

Kay Haycock  
Network Operations  
kay.haycock@uk.ngrid.com  
Direct tel +44 (0)1926 65 5342

Thursday 23<sup>rd</sup> October 2008

[www.nationalgrid.com](http://www.nationalgrid.com)

Dear User

**RE: Tender for Entry Capacity Buy Back Options (National Grid Gas plc as Buyer) OT52**

National Grid Gas plc would like to invite you to take part in a Tender for options to buy back entry capacity as part of its ongoing role in ensuring efficient capacity management and release. This Tender will take place on Tuesday 28<sup>th</sup> October 2008.

Users will be able to submit up to 10 bids per ASEP for each Option period offered, all of which could be accepted. The Option Exercise Period is detailed in the Tender Invitation Notice.

**Please note: both the Premium and Strike price are to be specified by the Tendering Users.**

The Tender will be conducted in Gemini and offers for the Option Exercise Period should be made via the **Deal>Capture>Create Bids** screen. Before entering an offer the tender rules and terms can be viewed from the Gemini system via reference number 1.52. The rules and terms must be accepted before offers can be made (a copy of the Option Tender Terms and Rules are attached to this invitation letter in Appendix 2).

May I ask you to note that in respect of any ASEP, Users should not offer for buy back a greater volume than the entry capacity entitlement they hold on Gemini on Tuesday 28<sup>th</sup> October 2008. This can be viewed via the Product>Entitlements-Net screen. Offers not meeting this criterion will be rejected by Gemini when bids are processed.

National Grid shall notify Tendering Users of Tender Acceptances by means of a Tender Acceptance Notice, which may be viewed on the Bid Information Screen in Gemini. National Grid will endeavour to provide this notification as soon as possible after the close of the Offer Window Period, dependent on the number of bids received, but in any case by 14:00 hours on Monday 3<sup>rd</sup> November 2008.

We would appreciate your support in the tender, as it is an important element in ensuring efficient capacity management and release under the regime.

If on reading the attached you have any queries then please call me on 01926 655342. Alternatively the Capacity Team can be contacted by email at [Capacity.Auctions@uk.ngrid.com](mailto:Capacity.Auctions@uk.ngrid.com)

We look forward to receiving your offers.

Yours sincerely

Kay Haycock  
Network Operations

## Appendix 1

Reference No: OT52

### **TENDER INVITATION NOTICE**

1. This Tender Invitation Notice (“**Tender Invitation Notice**”) is issued in accordance with, and is subject to, the Option Tender Rules 1.52 (the “**Option Tender Rules**”) and the Terms also with the Reference Number 1.52 (the “**Terms**”), both of which can be accessed via the **Deal>Capture>Create Bids** screen in Gemini.
2. Defined terms used in this Tender Invitation Notice shall, unless the context otherwise requires or otherwise defined herein, have the meanings given to them in the Terms.
3. Users are invited to submit Tender Offers (each for the grant of an Option to National Grid for the surrender to National Grid of System Entry Capacity) in accordance with, and subject to, this Tender Invitation Notice, the Option Tender Rules and the Terms.
4. Each Tender Offer may be in respect of one only of the following Aggregate System Entry Points:
  - a) Bacton (BA)
  - b) Easington (EA)
  - c) Garton (GR)
  - d) Hatfield Moor Onshore (HM)
  - e) Hatfield Moor Storage (HT)
  - f) Hornsea (HS)
  - g) Teesside (TE)
  - h) Theddlethorpe (TH)
5. Each Tender Offer must confirm to one of the combinations of Exercise Period and Permitted Exercise Days specified below.

<b>Aggregate System Entry Point</b>	<b>Options Exercise Period (both Days inclusive)</b>	<b>Number of Permitted Exercise Days to not exceed</b>
For each ASEP	01/12/08 – 31/12/08	3
For each ASEP	01/01/09 – 31/01/09	3
For each ASEP	01/02/09 – 28/02/09	3

6. The Tender Capacity stated in a Tender Offer must not be less than 100,000 kWh per Day and must be a whole multiple of 100,000 kWh per Day.

7. The Premium (in pence per kWh) for each Tender offer shall be specified by the User.
8. The Strike Price shall be specified by the User.
9. The Offer Window Period within which Tender Offers must be received by National Grid is between 09:00 hours and 14:00 hours on Tuesday 28<sup>th</sup> October 2008.
10. Tender Offers must be made by completing in full and submitting to National Grid a Tender Offer Notice. The form of such Tender Offer Notice may be accessed via the **Deal>Capture>Create Bids** screen in Gemini and should be submitted to National Grid via such screen.
11. The Option Exercise Notification Deadline for the purpose of Clause 3.2 of the Terms shall be 13:00 hours on the earliest Day for which the Option Exercise Notification relates.
12. The Final Option Exercise Time for the purpose of Clauses 3.3 and 5.1 of the Terms shall be 14:00 hours.
13. National Grid shall notify Tendering Users of Tender Acceptances by means of a Tender Acceptance Notice, which may be viewed on the Bid Information Screen in Gemini.
14. Any questions regarding this Tender Invitation Notice may be made prior to the end of the Offer Window Period between 08:30 hours and 16:30 hours Monday to Friday (bank holidays excepted) by telephone to Kay Haycock on 01926 655342.

**Appendix 2**  
**Reference Number: 1.52**

**OPTION TENDER RULES**

**INTRODUCTION**

1. These Option Tender Rules (“**Option Tender Rules**”) detail the procedure by which a Tendering User may offer and National Grid may accept and exercise an Option to enable National Grid to accept the surrender of System Entry Capacity from that Tendering User.
2. Defined terms used in these Option Tender Rules shall, unless the context otherwise requires or otherwise defined herein, have the meanings given to them in the Terms (as defined below).

**TENDER OFFERS**

1. Tender Offers must be submitted by a Tendering User via the Create Bids Screen in Gemini in accordance with (and are subject to) these Option Tender Rules, the attached Terms with the above Reference Number (the “**Terms**”) and the Tender Invitation Notice also with the above Reference Number (the “**Tender Invitation Notice**”).
2. In submitting a Tender Offer a Tendering User is binding itself to the provisions of these Option Tender Rules, the Terms and the Tender Invitation Notice and shall be deemed to have offered to grant an Option to National Grid for the surrender to National Grid of System Entry Capacity.
3. A Tender Offer must be made in a Tender Offer Notice in the form set out on the Create Bids Screen in Gemini.
4. All Tender Offer Notices must be completed and submitted strictly in accordance with the Tender Invitation Notice, these Option Tender Rules and the Terms. No amendments or qualifications are permitted to any Tender Offer.
5. No more than one offer to surrender System Entry Capacity may be made in any one Tender Offer. Each and every Tender Offer set out in a Tender Offer Notice shall be separate to, and independent of, every other Tender Offer set out therein.
6. A Tendering User may submit not more than 10 Tender Offers in respect of the same combination of Aggregate System Entry Point and Option Exercise Period pursuant to the same Tender Invitation Notice.
7. Subject to paragraphs 5 and 6 above, there is no limit on the number of Tender Offers, which may be made on any one Tender Offer Notice.

8. Only one Tender Offer Notice may be submitted in respect of the same Tender Invitation Notice.
9. Every Tender Offer shall be separate to and independent of every other Tender Offer whether in respect of the same Tender Offer Notice or otherwise.
10. Every Tender Offer made shall be given a unique identifying reference number by Gemini. Such unique reference number shall be used to identify the relevant Tender Offer in any Tender Acceptance.
11. The Strike Price specified in a Tender Offer must be in pence per kWh and be to no more than four decimal places. The Premium, Option Exercise Period, number of Permitted Exercise Days, Tender Capacity and Aggregate System Entry Point for every Tender Offer must be in accordance with the requirements of the Tender Invitation Notice.
12. Tender Offers must not be made for speculative purposes. The attention of all Tendering Users is drawn to the representations, warranties and undertakings set out in the Terms.
13. In preparing and submitting its Tender Offer every Tendering User must first:
  - (a) obtain all information necessary for the preparation of its Tender Offer;
  - (b) ensure that its Tender Offer is properly completed and satisfy and verify all matters in relation to its Tender Offer (each Tendering User being solely responsible and liable for any error or omission in its Tender Offer);
  - (c) carry out all necessary researches, investigations and enquiries in relation to its Tender Offer;
  - (d) satisfy itself as to the nature, extent, volume and character of its Tender Offer and the Tender Documents;
  - (e) satisfy itself as to all other matters which may affect its Tender Offer and as to the accuracy and sufficiency of its Tender Offer; and
  - (f) obtain all necessary information as to the risks, contingencies and any other circumstances which may reasonably influence or affect its Tender Offer.
14. Irrespective of whether or not a Tender Acceptance is made in respect of any Tender Offer(s) set out in a Tender Offer Notice, National Grid may disclose any information contained in a Tender Offer Notice as provided in Clause 11 of the Terms.

## **TENDER ACCEPTANCES**

1. Tender Acceptances may be viewed on the Bid Information Screen in Gemini. No Tender Offer shall be deemed accepted unless such a Tender Acceptance is so posted. National Grid shall be under no obligation to notify Tendering Users of non-accepted Tender Offers.

### **EXERCISE OF OPTIONS**

1. An Option may be exercised by National Grid in whole or in part in accordance with the Terms.

### **COSTS, EXPENSES AND PAYMENTS**

1. There is no payment obligation in respect of an Option or any Tender Document save as expressly set out in the Terms.
2. Tendering Users are solely responsible and liable for all costs, expenses and liabilities incurred in connection with their preparation, submission and operation of a Tender Offer.

## **TERMS**

### **1. DEFINITIONS**

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

“**Exercised Option Capacity**” means, in respect of an Option or any part thereof exercised under an Option Exercise Notification, the amount in kWh per Day (being a quantity not a rate) of System Entry Capacity specified as such in respect of any specific Day or Days (or part thereof) in that Option Exercise Notification;

“**Final Option Exercise Time**” means, in respect of an Option, the time stated as such in the Tender Invitation Notice;

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

“**Implied Rate**” means, in respect of an Option or any part thereof exercised under an Option Exercise Notification, and in respect of any Day (or part thereof), the amount of the Exercised Option Capacity for that Day (or part thereof) divided by the period (in hours) from the time that Option Exercise Notification became effective for that Day to the end of that Day, expressed as an hourly rate;

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

“**Offer Window Period**” means the period specified as such in the Tender Invitation Notice, during which a Tender Offer may be submitted to National Grid;

“**Option**” means a right granted by the Tendering User to National Grid, upon the exercise of which (whether in whole or in part) National Grid is entitled to receive a surrender of System Entry Capacity, in accordance with the provisions of Clause 3 and the other provisions of these Terms and the other Tender Documents;

“**Option Exercise Notification**” means a notification (whether verbal or made via Gemini) by National Grid to the Tendering User to exercise an Option (or part thereof) in respect of the Day or Days (or part thereof) and other particulars specified therein and issued by National Grid in accordance with Clause 7 and the other provisions of these Terms and the other Tender Documents;

“**Option Exercise Notification Deadline**” means, in respect of an Option, the time stated as such in the Tender Invitation Notice;

**“Option Exercise Period”** means, in respect of an Option, the period in Days (which may be broken or continuous in accordance with any requirements set out in the Tender Invitation Notice) during which that Option may be exercised, as is specified as such in the Tender Offer and Tender Acceptance relating to that Option;

**“Option Exercise Value”** means, in respect of an Option or any part thereof exercised under an Option Exercise Notification, the Strike Price, multiplied by the relevant number of Days (or part thereof) in respect of which the Option is exercised, multiplied by the Exercised Option Capacity for one such Day (or part thereof), in each case as set out in that Option Exercise Notification;

**“Option Reference Number”** means, in respect of an Option, the reference number given thereto by National Grid in a Tender Acceptance Notice and referred to in an Option Exercise Notification where applicable;

**“Option Tender Rules”** means the document described on its face as such (bearing the same Reference Number as these Terms and being attached to these Terms) and published on Gemini which relates to and governs the procedure by which a Tendering User may offer and National Grid may accept and exercise an Option to enable National Grid to accept the surrender of System Entry Capacity from the Tendering User;

**“Permitted Exercise Days”** means, in respect of an Option, the maximum number of Days specified as such in the Tender Offer and Tender Acceptance relating to that Option in respect of which National Grid may serve Option Exercise Notifications;

**“Premium”** means, in respect of an Option, the amount in pence per kWh specified as such in the Tender Offer and Tender Acceptance relating to that Option;

**“Premium Payment”** means, in respect of an Option, the Premium multiplied by the Tender Capacity for one Day, multiplied by the number of Permitted Exercise Days, in each case in respect of that Option, such Premium Payment being the sum specified as such in the relevant Tender Acceptance;

**“Strike Price”** means, in respect of an Option, the amount in pence per kWh specified as such in the Tender Offer and Tender Acceptance relating to that Option;

**“Tender Acceptance”** means an acceptance by National Grid as set out in a Tender Acceptance Notice of a Tender Offer from a Tendering User;

**“Tender Acceptance Notice”** means a notice containing one or more Tender Acceptances and viewable on the Bid Information Screen in Gemini;



**“Tender Capacity”** means, in respect of an Option, the amount in kWh per Day (being a quantity not a rate) of System Entry Capacity as is specified as such in the Tender Offer and Tender Acceptance relating to that Option;

**“Tender Documents”** means these Terms, the Option Tender Rules and each applicable Tender Invitation Notice, Tender Offer Notice, Tender Acceptance Notice and Option Exercise Notification;

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

**“Tender Offer”** means an offer submitted by or on behalf of a Tendering User in a Tender Offer Notice by which such Tendering User offers to grant an Option to National Grid at the Premium and at the Strike Price for a specified maximum amount of Tender Capacity for a specified maximum number of Permitted Exercise Days within the specified Option Exercise Period and at a specified Aggregate System Entry Point in each case as permitted or determined by the Tender Invitation Notice where appropriate;

**“Tender Offer Notice”** means a notice containing one or more Tender Offers submitted by or on behalf of a Tendering User pursuant to a Tender Invitation Notice and received by National Grid during the Offer Window Period in accordance with these Terms and the Option Tender Rules;

**“Tendering User”** means a User under Network Code which submits a Tender Offer; and

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

## **2. INTERPRETATION**

2.1 In these Terms and the other Tender Documents:

- (a) references to Clauses are references to the clauses of these Terms unless otherwise stated; and
- (b) the singular shall include the plural and vice versa.

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

- 2.3 Words and expressions defined in the Network Code and which are used in these Terms or in any other Tender Document capitalised but not defined herein have the meanings ascribed to them under the Network Code where the context permits.
- 2.4 References in these Terms and the other Tender Documents to Sections are to sections of the Network Code (and shall be deemed to be amended appropriately in the event of any modification of the Network Code which changes any such Section reference).

### **3. OPTION/ TENDER ACCEPTANCE**

- 3.1 Where pursuant to the Tender Invitation Notice a Tendering User submits a Tender Offer in a Tender Offer Notice which is received by National Grid during the Offer Window Period and National Grid makes a Tender Acceptance in a Tender Acceptance Notice in relation to that Tender Offer, in each case pursuant to and in accordance with these Terms, the Option Tender Rules and the Tender Invitation Notice, that Tender Offer shall have been accepted by National Grid in the terms set out in the Tender Acceptance and such Tendering User shall be deemed to have granted an Option to National Grid in accordance with these Terms and the Option Tender Rules under which:
- (a) National Grid shall make the Premium Payment to the Tendering User subject to and in accordance with the provisions of Clause 4.1; and
  - (b) National Grid shall, subject to the exercise in whole or in part of that Option, be entitled to receive from the Tendering User in the Option Exercise Period (in respect of such number of Days not exceeding the number of Permitted Exercise Days) a surrender of System Entry Capacity of an amount not exceeding the Tender Capacity for each such Day at the Strike Price and at the Aggregate System Entry Point, in each case as specified in the Tender Offer and the Tender Acceptance relating to that Option.
- 3.2 An Option may be exercised in whole or in part by National Grid serving one or more Option Exercise Notifications on the Tendering User at any time up until the Option Exercise Notification Deadline. An Option Exercise Notification may, in respect of any Option, be given in respect of:

- (a) any Day or Days (or part thereof) in the relevant Option Exercise Period (and subject to the foregoing provisions of this Clause 3.2 further Option Exercise Notifications may be given in respect of that Option until the end of the Option Exercise Period) provided in each case that, in respect of that Option, Option Exercise Notifications may not be given in respect of more Days in aggregate than the number of Permitted Exercise Days for that Option; and
  - (b) (notwithstanding the effective time of the Option Exercise Notification determined pursuant to Clause 3.3 below), all or part only of the Tender Capacity for any such Day in the Option Exercise Period (and if in respect of part only of the Tender Capacity with respect to any Day, the Option in respect of the remaining Tender Capacity for such Day shall lapse).
- 3.3 An Option (or the relevant part thereof) shall be exercised in respect of any specific Day with effect from the effective time stated as such in the relevant Option Exercise Notification, being a time (on the hour) not later than the Final Option Exercise Time and not earlier than one hour after the service of the relevant Option Exercise Notification.
- 3.4 Following the service of an Option Exercise Notification by National Grid pursuant to Clause 3.2 in respect of an Option, National Grid shall pay to the Tendering User a sum equal to the relevant Option Exercise Value subject to and in accordance with the provisions of Clause 4.2, the Tendering User shall be deemed to have surrendered to National Grid the relevant Exercised Option Capacity in respect of each relevant Day or Days (or part thereof) and at the relevant Aggregate System Entry Point (in each case as specified in the Option Exercise Notification) and National Grid will reduce the amount of Available Firm System Entry Capacity held by the Tendering User accordingly.
- 3.5 Only one Tender Acceptance may be given in respect of any one Tender Offer.
- 3.6 A Tender Offer Notice, a Tender Acceptance Notice and an Option Exercise Notification once issued may not be withdrawn without the prior written consent of the recipient thereof (which may be given or withheld by that recipient in its sole discretion).
- 3.7 The issue of a Tender Acceptance by National Grid shall not oblige it to serve an Option Exercise Notification in respect of any Option or any part thereof.

- 3.8 To the extent that, in relation to any Option, National Grid has not served Option Exercise Notifications in full during the Option Exercise Period for that Option, the relevant part of that Option in respect of which no Option Exercise Notification has been served shall lapse.
- 3.9 National Grid may accept or not accept a Tender Offer in its absolute discretion and shall not be obliged to give any reason therefor.

#### **4. PREMIUM PAYMENT AND OPTION EXERCISE VALUE**

- 4.1 Subject to Clause 4.3, following the issue of a Tender Acceptance by National Grid in a Tender Acceptance Notice, an amount equal to the applicable Premium Payment as stated in that Tender Acceptance shall be payable by National Grid to the Tendering User on or prior to the sixteenth Business Day in the calendar month immediately following the calendar month in which the Option Exercise Period falls. In the event that the Option Exercise Period extends over more than one calendar month, the payment shall be made in respect of each such calendar month for an amount calculated on a pro rata basis having regard to the number of Days in the preceding calendar month falling within that Option Exercise Period and the total number of Days in the Option Exercise Period. Such sum shall only be payable in respect of an Option for which National Grid issues a Tender Acceptance.
- 4.2 Subject to Clause 4.3, in the event that National Grid serves an Option Exercise Notification in respect of an Option pursuant to which an amount of Exercised Option Capacity in relation to that Option and as stated in that Option Exercise Notification is surrendered to National Grid in any calendar month, a sum equal to the relevant Option Exercise Value as stated in the Option Exercise Notification shall be payable by National Grid to the Tendering User for such Exercised Option Capacity on or prior to the sixteenth Business Day in the calendar month immediately following that in respect of which the Exercised Option Capacity relates. For the avoidance of doubt, more than one such sum may be due in respect of an Option when multiple Option Exercise Notifications are served in respect of that Option as a consequence of which more than one amount of Exercised Option Capacity is surrendered to National Grid in respect of the same Option in the same calendar month. No such sum shall be payable in respect of an Option if National Grid does not serve an Option Exercise Notification in respect of that Option giving rise to the surrender of any Exercised Option Capacity in a calendar month.

#### 4.3

- (a) In the event that a Tendering User ceases to be a User these Terms and the other Tender Documents and the Option shall (without prejudice to all and any accrued rights and obligations) terminate on the User Discontinuance Date and no further sums shall be due hereunder or thereunder in respect of the period following the User Discontinuance Date.
- (b) All sums under Clause 4.1 shall, in respect of each Option, be pro-rated to the User Discontinuance Date having regard to the number of Days (but not the amount of Exercised Option Capacity) prior to the User Discontinuance Date for which capacity has been surrendered to National Grid pursuant to that Option and the number of Permitted Exercise Days for that Option. Any necessary adjustments shall be made as appropriate.
- (c) No sum shall be payable under Clause 4.2 in respect of any Day for which an Option Exercise Notification is issued to the extent that any such Day is a Day after the User Discontinuance Date in respect of any Tendering User.

4.4 There is no payment obligation in respect of an Option or any Tender Document save as expressly set out in these Terms.

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

5.1 The Tendering User represents, warrants and undertakes to National Grid that:

- (a) it is a User for the purposes of the Network Code and has and will have full power and authority to execute, deliver and perform all obligations of it under these Terms and the other Tender Documents and no limitation on its powers will be exceeded as a result of it entering into these Terms or into any of the other Tender Documents or the issuance of any of them by or on behalf of it or National Grid;
- (b) at the date of each and every Tender Offer it is and will be the holder of Available System Entry Capacity at the relevant Aggregate System Entry Point of:
  - (i) a quantity not less than the Tender Capacity; and
  - (ii) an amount such that if National Grid were to issue an Option Exercise Notification effective from the Final Option Exercise Time on any Day in the Option Exercise Period for an amount of Exercised Option Capacity equal to the Tender Capacity, the Available System

Entry Capacity held by the Tendering User expressed as an hourly rate for the period from such time until the end of that Day would be greater than or equal to the Implied Rate for such Day,

in each case in respect of all Days in the Option Exercise Period as stated in each Tender Offer (for the purpose of this Clause 5.1(b) and in respect of each Tender Offer, the “**required holding**”) and that in the event that National Grid issues a Tender Acceptance in respect of a Tender Offer the Tendering User will retain all such required holding in respect of each Day in the relevant Option Exercise Period until, in respect of each such Day, one hour after the Final Option Exercise Time on that Day (save to the extent that such capacity is earlier surrendered to National Grid pursuant to the exercise of an Option);

- (c) in the event that National Grid issues an Option Exercise Notification in respect of an Option all of the Exercised Option Capacity for all Days (or part thereof) referred to in such Option Exercise Notification shall be surrendered with full title guarantee and free from any charge, lien, equity, third party right, option, right of pre-emption or other encumbrance, priority or security of whatever nature and together with all rights attaching thereto;
- (d) the Tender Offer Notice submitted by it has been duly authorised and submitted by duly authorised persons in accordance with the constitutional documents of the Tendering User;
- (e) the Tender Offer Notice and each of the other Tender Documents constitute and will constitute the legal, valid, binding and enforceable obligations of the Tendering User in accordance with its terms; and
- (f) the information in the Tender Offer Notice submitted by it has not been communicated to any other person or adjusted in accordance with any agreement or arrangement with any other person except as agreed in writing by National Grid.

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

- (a) it has all governmental and regulatory authorisations, licences, consents, waivers and permissions, howsoever described (including, without limitation, under the Financial Services and Markets Act 2000 and the Gas Act 1986 as amended) necessary in order to be able to enter into any of the Tender Documents and the Options constituted by them and to be able to perform

its obligations under them and under any contract resulting from the exercise of any such Option, and maintains the same in full force and effect and all conditions of any such authorisations, licences, consents, waivers or permissions have been complied with;

- (b) it is purchasing or selling each Option granted or purchased pursuant to these Terms and the other Tender Documents for commercial purposes and not for investment purposes;
- (c) it is able to surrender (if a seller) or accept (if a buyer) System Entry Capacity which is the subject of any Option transaction under these Terms or any other Tender Documents; and
- (d) it uses System Entry Capacity in its business.

## **6. LIABILITY**

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

- (a) neither shall be liable to the other for loss arising from any breach of these Terms or any other Tender Document, other than (but without prejudice to any other provision of these Terms or any other Tender Document which excludes or limits liability in respect of any breach) for loss directly resulting from such breach and which at the relevant date was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:
  - (i) physical damage to the property of the other; and/or
  - (ii) the liability (in law) of such other to any other person for loss in respect of physical damage to the property of such person;
- (b) neither shall in any circumstances be liable in respect of any breach of these Terms or any other Tender Document to the other for:
  - (i) any loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill, or increased cost of working; or
  - (ii) any indirect or consequential loss; or
  - (iii) except as provided in Clauses 6.1(a)(ii) and 6.5, loss resulting from the liability of the other to any person howsoever and whensoever arising;

- (c) the rights and remedies of the parties pursuant to these Terms and the other Tender Documents exclude and are in place of any rights or remedies of either party in tort (including negligence and nuisance) or (subject to Clause 8) misrepresentation in respect of the subject matter of these Terms or any other Tender Document; and accordingly, but without prejudice to Clause 6.5 and Clause 6.6(b), each party (to the fullest extent permitted by law):
    - (i) waives any rights or remedies; and
    - (ii) releases each other from any duties or liabilities, arising in tort or (subject to Clause 8) misrepresentation in respect of the subject matter of these Terms or any other Tender Document.
- 6.2 For the purposes of Clause 6.1(a), the “**relevant date**” is the date of the relevant Tender Document.
- 6.3 The amount or amounts for which either National Grid or the Tendering User may be liable to the other pursuant to Clause 6.1(a) in respect of any one event or circumstance constituting or resulting in that first party’s breach of a provision of these Terms or any other Tender Document shall not exceed £1,000,000 (one million pounds sterling).
- 6.4 Clause 6.1 is without prejudice to any provision of these Terms which provides for an indemnity, or which provides for either National Grid or the Tendering User to make a payment to the other.
- 6.5 Nothing in these Terms or in any other Tender Document shall exclude or limit the liability of either National Grid or the Tendering User for death or personal injury resulting from its negligence.
- 6.6 Nothing in this Clause 6 shall:
  - (a) prevent either National Grid or the Tendering User from or restrict it in enforcing any obligation (including suing for a debt) owed to it under or pursuant to these Terms; or
  - (b) constitute a waiver by National Grid or the Tendering User of any right or remedy it may have (other than pursuant to these Terms or any other Tender Document) in respect of a breach by the other of any Legal Requirement.
- 6.7 Each provision of this Clause 6 shall be construed as a separate and severable contract term, and shall as respects any Discontinuing User survive that User’s ceasing to be a User under the Network Code.



- 6.8 Each of National Grid and the Tendering User agree that the provisions of this Clause 6 are fair and reasonable having regard to the circumstances at the date of the Tender Invitation Notice and the Tender Offer Notice.

## **7. NOTICES**

- 7.1 Tender Invitation Notices shall be sent by National Grid by facsimile to such facsimile number as National Grid maintains for each User for the purpose of sending notices under the Network Code in relation to System Entry Capacity. Such facsimile shall be deemed to have been received on completion of despatch by National Grid provided that it receives a transmission report showing transmission in full without any error message.
- 7.2 Tender Offer Notices shall be submitted by the Tendering User to National Grid by means of the Create Bids Screen in Gemini. Tender Acceptance Notices shall be posted on the Bid Information Screen in Gemini.
- 7.3 Option Exercise Notifications may be given by National Grid in its sole discretion either by posting the same on the Bid Information Screen in Gemini or by telephone to one of the numbers and one of the representatives in accordance with the provisions of Clause 7.4 below.
- 7.4 For the purpose of enabling National Grid to give Option Exercise Notifications by telephone:
- (a) National Grid may speak to any of such persons and on any of such numbers as National Grid currently maintains for the purpose of giving operational communications (or such other persons and/or numbers as the Tendering User may notify to National Grid in writing from time to time);
  - (b) the Tendering User shall ensure that National Grid seeking to give an Option Exercise Notification will at any time be able to contact not less than one of such representatives of the Tendering User by means of one of such telephone numbers;
  - (c) it is agreed that National Grid may rely absolutely without further investigation on the representation of any person on any of the telephone numbers referred to in Clause 7.4(a) above that such person is one of the representatives referred to in that Clause and such person shall bind the Tendering User for the purposes of receipt of the Option Exercise Notification;
  - (d) it is agreed that National Grid may (but shall not be obliged to) record any such telephone conversation and later use any such recording as evidence of its content;

- (e) it is agreed that National Grid will promptly after the telephone communication is completed make and keep a record in which the time and content of the telephone notice is logged and will, by way of confirmation only, post an Option Exercise Notification on the relevant screen on Gemini, such Option Exercise Notification being marked as confirmatory only, (but failure to make or keep any such record or to post any such follow up Option Exercise Notification shall not affect the validity of the giving of the Option Exercise Notification by telephone); and
- (f) the Option Exercise Notification shall be treated as validly given as an Option Exercise Notification at the time when the telephone communication is completed.

## **8. ENTIRE AGREEMENT**

In respect of any Option and save as otherwise expressly provided herein, these Terms and the relevant other Tender Documents (including, without limitation but for the avoidance of doubt, any Option Exercise Notification delivered by telephone) shall be read as one and constitute the entire agreement between National Grid and the Tendering User (subject always to the Network Code and Ancillary Agreements thereunder) with respect to the matters referred to herein and therein and shall prevail over and supersede all prior agreements, understandings, statements, representations, commitments, warranties, and communications between National Grid and the Tendering User (including, without limitation, any information provided by telephone pursuant to paragraph 14 of a Tender Invitation Notice) with respect to such matters and neither National Grid nor the Tendering User shall rely on or be bound by any of the foregoing not appearing in or incorporated by specific reference into these Terms or the relevant other Tender Documents. Nothing in these Terms or any relevant other Tender Document shall operate to exclude either National Grid's or the Tendering User's liability to the other for fraudulent misrepresentation in respect of any Option.

## **9. VARIATION AND WAIVER**

- 9.1 No variation of these Terms or any of the other Tender Documents in relation to an Option shall be effective unless made in writing and signed by or on behalf of both National Grid and the Tendering User for that Option.
- 9.2 None of the provisions of these Terms or of the other Tender Documents shall be considered waived by National Grid or the Tendering User unless such waiver is given in writing and signed by a duly authorised representative of the party making the waiver. No such waiver shall be a waiver of any past or future default or breach or modification of any term, provision, condition or covenant of these

Terms or of the other Tender Documents or any of them unless and to the extent expressly set forth in such waiver.

- 9.3 Nothing in this Clause 9 or otherwise in these Terms or the other Tender Documents shall affect or prejudice either party's right to serve Tender Documents otherwise than in writing where permitted in accordance with the provisions of Clause 7.

## **10. ASSIGNMENT ETC.**

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

## **11. CONFIDENTIALITY**

Each of National Grid and the Tendering User shall keep confidential and shall not disclose to any third party any information provided by the other party in any Tender Document or in connection with the performance of these Terms or any of the other Tender Documents (whether or not an Option is entered into). Provided that:

- (a) this restriction shall not apply to any information which at the time of disclosure is in the public domain or thereafter comes into the public domain otherwise than as a consequence of a breach by National Grid or the Tendering User of its obligations under this Clause 11;
- (b) this restriction shall not apply in respect of the disclosure of information to any government department or any governmental or regulatory agency having jurisdiction over either National Grid or the Tendering User (including but not limited to the Gas and Electricity Markets Authority), or as required by law or any lawful subpoena or recognised stock exchange or other process in connection with any judicial arbitration or administrative proceeding, or where reasonably necessary to effect the purpose of these Terms or of any or all of the other Tender Documents; and
- (c) it is agreed that National Grid may disclose any information (including, without limitation, details of prices and quantities contained in any Tender Document whether or not an Option is entered into in relation thereto) to the extent required by the Network Code, including to the extent that any subsequent amendments or modifications thereto may require such disclosure (notwithstanding that any such amendments or modifications may, whether in whole or in part, have retrospective effect).

## **12. THIRD PARTY RIGHTS**

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

## **13. SEVERABILITY**

If any term or provision of these Terms or of any of the other Tender Documents shall be held to be illegal or unenforceable in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of these Terms or such other Tender Document but the validity and enforceability of the remainder of these Terms and the other Tender Documents shall not be affected.

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

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

## **15. GEMINI**

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