with paragraph 5.15, expressed in the relevant Quantity Unit;

Trade Value means in respect of any Bilateral Trade or Trade Leg, the Trade Quantity multiplied by the Power Product duration, multiplied by the Price;

Trader User has the meaning ascribed to that expression in the Network Code;

Trading Charges has the meaning ascribed to that expression in the Balancing and Settlement Code;

Trading Condition has the meaning set out in paragraph 4 of Annex 1;

Trading Hours means the times at which Power Members may enter into Power Bilateral Trades by means of the Operating System in respect of a Power Product, as specified in the relevant Market Specification;

Trading System Clearer has the meaning ascribed to that expression in the Network Code;

Trading System Contract means the trading system contract (as such expression is defined in the Network Code) to which APX is a party;

Trading Terms means the Power Trading Terms and the Gas Trading Terms;

Trading Time means period of time for which a given Power Product or Power Product type is available for trading, as specified in the relevant Market Specification;

Transfer Request means a written request by a Clearing Member for release of all or any Collateral such Member has provided in accordance with the Credit Policy as provided in paragraph 13.13, subject to payment by the Clearing Member of APX's reasonable costs of doing so;

UK Link has the meaning ascribed to that expression in the Network Code;

User Agent has the meaning ascribed to that expression in the Network Code and in relation to a Gas Clearing Member means ENDEX pursuant to its appointment by the Gas Clearing Member in accordance with the Gas Trading Rules;

Volume means with respect to an Order or a Bilateral Trade, the volume derived by multiplying the Order Quantity or the Trade Quantity, as appropriate, by the duration of the relevant Power Product; and

Volume Unit means with respect to an Order or a Bilateral Trade, the unit in which the Volume is expressed, as specified in the relevant Market Specification.

Interpretation - General

1.5 In the APX Rules, unless the context requires otherwise:

- (a) a reference to a particular paragraph is a reference to a paragraph in the APX Rules;
- (b) words in the singular may be interpreted as including the plural;
- (c) the words “includes” or “including” are to be construed without limitation;
- (d) a derivative term of any defined term shall be construed in accordance with the relevant definition;
- (e) any reference to any time is a reference to the official time in England;
- (f) a reference to any statute shall be construed as including any orders, codes of practice or other sub-ordinate legislation made pursuant thereto;
- (g) a reference to any Legal Requirement shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment (before or after the date of the Membership Agreement) of that Legal Requirement in force at that time;
- (h) a reference to contractors shall be interpreted as referring to contractors and subcontractors of any tier; and
- (i) if there is a conflict between the APX Rules and any applicable Trading Terms, the Trading Terms control and take precedence; and
- (j) for the avoidance of doubt, where these APX Rules provide that APX “may” do something it is a right which it may exercise in its absolute discretion and it shall not be under any obligation to do so.

Therms to kWh Conversion

1.6 Where for the purposes of the APX Rules any quantity is required to be converted from therms to kWh, or where the Operating System automatically converts a quantity expressed in therms to kWh, the conversion shall be conducted by multiplication of the figure in therms by 29.3071 to obtain a figure in kWh. Where a value expressed in kWh is required to be an integer, the result of such multiplication shall be subject to standard rounding.

1.7 Where for the purposes of the APX Rules any price is required to be converted from pence per therm to pence per kWh, or where the Operating System automatically

converts a price expressed in pence per therm to pence per kWh, the conversion shall be conducted by dividing the price in pence per therm by 29.3071 to obtain a price in pence per kWh and rounding to the nearest fourth decimal point (subject to standard rounding).

Headings the APX Rules, Membership Agreement and any Trading Terms are used or made for convenience

- 1.8 Headings in the APX Rules and references thereto in only and shall not affect the interpretation of any provisions of the APX Rules, Membership Agreement or Trading Terms.

References to Headings

- 1.9 References to headings in the provisions of the APX Rules are made in brackets and in italics

PART I: POWER TRADING

2. INTERPRETATION OF TERMINOLOGY WITH RESPECT TO ORDERS AND POWER BILATERAL TRADES

- 2.1 The provisions of this paragraph 2 set out the basis on which certain terms relating to Orders and Power Bilateral Trades are to be construed for the purposes of the APX Rules.

Making Orders

- 2.2 An Order is “made” by a Power Member where a Document is received by APX which indicates to APX a willingness to enter into a Power Bilateral Trade on specified terms.

Displaying Orders

- 2.3 An Order is “displayed” when APX makes such Order available for viewing by Power Members in accordance with, and subject to, the APX Rules.

Posting Orders

- 2.4 An Order is “posted” by a Power Member when:
- (a) a Continuous Order which has been made by such Power Member is displayed by APX;
 - (b) a Continuous Order deemed to have been made by such Power Member in respect of a Residual Quantity is displayed as a consequence of the acceptance of a preceding Continuous Order; or
 - (c) an Auction Order which has been made by such Power Member is not rejected by APX.

Live Orders

- 2.5 An Order is “live” when, during Trading Hours for the Power Product to which the Order relates, it has been posted and has not been accepted or withdrawn.

Matching Orders

- 2.6 A Bid and Offer constituting Continuous Orders “match” when they are identical to each other save as to:
- (a) one being a Bid and the other an Offer; and
 - (b) the identities of the Power Members making such Bid and Offer; and
 - (c) where partial acceptance of the Bid is permitted, the Order Quantity of the Offer is less than the Order Quantity of the Bid; and
 - (d) where partial acceptance of the Offer is permitted, the Order Quantity of the Bid is less than the Order Quantity of the Offer; and

- (v) any differing terms of the Bid and the Offer which are Compatible.

Partial Acceptance of Orders

- 2.7 Partial acceptance is permitted in respect of any Order which does not indicate that partial acceptance is not permitted.

Accepting Offers

- 2.8 Subject to paragraph 2.9, an Offer constituting a Continuous Order shall have been “accepted” by a Power Member where such Offer is live and a matching Bid has been made by such Power Member (and not rejected by APX pursuant to the APX Rules) and where:
 - (a) such Offer is not accepted as a consequence of another matching Bid, which, in accordance with the functionality of the Operating System takes precedence; or
 - (b) APX does not prevent acceptance of such Offer pursuant to paragraphs 5.3 to 5.8, 7.2(f) or 7.2(h).
- 2.9 Where a Bid constituting a Continuous Order is made (and not rejected by APX pursuant to the APX Rules) which matches one or more live Offers, the Offer “accepted” as a consequence of such Bid shall be:
 - (a) the live Offer with the lowest Price; or
 - (b) where, the lowest Price is common to two or more Offers, one of the Offers with the lowest Price which, in accordance with the functionality of the Operating System, takes precedence.
- 2.10 An Offer constituting an Auction Order shall have been “accepted” where so determined by the relevant Auction Algorithm.

Accepting Bids

- 2.11 Subject to paragraph 2.13, a Bid constituting a Continuous Order shall have been “accepted” by a Power Member where such Bid is live and a matching Offer has been made by such Power Member (and not rejected by APX pursuant to the APX Rules) and where:
 - (a) such Bid is not accepted as a consequence of another matching Offer, which, in accordance with the functionality of the Operating System takes precedence; or
 - (b) APX does not prevent acceptance of such Bid pursuant to paragraphs 5.3 to 5.8, 7.2(f) or 7.2(h).
- 2.12 Where an Offer constituting a Continuous Order is made (and not rejected by APX pursuant to the APX Rules) which matches one or more live Bids, the Bid “accepted” as a consequence of such Offer shall be:
 - (a) the live Bid with the highest Price; or

- (b) where, the highest Price is common to two or more Bids, one of the Bids with the highest Price which, in accordance with the functionality of the Operating System takes precedence.

2.13 A Bid constituting an Auction Order shall have been “accepted” where so determined by the relevant Auction Algorithm.

Withdrawing Orders

2.14 A Power Member shall have “withdrawn” an Order where a Document is received by APX (and not rejected by APX in accordance with the APX Rules) which indicates to APX that such Order is being withdrawn by the relevant Power Member (including, for the avoidance of doubt, any notification by such Power Member indicating that such Order should be modified or placed on hold), or when the specified Order Expiry Time for such Order is reached.

Rejection of Orders

2.15 An Order shall have been “rejected” by APX when the Power Member (in accordance with the APX Rules) is automatically notified by means of the Operating System that such Order has been rejected or that the Power Member has been unsuccessful in its attempts to make or post such Order.

Derivative Terms

2.16 In relation to any Order, any reference to the terms “make”, “display”, “post”, “match”, “accept”, “reject” and “withdraw” (and derivatives thereof) shall be construed in accordance with this paragraph 2.

Compatible Orders

Terms of Power Bilateral Trade

2.17 Where a Power Bilateral Trade is formed as a result of a Bid and an Offer matching (each constituting a Continuous Order), in respect of which any of the terms are Compatible, the relevant terms of the Power Bilateral Trade shall be the terms of the Originating Bid or Offer.

Price

2.18 The terms of a Bid and an Offer (each constituting a Continuous Order) shall be Compatible with respect to Prices:

- (a) where the Price of the Originating Bid is greater than the Price of the Corresponding Offer; or
- (b) where the Price of the Originating Offer is less than the Price of the Corresponding Bid.

3. ORDERS

Entitlement to make Orders

- 3.1 Subject to any obligation or entitlement of APX pursuant to the APX Rules to reject any Order, the Power Member may, in accordance with, and subject to, the APX Rules, make Orders.
- 3.2 Orders in respect of any Power Product may be submitted during Trading Hours when such Power Product is available for trading.

Orders and Price Limits

- 3.3 Where APX, pursuant to paragraph 5.3 rejects an Order made by the Power Member, the Power Member shall be notified forthwith of such rejection.
- 3.4 APX may from time to time set (or reset) price limits on the highest and/or lowest Price that may form part of an Order for a Power Product. APX shall take reasonable steps to communicate any such limits to all Power Members forthwith on setting or resetting them.
- 3.5 APX shall reject any Order that a Power Member makes for a Power Product that specifies a Price that is higher or lower than the highest or lowest price limits applicable for such Power Product at the time the Order is made.

Partial Acceptance

- 3.6 Where a Power Bilateral Trade is formed as a result of:
 - (a) the acceptance of a Continuous Order made by the Power Member in respect of which partial acceptance is permitted; or
 - (b) the Power Member making a Continuous Order in respect of which partial acceptance is permitted,

the Power Member that made the Order in respect of which there is a Residual Quantity shall be deemed to have made an Order (a ***Residual Order***) on identical terms to such Order save that the Order Quantity shall be the Residual Quantity.

- 3.7 Where a Power Bilateral Trade is formed as a result of the partial acceptance of an Auction Order or no part of an Auction Order is accepted, the Residual Quantity of such Order shall be deemed to be nil, and the Order shall be deemed to be cancelled in respect of such Residual Quantity.

Making Orders

- 3.8 When the Power Member makes an Order it shall:
 - (a) specify the Power Product of such Order;
 - (b) indicate whether such Order is a Bid or an Offer;

- (c) specify the Price of such Order in the Price Unit, where the Order Type so requires;
- (d) specify the Order Quantity of such Order in the Quantity Unit;
- (e) in respect of an Order where the Market Specification so requires, specify the Lead Time of such Order;
- (f) in respect of an Order where the Market Specification so requires, specify the Location for such Order;
- (g) in respect of an Order where the Market Specification so requires, specify a Reason Code;
- (h) in respect of an Order where the Market Specification so requires, specify the Order Type;
- (i) in respect of an Order where the Market Specification so requires, specify the Execution Condition;
- (j) specify the Order Expiry Time of such Order; and
- (k) in respect of an Order where the Market Specification so requires, specify the Position Account which should be debited or credited, as appropriate, under the Balancing and Settlement Code if the Order is accepted.

Order Prices

- 3.9 The Price of any Order shall be expressed in whole number multiples of the Tick Size.

Order Quantities

- 3.10 The Order Quantity of an Order shall be expressed in whole number multiples of the Lot Size, and shall be no less than the Minimum Order Quantity.

Lead Times

- 3.11 The Lead Time of an Order shall be expressed in accordance with the relevant Market Specification.

Rejection of Orders

- 3.12 APX shall reject any Order made by the Power Member where the Power Member fails to comply with any of the provisions of this paragraph 3 and the Power Member shall forthwith be notified of such rejection.

4. DISPLAY OF ORDERS AND POWER BILATERAL TRADES

General

- 4.1 Subject to any obligation or entitlement of APX pursuant to the APX Rules to reject any Order or not to display any Order, APX shall, in accordance with, and subject to, the APX Rules, display Orders made by each Power Member (and not withdrawn by

such Power Member) during the Trading Hours for the Power Product to which such Order relates.

- 4.2 APX shall display an Auction Order only to the Power Member who posted it.

Anonymity

- 4.3 Without prejudice to paragraph 19.3, APX shall not display the identity of a Power Member in connection with any Order made or Power Bilateral Trade entered into, by such Power Member.

Removal of Orders

- 4.4 APX shall cease to display any Order posted by a Power Member:
- (a) upon its acceptance (save that it may be displayed in a form that does not permit acceptance);
 - (b) upon its withdrawal in accordance with instructions 19.3 for its withdrawal given by such Power Member; and
 - (c) where such Power Member's access to, and use of, the Operating System is terminated or suspended (other than pursuant to paragraph 17.3(b) but without prejudice to paragraph 4.4(b)).

Nothing in this paragraph 4.4 shall oblige APX to carry out a withdrawal upon instructions given by any Power Member, where such instructions relate to an Auction Order and are received after the relevant market closure time for the Power Product to which such Order relates, as set out in the relevant Market Specification.

Security Arrangements

- 4.5 APX may reject any Order, or attempted withdrawal of any Order, or any other Document as a consequence of the operation of security arrangements reasonably employed by APX for the protection of the Operating System including any virus detection software employed by APX and shall, where practicable, notify the Power Member of such rejection forthwith.

5. ACCEPTANCE OF ORDERS

Entitlement to accept Orders

- 5.1 Subject to any obligation or entitlement of APX pursuant to the APX Rules to reject acceptance by the Power Member of any Order, the Power Member may accept live Continuous Orders.
- 5.2 Auction Orders shall be accepted only in accordance with the relevant Auction Algorithm.

Restrictions on acceptance of Orders

- 5.3 APX may reject any acceptance by the Power Member of an Order where:

- (a) the Membership of the Power Member is suspended in accordance with the terms of these APX Rules;
- (b) an Event of Default has occurred with respect to the Power Member;
- (c) such acceptance would cause the Power Member's Net Exposure to exceed its Approved Credit Limit;
- (d) APX is of the opinion that events have occurred that could or are likely to result in a situation in which the Power Member no longer satisfies one or more of the requirements set out in these APX Rules which could hinder the proper functioning of the Operating System; or
- (e) If the Power Member is a Clearing Participant, upon receipt of a copy of a default notice under the ECC Clearing Conditions, issued by ECC,

and the Power Member shall be forthwith notified of such rejection.

Position Limits Power Member

- 5.4 The Power Member may not accept any Order or enter into an OTC Spot Power Transaction, and is not entitled to have any Order made by it accepted by any other Power Member or any OTC Spot Power Transaction Request accepted by the Clearing House, where (in either case) such acceptance would cause the Power Member's Net Exposure to exceed its Approved Credit Limit.
- 5.5 The Power Member may not submit, modify or accept a Spot Power Continuous Order, Spot Power Auction Order or a Spot Power Day-Ahead Afternoon Auction Order and may not submit or modify an OTC Spot Power Transaction Request if, at any time, the Power Member's cumulative net Energy Contract Volume in respect of any relevant Settlement Period, to the extent that it reflects a net energy sale, is greater than the Power Member's Position Limit or would be greater than the Power Member's Position Limit if that Order or OTC Spot Power Transaction Request were submitted, matched, filled or, in the case of an Order only, accepted.

No acceptance by Power Member of that Power Member's Orders

- 5.6 APX shall not permit acceptance by the Power Member of any Order made by that Power Member unless that Power Member has requested APX that the Power Member shall be permitted to accept Orders made by itself or by an Affiliate of that Power Member.
- 5.7 Nothing in paragraph 5.6 shall prevent the simultaneous acceptance of a Bid and an Offer posted by the Power Member where both constitute Auction Orders relating to the same Power Product

Limits on partial acceptance

- 5.8 An Order that indicates that it may not be partially accepted may be accepted only in its entirety.

Effect of acceptance of Bids and Offers

- 5.9 Subject to paragraphs 2.17, 2.18 and 5.15, where the Power Member accepts a Bid constituting a Continuous Order or another Power Member accepts an Offer constituting a Continuous Order posted by the Power Member a Power Bilateral Trade shall be formed in accordance with the terms of such Offer or, as the case may be, Bid, in relation to which the Power Member is the Seller and the other Power Member is the Buyer and APX shall notify the Power Member and the other Power Member by means of the Operating System of the details of such Power Bilateral Trade in accordance with paragraph 5.17 and the relevant Power Trading Terms, and the provisions of paragraph shall apply.
- 5.10 Subject to paragraphs 2.17, 2.18 and 5.15, where the Power Member accepts an Offer constituting a Continuous Order or another Power Member accepts a Bid constituting a Continuous Order posted by the Power Member a Power Bilateral Trade shall be formed in accordance with the terms of such Offer or, as the case may be, Bid, in relation to which the Power Member is the Buyer and the other Member is the Seller, and APX shall notify the Power Member and the other Power Member by means of the Operating System of the details of such Power Bilateral Trade in accordance with paragraph 5.17 and the relevant Power Trading Terms, and the provisions of paragraph 5.13 shall apply.
- 5.11 Subject to paragraph 5.16, where the Power Member's Bid constituting an Auction Order is matched by the Operating System in accordance with the Auction Algorithm with the Offer constituting an Auction Order of another Power Member, a Power Bilateral Trade shall be formed in accordance with the relevant Auction Algorithm, in relation to which the Power Member is the Seller and the other Power Member is the Buyer and the Price shall be the relevant Market Auction Price. APX will notify the Power Member and the other Power Member by means of the Operating System of the details of such Power Bilateral Trade in accordance with paragraph 5.17, and the provisions of paragraph 5.13 shall apply.
- 5.12 Subject to paragraph 5.16, where the Power Member's Offer constituting an Auction Order is matched by the Operating System in accordance with the Auction Algorithm, with the Bid constituting an Auction Order of another Power Member, a Power Bilateral Trade shall be formed in accordance with the relevant Auction Algorithm, in relation to which the Power Member is the Buyer and the other Power Member is the Seller and the Price shall be the relevant Market Auction Price. APX will notify the Power Member and the other Power Member by means of the Operating System of the details of such Power Bilateral Trade in accordance with paragraph 5.17, and the provisions of paragraph 5.13 shall apply

Power Bilateral Trade formation

- 5.13 Any Power Bilateral Trade formed pursuant to paragraphs 5.9 to 5.12, shall automatically and immediately be registered by the Clearing House for clearing. Upon registration by the Clearing House, the Power Bilateral Trade is novated and, in relation to each of the Power Member and the other Power Member a Spot Power Trade Leg will be formed, with the Clearing House, in each case for a Power Trading Member, in accordance with the ECC Clearing Conditions, or, in each case for a Power Clearing Member, in accordance with the provisions of Part II of these APX Rules.

- 5.14 The rights and obligations under any Spot Power Trade Leg shall be determined by;
- (a) the matched Bid and Offer that led to the Spot Power Trade Leg, save that in the event of a partial match, article 5.15 shall apply;
 - (b) the terms of the applicable Power Trading Terms; and
 - (c) for Power Trading Members, the ECC Clearing Conditions in force at the time the Spot Power Trade Leg arose.

Effect of Partial Acceptance of Orders

- 5.15 Where a Power Bilateral Trade is formed as a result of:
- (a) the acceptance of a Continuous Order in respect of which partial acceptance is permitted; or
 - (b) the making of a Continuous Order in respect of which partial acceptance is permitted,
- the Trade Quantity of such Power Bilateral Trade, shall be the lower of the Order Quantities of the Originating Bid/Offer and Corresponding Bid/Offer, and the Residual Quantity shall be the difference between the Order Quantities of such Orders expressed in the relevant Quantity Unit.
- 5.16 Where a Power Bilateral Trade is formed as a result of the acceptance of an Auction Order, the Trade Quantity of such Power Bilateral Trade shall be the quantity accepted in accordance with the relevant Auction Algorithm, and the Order shall be deemed to be cancelled in respect of any Residual Quantity.

Power Bilateral Trade Confirmation

- 5.17 As soon as reasonably practicable after formation of a Power Bilateral Trade to which the Power Member is a party, APX shall confirm to the Power Member in respect of such Power Bilateral Trade:
- (a) the Contract I.D.;
 - (b) whether the Power Member is the Buyer or Seller;
 - (c) the time of formation of such Power Bilateral Trade;
 - (d) the Power Product of such Power Bilateral Trade;
 - (e) the Trade Quantity of such Power Bilateral Trade in the relevant Quantity Unit and Alternative Quantity Unit;
 - (f) the Trade Value of such Power Bilateral Trade in the relevant Currency Unit; and
 - (g) the Location (if any) of such Power Bilateral Trade.

Market Malfunction

- 5.18 Without prejudice to paragraphs 10.4 to 10.7, any Power Bilateral Trade formed between the Power Member and another Power Member as a result of a malfunction of the Operating System shall be void.
- 5.19 Any Power Bilateral Trade shall be void where APX fails to notify the Power Member or the other Power Member of such Power Bilateral Trade by means of the Operating System or pursuant to paragraph 5.17.
- 5.20 Where either Party becomes aware, or is of the opinion, that a Power Bilateral Trade has or has not been formed as between the Power Member and another Power Member as a result of a malfunction of the Operating System, it shall as soon as reasonably practicable notify the other by telephone, and forthwith confirm such telephone notification by facsimile transmission.

Power Trading Terms

- 5.21 The obligations of the Power Member and the other Power Member with respect to any Power Bilateral Trade shall be determined by reference to the relevant Power Trading Terms as at the time of formation of such Power Bilateral Trade.

6. MANIFEST ERRORS IN RELATION TO POWER BILATERAL TRADES

Application by Member

- 6.1 In the event that the Power Member:
- (a) accepts a Continuous Order; or
 - (b) posts a Continuous Order that is accepted by another Power Member,

and in accepting or, as the case may be, posting, such Order, the Power Member has, in its reasonable opinion, made a manifest error, the Power Member may make an application to APX to void the resultant Power Bilateral Trade.

Contents of Application

- 6.2 An application made pursuant to paragraph 6.1 shall contain particulars of the alleged manifest error and the cause of such alleged manifest error.

Notification of application

- 6.3 Any application to void a Power Bilateral Trade pursuant to paragraph 6.1 must:
- (a) be made either by telephone or facsimile within ten (10) minutes of the formation of such Power Bilateral Trade, and no later than thirty (30) minutes before the market closure time for the Power Product to which the Power Bilateral Trade relates; and
 - (b) be of a materiality greater than the prevailing materiality threshold of £5,000.

- 6.4 Where an application satisfying paragraph 6.3 is made pursuant to this paragraph 6 to void a Power Bilateral Trade to which the Power Member is the counterparty, APX shall, within ten (10) minutes of such application being made to APX, notify the other Power Member by facsimile, by telephone or via the Operating System of such application.

Application Fee

- 6.5 The fee for any application made by the Power Member pursuant to this paragraph 6 is the amount (if any) specified in the Statement of Charges.

Determination of manifest error by APX

- 6.6 APX shall determine whether an alleged manifest error, notified to it in accordance with the provisions of this paragraph 6 by the Power Member is a manifest error. Such determination shall be made within twenty (20) minutes of notification of the alleged manifest error. APX's determination on whether a manifest error has or has not occurred, is final. APX shall have no liability for its determination that a manifest error has or has not occurred.

Assistance from Power Member

- 6.7 The Power Member shall provide such information and assistance as may be reasonably requested by APX in connection with any determination being made by APX pursuant to this paragraph 6.

Finding of manifest error

- 6.8 APX's determination in respect of any application to void a Power Bilateral Trade to which the Power Member is a party shall be notified to the Power Member by telephone and confirmed by facsimile or via the Operating System as soon as reasonably practicable.
- 6.9 In respect of an application pursuant to paragraph 6 to void a Power Bilateral Trade, APX shall as soon as reasonably practicable after making its determination notify all Power Members whether the application was successful or not.

Effect of finding of manifest error

- 6.10 Where APX determines, pursuant to this paragraph 6, that any Power Bilateral Trade to which the Power Member is a party is void then, save in respect of any amounts due under the APX Rules and subject to any arrangements between the relevant Power Members, such Power Bilateral Trade shall have no effect and shall be considered never to have had any effect.

Payments in respect of manifest errors

- 6.11 Any payment due to or from the Power Member pursuant to this paragraph 6 shall be invoiced by APX and payable by or to the Power Member pursuant to paragraph 8 (*Fees*).

Waiver of common law rights

- 6.12 Subject to the provisions of this paragraph 6, to the fullest extent permitted by law the Power Member irrevocably waives all rights that it may have or which may accrue to it in law (including any right to seek any relief in equity under the doctrine of mistake) in respect of any error or mistake made by the Power Member in entering into any Power Bilateral Trade.

Market Integrity

- 6.13 Without limitation to APX's other rights under this Agreement, APX may refuse to comply with this paragraph 6 in whole or part if, in its reasonable opinion:-
- (a) to comply with this paragraph 6 would or may result in any Power Product, Power Member or APX itself being undermined or improperly manipulated; or
 - (b) in all the circumstances then known to APX, the error notified by the Power Member does not constitute a manifest error.

Limitation of Liability

- 6.14 APX shall not be liable for any losses, damages, claims, costs or expenses whatsoever for refusing to comply with this paragraph 6 in whole or in part pursuant to paragraph 6.13.

7. MARKET CONDUCT

Integrity of the Market

- 7.1 Power Members and APX shall at all times co-operate in accordance with the APX Rules and shall ensure that they do not act in a manner as to cause APX to breach any applicable regulations to which APX is subject. Without limiting the foregoing the Power Member shall:
- (a) observe high standards of integrity and fair dealing and high standards of market conduct; and
 - (b) act with due skill, care and diligence.

Conduct in relation to trading

- 7.2 The obligations of the Power Member under paragraph 7.1 shall be construed so that if APX has reasonable grounds to believe that the Power Member has, in relation to activity engaged in on the Operating System:
- (a) committed fraud;
 - (b) acted dishonestly;
 - (c) engaged or attempted to engage in market manipulation as such term is used in REMIT;

- (d) engaged or attempted to engage in insider trading as such term is used in REMIT;
- (e) engaged or attempted to engage in any activity constituting market abuse;
- (f) made or accepted any Order with the intention of defaulting in its performance or being reckless or negligent as to whether a default might occur (ignoring in this regard any Power Bilateral Trade in respect of which the Power Member notifies APX of a manifest error pursuant to the provisions of paragraph 6);
- (g) selected for acceptance out of price order an Order from Orders in relation to the same Power Product and on the same terms (other than with respect to price) and such acceptance has not occurred inadvertently;
- (h) acted or attempted to act in a manner which in the reasonable opinion of APX will cause APX to be in breach of any applicable regulations to which APX is subject; or
- (i) breached paragraph 38 of the APX Rules,

then APX may apply any or all of the sanctions set out in paragraph 7.4.

Investigations

- 7.3 APX may (without imposing any obligation on a Power Member) conduct such investigations as it deems necessary into any alleged or suspected activity referred to in paragraph 7.2 by any Power Member which may result in the imposition of a sanction as referred to in that paragraph.

Sanctions

- 7.4 The sanctions referred to in paragraph 7.2 (in respect of the activities referred to in that paragraph) are:
- (a) where APX considers that such activity is not sufficiently serious for any further action to be taken, notifying the Power Member accordingly; and/or
 - (b) issuing a written warning to the Power Member; and/or
 - (c) reporting APX's determination in relation to such activity to any Competent Authority; and/or
 - (d) refusing to permit individual servants or agents of the Power Member to access and use the Operating System on behalf of the Power Member; and/or
 - (e) withdrawing from display any Orders posted by the Power Member; and/or
 - (f) restricting or suspending the Power Member's right to post and/or accept Orders; and/or
 - (g) reducing the Power Clearing Member's Approved Credit Limit to an amount lower than that determined in accordance with the Credit Policy; and/or

- (h) not permitting the Power Member to accept any Order posted by specific Power Members; and/or
- (i) where APX considers that such activity is material, giving notice of the activity to the Power Member concerned and, where APX considers appropriate, requiring an explanation to be given and/or requiring remedial action to be taken within a period specified in the notice. Where (1) an explanation and/or remedial action was required and a satisfactory explanation is not received and/or appropriate remedial action is not taken within the prescribed period, or (2) APX did not consider it appropriate to require an explanation or remedial action APX may suspend or terminate the Power Member's right of access to, and use of, the Operating System.

8. PAYMENT OF FEES

- 8.1 APX and the Power Member shall pay to one another in accordance with the APX Rules any amounts determined by the APX Rules.

Fees

- 8.2 The Power Member shall pay to APX in pounds sterling the fees set out in, or otherwise calculated in accordance with the Statement of Charges, together with all VAT attributable thereto, as and when required in accordance with paragraph 16 (Invoicing and Payment) but subject always to paragraph 8.3 and, in relation to membership fees, subject to any reduction calculated in accordance with Schedule 4.

Each Power Member shall owe APX specific fees, as specified on the APX Website and in the Statement of Charges, as amended from time to time by Notice. All Fees under the APX Rules shall be invoiced by or on behalf of APX in accordance with these APX Rules.

The invoice shall in any event include:

- a. Fees that the Power Member may owe to the APX;
- b. the identity of the Power Member;
- c. a unique reference number; and
- d. VAT and any other applicable taxes or levies payable by the Power Member in respect of the above.

All Fees shall be payable on the date of receipt of the invoice. The Fees shall be collected by the Clearing House and remitted to APX.

- 8.3 In the event that the Power Member fails to make a payment, APX is entitled to the legal interest rate due to APX. A Power Member is not allowed to set off its obligations towards APX against obligations of APX. All amounts payable by the Power Member or APX pursuant to the Membership Agreement, the APX Rules, are unless otherwise expressly stated, exclusive of any applicable VAT.

Suspension of Rights on Non-Payment

8.4 If:

- (a) the Power Member fails to make any payment to APX in cleared funds of the net amount (if any) payable by the Power Member as shown in any Invoice on the due date for payment as determined in accordance with paragraph 8 and for Power Clearing Members, paragraph 16.12; or
- (b) it appears to APX, acting in good faith, that the Power Clearing Member is unable or likely to become unable to meet its payment obligations (taking into account any Collateral provided by the Power Clearing Member) in respect of one or more Power Bilateral Trades or Trade Legs,

then APX shall have the right (for so long as such circumstance persists and without prejudice to its other rights and remedies), forthwith on notice to the Power Member (which may be given either electronically (and confirmed forthwith in writing) or in writing, as APX may determine) to suspend, in whole or in part the Power Member's access to, and use of, the Operating System until such time as such circumstance has been remedied to APX's reasonable satisfaction. Save where APX exercises such rights of suspension on the grounds that it appears to APX (acting in good faith) that the Power Member is unable or unlikely to be able to meet its payment obligations in respect of one or more Power Bilateral Trades, APX shall provide advance warning to the Power Member that it intends to exercise such rights of suspension.

Effect of Suspension of Rights

- 8.5 Suspension does not affect any obligation of the Power Member to pay fees under the APX Rules and does not exonerate or release either APX or the Power Member from any liabilities accrued or accruing under the APX Rules.

9. POWER MEMBER TRADING OBLIGATIONS

- 9.1 Without prejudice to any other obligation in the APX Rules, the Power Member shall:
- (a) procure that APX is notified from time to time of the identities of any one or more other Power Members who, together with the Power Member, are part of the same Group;
 - (b) immediately notify APX if the Power Member no longer holds a Licence or has ceased to be, or is due to cease to be, a BSC Party;
 - (c) take all reasonable steps to ensure that it complies at all times with the Membership Criteria;
 - (d) at APX's reasonable request, provide reliable market quotes in order to assist APX in generating reference prices for the purposes of administering Power Bilateral Trades; and

- (e) take all reasonable steps to ensure that it is able to perform its obligations in respect of any Power Bilateral Trade entered into by the Power Member in accordance with the Power Trading Terms.

10. DELIVERY AGENCY

Appointment of the Clearing House as Delivery Agent

- 10.1 The Power Member hereby appoints the Clearing House as its Delivery Agent for the purpose of making Deliveries on behalf of the Power Member.

Establishment of the Clearing House as Delivery Agent

- 10.2 The Power Member shall as soon as reasonably practicable take all necessary steps to establish the Clearing House as its Delivery Agent in accordance with the requirements of the applicable Membership Criteria.

Limits on revocation of Agency

- 10.3 Other than by reason of termination of the Membership Agreement, the Power Member shall not revoke, nor purport to revoke, the Clearing House's appointment as Delivery Agent pursuant to paragraph 10.1.

Obligations of APX

- 10.4 APX shall not make any Delivery on behalf of the Power Member other than in respect of a Trade Leg to which the Power Member is a party.
- 10.5 APX shall indemnify the Power Member from and against all losses, liabilities, costs and expenses incurred by the Power Member:
 - (a) as a direct consequence of a breach by APX of paragraph 10.4; and/or
 - (b) as a result of any attempt by APX to rectify such breach pursuant to paragraph 10.8, save where the steps taken by APX have been agreed previously with the Power Member, (such agreement not to be unreasonably withheld) pursuant to a telephone communication between APX and the Power Member (such telephone communication to be confirmed by facsimile).
- 10.6 There shall be no double-recovery by the Power Member in respect of a breach of paragraph 10.4 and a breach by APX of the relevant Power Trading Terms in relation to the same Trade Leg.
- 10.7 If APX breaches paragraph 10.4, APX's liability shall be limited in accordance with paragraph 23.6.

Correction of Inaccurate Delivery

- 10.8 Nothing in this paragraph 10 shall prevent or restrict APX from making notifications to a Hub Operator for the purposes of correcting any Delivery made in error, or inaccurately.

PART II: CLEARING MEMBERS

11. CLEARING MEMBER ACCESS CRITERIA

- 11.1 Each Gas Clearing Member must at all times satisfy the following conditions:
- (a) it must satisfy the Membership Criteria;
 - (b) it must be a Gas Trading Member;
 - (c) it must be in compliance with the Gas Trading Rules;
 - (d) it must have entered into a Membership Agreement;
 - (e) It must:
 - (i) be a Code User;
 - (ii) be in compliance with the Network Code; and
 - (iii) where it is not a Trader User, it must hold a Gas Transporter's Licence or a Shipper's Licence, which in either case is in force with no notice of revocation having been given in respect of it.
 - (f) It must provide satisfactory evidence to APX demonstrating that it can meet and will continue to be able to meet its delivery obligations under Trade Legs; and
 - (g) It must provide APX, if so requested, with a legal opinion from legal counsel that the legal and regulatory regime under which it is established and required to operate will not inhibit the ability of APX to act effectively under, or otherwise impede the effective operation of the arrangements contemplated by these APX Rules.
- 11.2 In addition to satisfying the Membership Criteria in accordance with paragraphs 17.1(a) and 9.1(c), a Power Clearing Member must satisfy the following conditions:
- (a) It must provide satisfactory evidence to APX demonstrating that it can meet and will continue to be able to meet its delivery obligations under Trade Legs; and
 - (b) It must provide APX, if so requested, with a legal opinion from legal counsel that the legal and regulatory regime under which it is established and required to operate will not inhibit the ability of APX to act effectively under, or otherwise impede the effective operation of the arrangements contemplated by these APX Rules.
- 11.3 The criteria set out or referred to in paragraph 11.1 and 11.2 are referred to in these APX Rules as the *Clearing Member Access Criteria* in relation to Gas Clearing Members and Power Clearing Members respectively.

12. GENERAL CLEARING PROVISIONS

Registration of Gas Bilateral Trades

- 12.1 Once a Gas Bilateral Trade has been concluded on the Gas Trading Platform, APX shall automatically and immediately register the Gas Bilateral Trade in the Position Account of the relevant Gas Clearing Member.

Registration of Power Bilateral Trades

- 12.2 Once a Power Bilateral Trade has been concluded APX shall automatically and immediately register the Power Bilateral Trade in the Position Account of the relevant Power Clearing Member.

Formation of Trade Legs

- 12.3 Upon registration of a Bilateral Trade for clearing in accordance with paragraph 12.1 or 12.2, the Bilateral Trade shall be novated and replaced by two Trade Legs, one between the selling Member and the Clearing House and one between buying Member and the Clearing House. As a result, the original corresponding rights and obligations arising from the Bilateral Trade shall be discharged and the Clearing House shall have the rights and will be liable for the obligations arising from the Trade Leg registered in the name of the relevant Member.
- 12.4 Each or any Trade Leg formed as a result of the registration of a Bilateral Trade for clearing shall be registered by APX in the Position Account of the relevant Clearing Member. Each or any Trade Leg shall be registered in the name of the relevant Clearing Member. Upon such registration, each or any Trade Leg is deemed to be irrevocably registered for settlement.

Clearing and settlement

- 12.5 APX shall act as central counterparty for Trade Legs registered in accordance with Part II of the APX Rules and shall settle such Trade Legs in accordance with the terms of these APX Rules and the relevant Trading Terms.
- 12.6 For the purposes of acting as central counterparty in relation to Gas Bilateral Trades and the applicable Trade Legs, APX has been designated by ENDEX as the Trading System Clearer in accordance with Article 2.1.3(c), Section D, of the Transportation Principal Document of the Uniform Network Code as amended from time to time.
- 12.7 APX shall not be liable if a Bilateral Trade is not registered or is improperly registered in a Position Account(s) as a result of the fault of any third party or Force Majeure.

Market Malfunction

- 12.8 Without prejudice to the obligations of APX as Delivery Agent for a Power Clearing Member pursuant to the APX Rules and the obligations of ENDEX as User Agent for a Gas Clearing Member pursuant to the Gas Trading Rules, any Trade Leg formed between a Power Clearing Member and APX or a Gas Clearing Member and APX as a result of a malfunction of the Operating System or the Gas Trading Platform shall be void.

Gas Clearing Member Fees

- 12.9 The Gas Clearing Member shall pay to APX in pounds sterling the fees set out in, or otherwise calculated in accordance with the Statement of Charges, together with all VAT attributable thereto, as and when required in accordance with paragraph 16 (*Invoicing and Payment*) but subject always to paragraph 12.10 and, in relation to membership fees, subject to any reduction calculated in accordance with Schedule 4.
- 12.10 All amounts payable by the Gas Clearing Member or APX pursuant to the Membership Agreement or these APX Rules are, unless otherwise expressly stated, exclusive of any applicable VAT.

13. CREDIT REQUIREMENTS

Collateral in cash / Bank Guarantee

- 13.1 APX will, in accordance with the Credit Policy, determine the Clearing Member's Approved Credit Limit and will keep the Clearing Member informed of its Approved Credit Limit.
- 13.2 Each Clearing Member is required to provide APX with Collateral in the form of cash transferred to the Clearing Member Account (or, if the Clearing Member does not have a Member Account, the Collateral Account). In addition, APX may, in its sole discretion, accept Collateral in the form of a Bank Guarantee or a letter of credit (such letter of credit being in a form satisfactory to APX). APX will announce from time to time one or more procedures on the provision of Collateral.
- 13.3 For the avoidance of doubt, the Collateral is provided amongst other purposes as security for the obligations of a Clearing Member arising out any Trade Leg to which the Member is a party.
- 13.4 A Bank Guarantee must be issued by a bank approved by APX.
- 13.5 The amount of Collateral shall at all times be at least equal to the Net Exposure of the individual Clearing Member.
- 13.6 The Net Exposure shall be calculated individually for each Clearing Member in accordance with the Credit Policy in Schedule 1. The calculation method may be amended from time to time by APX.
- 13.7 APX has the right to demand supplementary Collateral in cash from a Clearing Member at any time if APX concludes that its risk assessment gives rise to a need for it and/or if APX in its sole discretion deems appropriate in order to protect the interests of the other Clearing Members, APX and/or the integrity of APX or the arrangements contemplated by these APX Rules or the Gas Trading Terms. Following a demand by APX for supplementary Collateral in accordance with this paragraph 13.7, supplementary Collateral in cash has to be transferred forthwith to the Clearing Member Account (or, if the Clearing Member does have a Member Account, the Collateral Account). In addition, the Clearing Member may, subject to the approval of APX, meet such a demand for supplementary Collateral by increasing the coverage of an existing Bank Guarantee or by providing APX with a Bank Guarantee or an additional Bank Guarantee.

- 13.8 APX may charge the Clearing Member a Collateral Fee for the processing and management of Collateral.
- 13.9 The Clearing Member shall be liable for any costs charged by any bank to APX or any other third party in respect of the administrative process of Collateral and these shall subsequently be charged by APX to the Clearing Member.

Validity of Instruments of Collateral

- 13.10 Any document or instrument which is, or on the basis of which the Clearing Member provides Collateral pursuant to the Credit Policy (and whether or not entered into by the Clearing Member) shall not be a part of the APX Rules or the Membership Agreement, and no provision of, or amendment of, the APX Rules, the Membership Agreement or the Trading Terms, nor any inconsistency between the APX Rules, the Membership Agreement or the Trading Terms and any such document or instrument, and nothing done by APX pursuant to the APX Rules, Membership Agreement or the Trading Terms, shall prejudice or invalidate any such document or instrument.

Financial Assurances Demand

- 13.11 Where the Member's Net Exposure exceeds at any time its Approved Credit Limit, APX may issue in writing (at APX's option, by facsimile), a demand (a *Financial Assurances Demand*) setting out the action that APX reasonably requires the Clearing Member to take in order to secure the Clearing Member's compliance with paragraph this 13. Such Financial Assurances Demand may require the Clearing Member to:
- (a) provide, within one Business Day, Collateral acceptable to APX in an amount equal to the difference between the Clearing Member's Approved Credit Limit and its Net Exposure; and/or
 - (b) in the case of a Power Clearing Member, withdraw all or any Orders posted by the Power Clearing Member.
 - (c) in the case of a Gas Clearing Member, instruct ENDEX to withdraw all or any Orders (as such term is used in the Gas Trading Rules) posted of the Gas Trading platform by such Gas Clearing Member in its capacity as Gas Trading Member.
- 13.12 Without limiting in any way the other rights or remedies available to APX under the APX Rules, if the Clearing Member does not comply with the terms of a Financial Assurances Demand in accordance with paragraph 13.11, APX may, in order to reduce the Clearing Member's Net Exposure, withhold amounts otherwise payable in accordance with the terms of the APX Rules to the Clearing Member in order to reduce the Clearing Member's Net Exposure.

Return of Collateral

- 13.13 Where the Clearing Member has provided Collateral in accordance with the Credit Policy, the Clearing Member may (on its own behalf or on behalf of a guarantor) request APX to release all or any of such Collateral or agree to a reduction in any maximum amount of such Collateral.

- 13.14 In accordance with the Credit Policy, Transfer Requests received from Members before 11.00 AM GMT will be processed on the same Business Day with respect to the Power Market. With respect to the NBP Market, Transfer Requests received from Gas Clearing Members before 11.00 AM GMT will be processed on the next Business Day.
- 13.15 Following a request by the Clearing Member under paragraph 13.13, APX shall, as soon as reasonably practicable, reduce the Clearing Member's Approved Credit Limit accordingly and release Collateral to such extent or by such amount as will secure that, on the basis of the release of Collateral (and taking into account any alternative Collateral provided by the Clearing Member), the Collateral provided by the Member is in accordance with the Credit Policy.
- 13.16 APX may refuse any request under paragraph 13.13 to the extent that the Approved Credit Limit as so reduced falls below the Clearing Member's Net Exposure at that time.
- 13.17 Following a reduction in the Clearing Member's Approved Credit Limit, APX shall, if requested to do so by the Clearing Member, as soon as reasonably practicable release Collateral to such extent or by such amount as will secure that, on the basis of the release of Collateral (and taking into account any alternative Collateral provided by the Clearing Member), the Collateral provided by the Clearing Member is in accordance with the Credit Policy.

Cash Collateral

- 13.18 APX will maintain a deposit account (the *Collateral Account*) in its sole name with a bank chosen by APX in its sole discretion for the purposes of receiving from any Clearing Member that does not have a Clearing Member Account Collateral in the form of cash in accordance with the Credit Policy.
- 13.19 (a) Subject to 13.19(b), all Collateral in the form of cash shall be paid by a Clearing Member into its Clearing Member Account and shall be retained in full in the Clearing Member's Clearing Member Account until such time as all commitments reliant upon such Collateral have been discharged (including for the avoidance of doubt pursuant to paragraphs 16.39 and 13.14) or an alternative form of Collateral acceptable to APX is in place.
- (b) Any Collateral in the form of cash already held by APX, or received by APX, from a Clearing Member prior to a Clearing Member Account having been established for that Clearing Member shall be retained on the Collateral Account until such time as a Clearing Member Account for that Clearing Member is established. Once a Clearing Member Account for that Clearing Member has been established, the amount of that Clearing Member's Collateral in the form of cash held in the Collateral Account shall be transferred by APX to that Clearing Member's Member Account.
- 13.20 Subject to the condition that the Interest Haircut shall never be greater than the Base Rate:
- (a) the rate of interest payable on Collateral that is held in a Cash Account is stated in the Statement of Charges; and

- (b) the rate of interest payable on Collateral that is held in an Escrow Account is stated in the Statement of Charges;

where, in each case, interest shall accrue daily on the basis of a 365 day year, and interest will be earned from receipt of the Collateral in the form of cash into the relevant account until such time as the deposit is returned or called.

- 13.21 All Collateral posted by Gas Clearing Members with respect to the NBP Market residing in the Collateral Account or Cash Accounts may be used either directly or by means of security for making payments as required under the provision of section X2.8 of the Network Code or, where APX reasonably believes that a Cash Call is imminently to be made in accordance with section X of the Network Code, in anticipation of such Cash Call being made, in an amount equal to the amount for which APX reasonably believes such Cash Call is to be made.
- 13.22 If amounts available within the Collateral Account and/or Cash Accounts are insufficient to meet the requirements contemplated by paragraph 13.21, APX may request any Gas Clearing Member providing Collateral in the form of a letter of credit (or a bank guarantee) or in the form of cash in an Escrow Account to provide for a cash payment into the Collateral Account to serve as (additional) Collateral in such an amount as APX may reasonably require up to the maximum amount determined in accordance with the Credit Policy.

13.22A All Collateral posted by Power Clearing Members residing in the Collateral Account or Cash Accounts may be used by APX either directly or by way of security for making payments to any other CCP in connection with the settlement of Trade Legs resulting from Market Coupling with respect to the Power Market but only to the extent required to finance the cash flows arising from the different settlement dates applied by the Central Clearing Party involved in those Trade Legs and/or to meet the applicable collateral requirements of such other Central Clearing Party acting as clearing house in connection with Market Coupling.

13.22B If amounts available within the Collateral Account and/or Cash Accounts are insufficient to meet the requirements contemplated by paragraph 13.22A, APX may request any Power Clearing Member providing Collateral in the form of a letter of credit (or a bank guarantee) or in the form of cash in an Escrow Account to provide for a cash payment into the Collateral Account to serve as (additional) Collateral in such amount as APX may reasonably require up to the maximum amount determined in accordance with the Credit Policy.

.

Enforcement

- 13.23 APX agrees with the Clearing Member to take all such action in APX's opinion reasonable in all the circumstances to enforce the obligations of all Clearing Members under this paragraph 13.

Drawing and Use of Collateral

- 13.24 APX shall be entitled to initiate a draw upon a Clearing Member's Collateral if:
- (a) a Clearing Member has not paid in full all amounts owed by it to APX or ENDEX under these APX Rules or the Gas Trading Rules on a due date;
 - (b) in respect of a Power Clearing Member an Event of Default has occurred;
 - (c) in respect of a Gas Clearing Member, such Gas Clearing Member is in default of its obligations under these APX Rules and/or the Gas Trading Rules and/or its obligations under the rules of any other exchange, trading platform or clearing house; or
 - (d) if the Collateral is in the form, in whole or part, of a Bank Guarantee or a letter of credit, that Bank Guarantee or letter of credit expires or terminates in accordance with its terms within the next 30 days and that Bank Guarantee or letter of credit has not been renewed, replaced or extended to APX's reasonable satisfaction.
- 13.25 APX shall apply drawings under 13.24 in discharge of:
- (a) the Power Clearing Member's outstanding financial obligations under the APX Rules in an amount equal to the amount of those drawings;
 - (b) the Gas Clearing Member's outstanding financial obligations under the APX Rules and the Gas Trading Rules in an amount equal to the amount of those drawings.

APX shall not draw upon a Clearing Member's Collateral in an amount exceeding APX's reasonable estimate of the Power Clearing Member's outstanding financial obligations (whether contingent or otherwise) under the APX Rules or, in the case of a Gas Clearing Member, such Gas Clearing Member's outstanding financial obligations (whether contingent or otherwise) under the APX Rules and the Gas Trading Rules.

- 13.26 Without prejudice to paragraph 13.29 below, if drawings under paragraph 13.24 are insufficient to discharge all of the Power Clearing Member's financial obligations under the APX Rules, and, in the case of a Gas Clearing Member, such Gas Clearing Member's obligations under the APX Rules and the Gas Trading Rules, then APX shall apply those drawings in full or partial discharge of the Power Clearing Member's financial obligations under the APX Rules and, in the case of a Gas Clearing Member, such Gas Clearing Member's obligations under the APX Rules and the Gas Trading Rules in the order in which such financial obligations became due so that those financial obligations attracting the higher interest rates (pursuant to paragraph 16.17) are discharged first.
- 13.27 Full or partial discharge of the Power Clearing Member's outstanding financial obligations under the APX Rules and, in the case of a Gas Clearing Member, such Gas Clearing Member's obligations under the APX Rules and the Gas Trading Rules in accordance with paragraphs 13.25, 13.26 and 13.29 shall not constitute payment by the Power Clearing Member for the purposes of determining whether any Event of Default has occurred or, in the case of a Gas Clearing Member for the purposes of determining

whether such Gas Clearing Member is in default constituting an Event of Default (as such expression is used in the Gas Trading Rules) of the Gas Trading Rules.

- 13.28 APX shall return to the Clearing Member any excess of such drawings over all amounts owed by the Clearing Member once all liabilities (whether contingent or otherwise), in the case of a Power Clearing Member to APX under the APX Rules (or, in the case of a Gas Clearing Member, such Gas Clearing Member's obligations under the APX Rules and the Gas Trading Rules) have been fully and irrevocably discharged.
- 13.29 If drawings under 13.24 are insufficient to discharge all of the Power Clearing Member's and /or Gas Clearing Member's financial obligations under the APX Rules, then APX shall apply those drawings:
- (a) firstly, in full or partial discharge of the Gas Clearing Member's financial obligations under the OCM or the Gas Storage Market;
 - (b) thereafter, in discharge of the Clearing Member's financial obligations under the APX Rules or under the Gas Trading Rules in respect of Day-ahead-market Trades and Spot Power Bilateral Trades or, as applicable, the related Trade Legs, (such discharge to be in direct proportion to the entire amount owing in relation to such Day-ahead-market Trades and Spot Power Bilateral Trades respectively).

Transfer of Title

- 13.30 The right, title and interest in and to any Collateral in the form of cash (subject to the terms of an Escrow Agreement that has been put in place in respect of a Clearing Member's Member Account) shall vest in APX free and clear of any liens, claims, charges or encumbrances or any other interest of the Clearing Member or of any third person. The provisions in the APX Rules are not intended to create and do not create in favour of any party any mortgage, charge, lien, pledge, encumbrance or other security interest in any Collateral.

14. DEFAULT CONTRIBUTIONS

- 14.1 In this paragraph 14 ***DC Member*** means another Clearing Member, but not being National Grid Electricity Transmission PLC (***NGET***) or National Grid Gas PLC (***NGG***), being a Defaulting Party under the APX Rules and that other Clearing Member's agreement with APX, in respect of which drawings contemplated by paragraphs 13.24 to 13.29 of the APX Rules are insufficient to discharge all of that other Clearing Member's financial obligations to APX in respect of Day-ahead-market Trades and/or Spot Power bilateral Trades or associated Trade Legs under the APX Rules and that other Clearing Member's agreement with APX.
- 14.2 In respect of any DC Member, the Clearing Member shall, within one Business Day of receipt of an invoice from APX, pay to APX amount(s) (***Default Contribution(s)***) calculated in accordance with paragraph 14.3 save that neither NGET or NGG shall be obliged to make a Default Contribution under this paragraph 14.2.

Calculation of Default Contributions

- 14.3 Where a Default Contribution is required under paragraph 14.2 in respect of unfulfilled obligations relating to the Day-ahead-market Trades of a DC Member, the amount of the Clearing Member's Default Contribution shall be C_G , calculated in accordance with the following formula:

$$C_G = \min\left(\frac{I_G}{2}, \frac{I_G}{T_G} L_G\right)$$

where:

I_G is the Clearing Member's (definitive) initial margin amount in respect of Day-ahead-market Trades, as calculated in accordance with paragraph 1.2(g) of Schedule 1, and as last confirmed to the Clearing Member by APX prior to the relevant Event of Default or Potential Event of Default in respect of the DC Member;

T_G is the total of all Clearing Members' (definitive) initial margin amounts in respect of Day-ahead-market Trades as last confirmed to the Clearing Members by APX prior to the relevant Event of Default or Potential Event of Default in respect of the DC Member (other than the initial margin amount of the DC Member);

L_G is the total amount of the DC Member's unfulfilled obligations in respect of Day-ahead-market Trades.

- 14.4 Where a Default Contribution is required under paragraph 14.2 in respect of unfulfilled obligations relating to the Spot Power Bilateral Trades of a DC Member, the amount of the Clearing Member's Default Contribution shall be C_P , calculated in accordance with the following formula:

$$C_P = \min\left(\frac{I_P}{2}, \frac{I_P}{T_P} L_P\right)$$

where:

I_P is the Clearing Member's (definitive) initial margin amount in respect of Spot Power Bilateral Trades, as calculated in accordance with paragraph 1.2(g) of Schedule 1, and as last confirmed to the Clearing Member by APX prior to the relevant Event of Default or Potential Event of Default in respect of the DC Member;

T_P is the total of all Clearing Members' (definitive) initial margin amounts in respect of Spot Power Bilateral Trades as last confirmed to the Clearing Members by APX prior to the relevant Event of Default or Potential Event of Default in respect of the DC Member (other than the initial margin amount of the DC Member);

L_P is the total amount of the DC Member's unfulfilled obligations in respect of Spot Power Bilateral Trades.

- 14.5 For the avoidance of doubt, where the Clearing Member's (definitive) initial margin amount is nil in respect of Day-ahead-market Trades and/or Spot Power Bilateral Trades (i.e. where the Clearing Member does not have an active trading position), the

Clearing Member shall not be liable for Default Contribution(s) in respect of whichever of Day-ahead-market Trades and/or Spot Power Bilateral Trades the Clearing Member's (definitive) initial margin amount is nil.

- 14.6 Notwithstanding this paragraph 14 the Clearing Member shall be liable to APX for all amounts due in accordance with these APX Rules.
- 14.7 APX shall use all reasonable endeavours to recover from each DC Member all amounts due to APX under the APX Rules which, if not recovered, could give rise to a liability on the Clearing Member under paragraph 14.2, but shall not be required to institute legal proceedings or incur significant cost or expense.
- 14.8 In the event that APX recovers an amount from a DC Member in respect of which any Default Contribution was paid by the Clearing Member, APX shall (without prejudice to any other provisions of these APX Rules) apportion and pay such amount pro rata to each Clearing Member, including the Clearing Member, which paid a Default Contribution to APX in respect of that DC Member.

15. UTILIZATION

- 15.1 Following an Event of Default, APX can apply Collateral and Default Contributions, to the extent available, in the following order to satisfy the obligations of the Defaulting Party towards APX:
 - (a) any Collateral deposited by the Defaulting Party, whatever the commodity market on which the principal transactions were executed;
 - (b) the Default Contributions of the other Clearing Members in relation to the Gas Market and/or the Power Market, as appropriate, on a pro rata basis, taking into account the proportion of the Defaulting Party's deficit that arises from activity in the Gas Market and the proportion that arises from activity in the Power Market.
- 15.2 If an Insolvency Event occurs in respect of a Central Clearing Party acting as clearing house in connection with Trade Legs resulting from Market Coupling with respect to the Power Market and to the extent that collateral is actually posted by APX with such Central Clearing Party, APX may apply Collateral and Default Contributions in accordance with Clause 15.1 (a) and (b) to satisfy the defaulting Central Clearing Party's obligation to return such collateral to APX.
- 15.3 Following utilization of Default Contributions by APX in accordance with Clause 15.1 (b) and/or Clause 15.2, each Clearing Member shall restore its Default Contribution to its original amount within a period of one Business Day after the utilization.

16. INVOICING AND PAYMENT

Invoices to Power Clearing Members

- 16.1 APX shall render Invoices to the Power Clearing Member by the Invoice Delivery Dates setting forth the net amounts payable by the Power Clearing Member or, alternatively, the net amounts payable to the Power Clearing Member, which shall detail:

- (a) in respect of each Trade Leg in relation to which the Power Clearing Member is the Buyer, the Trade Value payable to or from the Power Clearing Member in respect of such Trade Leg relating to the relevant Invoice Period, together with any other amounts due under the Power Trading Terms for such periods, taking into account the amount of any refund payable under the Power Trading Terms in relation to any such Trade Leg;
- (b) in respect of each Trade Leg in relation to which the Power Clearing Member is the Seller, the Trade Value payable to or from the Power Clearing Member in respect of such Trade Leg relating to the relevant Invoice Period, together with any other amounts due under the Power Trading Terms for such periods, taking into account the amount of any refund payable under the Power Trading Terms in relation to any such Trade Leg;
- (c) the fees to be paid to APX by the Power Clearing Member in respect of that Invoice Period pursuant to paragraph 8 (*Fees*);
- (d) the amount of any positive or negative adjustments, which have not been specified in a previous Invoice, made prior to the preparation of such Invoice pursuant to this paragraph 16 relating to any previous Invoice Period together with any interest accrued due under paragraph 16.23;
- (e) any payment due to or from the Power Clearing Member in relation to such Invoice Period in respect of a manifest error under paragraph 6;
- (f) any amount or amounts unpaid and payable by either APX or the Power Clearing Member to the other in respect of any previous Invoice together with any interest accrued in respect of such amount or amounts and due from either APX or the Power Clearing Member to the other under paragraph 16.17;
- (g) any other amounts due to or from the Power Clearing Member under the APX Rules, including amounts due under paragraph 19.7(a), for the provision and maintenance of Connection Equipment and for provision of Data in addition to that available through the Operating System;
- (h) any Pass-Through Amounts in respect of that Invoice Period; and
- (i) VAT and any other applicable sales, transfer or other taxes payable by the Power Clearing Member or APX in respect of the above.

Invoices to Gas Clearing Members

- 16.2 APX shall render Invoices to the Gas Clearing Member for itself and on behalf of ENDEX. All amounts invoiced by APX on behalf of ENDEX shall be payable by the Gas Clearing Member to APX and such payment will constitute final settlement of such amounts regardless of whether such amounts are paid by APX to ENDEX. Each Invoice shall set forth the net amounts payable by the Gas Clearing Member or, alternatively, the net amounts payable to the Gas Clearing Member, which shall detail:
- (a) in respect of each Trade Leg in relation to which the Gas Clearing Member is the Buyer, the Trade Value payable to or from the Gas Clearing Member in respect of such Trade Leg relating to the relevant Invoice Period, together with

any other amounts due under the Gas Trading Terms for such periods, taking into account the amount of any refund payable under the Gas Trading Terms in relation to any such Trade Leg;

- (b) in respect of each Trade Leg in relation to which the Gas Clearing Member is the Seller, the Trade Value payable to or from the Gas Clearing Member in respect of such and Trade Leg relating to the relevant Invoice Period, together with any other amounts due under the Gas Trading Terms for such periods, taking into account the amount of any refund payable under the Gas Trading Terms in relation to any such Trade Leg;
- (c) the fees to be paid to be paid by the Gas Clearing Member in respect of that Invoice Period pursuant to the terms of the Gas Trading Rules, including the Gas Trading Terms (provided that any amounts invoiced by ENDEX to the Gas Clearing Member pursuant to paragraph 7.7 of the Gas Trading Rules, shall not also be invoiced by APX for itself or on behalf of ENDEX under this paragraph 16;
- (d) the amount of any positive or negative adjustments, which have not been specified in a previous Invoice, made prior to the preparation of such Invoice pursuant to this paragraph 16 relating to any previous Invoice Period together with any interest accrued due under paragraph 16.23;
- (e) the fees payable by the Gas Clearing Member in respect of that Invoice Period pursuant to paragraph 8 of the Gas Trading Terms;
- (f) any amount or amounts unpaid and payable by either APX or the Gas Clearing Member to the other in respect of any previous Invoice together with any interest accrued in respect of such amount or amounts and due from either APX or the Gas Clearing Member to the other under paragraph 16.17;
- (g) any other amounts due to or from the Gas Clearing Member under the Gas Trading Rules or these APX Rules;
- (h) VAT and any other applicable sales, transfer or other taxes payable by the Gas Clearing Member in respect of the above.

Contents of Invoice

16.3 Each Invoice shall include the following supporting information:

- (a) in respect of each Trade Leg to which the Clearing Member is a party, the Trade Quantity (or as applicable Trade Quantity as such expression is used in the Gas Trading Rules) falling in the relevant Invoice Period, expressed in the Quantity Unit (or as applicable Quantity Unit as such expression is used in the Gas Trading Rules), and the part of the Trade Value (or as applicable Trade Value as such expression is used in the Gas Trading Rules) falling in the relevant Invoice Period, expressed in the Currency Unit; and
- (b) the identity of the Clearing Member, the relevant Invoice Period and a unique reference number.

Form of Invoice

- 16.4 Invoices shall be in eye readable format either sent electronically (including through a website) or by written notice (at APX's option). For the purposes of this paragraph 16, any Invoice sent electronically shall be deemed to have been sent on the date of transmission.
- 16.5 Invoices shall incorporate, where appropriate, a VAT invoice for APX and a self-billed VAT invoice for each Clearing Member in respect of the supplies detailed in the Invoice.

Replacement Invoice

- 16.6 Where APX is notified or otherwise discovers, no later than four Business Days prior to the time of payment specified in paragraphs 16.12 and 16.13, that any Invoice contains an arithmetic or other error or omission affecting the net amount payable to or from the Power Clearing Member, or as the case may be, the Gas Clearing Member may agree that APX shall, no later than four Business Days prior to such time of payment, submit a replacement Invoice which shall, for the purposes of this paragraph 16, be deemed to be the Invoice issued pursuant to paragraph 16.1 (in the case of a Power Clearing Member) or 16.2 (in the case of a Gas Clearing Member).

Delays in Invoice

- 16.7 No delay by APX in submitting an Invoice shall prejudice the liability, once such Invoice has been submitted, of APX or the Clearing Member for the amounts specified therein.

Status of Settlement Account and Member Accounts

- 16.8 APX will establish the Settlement Account with a bank chosen by APX in its sole discretion.
- 16.9 APX will establish a separate Cash Account and/or an Escrow Account for each Clearing Member.
- 16.10 The Settlement Account shall be solely in the name of APX and under its control. The Settlement Bank shall be entitled to observe any instructions given in accordance with any mandate from time to time held by the Settlement Bank without any liability to APX or the Clearing Member to ensure that payments are made strictly in accordance with the APX Rules, Part II and APX agrees to procure that all such instructions shall be consistent with the APX Rules, Part II.
- 16.11 APX undertakes (and in relation to paragraphs 16.11(a) and 16.11(b) only, shall indemnify and hold harmless the Clearing Member from and against any loss, liability, damage, claim, action, proceeding and cost and expense reasonably incurred by the Clearing Member resulting from any breach by APX thereof) that it will not make any payments out of the Settlement Account other than those described in paragraphs 16.10, 16.13, 16.14 and 16.34 and;

- (a) it will maintain the Settlement Account as a separate account without right of recourse by the Settlement Bank against the Settlement Account in connection with any debts owed by APX to the Settlement Bank;
- (b) it will endeavour to procure that no payments are made into the Settlement Account other than:
 - (i) payments made in discharge of sums owing by Power Clearing Members in accordance with Invoices issued under paragraph 16.1 and/or Gas Clearing Members in accordance with Invoices issued under paragraph 16.2;
 - (ii) payments made by National Grid to APX pursuant to Section X2.8 of the Network Code; and
 - (iii) Trading Charges.

Time of Payment

- 16.12 The Clearing Member shall pay in cleared funds for value by 11.00 hours GMT on the Invoice Settlement Date, the net amount (if any) payable to APX as shown in the relevant Invoice.
- 16.13 Subject to paragraph 16.14:
- (a) APX shall release funds for payment of the net amount (if any) payable to the Power Clearing Member as shown in the relevant Invoice with respect to the Power Market for value by close of banking business on the Invoice Settlement Date.
 - (b) APX shall release funds for payment of the net amount (if any) payable to the Gas Clearing Member as shown in the relevant Invoice with respect to a Gas Product for value by close of banking business on the Business Day immediately following that referred to in paragraph 16.12.
- 16.14 Where National Grid Balancing is the Gas Clearing Member, APX may make payments from the Settlement Account to National Grid in accordance with the provisions of section X2.8 of the Network Code or, where it reasonably believes that a Cash Call is imminently to be made by National Grid in accordance with section X of the Network Code, in anticipation of such Cash Call being made, in an amount equal to the amount for which APX reasonably believes such Cash Call is to be made.
- 16.15 Any payments made by a Hub Operator to APX pursuant to the Hub Rules shall be made to the Settlement Account.
- 16.16 For the avoidance of doubt, there shall be no double recovery as between APX and a Hub Operator of amounts payable under the provisions of the APX Rules and the relevant Hub Rules.

Effect of Late Payment

16.17 In the event that either Party fails to make payment to the other in cleared funds of the net amount (if any) payable by that Party as shown in any Invoice on the due date for payment as determined in accordance with paragraphs 16.12 and 16.13, the Party so failing to make payment shall pay to the other interest on the unpaid amount at the following rates (in each case by reference to the Base Rate) in accordance with the following provisions:

- (a) where the Clearing Member fails to make payment as aforesaid:
 - (i) from such due date for payment until the day on which payment is received by APX in cleared funds for value or (where applicable) the date referred to in paragraph 16.19, 3% per annum above the Base Rate; and
 - (ii) from the beginning of the third Business Day after such due date for payment until the day on which payment is received by APX in cleared funds for value or (where applicable) the date referred to in paragraph 16.19, a further 3% per annum above the rate defined in paragraph 16.17(a)(i); and
 - (iii) from the beginning of the fifth Business Day after such due date for payment until the day on which payment is received by APX in cleared funds for value or (where applicable) the date referred to in paragraph 16.19, a further 5% per annum above the rate defined in paragraph 16.17(a)(ii),

and a minimum payment of £100 (one hundred pounds sterling) shall always apply;

- (b) where APX fails to make payment as aforesaid:
 - (i) from such due date for payment (but subject to paragraph 16.18) until the day on which payment is received by the Clearing Member in cleared funds for value, 3% per annum above the Base Rate; and
 - (ii) in addition:
 - (A) from the beginning of the third Business Day after such due date for payment until the day on which payment is received by the Clearing Member in cleared funds for value, a further 3% per annum above the rate defined in paragraph 16.17(b)(i); and
 - (B) from the beginning of the fifth Business Day after such due date for payment until the day on which payment is received by the Clearing Member in cleared funds for value, a further 5% per annum above the rate defined in paragraph 16.17(b)(ii)(A),

and a minimum payment of £100 (one hundred pounds sterling) shall always apply.

16.18 Where APX has issued an Invoice after the last day by which such Invoice is to be rendered to the Power Clearing Member pursuant to paragraph 16.1 or to a Gas Clearing

Member pursuant to paragraph 16.2 and in respect of that Invoice has failed to make payment as referred to in paragraph 16.17, interest shall accrue in accordance with paragraph 16.17(b) with effect from the last day by which such Invoice is to be rendered pursuant to paragraph 16.1 or 16.2.

- 16.19 For the avoidance of doubt, where the Clearing Member fails to make payment to APX as referred to in paragraph 16.17, the Member shall be liable to pay interest to APX on such unpaid amount pursuant thereto notwithstanding that, where such unpaid amount is disputed by the Clearing Member, it is subsequently agreed or determined that the Clearing Member should not be required to pay any or all of such unpaid amount to APX. In such a case, for the purpose of paragraph 16.17, interest shall be payable on such unpaid amount until the date upon which the dispute is agreed or determined.
- 16.20 It is acknowledged by the Parties that the payments of interest, including the escalation of rates, as provided in paragraph 16.17 have been designed to take account of the Parties' mutual interest in preserving the integrity of the Power Market and, as applicable, the Gas Market and the additional costs likely to be incurred by APX and each Clearing Member respectively in re-establishing the integrity of the Power Market and, as applicable, the Gas Market following any failure to make payment and furthermore recognising that these costs are likely to increase the longer there is a delay in making due payment.

Disputes

- 16.21 The Invoice shall be final and binding as to the amount payable in relation to that Invoice Period for the purposes of paragraphs 16.12 and 16.13. The Clearing Member shall not be entitled to withhold or reduce payment as a result of any dispute as to any item set out in the Invoice. The Clearing Member shall notify APX as soon as possible if it disputes any item in the Invoice, and any adjusting payment required to be made following agreement or determination of a dispute in accordance with paragraph 34 (*Jurisdiction and Disputes*) shall be dealt with as provided for in paragraphs 16.12, 16.13 and 16.23.
- 16.22 Where, by no later than four Business Days prior to the time for payment specified in paragraphs 16.12 and 16.13, a dispute has been notified to APX and settled by agreement between the Clearing Member and APX, the provisions of paragraph 16.6 shall apply.

Interest

- 16.23 If following a dispute it is determined or agreed that the Clearing Member was entitled to a further payment from APX or that the Clearing Member was not entitled to any payment (or part thereof) it has received, then APX shall pay to the Clearing Member, or the Clearing Member shall pay to APX (as the case may be), interest on the amount overpaid or underpaid (as the case may be) at the Base Rate from the due date for payment of all Invoices from which the dispute arose until the date of payment or repayment (as the case may be).

Time Limit for Disputes

- 16.24 Notwithstanding anything herein contained to the contrary, neither APX nor the Clearing Member shall be entitled, other than on the grounds of fraud, to dispute amounts owing or allegedly owing by it under this paragraph 16 in relation to any Invoice Period, or an amount paid or payable hereunder, unless such dispute is raised by written notice given to the other Party within eighteen months after the last date by which the Invoice in respect of that Invoice Period is to be rendered in accordance with paragraph 16.1.

Self-billing

- 16.25 The Clearing Member consents to the operation of a self-billing system by APX with regard to payments in respect of Trade Legs to which the Clearing Member is a party (as Seller) and will maintain such consent at all times unless APX otherwise agrees in writing.
- 16.26 If the Commissioners of Customs and Excise elect under Section 29 of the Value Added Tax Act 1994 to regard an amount of VAT due from a Clearing Member on a self-billed invoice as VAT due from APX then the Clearing Member agrees to pay to APX on demand an amount equal to any such VAT.
- 16.27 Invoices in relation to sums due from APX to a Hub Operator or vice versa shall be raised in accordance with arrangements from time to time made between APX and such Hub Operator.

Interest on sums payable to APX following termination for insolvency or breach

- 16.28 Without prejudice to paragraph 16.17, in the event that the Clearing Member fails to make payment to APX in cleared funds for value, where applicable, as determined in accordance with paragraphs 25.6 to 25.13, the Clearing Member shall pay to APX interest on the unpaid amount at 3% per annum above the Base Rate until the day on which payment is received by APX in cleared funds for value.

Deductions and Set Off

- 16.29 Amounts payable under the APX Rules shall be paid:-
- (a) free and clear of any restriction, reservation or condition; and
 - (b) save as provided by paragraphs 16.30, 16.31, 16.39 and 16.40, without deduction or withholding in respect of tax or on account of any amount due or to become due to the paying Party, whether by way of set off, counterclaim or otherwise, or on any other basis whatsoever.
- 16.30 If, in respect of a payment to be made by either Party to the other, any deduction or withholding is required by the law of any jurisdiction outside of England and Wales, the paying Party shall:
- (a) ensure that the amount of such withholding or deduction does not exceed the minimum so required;

- (b) forthwith pay to the other Party such additional amounts as will ensure that the net amount received by the other Party will be equal to that which would have been received had no deduction or withholding been made; and
- (c) pay the amount withheld or deducted to the relevant authority in accordance with the relevant requirement of law, and provide to the other Party a receipt issued by such authority or (if such a receipt is not available) a certificate in respect of such payment.

16.31 In respect of any Clearing Member, without prejudice to any other right or remedy which it may have, APX may set off any amount due and payable by it to that Clearing Member (whether under the APX Rules or otherwise howsoever) against the amount due and payable to it under the APX Rules by that Clearing Member.

16.32 .

Payments to APX

16.33 The Clearing Member shall make all payments due to APX, or as applicable ENDEX, pursuant to the APX Rules (or as applicable the Gas Trading Rules) by direct debit, standing order or other recognised electronic means to the Clearing Member Account.

16.34 Where any payment is made to an incorrect account, APX may transfer the payment to the appropriate account or make such other transfer to adjust the position between the accounts affected as they consider necessary.

Payments to the Clearing Member

16.35 APX shall make all payments due to the Clearing Member pursuant to the APX Rules to the Clearing Member Account pursuant to paragraphs 16.12 and 16.13.

Denomination of Payment

16.36 All payments shall be made in pounds sterling.

Notification of Bank Account Details

16.37 Each Party shall, not later than five days after the date of the Membership Agreement, notify the other of the name and address of the bank to which payments to that Party should be made together with the sort code, the account number for payments, the name of such account and the Party's VAT number.

16.38 Either Party may change the details provided pursuant to paragraph 16.37 upon ten days' prior written notice to the other.

Acceleration

16.39 In the event:

- (a) of a failure by the Clearing Member to make payment to APX in cleared funds for value of the net amount (if any) payable by the Clearing Member as shown

in any Invoice on the due date for payment as determined in accordance with paragraph 16.12; and/or

- (b) if it appears to APX, acting in good faith, that the Clearing Member is unable or likely to become unable to meet its payment obligations (taking into account any Collateral provided by the Clearing Member) in respect of one or more Bilateral Trades and/or Trade Legs,

then, subject always to paragraph 16.40, APX may declare as immediately due and payable to APX all or any part of any amount otherwise not yet due and payable and either shown in any existing Invoice as owing by the Clearing Member to APX and/or (where not specified in any Invoice) any other amounts then owing to APX (net of any other amounts then owing by APX to the Clearing Member pursuant to the APX Rules) without demand or notice of any kind, and all such amounts shall be immediately payable by the Clearing Member notwithstanding paragraphs 16.12, 16.13 and 16.28 and whether or not such amounts have at such time been specified in an Invoice.

- 16.40 Where APX has made a declaration under paragraph 16.39 APX shall revoke such declaration if it is subsequently demonstrated to APX's reasonable satisfaction that the Clearing Member is able to pay its debts as and when they fall due. It is agreed by the Parties that, notwithstanding any contrary provision in this paragraph 14, no interest shall accrue on such amounts so declared to be immediately due and payable before the date when such amounts would otherwise become due and payable unless and until written notification of such declaration is made by APX to the Clearing Member (such interest accruing with effect from the Business Day next following the date of such notification).

Interaction of APX Rules and Hub Rules

- 16.41 Where a Hub Operator is the Member, subject to paragraphs 16.16, 16.42 and 16.43, the provisions of this paragraph 16 shall be without prejudice to the provisions of the Hub Rules, and such Hub Operator shall not be stopped from utilising such provisions or exercising any remedy pursuant thereto by virtue of its status as a Member under the APX Rules.
- 16.42 Where a Hub Operator is the Member, the provisions of paragraph 16.17(a) shall apply with respect to late payment under the APX Rules notwithstanding the provisions of the Hub Rules.
- 16.43 Where a Hub Operator is the Member, neither Party shall have any obligation to make payments of interest to the other for late payment under paragraph 16.17 to the extent that interest in respect of such late payment is payable by that Party to the other pursuant to the Hub Rules.

Other Liabilities

- 16.44 Where:
- (a) either APX or the Power Clearing Member is liable to make a payment to the other pursuant to Annex 1 paragraph 7; or

- (b) either APX or the Power Clearing Member is liable to make a payment to the other pursuant to Annex 2 paragraph 5.

the obligation to make such payment shall fall due on the day on which full particulars of the claim in respect of such liability are notified to the other Party.

- 16.45 If APX or the Power Clearing Member fails to make payment in full referred to in paragraph 16.44 on the day when such payment falls due, interest shall be payable on the unpaid amount from the due date for payment as aforesaid at 3% per annum above the Base Rate.

PART III: GENERAL PROVISIONS

17. ACCESS TO THE OPERATING SYSTEM

General

- 17.1 The Member shall have a right of access to, and use of, the Operating System with effect from the commencement date(s) for such periods as may be determined in accordance with the APX Rules, subject to:
- (a) compliance by the Clearing Member with the applicable Clearing Member Access Criteria;
 - (b) compliance by the Clearing Participant with the applicable ECC Clearing Conditions;
 - (c) the installation by, or on behalf of, the Member, of Connection Equipment; and
 - (d) the provisions of the APX Rules.

Suspension of access to, and use of, the Operating System

- 17.2 A Member's access to, and use of, the Operating System and APX's performance of its obligations under the Membership Agreement and these APX Rules may, at the sole discretion of APX, be suspended by APX:
- (a) on not less than two Business Days' prior written notice where, in the reasonable opinion of APX, there has been a material breach by the Member of any provisions of the APX Rules which at the expiry of such period of notice remains unremedied; or
 - (b) in the case of a Power Member only, in accordance with paragraph 8.4 (*Suspension of rights on non-payment*); or in the case of a Power Member only, pursuant to paragraph 7.4 (*Sanctions*); or
 - (c) with regards to a Power Trading Member that is a Clearing Participant, if the ECC requests APX to suspend such a Power Trading Member;
 - (d) where APX reasonably believes that the Clearing Member is in breach of the applicable Clearing Member Access Criteria; or
 - (e) if there is an Event of Default or Potential Event of Default in relation to that Member.
- 17.3 Subject to paragraph 19.8, the Member's access to, and use of, the Operating System shall (without prejudice to the provisions of Schedule 4, the Power Trading Terms and, where applicable, the Gas Trading Terms) be suspended:
- (a) during any Market Failure, APX having exhausted the contingency arrangements referred to in paragraph 19.1;
 - (b) during any Connection Failure;

- (c) during any Planned Maintenance Period;
- (d) in the case of a Power Member only, upon APX becoming aware of a Power Emergency;
- (e) in the case of a Gas Clearing Member only, APX becoming aware of a Gas Emergency; or
- (f) where APX has suspended the operation of the Operating System pursuant to paragraph 20.1(i).

17.4 Without regard to whether an Event of Default exists, APX may suspend the Member's rights to use any service (including in relation to a Power Member only, to trade any Power Product) if:

- (a) APX is required to, in order to comply with an order, instruction or request from any Competent Authority;
- (b) APX has reasonable grounds to suspect fraud or attempted fraud or other criminal activity in connection to any service or Product regardless of whether the Member is aware or approves of the same; or
- (c) In APX's reasonable opinion, such suspension is required to protect any Market, service or Product in the longer term.

Notification of suspension of access

17.5 Where the Member's access to, and use of, the Operating System has been suspended (or there has been any other suspension) pursuant to any provision of paragraphs 17.2 to 17.4 (other than paragraph 17.3(b)) APX shall forthwith notify the Member of such suspension and the reason therefor.

Resumption of access

17.6 Where the Member's right of access to, and use of, the Operating System is suspended (or there has been any other suspension) pursuant to any provision of paragraphs 17.2 to 17.4 (other than paragraph 17.3(b)) APX shall, by notification to the Member, permit the Member to resume access to, and use of, the Operating System or any other applicable service once APX is reasonably satisfied that the circumstances giving rise to such suspension no longer apply.

17.7 Where the Member's right of access to, and/or use of, the Operating System is curtailed or suspended pursuant to paragraph 7.4, APX shall cease to so curtail or suspend such rights or, as the case may be, shall permit the Member to resume access to, and/or use of, the Operating System once APX, acting reasonably, determines:-

- (a) that the circumstances, actions or omissions giving rise to the curtailment or suspension do not warrant continued curtailment or suspension; and
- (b) that the Member has made appropriate arrangements intended to secure that an action or omission on the part of the Member, similar to the act(s) or omission(s) giving rise to such curtailment or suspension, will not be repeated.

Termination of access

- 17.8 The Member's right of access to, and use of, the Operating System shall terminate on termination of the Membership Agreement.

Access to the Operating System by Power Member

- 17.9 Where, pursuant to the Membership Agreement and the APX Rules, the Power Member has a right of access to, and use of, the Operating System, subject to the APX Rules, the Power Member may:

- (a) view any Order whilst such Order is displayed; and
- (b) view the information made available by APX pursuant to paragraph 19.3.

- 17.10 Where the Power Member has a right of access to, and use of, the Operating System, the Power Member may, subject to the APX Rules and paragraph 17.11, use the Operating System:

- (a) to make Orders;
- (b) to withdraw any such Order posted by the Power Member in accordance with the APX Rules;
- (c) to accept Orders posted by other Power Member; and
- (d) in relation to Power Clearing Members only, for any other purposes contemplated by the APX Rules related to the clearing of Power Bilateral Trades and their associated Trade Legs.

- 17.11 The Power Member shall not be entitled to access to or use of the Operating System under paragraph 17.10, unless it has complied with the relevant Trading Conditions and Notification Conditions set out in the relevant Power Trading Terms.

Access to the Operating System by Gas Clearing Member

- 17.12 Where, pursuant to the Membership Agreement and the APX Rules, the Gas Clearing Member has a right of access to, and use of, the Operating System, subject to the APX Rules and paragraph 17.13, the Gas Clearing Member may use the Operating System:

- (a) to send communications to APX via the Operating System;
- (b) to view the information made available by APX on the Operating System pursuant to the terms of these APX Rules; and
- (c) for any other purposes contemplated by the APX Rules related to the clearing of Gas Bilateral Trades and their associated Trade Legs.

- 17.13 The Gas Clearing Member shall not be entitled to access to or use of the Operating System under paragraph 17.12 unless it has complied with the relevant Clearing Member Access Criteria.

No liability for Suspension or Termination

- 17.14 Without prejudice to the provisions of the APX Rules, APX shall not be liable to the Member (except as provided in Schedule 4) for any loss, liability, damage, claim, action, proceeding, cost and expense arising directly or indirectly from or in connection with the occurrence of any suspension or termination of access to, and/or use of, the Operating System in accordance with this paragraph 17 or as a result of any inability or limitation of the ability of the Member to use the Operating System and/or the Connection Equipment for any other reason whatsoever.

Interruption, Malfunction and Alternative Communications

- 17.15 The Member acknowledges that interruption of communications (including any third party telephone network fixed line service (whether or not arranged through APX's internet link) or malfunction of the Member's computer system may result in the Member's instructions or communications not being received or the Member not receiving APX's electronic acknowledgement or other information from other Members. The Member shall take reasonable and prudent steps to mitigate against these risks including maintaining an operational backup communications link and an operational backup computer capable of running its user interface. APX shall have no liability whatsoever in respect of any such interruption or malfunction unless caused by an act or omission of APX, its Affiliates and representatives where APX, its Affiliates and representatives have failed to take reasonable and prudent measures to mitigate against those risks. If as a result of a communication or computer failure or for any other reason accepted by APX, the Member attempts to communicate its instructions by any means other than the user interface, APX shall use its reasonable endeavours to take account of and act on those instructions but shall have no liability whatsoever in respect of any failure to do so.

Origination of Documents

- 17.16 Subject to paragraph 5.18, the Member agrees that the receipt by APX of a Document bearing the Signature of a Member shall be sufficient to verify that such Member originated such Document.

No liability for interface

- 17.17 The Member shall be responsible for ensuring that the Connection Equipment interfaces correctly with the Operating System and APX shall not be liable for any loss, liability, damage, claim, action, proceeding, cost or expense in connection with any failure of the Connection Equipment to interface correctly with the Operating System.

18. OPERATING SYSTEM

Use of Operating System

- 18.1 The Member is entitled to use the Service and Data, and view the parts of the Data made available to it for viewing, in accordance with the Terms of Use of Operating System, and shall perform the obligations imposed on the Member thereby.

Minimum Requirements

- 18.2 Without prejudice to the Member's obligations pursuant to the Terms of Use of Operating System, each of APX and the Member shall use reasonable endeavours to ensure that its software and hardware shall be free from any computer viruses and use its reasonable endeavours to ensure that no computer viruses are introduced on to the other's software and hardware as a consequence of the Member's use of the Operating System.
- 18.3 The Member acknowledges that it shall have no right or remedy against APX in respect of the Member's inability to access and/or use the Operating System and/or the Connection Equipment where it attempts to utilise any part of the Service and Data on equipment that does not meet (to any extent) the minimum requirements set out in the Terms of Use of Operating System.

APX's Warranty

- 18.4 APX warrants to the Member that the use of the Service by the Member in respect of the Service and Data under paragraph 18.1, and the use by the Member of the Service and Data in compliance with the requirements of the APX Rules and, in connection therewith, in accordance with the operating instructions, does not and will not infringe the intellectual property rights subsisting in the European Economic Area, Switzerland or the United States of America of a third party provided that any liability under this warranty shall be subject to the proviso in paragraph 18.6.
- 18.5 APX shall have no obligation to the Member under paragraph 18.4 and shall not be in breach of such warranty where and to the extent that any alleged infringement arises from:
- (a) modifications to the Service and Data made by or on behalf of the Member without the consent of APX; or
 - (b) use of the Service and Data by the Member in any manner in breach of the APX Rules; or
 - (c) any breach by the Member of the Terms of Use of Operating System; or
 - (d) infringement of any intellectual property rights by use of the Service and Data by the Member outside the European Economic Area, Switzerland and the United States of America.

Indemnity

- 18.6 APX shall indemnify and hold harmless the Member from and against any and all loss, liability, damage, claim, action, proceeding, and cost and expense reasonably incurred by the Member, resulting from any breach by APX of paragraph 18.4 (APX's Warranty), provided always that:
- (a) APX is promptly notified of and shall have the exclusive right to immediate and complete control of any claim, action or proceeding which may result in any claim against APX under paragraph 18.4 or this paragraph 18.6 and any negotiations relating to any such matter;

- (b) the Member does not settle the claim or knowingly prejudice APX's defence of such claim; and
 - (c) the Member gives APX assistance as required by paragraph 18.8.
- 18.7 Where any claim has been made against the Member on the basis of facts, events or circumstances which are or may be the subject of the indemnity given under paragraph 18.6 by APX, APX shall, where requested to do so, provide reasonable assistance, not being financial assistance (but without prejudice to the indemnity itself), to the Member in defending the claim.
- 18.8 In case APX decides to control the claim in accordance with paragraph 18.6(a) the Member shall, where requested to do so, give APX reasonable assistance, not being financial assistance, to APX in defending the claim.

19. MARKET

System functionality

- 19.1 APX shall ensure that the Operating System shall be a screen based real time electronic trading system which implements those provisions of the APX Rules and the Power Trading Terms and, where applicable the Gas Trading Terms, which expressly or by implication require an action to be taken by means of or carried out on or by the Operating System supported by back-up equipment and contingency arrangements for the purposes of reducing, to the standard of a Reasonable and Prudent Operator, the risk of a Market Failure.

Power Members

- 19.2 Power Members may, subject to the APX Rules and the use of functioning Connection Equipment which complies with the requirements specified by APX pursuant to paragraph 18.2, view displayed Orders ranked according to Price.
- 19.3 At any time when the Power Member is entitled to access to the Operating System, APX shall make available to the Power Member by means of the Operating System at such time the following information in respect of each Power Product available for trading at such time in respect of any Power Bilateral Trade:
- (a) the Trade Quantity expressed in the relevant Quantity Unit;
 - (b) the Price expressed in the relevant Price Unit;
 - (c) the time of formation of such Power Bilateral Trade;
 - (d) the Lead Time (where applicable);
 - (e) the Location (where applicable);

Use of non-compliant equipment

- 19.4 APX gives no warranty regarding the operability of the Service and Data, or its interoperability with other software programs where it is used other than in accordance

with paragraph 18.2, and the use of the Service and Data by the Member on equipment that does not meet (to any extent) the minimum requirements referred to in paragraph 18.3 shall be entirely at the Member's own risk.

Planned Maintenance Periods

- 19.5 APX shall give the Member as much notice as reasonably practicable but in any event not less than seven calendar days' prior written notice of any period during which the Operating System will be unavailable as a result of any maintenance or upgrading of the Operating System including any equipment operated by or on behalf of APX in connection with the Operating System, or in relation to Gas Clearing Members only, as a result of any similar work being undertaken by ENDEX in relation to the Gas Trading Platform.
- 19.6 APX shall use all reasonable endeavours to conduct maintenance and upgrading of the Operating System at times when in its reasonable opinion the impact on the Markets will be minimised and, in relation to a Gas Clearing Members only, to procure that ENDEX does the same.

Assistance by APX in the event of Connection Failures

- 19.7 Where the Member requests the assistance and/or advice of APX in overcoming any Connection Failure or any other failure of the Member's Connection Equipment:
- (a) the Member shall pay APX's reasonable costs and expenses incurred by APX in advising and/or assisting the Member in overcoming or attempting to overcome such failure; and
 - (b) any such advice and/or assistance provided by APX in response to such request shall be undertaken in good faith.
- 19.8 Notwithstanding paragraphs 33.5 to 33.7 where there is a Connection Failure or System Unavailability (as defined in Schedule 4) or in case of any other technical or functional problem during the submission of Orders, the Power Member can request APX to make and withdraw Orders on behalf of the Power Member. This process is referred to as "Trading on Behalf".

When submitting a request, the Power Member needs to transmit the Order to be entered into the Operating System to the operations department of APX as an attachment to an email. Immediately thereafter, the Power Member must notify APX that a request was submitted. Mandatory *.xls templates for such notifications are provided by APX on request and are downloadable via the APX Website.

The Power Member needs to send a signed fax or e-mail with a signed and scanned document attached in which APX is given a power of attorney for submitting Orders on the Power Member's behalf and in which APX is indemnified from all consequences resulting from APX submitting Orders on the Power Member's behalf. If this fax or e-mail with attachment is not received prior to the matching process APX reserves the right to withdraw all Orders which APX submitted on the Power Member's behalf.

Requests for trading on behalf and the relevant Order(s) must be received by APX ultimately by the time as indicated in the relevant Market Rules Notice. Any request submitted after that time shall not be considered by APX.

The service of "Trading on Behalf" is subject to availability of resources at APX and provided on a best efforts basis only. APX does not accept any liability for damages in whatever form, which may be the consequence or result of providing or denying this service.

20. APX'S OBLIGATIONS

20.1 Without prejudice to any other obligation in the APX Rules, APX shall:

- (a) maintain a level of security of access to, and use of, the Operating System to the standard of a Reasonable and Prudent Operator;
- (b) take all steps to the standard of a Reasonable and Prudent Operator to prevent unauthorised use by employees and agents of APX of the Member's Log-in Codes and Signature;
- (c) as soon as reasonably practicable, notify the Member of any unauthorised attempts, of which APX becomes aware, to use any of the Member's Log-in Codes or Signature;
- (d) obtain:
 - (i) liability insurance (with reputable insurers determined by APX) in respect of sums that may become due from APX to Power Members as a consequence of breaches by APX of the provisions of paragraph 10.4 or, in relation to any Power Bilateral Trades or their related Trade Legs, of the Trading Terms, in so far as applicable, and in respect of a Gas Clearing Member in relation to any Gas Bilateral Trades and their related Trade Legs, of the Gas Trading Terms, to the extent that APX considers prudent; and
 - (ii) fidelity insurance (with reputable insurers determined by APX) to the extent that APX considers prudent,

and, at the request of the Member, provide a copy of the insurance certificates and a summary of the cover provided and (where applicable) use reasonable endeavours to expedite payment by such insurers pursuant thereto and pay all premiums in respect of such insurance when due and do nothing to invalidate such insurance;

- (e) not post Orders on its own account except in circumstances contemplated by paragraph 37;
- (f) abide by and perform the terms of the Membership Agreement, and, as given effect as between APX and the Member, the APX Rules;
- (g) provide the services specified in Schedule 4;

- (h) notify the Power Member when a material claim is made by APX under the insurance policy obtained pursuant to paragraph 20.1(d)(i) and provide information as to the circumstances giving rise to such claim;
- (i) suspend the operation of the Operating System when the level of claims made by APX exceeds the level of cover under the insurance policy obtained pursuant to paragraph 20.1(d)(i); and
- (j) while fulfilling its obligations under the APX Rules, abide by and comply with the provisions of the relevant Hub Rules.

21. APX'S REPRESENTATIONS AND WARRANTIES

21.1 APX represents and warrants to the Member (which representations and warranties are deemed to be repeated by APX on each date on which the Member acts under the APX Rules) that:

- (a) **(Status)** it is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation (and, if relevant under those laws, in good standing);
- (b) **(Power)** it has the power (i) to execute the Membership Agreement and any other documentation relating to the Membership Agreement to which it is a party, (ii) to deliver the Membership Agreement and any other documentation relating to the Membership Agreement that it is required by the Membership Agreement to deliver, and (iii) to perform its obligations under the Membership Agreement and has taken all necessary action to authorise that execution, delivery and performance;
- (c) **(No Violation or Conflict)** the execution, delivery and performance referred to in this paragraph under (b) does not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any governmental authority applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (d) **(Required Authorisations)** unless otherwise provided in the APX Rules, all governmental and other licences, authorisations, permits, consents, contracts (including the Balancing and Settlement Code and the Network Code) and other approvals (if any) that are required to enable the Party to fulfil any of its obligations under the Membership Agreement (*APX Required Authorisations*) have been obtained and are in full force and effect and all conditions of any APX Required Authorisations have been complied with;
- (e) **(Obligations Binding)** its obligations under the Membership Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law);

- (f) **(No Event of Default)** no event which would constitute an Event of Default were APX a Member, or event which with notice and/or lapse of time would constitute such an Event of Default, has occurred with respect to it and no such event would occur as a result of its entering into or performing its obligations under the Membership Agreement;
- (g) **(No Litigation)** no litigation, arbitration or administrative suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened against it or any of its Affiliates which would, if adversely determined, result in a material adverse change in its financial condition or its ability to perform its obligations under the Membership Agreement, or that is likely to affect the legality, validity or enforceability against it of the Membership Agreement or its ability to perform its obligations under the Membership Agreement;
- (h) **(No Reliance)** it is not relying upon any representations of the Member other than those expressly set out in the APX Rules and the Membership Agreement;
- (i) **(Principal)** it has negotiated, entered into and executed the Membership Agreement as principal (and not as agent or in any other capacity, fiduciary or otherwise);
- (j) **(Risk Assumption)** it has entered into the Membership Agreement with a full understanding of the material terms and risks of the Membership Agreement and it is capable of assuming those risks;
- (k) **(No Advice)** the Member, being the other Party, is not acting as a fiduciary or an advisor for it, nor has the Member given to it any advice, representation, assurance or guarantee as to the expected performance, benefit or result of Power Products tradeable under the APX Rules; and
- (l) **(Accurate Information)** all applicable information that is furnished in writing, if any, by or on behalf of it to the Member and is identified for the purpose of this paragraph is, as of the date it is furnished to the Member, true, accurate and complete in every material respect.

22. MEMBER'S OBLIGATIONS AND REPRESENTATIONS AND WARRANTIES

22.1 Without prejudice to any other obligation in the APX Rules, the Member shall

- (a) abide by and perform the terms of the Membership Agreement and, as given effect as between APX and the Member, the APX Rules;
- (b) give notice to APX as soon as reasonably practicable if the Member is of the opinion that it will, or may, fail to make any payment due in accordance with paragraph 8 and (*Fees*) paragraph 16 (*Invoicing and Payment*);
- (c) take all steps to the standard of a Reasonable and Prudent Operator to ensure that all data and information that the Member inputs into the Operating System is correct;

- (d) take all steps to the standard of a Reasonable and Prudent Operator to prevent unauthorised use of the Member's Log-in Codes and Signature by any person;
- (e) notify APX of persons authorised by the Member to use the Operating System on behalf of the Member and the Log-in Code for each such person, and notify APX immediately by telephone and facsimile transmission in the event of the Member withdrawing such authorisation from any person;
- (f) notify APX immediately by facsimile transmission or mail (including e-mail in the event of a replacement of a person that is authorised by the Member to use the Operating System and the Log-in Code on behalf of the Member or in the event of any amendment to the contact information of such authorised person; and
- (g) cause its authorised person to use the Log-in Code lawfully and in compliance with the APX Rules and keep the Log-in Code confidential and under lock and key. The Log-in Code is personal and specifically assigned to the authorised person. The Member shall therefore cause its authorised person not to provide or disclose the Log-in Code to other persons. The Member is and shall remain responsible and liable for (i) all use of the Log-in Code by its authorised person and (ii) any and all acts or omissions of such authorised person in respect of the Log-in Code.

22.2 The Member represents and warrants to APX (which representations and warranties are deemed to be repeated by Member on each date on which the Member acts under the APX Rules) that:

- (a) **(Status)** it is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation (and, if relevant under those laws, in good standing);
- (b) **(Power)** it has the power (i) to execute the Membership Agreement and any other documentation relating to the Membership Agreement to which it is a party, (ii) to deliver the Membership Agreement and any other documentation relating to the Membership Agreement that it is required by the Membership Agreement to deliver, and (iii) to perform its obligations under the Membership Agreement and has taken all necessary action to authorise that execution, delivery and performance;
- (c) **(No Violation or Conflict)** the execution, delivery and performance referred to in this paragraph under (b) does not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any governmental authority applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (d) **(Required Authorisations)** unless otherwise provided in the APX Rules, all governmental and other licences, authorisations, permits, consents, contracts (including the Balancing and Settlement Code and the Network Code) and other approvals (if any) that are required to enable the Party to fulfil any of its obligations under the Membership Agreement (*Member Required*

Authorisations) have been obtained and are in full force and effect and all conditions of any Member Required Authorisations have been complied with;

- (e) **(Obligations Binding)** its obligations under the Membership Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law);
- (f) **(No Event of Default)** no Event of Default, or event which with notice and/or lapse of time would constitute an Event of Default, has occurred with respect to it and no such event would occur as a result of its entering into or performing its obligations under the Membership Agreement;
- (g) **(No Litigation)** no litigation, arbitration or administrative suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened against it or any of its Affiliates which would, if adversely determined, result in a material adverse change in its financial condition or its ability to perform its obligations under the Membership Agreement, or that is likely to affect the legality, validity or enforceability against it of the Membership Agreement or its ability to perform its obligations under the Membership Agreement;
- (h) **(No Reliance)** it is not relying upon any representations of APX other than those expressly set out in the APX Rules and the Membership Agreement;
- (i) **(Principal)** it has negotiated, entered into and executed the Membership Agreement as principal (and not as agent or in any other capacity, fiduciary or otherwise);
- (j) **(Risk Assumption)** it has entered into the Membership Agreement with a full understanding of the material terms and risks of the Membership Agreement and it is capable of assuming those risks;
- (k) **(No Advice)** APX, being the other Party, is not acting as a fiduciary or an advisor for it, nor has APX given to it any advice, representation, assurance or guarantee as to the expected performance, benefit or result of Power Products tradeable under the APX Rules; and
- (l) **(Accurate Information)** all applicable information that is furnished in writing, if any, by or on behalf of it to APX is, as of the date it is furnished to APX, true, accurate and complete in every material respect.

23. LIMITATION OF LIABILITY

General

- 23.1 Subject to the further provisions of this paragraph 23, each Party agrees and acknowledges that:

- (a) neither Party shall be liable to the other for loss arising from any breach of, or any breach of any warranty given pursuant to, the Membership Agreement or the APX Rules or, in respect of a Power Member, the Power Trading Terms, other than (but without prejudice to any other provision of the APX Rules or such Power Trading Terms 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 Party; and/or
 - (ii) the liability in law of the other Party to any other person for loss in respect of physical damage to the property of such person; and
- (b) neither Party shall in any circumstances be liable in respect of any breach of, or any breach of any warranty given pursuant to, the Membership Agreement or the APX Rules or, in respect of a Power Member, the Power Trading Terms, 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 paragraph 23.1(a)(ii), loss resulting from the liability of the other Party to any other person howsoever and whensoever arising.

Relevant Date

- 23.2 For the purposes of paragraph 23.1(a), the “relevant date” is the date of the Membership Agreement, or in respect of any Power Bilateral Trade the date of formation of such Power Bilateral Trade and in respect of any Trade Leg the date of the formation of such Trade Leg, except that where the breach in question would not have been a breach of the APX Rules but for a Rules Change, the relevant date shall be the date of such Rules Change.

Limitations on Liability

- 23.3 Subject to paragraph 23.4, the aggregate liability of APX and ENDEX to any individual Member in respect of the matters specified in paragraphs 23.1(a)(i) and (ii) and, to the extent the Member has a claim, in paragraphs 13.1(a)(i) and (ii) of the Gas Trading Rules in each case occurring in any calendar year shall not exceed £500,000 in total.
- 23.4 The aggregate liability of APX and ENDEX to all Members in respect of the matters specified in paragraphs 23.1(a)(i) and (ii) and, to the extent any of those Members has a claim, in paragraphs 13.1(a)(i) and (ii) of the Gas Trading Rules in each case occurring in any calendar year shall not exceed £10 million in total.
- 23.5 The aggregate liability of a Member to APX and ENDEX in respect of, in the case of APX the matters specified in paragraphs 23.1(a)(i) and (ii), and, in the case of a Member which is a Gas Clearing Member, the matters specified in paragraphs 13.1(a)(i) and (ii)

of the Gas Trading Rules, in each case occurring in any calendar year shall not exceed £500,000 in total.

23.6 In relation to Power Clearing Members only, notwithstanding any other provision of the APX Rules, if APX is the Non-Complying Party:

- (i) the amounts owed under paragraph 7.2(a) of Annex 1 and paragraph 5.2(a) of Annex 2 by APX (if any); less
- (ii) the amounts owed to APX under paragraph 7.2(b) of Annex 1 and paragraph 5.2(b) of Annex 2 (if any);

with respect to all Settlement Periods in a calendar year, shall not exceed £15 million less all amounts paid or payable by APX to other Power Clearing Members with respect to Settlement Periods occurring in that calendar year under the equivalent provisions of any agreements between APX and one or more of those other Power Clearing Members, generally, with respect to APX's failure in whole or part to accurately notify any Energy Contract Volume.

23.7 Subject to paragraph 23.9, the aggregate liability of APX and, where a Member is a Gas Clearing Member, ENDEX to any individual Member pursuant to any indemnity or indemnities (other than those contained in paragraphs 18.6 and 16.11 of these APX Rules or the Gas Trading Rules) provided for in the APX Rules and in the case of ENDEX the Gas Trading Rules, in respect of any one event or circumstance giving rise or which would otherwise give rise to liability under such indemnity or indemnities shall not exceed £1 million in total.

23.8 The aggregate liability of any individual Member to APX and, where a Member is a Gas Clearing Member, pursuant to any indemnity or indemnities provided for in the APX Rules and in the case of ENDEX, the Gas Trading Rules, in respect of any one event or circumstance giving rise or which would otherwise give rise to liability under such indemnity or indemnities shall not exceed £1 million in total.

23.9 Notwithstanding any other provision of the APX Rules or the Gas Trading Rules, the aggregate liability of APX and ENDEX to all Members pursuant to any indemnity or indemnities (excluding those contained in paragraphs 18.6 and 16.11 of these APX Rules or the Gas Trading Rules) provided for in the APX Rules, and in the case of ENDEX the Gas Trading Rules, in respect of any event(s) or circumstance(s) occurring in any calendar year giving rise or which would otherwise give rise to liability under such indemnity or indemnities shall not exceed £20 million in total.

23.10 Where the liability of APX and, where applicable ENDEX, to Members is limited pursuant to paragraph 23.4, the liability of APX, and, where applicable, ENDEX to the Member and such other Members shall be determined as follows:

- (a) where the total amount paid by APX, and, where applicable, ENDEX to Members in respect of the matters specified in paragraph 23.1(a)(i) and (ii) (and, in relation to ENDEX, matters specified in the Gas Trading Rules), occurring within a calendar year, together with the total amount claimed against APX, and where applicable, ENDEX, but unpaid in respect of such matters, exceeds £10 million, APX's and, where applicable, ENDEX's liability to each Member

(including the Member) that has at such time notified a claim to APX, or, where applicable ENDEX, in respect of such matters (which claim is outstanding) shall be determined pro rata to the value of such claims taking into account the provisions of paragraph 23.3;

- (b) in the event that the aggregate of:
- (i) the value of outstanding claims referred to in paragraph 23.10(a) (taking into account the provisions of paragraph 23.3); and
 - (ii) the amount referred to in paragraph 23.10(a) as having been paid by APX, or, as applicable, ENDEX;

is less than £10 million, the difference between the two shall be applied (taking into account the provisions of paragraph 23.3) towards satisfying claims made by Members in respect of the matters specified in paragraph 23.1(a)(i) and (ii), (and, in relation to ENDEX matters specified in the Gas Trading Rules) occurring in the relevant calendar year in order of the time at which such claims are notified to APX, or as the applicable, ENDEX, until the total amount paid or due to be paid by APX and, as applicable ENDEX, in respect of such claims made by Members (including the Member) reaches £10 million;

- (c) in the event that the liability of APX, and, where applicable, ENDEX to the Member in respect of any claim(s) by the Member in respect of the matters specified in paragraph 23.1(a)(i) and (ii) (and, in relation to ENDEX matters specified in the Gas Trading Rules) is subject to the provisions of paragraphs (a) and (b)) above (as the case may be), the liability of APX, and, where applicable, ENDEX in respect of such matters shall be restricted so that (in accordance with paragraphs (a) or (b) above (as the case may be)) the total liability of APX and, where applicable ENDEX to Members in respect of the matters specified in paragraph 23.1(a)(i) and (ii) (and, in relation to ENDEX matters specified in the Gas Trading Rules) in respect of the relevant calendar year is restricted to £10 million, and the Member waives any further right or entitlement to payment from APX, or, where applicable, ENDEX, in respect of any such claims and any further claims in respect of other such matters occurring within that calendar year (save to the extent that the aggregate of all paid and outstanding claims in respect of all such matters occurring in that calendar year falls below the figure specified in paragraph 23.4).

23.11 Where the liability of APX, and where applicable ENDEX to Members is limited pursuant to paragraph 23.6, the provisions of paragraph 23.10 shall apply so as to limit such liability of APX and where applicable ENDEX to the Member and such other Members as if the words “paragraph 23.4”, “in respect of the matters specified in paragraph 23.1(a)(i) and (ii) (and, in relation to ENDEX, matters specified in the Gas Trading Rules)” and “£10 million” were replaced with, respectively, the words “paragraph 23.6”, “in respect of the events specified in paragraph 23.6” and “£15 million” and as if the words “taking into account the provision of paragraph 23.3” were deleted.

23.12 Where the liability of APX and where applicable ENDEX to Members is limited pursuant to paragraph 23.9, the provisions of paragraph 23.10 shall apply so as to limit

such liability of APX and where applicable ENDEX to the Member and such other Members as if the words “paragraph 23.4”, “in respect of the matters specified in paragraph 23.1(a)(i) and (ii)” (and, in relation to ENDEX, matters specified in paragraphs 13.1(a)(i) and (ii) of the Gas Trading Rules) and “£10 million” were replaced with, respectively, the words “paragraph 23.9”, “in respect of any event(s) or circumstance(s) specified in paragraph 23.9” and “£20 million”.

23.13 References in paragraphs 23.1 to 23.12 to Members shall be deemed to apply to persons that have been Members but have ceased to be so.

Impact on Indemnities

23.14 In relation to Power Members only, paragraph 23.1 is without prejudice to any provision of the APX Rules or, in respect of any Power Bilateral Trade or Trade Leg, the Power Trading Terms, which provides for an indemnity, or which provides for either Party to make a payment to the other, included in respect of any Spot Power Bilateral Trade pursuant to paragraph 7 of the Spot Power Trading Terms for Power Clearing Members only, or for Power Members, in respect of any ECV Notification pursuant to paragraphs 3.4 and 5.1 of the Annex 2 or pursuant to Schedule 4).

Exceptions to Limitations

23.15 Nothing in the APX Rules shall exclude or limit the liability of either Party for:

- (a) death or personal injury resulting from the negligence of such Party; or
- (b) fraud or any other matter if and to the extent that, under English law, liability for it cannot be excluded, restricted or limited as against the Parties or their Affiliates or representatives in the context of the APX Rules.

Specific Liabilities

23.16 APX, its Affiliates or representatives shall not be liable to the Power Member, its Affiliates or representatives for any losses, damages, claims, costs or expenses whatsoever due to:

- (a) the act or omission of BSCC or any BSC Agent (each as defined in the Balancing and Settlement Code) including any failure or planned outage in whole or part of any computer or communication system owned, operated, used or maintained by any of them and any act or omission in relation to credit support which APX provides or attempts to provide for the purposes of the Balancing and Settlement Code;
- (b) any failure or planned outage in whole or part or inadequacy of design, implementation or construction of any computer system, communication system or software owned, operated or maintained by, or on behalf of, the Power Member or any other Power Member or any representative of either or due to any failure by the Power Member to install modifications or new releases of the Operating System issued by APX; and

- (c) any act or omission of CSL including any failure or planned outage in whole or in part of any computer or communication system owned, operated, used or maintained by or on behalf of CSL.

High grade service failure

- 23.17 In relation to Power Members only, if a high grade communications system of the ECV Aggregation Agent, any other BSC Agent or BSC Co relevant to the performance by APX of any obligation under the APX Rules in whole or in part fails or is not available due to a planned outage, then APX shall use its reasonable endeavours to use alternative communication systems to perform that obligation. However, APX, its Affiliates and its representatives shall have no liability to the Power Member, its Affiliates and its representatives for any damages, claims, costs or expenses whatsoever arising in whole or part due to any failure in whole or part to perform that obligation using any alternative communication system

Exclusion of other Remedies

- 23.18 Without prejudice to the rights of the parties to seek injunctive relief (including specific performance), the rights and remedies of the Parties pursuant to the Membership Agreement and the APX Rules and, in relation to any Power Bilateral Trade or Trade Leg, the Trading Terms, exclude and are in place of any rights or remedies of any Party in tort (including negligence and nuisance) or misrepresentation in respect of the subject matter of the Membership Agreement, the APX Rules and such Trading Terms, and accordingly, but without prejudice to paragraphs 23.14 (*Impact on Indemnities*) and 23.21 (*Legal Requirements*), each Party (to the fullest extent permitted by law):

- (a) waives any rights or remedies; and
- (b) releases the other Party from any duties or liabilities;

arising in tort or misrepresentation, other than in respect of a misrepresentation made fraudulently, or other fraudulent act, in respect of the subject matter of the Membership Agreement, the APX Rules or, in relation to any Power Bilateral Trade or Trade Leg, the Trading Terms.

- 23.19 Without prejudice to paragraph 23.18, where any provision of the Membership Agreement or the APX Rules, or, in relation to any Power Bilateral Trade or Trade Leg, the Trading Terms, provides for any amount to be payable by a Party upon or in respect of that Party's breach of any provision of the Membership Agreement, APX Rules or such Trading Terms, each Party agrees and acknowledges that the remedy conferred by such provision is exclusive of and is in substitution for, any remedy in damages in respect of such breach or the event or circumstance giving rise thereto.

Payment Obligations under APX Rules

- 23.20 For the avoidance of doubt, nothing in this paragraph 23 shall prevent any Party from, or restrict it in, enforcing any obligation owed to it under or pursuant to paragraph 8 and 16.

Legal Requirements

- 23.21 Save where such right or remedy arises solely pursuant to the Membership Agreement, the APX Rules, or in relation to any Power Bilateral Trade or Trade Leg, the Trading Terms, nothing in this paragraph 23 shall constitute a waiver by either Party of any right or remedy it may have in respect of a breach by the other Party of any Legal Requirement.

Severability of Terms

- 23.22 Each provision of this paragraph 23 shall be construed as a separate and severable contract term, and shall survive the termination of the Membership Agreement.

Negotiation of Exclusions of Liability

- 23.23 The Parties acknowledge and agree that the provisions of this paragraph 23 have been the subject of discussion and, in so far as is practicable, negotiation, and are fair and reasonable having regard to the circumstances as at the date of formation of each Power Bilateral Trade and Trade Leg.

Reasonable Pre-estimate

- 23.24 Each Party acknowledges that the payment obligations expressed to be liquidated damages are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages. Each Party waives the right to contest those payments as an unreasonable penalty or otherwise.

24. TERMINATION OF MEMBERSHIP AGREEMENT

Termination on Notice

- 24.1 The Member or APX may terminate the Membership Agreement with effect from the first day of any calendar month, by giving no less than thirty days prior written notice of such termination to the other provided that the Member may not serve such notice earlier than the date falling five months after the date of the Membership Agreement.
- 24.2 Where APX has suspended operation of the Operating System pursuant to paragraph 20.1(i) and resumption of the operation of the Operating System does not take place within thirty days of such suspension of operation, the Member may terminate the Membership Agreement on written notice to APX.
- 24.3 If applicable, APX may cancel or cause to be cancelled any authorisation for it or its subcontractor to act as ECV Notification Agent with effect from the termination date or later.
- 24.4 If it appears to APX, acting in good faith, that the Clearing Member is unable or likely to become unable to meet its payment obligations (taking into account any Collateral provided by the Member) in respect of one or more Power Bilateral Trades or Trade Legs, then APX shall have the right (for so long as such circumstance persists and without prejudice to its other rights and remedies), forthwith on notice to the Clearing Member (which may be given either electronically (and confirmed forthwith in writing) or in writing, as APX may determine) to suspend, in whole or in part the Clearing

Member's access to, and use of, the Operating System until such time as such circumstance has been remedied to APX's reasonable satisfaction. Save where APX exercises such rights of suspension on the grounds that it appears to APX (acting in good faith) that the Clearing Member is unable or unlikely to be able to meet its payment obligations in respect of one or more Power Bilateral Trades, APX shall provide advance warning to the Clearing Member that it intends to exercise such rights of suspension

25. TERMINATION IN EVENT OF DEFAULT OR BREACH

- 25.1 Either Party (the *Terminating Party*) may terminate the Membership Agreement:
- (a) on two Business Days' written notice to the other in the event that the other Party shall fail to pay any amount properly due or owing from it to the terminating Party pursuant to the APX Rules, or, in relation to any Bilateral Trade, pursuant to the relevant Trading Terms, and such non-payment continues unremedied at the expiry of seven Business Days immediately following receipt by the other Party of written notice from the terminating Party of such non-payment; or
 - (b) pursuant to the terms of any other agreement between APX and the Member.
- 25.2 APX may terminate the Membership Agreement if at any time, an Event of Default has occurred and is continuing or, in the case of a Power Trading Member, it ceases to be a Clearing Participant or, in the case of a Gas Clearing Member, it ceases to be a Gas Trading Member, and may designate a day as an early termination date (the *Early Termination Date*) for the Membership Agreement by giving not more than twenty (20) days' notice to the Defaulting Party. This notice shall, where applicable, specify the Event of Default. The Early Termination Date may not be earlier than the day the notice is effective.
- 25.3 For the avoidance of doubt, the right under paragraph 25.2 is in addition to any other remedies under the APX Rules or at law. The notice of the Early Termination Date may be by telephone if that notice is confirmed in writing within two (2) Business Days. If the notice by telephone is not confirmed in writing within two (2) Business Days then the notice by telephone shall be deemed not to have been given.

ECV Notification withdrawal, cancellation and termination

- 25.4 Notwithstanding any other provision of the APX Rules, but without prejudice to APX's rights under paragraphs 17.2, 17.3, 17.4 or 37, after the occurrence of an Event of Default by a Power Clearing Member as well as without prejudice to the ECC Clearing Conditions, the Clearing House may take such action as may be necessary to terminate the relevant ECV Notification Agent Authorisations, to withdraw or cancel ECV Notifications (including requiring the ECV Notification Agent to withdraw or cancel any ECV Notification) and to notify any other Power Member. The Defaulting Party irrevocably appoints the Clearing House as its agent to do all things, exercise all powers and give all notices as may be required by the ECV Notification Agent, the ECV Aggregation Agent, the Settlement Administration Agent or the System Operator for the purpose only of allowing that termination, withdrawal or cancellation to be effected.

The Defaulting Party ratifies and confirms whatever the Clearing House does in accordance with this paragraph 25.4.

Effects of Termination

- 25.5 In the event of termination of the Membership Agreement for any reason:
- (a) save as provided by the following provisions of this paragraph 25.5, the Parties shall, with respect to each other, cease to be bound by the terms of the APX Rules;
 - (b) other than to the extent that a payment is due in respect of those rights and remedies pursuant to paragraphs 25.6 to 25.13, such termination shall not prejudice any rights and remedies which may have accrued or which, on termination, accrue to the Member or APX pursuant to the APX Rules or in relation to any Bilateral Trade, pursuant to the Trading Terms or accrue to the Clearing Participant or the Clearing House pursuant to the ECC Clearing Conditions;
 - (c) the provisions of the APX Rules respecting confidentiality, maintenance of records, settlement of accounts (Clearing Members only) and any other provision which expressly survives or comes into effect on such termination shall, as between the Member and APX, remain in full force and effect;
 - (d) the Clearing House shall cease to be the Delivery Agent of the Member with immediate effect, save that APX shall remain the Member's Delivery Agent in respect of Bilateral Trades in respect of which the Delivery Period(s) has not expired;
 - (e) the relevant provisions of the APX Rules, shall remain effective until all obligations have been fully discharged; and
 - (f) within 30 days after termination, the Member shall, at APX's option, deliver to APX, uninstall or destroy as appropriate all copies of the user interface and user guides and certify this to APX in writing.

Demand for Payment on Termination

- 25.6 On, or as soon as reasonably practicable after, the Early Termination Date, APX shall in good faith calculate the termination amount (***Termination Amount***), being the Loss.
- 25.7 ***Loss*** means an amount that APX reasonably determines in good faith to be its total losses and costs (or, gain, in which case expressed as negative number in connection with the termination of the Membership Agreement including any cost of funding (based on actual costs to APX whether or not greater than market costs), or, at the election of APX but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or re-establishing any related trading position (or any gain resulting from any of them) or exercising any other remedy or right arising on the occurrence of an Event of Default. Loss includes losses and costs (or gains) in respect of any fee, charge or indemnity payment including any fees, or other fees payable under the APX Rules required to have been made and not made or non-compliance with the APX Rules (whether or not as a result of the suspension of the

obligation to pay or comply with those paragraphs under paragraphs 17.2, 17.3, 17.4) on or before the Early Termination Date. Loss includes those reasonable legal fees and out-of-pocket expenses reasonably incurred by APX. APX may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading traders in relevant markets.

For the avoidance of doubt, for the purposes of the calculation of Loss, but without prejudice to the Clearing Member's obligations to establish and maintain Collateral in accordance with Schedule 1 (*Credit Policy*), any amount of the Clearing Member's Collateral, which has been drawn by APX under paragraphs 13.24 to 13.29 shall be considered to be an amount paid to APX by Clearing Member.

- 25.8 APX shall notify the Defaulting Party of the Termination Amount including detailed support for the Termination Amount calculation.
- 25.9 APX shall not be required to enter into replacement transactions in order to determine the Termination Amount.
- 25.10 If the Termination Amount is a positive number, the Defaulting Party shall pay the Termination Amount to APX on or before the Business Day after the day of invoice or notification of the Termination Amount (the *Termination Payment Date*), which amount shall bear interest from the date following the Early Termination Date until and including the day of payment in accordance with paragraph 16.15 of the APX Rules.
- 25.11 If the Termination Amount is a negative number, APX shall pay the Termination Amount to the Defaulting Party as soon as practicable but in any case within 30 Business Days of the Termination Payment Date, which amount shall bear interest from the day following the Early Termination Date until and including the day of payment in accordance with paragraph 16.15 of the APX Rules.
- 25.12 APX may, at its option, set off the Termination Amount against any or all other amounts owing (whether or not matured, contingent or otherwise) between the Parties under the APX Rules or under any other agreements, instruments or undertakings between the Parties. The right of set-off shall be without prejudice and in addition to any right of set-off, combination of accounts, lien, charge or other right to which any Party is at any time otherwise entitled (whether by operation of law, by contract or otherwise).
- 25.13 Disputed amounts under these paragraphs 25.6 to 25.12 shall be paid by the Defaulting Party subject to refund with interest calculated in accordance with paragraph 16.23 of the APX Rules if the dispute is resolved in favour of the Defaulting Party.

26. CONFIDENTIALITY

Confidentiality Obligation of APX

- 26.1 APX shall secure that Protected Information is not disclosed to any person other than:
- (a) an officer or employee of APX (including any agent of APX or person seconded to APX), whose province it is to know the same; or
 - (b) a professional adviser of, contractor of, or consultant to, APX; or

- (c) any member of APX's Group, not being a Member;
- (d) ECC; or
- (e) ENDEX,

in any such case in accordance with the requirements of paragraph 26.5 and (in relation to paragraph 26.1(c)) only to the extent necessary for the exercise by APX of its rights and the performance by APX of its obligations under the APX Rules or for the purposes of internal audit or review of APX.

Confidentiality Obligation of Member

26.2 The Member shall secure that Protected Information is not disclosed to any person other than:

- (a) an officer or employee of the Member whose province it is to know the same; or
- (b) a professional adviser of, contractor of, or consultant to, the Member; or
- (c) any member of the Member's Group, not being a Member,

in any such case in accordance with the requirements of paragraph 26.5 and (in relation to paragraph 26.2(c)) only to the extent necessary for the exercise by the Member of its rights and the performance by the Member of its obligations under the APX Rules) or for the purposes of internal audit or review of the Member (but in the latter case not so as to permit disclosure of the Member's Signature and Log-in Codes).

Protected Information

Power Member

26.3 Protected Information, for the purposes of APX's obligations under this paragraph 26, means any information relating to the affairs of the Power Member which is obtained by APX in writing, or by electronic transmission of data, pursuant to or in the course of the implementation or performance of the Membership Agreement and the APX Rules and, in relation to any Power Bilateral Trade or Trade Leg, the relevant Power Trading Terms including:

- (a) the Power Member's Signature and Log-in Codes;
- (b) information provided by the Power Clearing Member to APX pursuant to the Credit Policy and details of the Member's Approved Credit Limit and record of payment of charges under the APX Rules;
- (c) in relation to any Power Bilateral Trade or Trade Leg to which the Power Member is a party, the identity of the Power Member; and
- (d) details of the Power Member's Connection Equipment,

and, for the purposes of the Power Member's obligations under paragraph 26.2, means any information relating to the affairs of APX or any other Member which is obtained in writing, or by electronic transmission of data, by the Power Member pursuant to or in the course of the implementation or performance of the Membership Agreement and the APX Rules including:

- (a) the Power Member's Signature and Log-in Codes; and
- (b) the Service and Data

Gas Clearing Member

26.4 Protected Information, for the purpose of APX's obligations under this paragraph 26, means any information relating to the affairs of the Gas Clearing Member which is obtained by APX in writing, or by electronic transmission of data, pursuant to or in the course of the implementation or performance of the Membership Agreement and the APX Rules including, but not limited to:-

- (a) the Gas Clearing Member's Signature and Log-in Codes;
- (b) information provided by the Gas Clearing Member to APX pursuant to the Credit Policy and detail of the Member's Approved Credit Limit and record of payment of charges under the APX Rules;
- (c) in relation to any Trade Leg to which the Gas Clearing Member is a party, the identity of the Gas Clearing Member; and
- (d) details of the Gas Clearing Member's Connection Equipment

and for the purposes of the Gas Clearing Member's obligations under this paragraph 26, means any information relating to the affairs of APX or any other Member which is obtained in writing, or by electronic transmission of data, by the Gas Clearing Member pursuant to or in the course of the implementation or performance of the Membership Agreement and the APX Rules including:

- (a) the Gas Clearing Member's Signature and Log-in Codes; and
- (b) the Service and Data.

Duties of Person to Whom Protected Information is Disclosed

26.5 Where Protected Information is disclosed by APX as permitted under paragraph 26.1 or by the Member as permitted under paragraph 26.2, the Party disclosing such information shall take all reasonable steps to secure that the person to whom the information is disclosed:

- (a) is aware of that Party's obligations under, as the case may be, paragraph 26.1 or 26.2 in relation thereto; and
- (b) does not disclose the information other than as is permitted of such Party in accordance with paragraph 26.1 or 26.226.2.

Permitted Disclosures

26.6 Nothing in paragraph 26.1 or 26.2 shall apply:

- (a) to the disclosure by APX or the Member of the entitlement of the Member to access and use the Operating System;
- (b) to the disclosure or use by a Party of Protected Information to which the other Party has consented in writing;
- (c) to any Protected Information which is in or enters the public domain, other than as a result of a breach by a Party of its obligations under paragraph 26.1; or
- (d) to the disclosure of any Protected Information to any person by a Party if and to the extent that such Party is required to make such disclosure to such person:
 - (i) in compliance with its duties under the Gas Act, the Electricity Act or the Regulation on Wholesale Energy Market Integrity and Transparency; or
 - (ii) in the case of the Member, in compliance with the conditions of the Member's Licence, or any document referred to in such licence with which the Member is required by virtue of the Gas Act or the Electricity Act or such licence to comply; or
 - (iii) in compliance with any other Legal Requirement or the law of any other jurisdiction; or
 - (iv) in response to a requirement of any stock exchange or regulatory authority or the Panel on Take-overs and Mergers; or
 - (v) pursuant to paragraph 34 (*Jurisdiction and Disputes*), or pursuant to any judicial process or tribunal having jurisdiction in relation to such Party; or
 - (vi) pursuant to any provision of the Membership Agreement, the APX Rules or, in respect of any Bilateral Trade or Trade Leg, the Trading Terms or, where applicable to Gas Trading Terms; or
 - (vii) pursuant to any obligation on that Party under the Hub Rules.
- (e) to the disclosure of Protected Information where and to the extent that the disclosure of such information is reasonably required to be disclosed to any lending or other financial institution proposing to provide or arrange the provision of finance to, or security for, such Party, for the purposes of the provision or arrangement of such finance or security, and provided that the person to whom the information is disclosed undertakes in writing to be bound by the provisions of this paragraph with respect to the other Party;
- (f) to the disclosure of Protected Information where and to the extent that the disclosure of such information is reasonably required to a bona fide prospective purchaser of either Party or of the business of either Party or any part thereof,

provided that the person to whom the information is disclosed undertakes in writing to the other Party to be bound by the provisions of this paragraph with respect to the other Party;

- (g) to the disclosure to the Authority of any Protected Information reasonably requested by the Authority;
- (h) to the disclosure by APX of any Protected Information to its current, or any prospective, bankers, insurers, insurance brokers and/or underwriters to such extent as may be reasonably required for the purposes of exercising its rights and performing its obligations under the APX Rules and/or obtaining any insurance and/or Facility and/or for the purposes of enabling any such bankers, insurers to enforce any of their rights or enforce payment of any Debt or other payment due to APX assigned to any of them provided APX notifies such persons of its obligations under paragraph 26.1 and takes reasonable steps to secure an appropriate obligation of confidentiality from such persons.

Additional Permitted Disclosures by the Clearing House in relation to Members

26.7 Nothing in paragraph 26.1 shall apply to the disclosure by the Clearing House of:

- (a) data regarding the number of Power Bilateral Trades or Orders processed by the Operating System in any period; and
- (b) data regarding the average or weighted average prices of such Power Bilateral Trades or Orders (or any category thereof) in respect of any period; and
- (c) data regarding aggregate quantities of such Power Bilateral Trades or Orders (or any category thereof) in any period,

provided that the Clearing House does not specify the Member as being a Party to any such Order or Power Bilateral Trade; and/or

- (d) data made available to Members pursuant to paragraph 19.3; and
- (e) data relating to Orders, provided that the Member is not identified as being a Party to any Power Bilateral Trade or Order.

Any such disclosure may be made to any person to whom the Clearing House has granted access to the Operating System for the purposes of viewing data displayed thereby, including price reporting agencies, irrespective of whether such persons are Members.

Disclosure Following Unauthorised Access to the Markets

26.8 Where:

- (a) either APX or the Member has disclosed information and has complied with the requirements of, in the case of APX, paragraph 20.1(a) and 20.1(b), and, in the case of the Member, paragraph 22.1(d); and

- (b) notwithstanding such compliance, a person obtains any Protected Information by unauthorised access to any element of the Operating System for which such either APX or the Member is responsible,

neither APX nor the Member shall not be in breach of paragraph 26.1 or 26.2 by virtue of such person having so obtained such Protected Information.

Survival of Confidentiality Provisions

- 26.9 The provisions of paragraphs 26.1 to 26.8 inclusive shall continue to bind the Power Member and the Gas Clearing Member (as applicable) and APX for a period of three years after termination of the Membership Agreement, notwithstanding, and irrespective of the reason for, such termination.

Ownership of Data on Operating System

- 26.10 Subject to paragraph 26.11(a), the data which is processed by, or recorded or maintained on, the Operating System (including all data derived therefrom, and any compilations of such data created by or on behalf of APX, together with all intellectual property rights in respect of any such data) shall belong to APX and, subject to paragraphs 26.1 and 26.11(b), APX may, without prejudice to any other requirement of the APX Rules, use, deal with and disclose, such data as it thinks fit.

Ownership of Data Provided by the Member

- 26.11 Where, as contemplated by the APX Rules, a Member provides data to APX via the Operating System;
 - (a) such data (as provided to APX by the Member) shall belong to the Member; and
 - (b) the Member hereby grants to APX (without prejudice to paragraph 26.1) a perpetual, non-exclusive, royalty-free licence (which shall survive the termination of the Membership Agreement) in respect of such data and all intellectual rights therein to use, copy, adapt and deal with such data for the purposes of performance and implementation of the APX Rules and, in respect of any Bilateral Trade or Trade Leg, the Trading Terms or the Gas Trading Terms as applicable, and for other purposes contemplated by the APX Rules (including any disclosure of information permitted by paragraphs 26.6 and 26.7, but without prejudice to paragraph 26.1) and such Trading Terms or Gas Trading Terms as applicable, but not otherwise.

Use of Data Provided by APX to the Member

- 26.12 Where, pursuant to the APX Rules, APX provides data to the Member, or any part of the Data is made available to the Member in accordance with the terms of the APX Rules, the Member shall (but without prejudice to paragraph 26.2) be entitled to download and copy such data (or such part of the Data) and use such data (or such part of the Data) free of charge for the purposes of its internal management activities (including in connection with the trading of energy and associated risk management activities).

Events of Default and Potential Events of Default

- 26.13 Notwithstanding any other provision of these APX Rules, APX may give notice of an Event of Default or Potential Event of Default in relation to a Member to (i) any other Member which has entered into arrangements with that Member under the APX Rules or (ii) (where required to do so by any Legal Requirement) any Competent Authority.

27. REMIT REPORTING

27.1 For the purpose of EU Regulation on wholesale energy market integrity and transparency n° 1227/2011 (REMIT) APX proposes, on demand of the Power Member:

- i) to provide the Power Member with its orders and transactions in the format required by ACER on SFTP Server;
- ii) a data reporting service to ACER and Competent Authorities.

These two distinct services. Both services:

- (a) concern the following data (all or none) on all APX as requested by REMIT:
- (b) Orders, Power Bilateral Trades and/or Trade Legs;
- (c) OTC Spot Power Transactions cleared via APX trade registration facility;
- (d) are optional;
- (e) take place once per day and seven days a week;
- (f) are subject to a specific agreement.

27.2 Both services as mentioned in paragraph 27.1 do not concern orders or transactions concluded via other exchanges or OTC outside of APX platforms.

28. ASSIGNMENT

No Assignment

28.1 Subject to paragraph 28.2, the Member may not assign or transfer, nor purport to assign or transfer the benefit or burden of the Membership Agreement and the APX Rules or any Power Bilateral Trade or Trade Leg, without the prior written consent of APX, which consent shall not be unreasonably withheld or delayed by APX.

28.2 A Party may assign its rights under the APX Rules by way of security to or in favour of any bank or financial institution in relation to the financing of the Party's business activities on giving written notice to the other Party. Upon assignment, the rights and/or obligations under the Membership Agreement or the APX Rules, including rights and obligations under Power Bilateral Trades and/or Trade Legs, assigned shall inure and be binding upon the successors and assigns of the Member.

Assignment to a Group Company

- 28.3 APX may assign all or any part of its rights and obligations under the Membership Agreement including the APX Rules to any of its Affiliates and the Member hereby consents to such assignment in advance.

29. NOTICES AND APX RULES NOTICES

General

- 29.1 Save where it is specified in the APX Rules or otherwise indicated by APX to the Member that any document, notice or other communication must or may be delivered or made in writing, by facsimile transmission or by telephone, or by other means, all documents, notices and other communications delivered or made, or required to be delivered or made, by or from one Party to the other Party under, or in connection with, the matters contemplated by, the APX Rules, shall be delivered or made electronically in eye readable format.

Electronic Communications

- 29.2 Any document, notice or communication to be delivered or made electronically shall be transmitted via the Operating System unless otherwise specified or permitted in the APX Rules.
- 29.3 Any communications to the Member automatically generated by the Operating System shall (where relevant) be deemed to be communications from APX for the purposes of these APX Rules.
- 29.4 Any document, notice or communication delivered or made electronically shall be effective at the time of transmission save where it confirms an earlier document, notice or communication delivered or made in accordance with these APX Rules by some other means of communication.
- 29.5 The address of a Party, and the representative for whose attention communications to be transmitted electronically other than by means of the Operating System are to be marked, shall be:
- (a) in respect of the Member, as specified by the Member pursuant to the Membership Criteria;
 - (b) in respect of APX:

Address: ukoperations@apxgroup.com

or such address and representative as such Party may from time to time notify in writing to the other for the purposes of receipt of communications by that Party.

Written Communications

- 29.6 Any document, notice or communication required by the APX Rules or in relation to any Power Bilateral Trade, the Power Trading Terms, and any Gas Bilateral Trade the Gas Trading Terms, to be delivered or made in writing shall be addressed to the

recipient at the recipient's address or facsimile number determined in accordance with paragraph 29.7, and marked for the attention of the representative (identified by name or title) referred to in that paragraph, and shall be deemed to have been received:

- (a) in the case of delivery by hand, when delivered; or
- (b) in the case of delivery by first class prepaid post, on the second Business Day following the day of posting or (if sent airmail from overseas) on the fifth Business Day following the day of posting; or
- (c) in the case of facsimile transmission, on acknowledgement of full receipt by the addressee's facsimile receiving equipment (where such acknowledgement occurs before 17.30 hours on a Business Day) and in any other case at 09.00 hours on the Business Day next following the day of acknowledgement.

Address etc. for Written Communications

29.7 The address and facsimile number of a Party, and the representative for whose attention written notices are to be marked, shall be:

- (a) in respect of the Member, as specified by the Member pursuant to the Membership Criteria;
- (b) in respect of APX:

Address: APX Commodities Limited
3rd Floor
18 King William Street
London
EC4N 7BP

Facsimile No. +31 20 305 4002

Notices to be marked for the attention of:

Managing Director

or such other address, facsimile number and representative as such Party may from time to time notify in writing to the other for the purposes of receipt of communications by that Party.

Telephone Communications

29.8 For the purposes of enabling telephone communications to be made pursuant to the APX Rules:

- (a) APX and the Member shall provide to each other not more than three telephone numbers and details (by name or title) of the representative to whom the Party giving such a communication should speak; and

- (b) each Party shall use reasonable endeavours to ensure that the other will at any time be able to contact a representative (of the first Party) by means of one of such telephone numbers; and
- (c) each Party consents to the recording by the other of telephone communications made pursuant to the APX Rules and warrants that it has obtained the consent of each of its representatives authorised to make such communications by telephone to such recording; and
- (d) each Party shall procure that any representative for the purposes of making telephone communications shall on request of the other Party in the course of such telephone communication identify himself or herself to the reasonable satisfaction of the other Party.

Telephone Answering Machines

- 29.9 Unless otherwise agreed by the Parties, and save as provided in Schedule 4, a message recorded on a telephone answering device shall not be a valid method of telephone communication.

Power Trading Terms

- 29.10 All notices to be sent in relation to any Power Bilateral Trade pursuant to the Power Trading Terms shall be made in writing.

APX Rules Notices

- 29.11 APX may from time to time issue APX Rules Notices in relation to any matter pertaining to the use or operation of or otherwise relating to the APX Rules and may publish the same on the APX Website in the area or section of such website reserved from time to time for the publication of such notices. On publishing an APX Rules Notice APX shall take reasonable steps to send details of that APX Rules Notice via electronic mail to Members.
- 29.12 An APX Rules Notice shall be effective from the time stated as the effective date, notwithstanding that any Member has not or has not been able, for whatever reason, to read the APX Rules Notice.
- 29.13 An APX Rules Notice shall remain in effect until it is amended or superseded by another APX Rules Notice or is withdrawn by APX.

30. WAIVER

- 30.1 No delay by, or omission of, either Party in exercising any right, power, privilege or remedy under the Membership Agreement, the APX Rules, or, in respect of any Power Bilateral Trade, the Power Trading Terms, shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof.
- 30.2 Any single or partial exercise of any such right, privilege or remedy shall not preclude any other or future exercise thereof or the exercise of any other right, power, privilege or remedy.

31. SEVERANCE

If any provisions of the APX Rules or Membership Agreement or, in relation to any Power Bilateral Trade, the Power Trading Terms is or becomes or is declared invalid, unenforceable or illegal by any jurisdiction to which it is subject or by order of the Commission of the European Communities or any Court, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of the APX Rules, the Membership Agreement or Power Trading Terms which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.

32. AMENDMENTS AND CHANGES TO THE APX RULES

Changes to the APX Rules, Annexes and the Membership Agreement

- 32.1 The APX Rules and the Annexes hereto, including the Membership Agreement, may be changed only in accordance with Schedule 3 or paragraph 33.9 (save where expressly provided otherwise therein).

33. MISCELLANEOUS

Language

- 33.1 Every document, notice or other communication delivered or made, or required to be delivered or made, by or from one Party to another under the Membership Agreement, the APX Rules and, in relation to any Power Bilateral Trade, the Power Trading Terms, shall be in the English language.

Membership Agreement

- 33.2 The Membership Agreement and, in relation to each Power Bilateral Trade, the Power Trading Terms incorporating the terms of such Power Bilateral Trade, shall be binding upon and ensure to the benefit of the Parties thereto and their respective permitted assignees.

Sub-contracting

- 33.3 APX may sub-contract the performance of all or any part of its obligations to any of its Affiliates and the Member hereby consents to such assignment in advance.
- 33.4 APX shall be responsible for any, and all, acts, defaults or neglects of any contractor and its servants or agents in the performance of APX's obligations pursuant to the APX Rules or any part thereof, as if they were the acts, defaults or neglects of APX.

Force Majeure

- 33.5 Subject to paragraph 19.8 (in relation to Power Members only) and compliance with paragraph 33.6, the obligations of each of APX and the Member pursuant to the APX Rules, other than the obligations to make payments of money, shall be suspended during the period and to the extent that such Party is prevented or hindered from complying therewith by Force Majeure.

- 33.6 If either Party shall rely on the occurrence of an event or circumstance of Force Majeure as a basis for being excused from performance of any of its obligations under the APX Rules, then the Party relying on the event or circumstance shall:
- (a) provide prompt written notice to the other Party of the occurrence of the event or circumstance, giving an estimate of its expected duration and the probable impact on the performance of its obligations hereunder;
 - (b) use its reasonable endeavours to remove or overcome the event or circumstance of Force Majeure, provided that nothing shall require a Party to accede to demands deemed to be unreasonable by such Party in connection with a strike or labour dispute;
 - (c) provide notice to the other Party of the cessation of the event or circumstance giving rise to such Force Majeure; and
 - (d) resume the performance of the obligation which it was unable to fulfil as a result of such Force Majeure as soon as reasonably practicable after the removal of the event or circumstance giving rise to such Force Majeure.
- 33.7 Unless expressly provided in the APX Rules, Force Majeure may not be claimed by the Member based upon purely economic considerations such as (i) loss of the Member's markets; (ii) the Member's inability to economically use or re-sell energy products; (iii) the inability to generate, transmit, distribute or consume electricity or gas or to procure the generation, transmission, distribution or consumption of electricity or gas.

Labour Disputes

- 33.8 Notwithstanding 33.6, the settlement of any strike, lockout, or labour dispute constituting a Force Majeure shall be within the sole discretion of the Party involved in that labour dispute, and the obligation to use commercially reasonable efforts to resolve or remedy such stick, lockout or labour dispute does not apply.

Change in Law

- 33.9 APX has entered into the Membership Agreement and agreed to provide services and Power Products to the Power Member and the clearing services to the Clearing Member based on and in reliance upon the continuation of all applicable Legal Requirements and law (**Laws**) in effect as of the date of the Membership Agreement. If a change in Law will render any provision(s) of the APX Rules illegal, unenforceable, or impracticable, then APX shall as soon as reasonably practicable after becoming aware of such change in Law notify each Member of the change in Law and its effect on such provision(s). Such notice shall contain the modification necessary to ensure that such provision(s) is/are not rendered illegal, unenforceable or impracticable. If such a modification is not possible, APX may in its sole discretion suspend or terminate the relevant provision(s) of the APX Rules that is/are affected by the change in Law in whole or in part (including the provision of a service or a Power Product to the Power Member or the provision of clearing services to the Clearing Member) with immediate effect. If reasonably possible APX shall make any such modification, termination or suspension in accordance with the rules change procedures in Schedule 3.

Further Assurance

- 33.10 Each Party shall do all necessary acts and make, execute, and deliver such written instruments as shall from time to time be reasonably required to carry out the terms of the APX Rules.

34. JURISDICTION AND DISPUTES

Escalation

- 34.1 Prior to initiating proceedings in accordance with the following provisions of this paragraph 34, the Parties shall escalate the issue or issues in dispute to the next level of management for resolution on a step by step basis to enable the issue to be resolved. Although it is the good faith intention of the Parties to use this escalation procedure in respect of any particular dispute to the fullest extent possible, nothing in this paragraph 34.1 shall prevent either Party seeking, obtaining or implementing any remedy or relief pursuant to paragraph 34.2 in respect of any dispute or actionable breach of the APX Rules or, in relation to any Power Bilateral Trade, the Power Trading Terms.

English Courts

- 34.2 The Parties irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the APX Rules and, in relation to any Power Bilateral Trade (including, for the avoidance of doubt, the associated Trade Legs), the Power Trading Terms, and that accordingly any suit, action or proceeding (collectively, for the purposes of this paragraph 34 “proceedings”) arising out of or in connection with the APX Rules and any such Power Bilateral Trade may be brought in such courts.
- 34.3 Each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any proceedings in any such court as is referred to in paragraph 34.2 and any claim that any such proceedings have been brought in an inconvenient forum, and further irrevocably agrees that a judgement in any proceedings brought in the English courts shall be conclusive and binding upon such Party and may be enforced in the courts of any other jurisdiction.
- 34.4 If the Member is not a company incorporated under the Companies Act it shall provide to APX in writing an address in a Member country of the European Union for service of process on its behalf in any proceedings.
- 34.5 The Member shall not revoke any notice provided pursuant to this paragraph 34, save in circumstances where it has notified APX in writing of an alternative address in England and Wales for service on its behalf of any proceedings with effect from the date of such revocation.
- 34.6 The Member irrevocably waives any right to claim that service of process in any proceedings has not been properly effected where such service of process has been effected by delivery to the address for service last notified to APX in accordance with this paragraph 34.6.

Mediation

- 34.7 Where they so agree, the Parties may refer any dispute with respect to any APX Rules, Power Bilateral Trade or Gas Bilateral Trade to mediation.

Status of Documents

- 34.8 Each Party agrees not to contest the validity or enforceability of Documents under the provision of any law applicable to such Party which provides that any documents are to be in writing or signed on behalf of any person.

Admissibility of Documents

- 34.9 In any proceedings or mediation between the Parties, a paper copy of any Document shall be admissible to the same extent and under the same conditions as other records originated and maintained in a documentary form.

Waiver

- 34.10 Without prejudice to the Parties' rights to challenge the authenticity of any documentary reproduction of a Document, neither Party shall, in any proceedings or mediation between the Parties, contest the admissibility of a documentary copy of any Document on the basis that the Document was originated in non-documentary form.

35. GOVERNING LAW

The Membership Agreement, the APX Rules, and, in respect of any Power Bilateral Trade or related Trade Leg, the Power Trading Terms, or any Gas Bilateral Trade or related Trade Leg, the Gas Trading Terms, shall be governed by and construed in all respects in accordance with English law.

36. RETENTION OF RECORDS

- 36.1 The Clearing House will retain a complete and chronological record of each Power Bilateral Trade (and resulting Trade Legs) and, in relation to a Gas Bilateral Trade, the resulting Trade Legs only, to which the Member is a party for six years following the expiry of the Delivery Period(s) of such Power Bilateral Trade or Gas Bilateral Trade (or, as applicable, the related Trade Leg).
- 36.2 At the request of the Member, and subject to payment by the Member of the Clearing House's reasonable costs of doing so, the Clearing House will, as soon as reasonably practicable after a request to do so, provide to the Member a copy of information retained by the Clearing House pursuant to paragraph 36.1.
- 36.3 Notwithstanding paragraph 36.2, the Member shall be responsible (without relying on the records referred to in paragraph 36.1) for maintaining appropriate records of Bilateral Trades and Trade Legs (including Trade Legs relating to Gas Bilateral Trades) to which the Member is a party.
- 36.4 APX and the Member shall ensure that electronic or computer records maintained pursuant to this paragraph 36 are accessible and are capable of being reproduced in eye readable form and of being printed, if required.

37. ACTION IN EVENT OF DEFAULT

In case of an Event of Default or Potential Event of Default in respect of a Member, the Clearing House may buy, sell or enter into as many Power Products or Gas Products (and in the case of Gas Products through the market operated by ENDEX or otherwise) at such times and at such prices as the Clearing House in its absolute discretion considers necessary either for its own account or as agent for the Member (and the Member irrevocably appoints APX as its agent, in order to secure to APX the ability (but so as not to impose upon APX any obligation to exercise that right) to trade out the position to which APX would be otherwise exposed, to do all things, exercise all powers and give all notices as may be required (including giving ECV Notifications to or from any person)) and the Member agrees to ratify and confirm whatever APX does in accordance with this paragraph 37:

- (a) to protect any Market, service, Power Product or Gas Product in the longer term;
- (b) to preserve the Clearing House's ability to make ECV Notifications;
- (c) to minimise APX's credit exposure to the Clearing Member,

and the Member shall be liable for any costs, fees, charges or other amounts payable by or on behalf of APX in relation to those Power Products or Gas Products and shall be entitled to receive any amounts paid to APX in APX's capacity as agent or a buyer or seller of those Power Products or Gas Products, subject to the right of APX to set-off these amounts against any other amounts owing (whether contingent or matured) to APX under this Agreement, in addition any other remedies APX may have, subject to paragraph 23.

38. CODE OF CONDUCT

Compliance with Laws

- 38.1 At all times during the term of the Membership Agreement, the Parties shall comply with all applicable Laws that relate to or have an impact upon the Parties' performance under the APX Rules.

Required Authorisations

- 38.2 Each Party shall maintain in full force and effect and comply with all required authorisations at all times during the term of the Membership Agreement.

No Improper Action

- 38.3 The Member shall not take any action that would undermine or improperly manipulate any Market, service, Power Product, any Other Member or APX.

No Violation

- 38.4 No Party shall take any action that would cause the other Party, or any Other Member to violate any Law, industry rules, or the APX Rules.

Timely Response

- 38.5 The Member and APX shall at all times respond to any communication from the other Party or its representatives in a timely manner.

Information

- 38.6 The Member shall update its Registration Form and advise APX of any required changes as soon as practicable after the relevant information changes.

Prohibition on Trading

- 38.7 Subject to paragraph 20.1(e) and paragraph 37, APX and its employees and directors are prohibited from the wholesale buying or selling, for their own account or otherwise, of a commodity or product for which APX operates a Market, or a commodity or product related thereto.

Prohibition on Interest in Members

- 38.8 APX and its employees and directors are prohibited from serving as a representative of any entity that is a Member.

No Self Dealing by the Power Member

- 38.9 The Power Member may not make or confirm a Power Bilateral Trade with itself and may not intentionally accept an Order in whole or part placed by itself or any of its Affiliates or representatives without APX's prior written consent. Nothing in this paragraph shall prevent the simultaneous acceptance of a Bid and an Offer posted by the Power Member where both constitute Auction Orders relating to the same Power Product.

SCHEDULE 1

CREDIT POLICY

1. DEFINITIONS

1.1 Unless otherwise defined in this Credit Policy, terms used herein shall have the meanings attributed to them in the Membership Agreement and the APX Rules.

1.2 In the APX Rules, the “Net Exposure” of the Clearing Member at any time, shall be the amount estimated by APX to be equal to:

(a) **(settlement amounts owed by the Clearing Member)** the total amount payable to APX by the Clearing Member as set out in all Invoices made available at that time but not yet paid;

less:

(b) **(settlement amounts owing to the Clearing Member)** the total amount payable by APX to the Clearing Member as set out in all Invoices made available at that time but not yet paid;

plus:

(c) **(uninvoiced settlement amounts owed by the Gas Clearing Member)** (OCM) in respect only of OCM Trades, the total of all Trade Value amounts payable to APX by the Gas Clearing Member which have not been included in a Invoice made available at that time;

less:

(d) **(uninvoiced settlement amounts owed to the Gas Clearing Member)** (OCM) in respect only of OCM Trades the total of all Trade Value amounts payable by APX to the Gas Clearing Member which have not been included in a Invoice made available at that time;

plus:

(e) **(uninvoiced settlement amounts owed by the Power Clearing Member)** (Day-ahead-market and Spot Power) in respect only of Day-ahead-market Trades and Spot Power Bilateral Trades, the total of all Trade Value amounts payable to APX by the Power Clearing Member which have not been included in a Invoice made available at that time, to the extent only that such Trade Value amounts reflect Delivery Periods that are Irrevocably Delivered;

less:

(f) **(uninvoiced settlement amounts owing to the Power Clearing Member)** (Day-ahead-market, Spot Power and Storage) in respect only of Day-ahead-market Trades, Spot Power Bilateral Trades and Storage Trades, the total of all Trade Value amounts payable by APX to the Power Clearing Member which

have not been included in a Invoice made available at that time, to the extent only that such Trade Value amounts reflect Delivery Periods that are Irrevocably Delivered;

plus:

- (g) **(initial margin amount)** in respect only of Day-ahead-market and Spot Power Bilateral Trades:

$$\sum_y \max(0, \frac{E_y - D_y}{E_y} V_y) \max(I_y P_y, G_y) - \min(0, \frac{E_y - D_y}{E_y} V_y) \max(J_y P_y, G_y)$$

where:

E_y : is the total number of Delivery Periods relating to individual Power Product ‘y’;

D_y : is the number of Delivery Periods relating to individual Power Product ‘y’ that are Irrevocably Delivered;

V_y : is the net volume (in the relevant Volume Unit) relating to individual Power Product ‘y’, where a buy volume is represented by a positive value and a sell volume is represented by a negative value;

I_y : is the (buy) initial margin parameter (expressed as a percentage) relating to individual Power Product ‘y’, evaluated according to the relevant APX Rules Notice;

P_y : is the prevailing market reference price (in the relevant Price Unit) relating to individual Power Product ‘y’, calculated by APX from time to time;

G_y : is the initial margin floor parameter (in the relevant Price Unit) relating to individual Power Product ‘y’, evaluated according to the relevant APX Rules Notice;

J_y : is the (sell) initial margin parameter (expressed as a percentage) relating to individual Power Product ‘y’, evaluated according to the relevant APX Rules Notice;

plus:

- (h) **(variation margin amount)** in respect only of Day-ahead-market and Spot Power Bilateral Trades:

$$\sum_t (\frac{E_y - D_y}{E_y} V_{ty}) \max(p_{ty} - P_y)$$

where:

E_y : is the total number of Delivery Periods relating to individual Power Product ‘y’;

D_y: is the number of Delivery Periods relating to individual Power Product ‘y’ that are Irrevocably Delivered;

v_{ty}: is the Volume (in the relevant Volume Unit) relating to individual Trade Leg ‘t’ in individual Power Product ‘y’, where a buy volume is represented by a positive value and a sell volume is represented by a negative value;

p_{ty}: is the Price (in the relevant Price Unit) relating to individual Trade ‘t’ in individual Power Product ‘y’;

P_y: is the prevailing market reference price (in the relevant Price Unit) relating to individual Power Product ‘y’, calculated by APX from time to time;

plus:

(i) **(order margin amount) (Continuous Orders)** in respect only of OCM Orders, Day-ahead-market Orders, Spot Power Continuous Orders and Storage Orders
:

$$\sum_{b,s} v_{by} \max(A_y p_{by}, H_y) + v_{sy} \max(B_y p_{sy}, H_y)$$

where:

v_{by}: is the Volume (in the relevant Volume Unit) relating to individual live Bid ‘b’ in individual Gas Product ‘y’, for which trading is not closed;

A_y: is the (buy) order margin parameter (expressed as a percentage) relating to individual Gas Product ‘y’, for which trading is not closed, evaluated according to the relevant APX Rules Notice;

p_{by}: is the price (in the relevant Price Unit) relating to individual live Bid ‘b’ in individual Gas Product ‘y’ for which trading is not closed;

H_y: is the order margin floor parameter (in the relevant Price Unit) relating to individual Gas Product ‘y’, for which trading is not closed, evaluated according to the relevant APX Rules Notice;

v_{sy}: is the Volume (in the relevant Volume Unit) relating to individual live Offer ‘s’ in individual Gas Product ‘y’, for which trading is not closed;

B_y: is the (sell) order margin parameter (expressed as a percentage) relating to individual Gas Product ‘y’, for which trading is not closed, evaluated according to the relevant APX Rules Notice;

p_{sy}: is the price (in the relevant Price Unit) relating to individual live Offer ‘s’ in individual Product ‘y’ for which trading is not closed;

plus:

(j) **(order margin amount) (Auction Orders)** in respect only of Spot Power Auction Orders and Spot Power Day-Ahead Afternoon Auction Orders:

$$\sum_y \max(0, U_y) A_y Q_y - \min(0, U_y) B_y Q_y$$

where:

U_y : is the (indicative) net volume (in the relevant Volume Unit) relating to individual Power Product 'y' that would arise in respect of all Orders submitted, were the relevant Auction Algorithm to be run at that time, where a buy volume is represented by a positive value and a sell volume is represented by a negative value;

A_y : is the (buy) order margin parameter (expressed as a percentage) relating to individual Power Product 'y', evaluated according to the relevant APX Rules Notice;

Q_y : is the (indicative) Market Auction Price (in the relevant Price Unit) relating to individual Power Product 'y' that would arise, were the relevant Auction Algorithm to be run at that time;

B_y : is the (sell) order margin parameter (expressed as a percentage) relating to individual Product 'y', evaluated according to the relevant APX Rules Notice;

plus:

(k) **(Position Limit amount)** in respect only of Spot Power Bilateral Trades, the amount equal to the Position Limit (in MW), specified to APX by the Power Clearing Member from time to time and which is effective at that time, multiplied by the Position Limit parameter (in £/MW), evaluated according to the relevant APX Rules Notice;

plus:

(l) **(other amounts owed by the Clearing Member)** the total of any other amounts (including VAT) which are payable by the Member under the APX Rules and which have not been included in an Invoice made available at that time;

less:

(m) **(other amounts owing to the Clearing Member)** the total of any other amounts (including VAT) which are payable to the Clearing Member under the APX Rules and which have not been included in an Invoice made available at that time.

1.3 A Product shall be irrevocably delivered (***Irrevocably Delivered***) in respect of each of its constituent Delivery Periods, for the purposes of this Schedule 1, at the time indicated in the relevant Market Specification.

2. CREDIT CRITERIA

2.1 This policy sets out the basis on which the Clearing Member may (with a view to obtaining or increasing an Approved Credit Limit) provide Collateral for the Clearing Member's Net Exposure.

2.2 The amount of the Clearing Member's Approved Credit Limit will be determined at the sole discretion of APX.

3. COLLATERAL GUIDELINES

3.1 APX shall have an absolute discretion as to what Collateral is acceptable to it.

4. CREDITWORTHINESS

4.1 The creditworthiness of Collateral proposed or provided to APX shall be determined by reference to any of the following, and other, factors, at APX's discretion:

- long term credit rating(s) from Moody's or Standard and Poor's rating agencies; and/or
- bank and other references; and/or
- corporate history and public records; and/or
- audited financial statements.

5. CONFIDENTIALITY

5.1 For the avoidance of doubt, credit information provided by or in relation to a guarantor shall be treated as "Protected Information" for the purposes of paragraph 19 of the APX Rules.

6. APPLICATION OF PROCEEDS OF COLLATERAL

6.1 If at any time, proceeds are paid to APX under an instrument of Collateral supporting obligations of a Clearing Member to APX under the APX Rules, APX shall apply such proceeds to the Settlement Account.

SCHEDULE 2

TERMS OF USE OF OPERATING SYSTEM

1. TERMS OF USE OF OPERATING SYSTEM

1.1 This schedule sets out the entitlement of Members in respect of the use of the Service and Data made available to them by APX in the course of its operation of the Operating System and imposes restrictions and obligations upon them in respect of the use of such Service and Data.

Service

1.2 (a) Subject to the restrictions in paragraph 2.1, the Member may:

- (i) view Data made available by APX to it for viewing in accordance with the APX Rules; and
- (ii) use the Service for so long as it is a Member, for the purposes contemplated by, and subject to, the APX Rules, but not otherwise.

Duration of Service

1.3 The Service granted to the Member in paragraph 1.2 is royalty-free, non-exclusive and non-transferable and shall terminate automatically upon termination of the Membership Agreement.

Ownership of Service and Data

1.4 The Service, the Data, operating instructions and all copyright and other intellectual property rights of whatever nature therein are and shall at all times remain, as between APX and the Member, the property of APX.

2. LIMITATIONS ON USE OF SERVICE AND DATA

2.1 The Member shall not:

- (a) sub-license the use of, or supply, the Service, the Data and/or any part of it to a third party;
- (b) except as may be permitted by law or as provided in paragraph 7, decompile, reverse engineer, disassemble or otherwise reduce, in whole or in part, any part of the Service or Data to eye readable form, or consent to any third party doing so;
- (c) assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber the Service and/or the Data or any accompanying documentation for itself or on behalf of a third party or make the same available to any such third party, provided that the Member shall be permitted to authorise any individual engaged by the Member as an independent contractor to access and use the

Operating System, in accordance with, and subject to, the APX Rules on behalf of, and in the name of, the Member;

- (d) delete, modify, remove or in any way obscure any copyright and proprietary notices of APX or any third party on any copy of the Service, the Data or operating instructions;
- (e) save as provided by paragraph 6, copy the Service or the Data, and nothing in the APX Rules shall permit or in any way entitle the Member to create derivative works based on the Service or the Data;
- (f) sell or otherwise dispose of equipment on which any part of the Data, or a copy of it, is stored, kept or to be found without first ensuring that the Data and all such copies have been previously deleted;
- (g) use, duplicate or display any part of the Service or Data or permit any third party to view the Service or Data made available by APX to it for viewing in any manner not expressly permitted by the APX Rules;
- (h) save to the extent expressly permitted to do so by the APX Rules, or otherwise with the express prior written agreement of APX, make derivative works based on, or compilations of data derived from, the Service or Data; or
- (i) save as pursuant to the exercise of the rights of the Member under the APX Rules, modify, copy or adapt the Service or Data.

Protection of Service and Data

2.2 The Member shall:

- (a) reproduce APX's and any third party's copyright and proprietary notices on any copy made by it of any part of the Service, Data or operating instructions;
- (b) without prejudice to the foregoing, take all such other reasonable steps which shall from time to time be necessary in the reasonable opinion of APX to protect the confidential information and intellectual property rights of APX in the Service, the Data and operating instructions;
- (c) inform all of its relevant employees, agents, independent contractors and sub-contractors (where applicable) that the Service and the Data constitutes confidential information of APX and that all intellectual property rights therein are the property of APX, and the Member shall take all such steps as shall be necessary (to the standard of a Reasonable and Prudent Operator) to ensure compliance by such relevant employees, agents, independent contractors and sub-contractors with the provisions of this schedule; and
- (d) be responsible for:
 - (i) any electronic communication originated by or on its behalf or deemed to be originated by it pursuant to the APX Rules, as applicable; and

- (ii) for its acts and the acts of its servants, agents, independent contractors and sub-contractors,

in connection with the Operating System or the Data.

Unauthorised Use of Service and Data

2.3 The Member shall not, and shall not attempt to, download, delete, modify, damage, and/or access for any purpose, other than as authorised under the APX Rules, any software program comprised in the Operating System and/or installed on any equipment operated by or on behalf of APX in connection with the operation of the Operating System.

2.4 The Member shall not, and shall not attempt to, download, delete, modify, and/or access for any purpose, other than as authorised under the APX Rules, any part of the Service or Data, and shall not attempt to damage or corrupt the Data.

3. INFRINGING SERVICE AND DATA

3.1 In the event that any of, or any part of the Service, the Data or operating instructions becomes, or in APX's reasonable opinion is likely to become, the subject of a claim for infringement of copyright or any other intellectual property rights owned or claimed by a third party, APX may (without prejudice to any other action it may take in respect of such claimed infringement) take all reasonable actions in relation to the Service, the Data and/or the operating instructions, which are necessary or desirable so as to avoid the infringement, comply with the terms of any judgement or order arising therefrom or so as to facilitate settlement of any such claim.

4. INDEMNITY

4.1 The Member shall indemnify and hold harmless APX from and against any and all loss, liability, damage, claim, action, proceeding, and cost and expense reasonably incurred by APX, resulting from, or arising in connection with, any breach by the Member of paragraphs 1.2, 2.1, 2.2, 2.3 and/or 2.4 and any actions of any person for which the Member is responsible pursuant to paragraph 2.2(d)), other than actions properly taken by such person on the Member's behalf pursuant to an express provision under the APX Rules.

Reasonable Assistance

4.2 Where any claim has been made against APX on the basis of facts, events or circumstances which are, or may be, the subject of the indemnity given under paragraph 4.1 by the Member, the Member shall, where requested to do so, provide reasonable assistance, not being financial assistance (but without prejudice to the indemnity itself), to APX in defending the claim.

5. CONNECTION EQUIPMENT

5.1 The Member shall secure that its Connection Equipment complies with the minimum requirements published by APX by APX Rules Notice from time to time and, shall bear the costs of upgrading or replacing the Connection Equipment in order to

secure that it complies with any amendment to such minimum requirements and is interoperable with the Service and Data.

6. COPIES

6.1 The Member shall be entitled to make such number of transient electronic copies of screen displays generated by the Operating System as it reasonably requires in order to view data comprised in the Service and the Data made available to it by APX for viewing, and obtaining access to and use of the Operating System in accordance with, and subject to, the APX Rules.

7. INTEROPERABILITY

7.1 Unless APX notifies the Member that it does not intend (for whatever reason, including, cost) to make available interface information necessary to achieve interoperability of the Service and/or the Data with independently created computer programs, such information will be provided by APX on request by the Member and (save where prevented by law) upon payment of APX's reasonable costs and expenses for procuring or supplying such information.

7.2 Where APX notifies the Member that it does not intend to make such information available as aforesaid, the Member shall be permitted to take such steps to reverse engineer or decompile such of the Service and Data as is provided to it by APX (otherwise than solely by way of APX making such Service and Data available for the use of the Member) to the extent permitted by law.

8. EXCLUSIONS

8.1 Save as provided in the APX Rules, all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise in respect of the Data and the provision of all and any support services by APX in connection therewith are, to the fullest extent permitted by law hereby excluded.

9. INTERPRETATION

9.1 Save where otherwise specified a reference in this schedule to a paragraph shall be a reference to a paragraph of this schedule.

9.2 Save as provided by paragraph 9.3 terms used in this schedule and defined in the APX Rules shall have the meaning ascribed to them therein.

9.3 For the purposes of this schedule, the following terms shall have the meanings ascribed to them below:

API means the automated programming interface that allows the viewing, posting, modifying and accepting of orders on the Operating System without accessing user screens;

Data means the body of data created by, processed by, or recorded or maintained on the Operating System from time to time and any compilations of such data created by or on behalf of APX; and

Service means, together with the Data, the functionality of the Operating System, including the API.

SCHEDULE 3

RULES CHANGES

1. INTRODUCTION

1.1 Subject always to paragraph 1.2, this schedule (as modified from time to time) comprises the procedures for amending the APX Rules (including for the avoidance of doubt this schedule) and the annexes hereto.

1.2 For the avoidance of doubt, this schedule shall not apply regarding proposed amendments to the Statement of Charges (which may be revised from time to time by APX by not less than ten Business Days prior written notice to the Members, although nothing in this paragraph 1.2 shall prejudice APX's right to publish revisions to the Statement of Charges in consequence of any Change Proposal in the manner provided in this schedule). Statement of Charges

2. DEFINITIONS AND INTERPRETATION

2.1 In this schedule the following words and expressions shall, unless the context otherwise requires, have the following meanings:

Change Proposal means a proposal to change the APX Rules, made by APX;

2.2 In this schedule, unless the context requires otherwise, a reference to a particular paragraph is a reference to a paragraph in this schedule.

3. CHANGE PROPOSALS

3.1 APX may from time to time issue a Change Proposal in accordance with the provisions of this schedule, to implement amendments to the APX Rules. A Change Proposal amending, deleting or substituting any provision set out in the APX Market Rules shall be clearly marked as a "Change Proposal" (but any omission by APX in this regard shall not affect the effectiveness of any such notice).

3.2 A Change Proposal will be issued at least 14 Days before the changes to the APX Rules become effective unless APX deems an earlier entry into force necessary in accordance with paragraph 6 of this Schedule.

3.3 A Member has the right to terminate the Membership Agreement pursuant to paragraph 24 if it does not wish to be bound by the terms of a Change Proposal, and a Change Proposal shall only become effective as specified in accordance with paragraph 29 (Notices and APX Rules Notices) and this Schedule.

3.4 Where the provisions of any APX Rules are amended or replaced pursuant to this Schedule, such amendments shall apply only in respect of Spot Power Bilateral Trade entered into after the date of such Change Proposal, unless otherwise specified therein

3.5

4. FORM OF CHANGE PROPOSAL

4.1 Subject to paragraph 4.2, each Change Proposal shall:

- (a) be in eye readable electronic format;
- (b) set out in reasonable but not excessive detail the nature and purposes of the Change Proposal;
- (c) disclose the identity of the Proposer.

4.2 APX may, from time to time by notice to all Members, specify the form which Change Proposals should take.

5. CONSULTATION WITH THE AUTHORITY

5.1 APX and any Member may consult with the Authority from time to time in relation to the subject matter of any Change Proposal.

6. MARKET EMERGENCIES

If an emergency occurs which has or may have an adverse effect on the integrity, security or functioning of a Market, a service or a Power Product, as determined by APX in its reasonable discretion, APX shall have the right to amend or modify the relevant provision(s) of the APX Rules that is/are affected by the market emergency, suspend or restrict trading in a Power Product or suspend or restrict the provision of a service without notice in order to respond to the emergency. Any such amendments or modifications to the APX Rules will not be applied retrospectively. To the extent practicable, APX shall consider the Member's interests and the interests of all other Members in an emergency and shall act reasonably during and after the emergency. Where reasonably practicable, any provision(s) of the APX Rules that is/are amended or modified as a result of the market emergency shall, after the market emergency has ended, be reinstated with effect from when, or as soon as reasonably practicable after, the market emergency has ended.

SCHEDULE 4

SERVICE LEVEL AGREEMENT

1. OPERATING SYSTEM UNAVAILABILITY

1.1 For the purposes of this schedule the Operating System shall be deemed to be unavailable for access to, and use by, the Member where:

- (a) the Member is unable to connect to the Operating System using any of the Member's Log-in Codes or where the Member is connected to the Operating System and such connection fails and the Member is unable to connect to the Operating System using any other of its Log-in Codes; or
- (b) the Member is otherwise unable to access and/or use the Operating System in accordance with the provisions of the APX Rules,

in each case where such inability does not occur:

- (i) during a Planned Maintenance Period; and/or
- (ii) as a result of a suspension of rights to access and/or use the Operating System in accordance with the provisions of the APX Rules

and in this schedule "System Unavailability" shall be construed accordingly.

1.2 If there is an event of System Unavailability in any Membership Fee Period which is not caused by or does not result from any or all of the following:-

- (a) an event or circumstance of Force Majeure;
- (b) a Connection Failure;
- (c) any breach by the Member of any obligation in the APX Rules, or any negligent act or omission or wilful default of the Member;
- (d) the Member's operator error; or
- (e) circumstances in which the Member is expressed in the APX Rules to have no right or remedy against APX under the APX Rules in respect of access to, and/or use of, the Operating System,

then the membership fee set out in or otherwise calculated in accordance with the Statement of Charges and payable by the Power Member under paragraph 8.2 of the APX Rules and by the Clearing Member under paragraph 12.9 shall be reduced by the amount (if any) calculated in accordance with paragraph 1.3 of this schedule, provided that the total reduction in respect of any Membership Fee Period shall not exceed the total membership fee payable by the Member in respect of such period.

1.3 The reduction shall be:

$$3.8 * \frac{A * B}{D}$$

Where:

A = the number of hours (rounded to the nearest whole number) in which the period of System Unavailability referred to in paragraph 1.2 of this schedule persists for a continuous period in excess of one hour, but excluding any period of System Unavailability arising as a consequence of APX continuing the suspension of the operation of the Operating System subsequent to the resolution of the events or circumstances giving rise to the event of System Unavailability during a period in which the Hub Rules so require;

B = membership fee for the Membership Fee Period; and

D = the number of hours in the Membership Fee Period

1.4 Without prejudice to the obligations of APX under paragraph 2 of this schedule (which shall continue in full force and effect), save where otherwise expressly provided in the APX Rules, the reduction in membership fees provided under and in accordance with paragraphs 1.2 and 1.3 of this schedule shall be the Member's sole remedy under the APX Rules against APX in respect of System Unavailability.

2. APX SUPPORT DESK

2.1 APX agrees to operate a 24 hour manned telephone facility (the *Support Desk*) to provide the following functions:

- (a) the receipt, logging and escalation of incidents and faults including System Unavailability (*Problem Calls*); and
- (b) the verbal provision of information, including support on the routine use and operation of the Operating System and advice and assistance on user procedures and the communication of ideas and methods intended to assist the Member in obtaining the best possible use from the Operating System.

All telephone calls to the Support Desk will be recorded by APX.

2.2 The Support Desk can be contacted on +31 20 305 4031 (or such other telephone number as may be notified from time to time by APX for such purpose). All Problem Calls will be answered by a suitably trained operator unless all available operators are busy on other calls in which case the Member will be put through to an answering machine and APX will ensure that an operator responds within 10 minutes. 90% of Problem Calls shall be answered by a suitably trained operator within 30 seconds.

2.3 Any Problem Calls should include the following information if known:-

- (a) Member name;
- (b) trader name, location and telephone number;
- (c) date and time of problem;

- (d) error message number and text (if applicable);
- (e) description of problem; and
- (f) where known, events that led to problem.

2.4 Following a Problem Call, APX shall allocate the reported problem to the appropriate expert within APX. APX will diagnose the reported problem (which with the co-operation of the Member may be by remote fault diagnosis) and notify the Member with its determination of the nature and cause of the reported problem.

2.5 Without prejudice to paragraph 1.2 of this schedule in respect of System Unavailability, APX shall use all reasonable endeavours to rectify the reported problem (which may be undertaken remotely and by recommendations for correction).

2.6 Although the diagnosis and rectification (where applicable) of reported problems as required in this schedule will generally be carried out by APX remotely, the Parties recognise that it may be necessary for APX to visit the Member's premises to discharge its obligations under this paragraph 2. Such visits shall be at APX's sole discretion but shall not be carried out except with the prior agreement of the Member (not to be unreasonably withheld or delayed).

2.7 If requested to do so by APX, the Member shall allow APX such reasonable access to its premises and its systems or hardware used to access and use the Operating System which, in the reasonable opinion of APX, is required in order to investigate and rectify reported problems under this paragraph 2. In connection therewith, APX shall, or shall procure that its representatives shall, comply with rules of the Member with respect to the safety and security of its premises and information held therein, and prior to obtaining access to the Member's premises, APX will sign an undertaking of confidentiality where reasonably requested by the Member.

ANNEX 1

SPOT POWER TRADING TERMS

1. SCOPE

1.1 Overview

This Annex 1 to the APX Rules sets out the requirements, procedures, and protocols for Spot Power Trading.

1.2 Spot Power Trading

Spot Power Trading involves the Power Member buying and selling volumes of electricity for notification under the Balancing and Settlement Code.

1.3 Power Product and Market

Each Spot Power Bilateral Trade relates to a Power Product and Spot Power Trading is conducted as a discrete Market.

1.4 Interpretation

In this Annex a, references to a paragraph are to a paragraph of this Annex 1, unless otherwise stated.

2. OTC SPOT POWER TRANSACTIONS

2.1 Request

The Power Member may request that an OTC Spot Power Transaction be accepted for clearing by the Clearing House (an *OTC Spot Power Transaction Request*) by the submission of, in a means acceptable to the Clearing House:

- (a) the volume of electricity it has agreed with another Power Member to buy or sell (which shall be deemed to be an amount in MWh for one or more Settlement Period(s), as applicable, equal to the amount specified in MW multiplied by the duration of the Power Product in hours);
- (b) the Settlement Period or Settlement Periods for which it has agreed to buy or sell that volume of electricity;
- (c) the price (in £/MWh) for that volume of electricity;
- (d) the Power Member's Energy Account which should be debited or credited, as appropriate, under the Balancing and Settlement Code if the OTC Spot Power Transaction is confirmed;
- (e) whether the Power Member is the Seller or the Buyer;

- (f) the identity of the Other Power Member with whom it has agreed the OTC Spot Power Transaction (the ***Other Power Member***) and details of that Other Power Member's Energy Account; and
- (g) (vii) such other information as may reasonably be required by the Clearing House.

2.2 Confirmation

- (a) If that Other Power Member agrees with the OTC Spot Power Transaction Request, it may confirm the OTC Spot Power Transaction Request.
- (b) The Power Member may confirm an OTC Spot Power Transaction Request made by another Power Member.
- (c) If an OTC Spot Power Transaction Request is logged by the Operating System as confirmed, paragraph 3.1(a) shall apply.
- (d) If an OTC Spot Power Transaction Request is not confirmed the Clearing House may delete the OTC Spot Power Transaction Request.

2.3 Time Limits and Term Structure

OTC Spot Power Transaction Requests and confirmations of OTC Spot Power Transaction Requests shall be subject to and shall conform with the time limits and term structures, including the market closure time published in a relevant APX Rules Notice from time to time.

2.4 Appointment of Agent

- (a) At the sole discretion of APX, the Power Member may, by documentation acceptable to APX, appoint an Agent to act on its behalf for the purposes of paragraphs 2.1 and 2.2, provided that the appointment shall only become effective upon the date on which APX notifies the Power Member that it accepts the appointment (the ***Agent***).
- (b) The Power Member shall be liable for the acts or omissions of any Agent appointed by it to the extent that that the Agent acts or purports to act on behalf of that Power Member in connection with this Agreement. The obligations entered into by an Agent acting or purporting to act on behalf of a Power Member in connection with this Agreement shall be binding on that Power Member.
- (c) The Power Member may appoint more than one Agent to act for it at any time, but not more than one Agent shall act for any Power Member at the same time in relation to any OTC Spot Power Transaction.

3. SPOT POWER TRADING TERMS

3.1 Clearing House as Counterparty

- (a) A Spot Power Trade Leg shall exist between the Power Member and the Clearing House when:
- (i) the Power Member's Spot Power Continuous Order is logged as matched or filled by the Operating System or the Power Member's acceptance of a Spot Power Continuous Order of another Power Member is logged by the Operating System;
 - (ii) an OTC Spot Power Transaction Request, which has been made or confirmed by that Power Member, in accordance with paragraph 2 is logged by the Operating System as confirmed; or
 - (iii) the Power Member's Spot Power Auction Order is logged as accepted by the Operating System,
 - (iv) the Power Member's Spot Power Day-Ahead Afternoon Auction Order is logged as accepted by the Operating System,

and, in the case of either (i), (ii), (iii) or (iv) novation to the Clearing House as CCP has occurred (*Spot Power Trade Leg*).

- (b) .

3.2 Payment and invoicing for Power Members

- (a) The Power Clearing Member shall pay, or be entitled to be paid, an amount for the volume of electricity to be bought or sold, respectively, in accordance with a Spot Power Trade equal to that volume (in MWh) multiplied by the relevant Price (in £/MWh) for that Spot Power Trade Leg (the *Spot Power Trade Amount*) in accordance with paragraph 8 and 16 of the APX Rules (regardless of whether or not the volume of electricity to be bought or sold under that Spot Power Trade Leg was taken into account in an ECV Notification).
- (b) The Power Clearing Member shall pay the fees and the Pass-Through Amounts applicable to the Spot Power Bilateral Trade and Spot Power Trade Leg in accordance with paragraph 8 and 16 of the APX Rules and (c) up to and including (d) hereunder.
- (c) The Invoicing Period for Power Trading Members is monthly. The Invoicing Period for Power Clearing Members is daily.
- (d) The Invoice Delivery Date and the Invoice Settlement Date for the Spot Power Market is the first Business Day following the end of the Invoice Period.

4. CONDITIONS FOR SPOT POWER TRADING

- (a) The Power Member may not submit or accept an Order or make or confirm an OTC Spot Power Transaction Request unless the following conditions are met (each a *Trading Condition*):

- (i) the Clearing House holds an ECV Notification Agent Authorisation which will allow it to make an ECV Notification on behalf of the Power Member and the Clearing House with respect to the relevant Energy Account Pair;
- (ii) no Event of Default has occurred and the Power Member has complied with this Agreement;
- (iii) the Power Member
 - (A) is a contract trading party (as defined in the Balancing and Settlement Code) and has Energy Accounts;
 - (B) is in compliance with the Balancing and Settlement Code;
 - (C) has conducted and is conducting its affairs so as not to give cause for any ECV Notification made by the Clearing House on its behalf to be refused, rejected, cancelled, disapproved or nullified (whether in whole or in part) on grounds that the Power Member is in level 1 or level 2 credit or other default under the Balancing and Settlement Code or is not in compliance with any applicable credit cover requirements under the Balancing and Settlement Code or otherwise; and
 - (D) in relation to Power Clearing Members only, the Power Clearing Member maintains sufficient Collateral in accordance with Schedule 1 to cover the Order or acceptance.
- (b) If any of the conditions under (a) cease to be satisfied after the Power Member has submitted or accepted an Order, APX may, but is not obliged to, withdraw the Order or the Clearing House may, but is not obliged to, not make an ECV Notification with respect to the Leg resulting from acceptance of that Order.

5. ECV NOTIFICATION AGENT AUTHORISATION

5.1 Validation of ECV Notification Agent Authorisation

- (a) Before the Power Member submits or accepts an Order for a Spot Power bilateral Trade or makes or confirms an OTC Spot Power Transaction Request, it shall:
 - (i) ensure that it is a contract trading party (as defined in the Balancing and Settlement Code); and
 - (ii) request that the Clearing House send it an ECV Notification Agent registration form and complete, sign and return that form.
- (b) the Clearing House shall then send the registration form to the ECV Aggregation Agent.
- (c) the Clearing House shall notify the Power Member when the Clearing House has been notified that it may act as ECV Notification Agent for the Power

Member and the Clearing House with respect to an Energy Account Pair and has been given all necessary authorisation IDs, authorisation keys and other information necessary for APX to act as ECV Notification Agent in accordance with the Balancing and Settlement Code.

- (d) The requirements for authorising the Clearing House to act as an ECV Notification Agent are specified under the Balancing and Settlement Code, the Balancing and Settlement Code procedures documents and other documents and communications from, or on behalf of, the ECV Aggregation Agent, other BSC Agents and Elexon, which may vary from time to time. Accordingly, the Power Member acknowledges that it may have to comply with other or different requirements or complete additional forms in order to allow the Clearing House to be or continue to be an ECV Notification Agent.
- (e) The Power Member acknowledges that the Balancing and Settlement Code may restrict the types of transactions for which an ECV Notification may be made by reference to the characterisation of Energy Accounts. In particular, the Clearing House must be registered as ECV Notification Agent for each different Energy Account Pair.

5.2 Other Requirements

- (a) Each Party shall do all things reasonably necessary in co-operation with the other, in addition to complying with the requirements of paragraph 5.1, to ensure that the Clearing House obtains an indefinite ECV Notification Agent Authorisation as required to make ECV Notifications required by the Power Member.
- (b) If, before the Clearing House's role as ECV Notification Agent is cancelled, the Clearing House does not have an ECV Notification Agent Authorisation as required to make ECV Notifications in relation to Spot Power Trade Legs of the Power Member, each Party shall do all things reasonably necessary in co-operation with each other, to ensure that the Clearing House obtains and maintains that ECV Notification Agent Authorisation as soon as practicable.

5.3 Termination of ECV Notification Agent Authorisation

Without prejudice to paragraphs 17.2 to 17.4 of the APX Rules (*Suspension*), paragraph 25.4 of the APX Rules (*ECV Notification Withdrawal, Cancellation and Termination*) and paragraph 37 of the APX Rules (*Action in Event of Default*) and the ECC Clearing Conditions, neither Party shall terminate an ECV Notification Agent Authorisation that has been validated by the ECV Aggregation Agent otherwise than in accordance with paragraph 4.3.

5.4 Cancelling the Authorisation

- (a) The Power Member may send a cancellation notice to the Clearing House requiring the Clearing House to stop acting as ECV Notification Agent for the Power Member and the Clearing House with respect to a specified Energy Account Pair once no further Outstanding Spot Power Trade Legs remain for that Energy Account Pair.

- (b) If any of the Notification Conditions cease to be satisfied, the Clearing House may notify the Power Member that it will cease to act as ECV Notification Agent in relation to one or more specified Energy Account Pairs.
- (c) As soon as practicable after the Clearing House receives a cancellation notice under (a) and no further Outstanding Spot Power Trade Legs remain for the relevant Energy Account Pair or the Clearing House sends a notice under (b), the Clearing House shall notify the ECV Aggregation Agent that its appointment as ECV Notification Agent for the Power Member and the Clearing House with respect to the relevant Energy Account Pair should
- (d) The Clearing House shall cease to act as ECV Notification Agent for the Power Member and the Clearing House with respect to the relevant Energy Account Pair with effect from the relevant date which is notified by the ECV Aggregation Agent to the Clearing House.
- (e) From the time that the Power Member gives a notice under (a) or receives a notice under (b), the Power Member shall not submit or accept any Spot Power Trade Orders or make or confirm an OTC Spot Power Transaction Request, ECV Notifications for which would be required to be made with respect to the relevant Energy Account Pair.

6. SUBMISSION OF ECV NOTIFICATIONS

6.1 Netting and Submission

- (a) Provided that the Notification Conditions are satisfied, all Outstanding Spot Power Trade Legs for an Energy Account Pair shall be taken into account in a notification submitted to the ECV Aggregation Agent.
- (b) For each Energy Account Pair, a notification shall be made (if required) to the ECV Aggregation Agent on behalf of the Power Member and the Clearing House so that the cumulative net Energy Contract Volume notified by the Clearing House for each Settlement Period, Gate Closure for which is after the ECV Notification Submission Time, (the *Net Settlement Period Volume*) equals the cumulative net Energy Contract Volumes for those Settlement Periods in all the then current Outstanding Spot Power Trade Legs and in all Outstanding Spot Power Trade Legs which have been taken into account in previous notifications made by the Clearing House. For these purposes Energy Contract Volumes which are to be debited to an Energy Account shall be subtracted from Energy Contract Volumes which are to be credited from that Energy Account.
- (c) To the extent that an Outstanding Spot Power Trade Leg covers a period greater than a Settlement Period, the period covered by the Outstanding Spot Power Trade Leg shall be broken down into its constituent Settlement Periods for the purposes of determining the Net Settlement Period Volume to be notified.

6.2 Conditions for Notification

The notification conditions (each a *Notification Condition*) are that:

- (a) the Clearing House holds an ECV Notification Agent Authorisation which will allow it to make the relevant accurate ECV Notification;
- (b) no Event of Default has occurred and the Power Member has complied with this Agreement;
- (c) a cancellation notice given under paragraph 4.4 has not become effective;
- (d) the Power Member:
 - (i) is a contract trading party (as defined in the Balancing and Settlement Code) and has Energy Accounts;
 - (ii) is in compliance with the Balancing and Settlement Code;
 - (iii) has conducted and is conducting its affairs so as not to give cause for any ECV Notification made by the Clearing House on its behalf to be refused, rejected or cancelled, disappplied or nullified (whether in whole or part) on grounds that the Power Member is in level 1 or level 2 credit or other default under the Balancing and Settlement Code or is not otherwise in compliance with any applicable credit cover requirements under the Balancing and Settlement Code or otherwise.

6.3 Other Information

If, for the purpose of making an Accurate ECV Notification, the Clearing House requires any information which it does not possess and cannot, using reasonable endeavours, obtain, then the Clearing House may give notice to the Power Member specifying what information it requires, and if the Power Member possesses or can, using reasonable endeavours, obtain that information, the Power Member shall furnish it to the Clearing House as soon as reasonably practicable.

6.4 Withdrawal of Notification

Except as provided in this Agreement, neither Party shall withdraw, cancel, amend or replace an ECV Notification without the prior consent of the other Party (which consent shall not be unreasonably withheld or delayed).

6.5 Inaccurate Notification

If either Party notifies the other Party that the Net Settlement Period Volume notified under the Balancing and Settlement Code is not accurate, then each Party shall take all reasonable steps to enable the Clearing House to correct the error.

6.6 Cancellation of Default Settings

Notwithstanding that the Net Settlement Period Volume is zero, if an ECV Notification is required under the Balancing and Settlement Code (due to rules relating to default settings or otherwise) to ensure that the Net Settlement Period Volume of zero is taken into account as an Energy Contract Volume, the Power Member shall comply with this annex in order to allow the required ECV Nomination to be made.

7. NOTIFICATION FAILURE IN RELATION TO POWER CLEARING MEMBERS ONLY

7.1 Failure Circumstances

- (a) Except to the extent that APX is relieved from complying with a relevant obligation under paragraphs 33.5 to 33.7 of the APX Rules (*Force Majeure*) and subject to (b) below and the limitations on liability set out in paragraph 7.3 (below) and paragraphs 23.6, 23.16 and 23.17 of the APX Rules, if, in respect of a Settlement Period and an Energy Account of the Power Clearing Member, the net Energy Contract Volume (if any) notified by APX and not refused, rejected, cancelled, disappplied or nullified for the purposes of the Balancing and Settlement Code does not equal the "Expected Energy Contract Volume" (which shall mean the net Energy Contract Volume determined by taking into account all Energy Contract Volumes, relating to all relevant Spot Power Trade Legs, for which the Notification Conditions were satisfied at the relevant time, adjusted if relevant for any trades entered into by APX pursuant to paragraphs 24.1 and 37 of the APX Rules), then one Party shall pay to the other Party, as the case requires, an amount calculated by reference to paragraph 7.2 as if APX were the Non Complying Party and the Power Clearing Member were the Complying Party.
- (b) Except to the extent that APX is relieved from complying with a relevant obligation under paragraphs 33.5 to 33.7 of the APX Rules (*Force Majeure*), if, in respect of a Settlement Period and an Energy Account of APX, the net Energy Contract Volume (if any) notified by APX and not refused, rejected, cancelled, disappplied or nullified for the purposes of the Balancing and Settlement Code does not equal the Expected Energy Contract Volume (as defined in paragraph 7.1(a)) due to the act or omission of the Power Clearing Member, then one Party shall pay to the other Party, as the case requires, an amount calculated by reference to paragraph 7.2 as if the Power Clearing Member were the Non-Complying Party and APX were the Complying Party.

7.2 Deemed Imbalance Charges

For a Settlement Period, if a payment is required to be made under paragraph 7.1, then APX shall calculate the amounts set out below for the Spot Power Trade Legs to which the circumstances apply and the resulting net amount shall be paid by the Party owing that amount to the other Party subject to paragraph 7.3(c):

- (a) the Non-Complying Party shall owe the Complying Party an amount equal to the Deemed Imbalance Charges (if any) deemed to be incurred by the Complying Party; and
- (b) the Complying Party shall owe the Non-Complying Party an amount equal to the Deemed Imbalance Charges (if any) deemed to be payable to the Complying Party.

7.3 Liabilities

- (a) Payment in accordance with the provisions of this paragraph 7 shall be full and final satisfaction of the rights of Parties for any total or partial failure of APX

to accurately notify Energy Contract Volumes on behalf of the Power Clearing Member or itself, howsoever caused and even if caused by the negligence or breach of duty of APX or the Power Clearing Member.

- (b) APX shall not be liable to the Power Clearing Member for any losses, costs, damages, claims or payments of whatsoever nature to the extent arising because an ECV Notification is refused, rejected, cancelled, disappplied or nullified (in whole or in part) due to a failure of the Power Clearing Member to maintain credit cover as required by the Balancing and Settlement Code or because a Level 1, Level 2 credit or other default occurs or is claimed to have occurred with respect to the Power Clearing Member under the Balancing and Settlement Code.
- (c) For the avoidance of doubt, in respect of Spot Power Bilateral Trades and Spot Power Trade Legs, these Spot Power Trading Terms are governed by the provisions of paragraph 23 of the APX Rules.

ANNEX 2

ECV NOTIFICATION SERVICE TERMS

1. SCOPE

1.1 General Introduction

This Annex 2 to the APX Rules sets out the requirements, procedures, and protocols for ECV Notifications where the Power Member and a Second Power Member wish APX to make the ECV Notification on their behalf.

1.2 ECV Notification

An ECV Notification is required under the Balancing and Settlement Code to enable trading in electricity in the England and Wales wholesale market to be taken into account when assessing a party's exposure to certain imbalance charges.

1.3 Interpretation

References to a paragraph mean a paragraph of this Annex 2, unless otherwise stated.

2. ARRANGING THE SERVICE

2.1 Request for the Service

- (a) If the Power Member wishes APX to be the ECV Notification Agent for itself and a Second Power Member with respect to a specified Energy Account Pair, then it shall:
 - (i) ensure that it and the Second Power Member are contract trading parties (as defined in the Balancing and Settlement Code) and have Energy Accounts; and
 - (ii) request that APX send it and the Second Power Member an ECV Notification Agent registration form.
- (b) When the Power Member and the Second Power Member have signed and returned the ECV Notification Agent registration form to APX, APX shall send the registration form to the ECV Aggregation Agent.
- (c) APX shall notify the Power Member and the Second Power Member advising each of each other's ECV Notification Counterparty ID with respect to the Energy Account Pair when APX has been notified that it may act as ECV Notification Agent for them, and has been given all necessary authorisation IDs, authorisation keys and other information necessary for APX to act as ECV Notification Agent in accordance with the Balancing and Settlement Code.
- (d) The requirements for authorising APX to act as an ECV Notification Agent are specified under the Balancing and Settlement Code, the Balancing and Settlement Code procedures documents and other documents and

communications from, or on behalf of, the ECV Aggregation Agent, other BSC Agents, and Elexon, which may vary from time to time. Accordingly, the Power Member acknowledges that it and the Second Power Member may have to comply with other or different requirements or complete additional forms in order to allow APX to be an ECV Notification Agent with respect to the particular transactions contemplated by the Power Member.

- (e) The Power Member acknowledges that the Balancing and Settlement Code may restrict the types of transactions for which an ECV Notification may be made by reference to the characterisation of Energy Accounts. In particular, APX must be registered as ECV Notification Agent for each different Energy Account Pair.

2.2 Other Requirements

- (a) Each Party and the Second Power Member shall do all things reasonably necessary in co-operation with each other, in addition to complying with the requirements of paragraph 2.1, to ensure that APX obtains an indefinite ECV Notification Agent Authorisation as required to make ECV Notifications required by the Power Member and the Second Power Member prior to the Gate Closure applicable to the first Settlement Period for which the Power Member and the Second Power Member wish an ECV Notification to be made.
- (b) If, before APX's role as ECV Notification Agent is cancelled in accordance with this Agreement, APX does not have an ECV Notification Agent Authorisation as required to make ECV Notifications required by the Power Member and the Second Power Member, each Party and the Second Power Member shall do all things reasonably necessary in co-operation with each other, to ensure that APX obtains and maintains that ECV Notification Agent Authorisation as soon as practicable.

2.3 Termination of ECV Notification Agent Authorisation

Without prejudice to paragraphs 17.2 to 17.4 of the APX Rules (*Suspension*), paragraph 25.4 of the APX Rules (*ECV Notification Withdrawal, Cancellation and Termination*), paragraph 37 of the APX Rules (*ECV Notification Withdrawal, Cancellation and Termination*), neither Party shall terminate or replace an ECV Notification Agent Authorisation that has been validated by the ECV Aggregation Agent otherwise than in accordance with paragraph 3.

2.4 Cancelling the Service

- (a) Either the Power Member or the Second Power Member may send a cancellation notice to APX requiring APX to stop acting as ECV Notification Agent for the Power Member and the Second Power Member with respect to a specified Energy Account Pair once no further Pending ECV Notifications remain for that Energy Account Pair.
- (b) If any of the Notification Conditions cease to be satisfied, APX may notify the Power Member and the Second Power Member that it will cease to act as ECV Notification Agent in relation to one or more specified Energy Account Pairs.

- (c) As soon as practicable after APX receives a cancellation notice under (a) and no further Pending ECV Notifications remain for the relevant Energy Account Pair or APX sends a notice under (b), APX shall notify the ECV Aggregation Agent that its appointment as ECV Notification Agent for the Power Member and Second Power Member with respect to the relevant Energy Account Pair should be cancelled.
- (d) APX shall cease to act as ECV Notification Agent for the Power Member and the Second Power Member with respect to the relevant Energy Account Pair with effect from the relevant date which is notified by the ECV Aggregation Agent to APX.
- (e) From the time that the Power Member gives a notice under (a) or receives a notice under (b), the Power Member shall not submit any Notification Requests or confirm any Notification Requests made by the Second Power Member for the relevant Energy Account Pair (except to reduce its Net Settlement Period Volume to zero MWh).

3. NOTIFICATION

3.1 Notification Request

The Power Member may request that an ECV Notification be made (a *Notification Request*) via its user interface by entering:

- (a) the ECV Notification Counterparty ID;
- (b) the periods for which the ECV Notification should be made;
- (c) the volume of electricity to be notified (in MW) for that period (which shall be deemed to be an amount in MWh for one or more Settlement Period(s), as applicable, equal to the amount specified in MW multiplied by 0.5 hours);
- (d) at the Power Member's option, the price (in £/MWh) for that period;
- (e) whether the Power Member is the Seller or the Buyer;
- (f) the applicable Energy Account Pair; and
- (g) such other information as may reasonably be required.

3.2 Confirmation

- (a) The Notification Request shall be displayed on the Second Power Member's user interface.
- (b) If the Second Power Member agrees with the Notification Request, it may confirm the Notification Request via its user interface.
- (c) The Power Member may confirm a Notification Request made by the Second Power Member via its user interface.

- (d) If a Notification Request is logged by the Operating System as confirmed, it shall be considered a pending ECV notification (a ***Pending ECV Notification***). A Pending ECV Notification shall cease to be a Pending ECV Notification once it is taken into account in a notification made under paragraph 5.
- (e) If a Notification Request is not confirmed within 6 months of being made or, if a Notification Request has not been confirmed and a Notification Condition applicable to that Notification Request ceases to be satisfied, APX may delete the Notification Request from the Power Members and the Second Power Member's User Interface.

3.3 Time Limits and Term Structure

Notification Requests and confirmations of Notification Requests shall be subject to and shall conform to the time limits and term structures published in the relevant APX Rules Notice from time to time.

3.4 Payment and invoicing

- (a) The Power Member shall pay the fees and the Pass-Through Amounts applicable to the Pending ECV Notification in accordance with paragraph 8 and paragraph 16 of the APX Rules and (b) up to and including (d) hereunder.
- (b) The Invoice Period for the ECV Notification service is daily.
- (c) The Invoice Delivery Date and the Invoice Settlement Date for the ECV Notification service is the first Business Day following the end of the Invoice Period.

4. SUBMISSION OF ECV NOTIFICATIONS

4.1 Netting and Submission

- (a) Provided that the Notification Conditions are satisfied, Pending ECV Notifications shall be taken into account in a notification submitted to the ECV Aggregation Agent in accordance with the timetable set out in the relevant APX Rules Notice. Each time at which such a notification is submitted is called an ECV Notification submission time (an ***ECV Notification Submission Time***).
- (b) For each ECV Notification Submission Time and each Energy Account Pair, a notification shall be made (if required) to the ECV Aggregation Agent on behalf of the Power Member so that the cumulative net Energy Contract Volume notified by APX each Settlement Period, Gate Closure for which is after the ECV Notification Submission Time, (the ***Net Settlement Period Volume***) equals the cumulative net Energy Contract Volumes for those Settlement Periods in all the then current Pending ECV Notifications and in all Pending ECV Notifications which have been taken into account in previous notifications made by APX. For these purposes Energy Contract Volumes which are to be debited to an Energy Account shall be subtracted from Energy Contract Volumes which are to be credited from that Energy Account.

- (c) To the extent the Pending ECV Notification covers a period greater than a Settlement Period, the period covered by the Pending ECV Notification shall be broken down into its constituent Settlement Periods for the purposes of determining the Net Settlement Period Volume to be notified.

4.2 **Conditions for Notification**

The notification conditions (each a *Notification Condition*) are that:

- (a) APX holds an ECV Notification Agent Authorisation which will allow it to make the relevant ECV Notification;
- (b) no Event of Default has occurred under this Agreement and the Power Member has complied with this Agreement;
- (c) no Event of Default has occurred under the agreement between the Second Power Member and APX which is equivalent to this Agreement and the Second Power Member has complied with that agreement;
- (d) a cancellation notice given under paragraph 2.4 has not become effective;
- (e) the Power Member and the Second Power Member:
 - (i) are each a contract trading party (as defined in the Balancing and Settlement Code) and each have Energy Accounts;
 - (ii) are in compliance with the Balancing and Settlement Code;
 - (iii) have each conducted and are conducting their respective affairs so as not to give cause for any ECV Notification made by the Clearing House on their behalf to be refused, rejected, cancelled, disappplied or nullified (whether in whole or part) on grounds that the Power Clearing Member or the Second Power Member is in level 1 or level 2 credit or other default under the Balancing and Settlement Code or is not otherwise in compliance with any applicable credit cover requirements under the Balancing and Settlement Code or otherwise.

4.3 **Other Information**

If, for the purpose of making an ECV Notification, APX requires any information which it does not possess and cannot, using reasonable endeavours, obtain, then APX may give notice to the Power Member specifying what information it requires, and if the Power Member possesses or can, using reasonable endeavours, obtain that information, the Power Member shall furnish it to APX as soon as reasonably practicable.

4.4 **Withdrawal of Notification**

Except as provided in this Agreement neither Party shall withdraw, cancel or replace an ECV Notification without the prior consent of the other Party and the Second Power Member (which consent shall not be unreasonably withheld or delayed).

4.5 **Inaccurate Notification**

If either Party notifies the other Party that the net Settlement Period Volume notified under the Balancing and Settlement Code is not accurate then each Party and the Second Power Member shall take all reasonable steps to enable the Clearing House to correct the error.

4.6 **Cancellation of Default Settings**

Notwithstanding that the net Settlement Period Volume is zero, if an ECV Notification is required under the Balancing and Settlement Code (due to rules relating to default settings or otherwise) to ensure that the net Settlement Period Volume of zero is taken into account as an Energy Contract Volume, the Power Member and the Second Power Member shall comply with this Annex 2 in order to allow the required ECV Nomination to be made.

5. **NOTIFICATION FAILURE**

5.1 **Failure Circumstances**

Except to the extent that APX is relieved from complying with a relevant obligation under paragraphs 33.5 to 33.7 of the APX Rules (*Force Majeure*) and subject to the limitations on liability set out in paragraph **Erreur ! Source du renvoi introuvable.** and paragraphs 23.6, 23.16 and 23.17 of the APX Rules, if, in respect of a Settlement Period and an Energy Account of the Power Member, the net Energy Contract Volume notified by APX and not refused, rejected, cancelled, disappplied or nullified for the purposes of the Balancing and Settlement Code does not equal the "Expected Energy Contract Volume" (which shall mean the net Energy Contract Volume determined by taking into account all Energy Contract Volumes, relating to all relevant Notification Requests logged as confirmed by the Trade System, for which the Notification Conditions were satisfied at the relevant time), then one Party shall pay to the other Party, as the case requires, an amount calculated by reference to paragraph 5.2.

5.2 **Deemed Imbalance Charges**

For a Settlement Period, if a payment is required to be made under paragraph 5.1, then APX shall calculate the amounts set out below and the resulting net amount shall be paid by the Party owing that amount to the other Party:

- (a) APX shall owe the Power Member an amount equal to the Deemed Imbalance Charges (if any) deemed to be incurred by the Power Member; and
- (b) the Power Member shall owe APX an amount equal to the Deemed Imbalance Charges (if any) deemed to be payable to the Power Member.

5.3 **Liabilities**

- (a) Payment in accordance with the provisions of this paragraph 5 shall be in full and final satisfaction of the rights of Parties for any total or partial failure of APX to accurately notify Energy Contract Volumes on behalf of the Power Member, howsoever caused and even if caused by the negligence or breach of duty of APX.

- (b) In particular, the Power Member acknowledges and agrees that if any total or partial failure to accurately notify Energy Contract Volumes is due to the act or omission of the Second Power Member, then any claim the Power Member may have would be against the Second Power Member and no claim whatsoever may be made against APX or any of its Affiliates, agents, officers and employees with respect to that failure to make an accurate ECV Notification.
- (c) The Power Member represents and warrants that before requesting APX to make an ECV Notification on its behalf, it has fully considered what, if any claims, it may bring against the Second Power Member and what, if any claims, the Second Power Member may bring against it if there is a total or partial failure to accurately notify Energy Contract Volumes under contract or otherwise. APX strongly recommends that the Power Member seek legal advice in this respect and fully document the risk allocation between the Power Member and the Second Power Member in a written agreement between them.
- (d) APX shall not be liable to the Power Member or the Second Power Member for any losses, costs, damages, claims or payments of whatsoever nature to the extent arising because an ECV Notification is refused, rejected, cancelled, disappplied or nullified (in whole or in part) due to a failure of the Power Member or the Second Power Member to maintain credit cover as required by the Balancing and Settlement Code or because a Level 1, Level 2 or other default occurs or is claimed to have occurred with respect to the Power Member or the Second Power Member under the Balancing and Settlement Code.
- (e) Unless APX expressly agrees to pay the Second Power Member the amount as liquidated damages, to the fullest extent permitted by Law, the Power Member shall on demand indemnify and hold harmless APX, its subcontractors, its Affiliates, agents, officers and employees from any and all losses, damages, claims, costs and expenses whatsoever to the extent resulting from any claim made by the Second Power Member either because an accurate ECV Notification was not made or was rejected in whole or in part.
- (f) For the avoidance of doubt, in respect of ECV Notifications, this annex is governed by the provisions of paragraph 23 of the APX Rules.