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20<sup>th</sup> February 2009

Dear Colleague

## **Rolling Monthly Transfer and Trade of System Entry Capacity**

### **Invitation to participate in the Rolling Monthly Surrender (Trade Initiation) Process for Capacity period April 2009**

Pursuant to TPD Section B2.3.3 of the Uniform Network Code, National Grid Gas plc invites you to take part in the rolling monthly trade initiation process for the surrender of capacity for April 2009.

The Surrender process will be conducted within Gemini in accordance with the Transfer and Trading Surrender Tender Rules (Terms and Conditions). For your convenience a copy of the Terms and Conditions are attached to this letter in Appendix B. The Terms and Conditions must be accepted within Gemini before rolling monthly surrender offers can be made.

National Grid NTS will conduct the surrender process on the following date:

**24<sup>th</sup> February 2009**

The surrender window will commence at 08:00 and close at 17:00 on the same calendar day. A rolling monthly surrender offer may be withdrawn or amended until, but not after, 17:00 on that day. Users may submit up to a maximum of two rolling monthly surrender offers per ASEP.

Users are invited to submit Surrender offers in kWh/day (but not for a quantity less than 100,000 kWh/day) up to an aggregate amount not exceeding their Firm NTS Entry Capacity entitlement at the ASEP for the capacity month of **April 2009**, and each surrender offer should specify the minimum price (rolling monthly Surrender price) the User wishes to be paid in respect of the surrender of Firm NTS Entry Capacity at the ASEP. For reference the reserves prices for the RMTTSEC auction are attached in appendix A.

The Tender will be conducted in Gemini and Surrender offers should be made using the **Deal>Capture>Create Bids** screen. If you wish to check your entitlements prior to submitting a surrender offer you should navigate to **Home > Product > Entitlements - Net > Query**

Rolling monthly Surrender offers will be accepted or rejected after the RMTTSEC auction bid window has closed. National Grid NTS may accept all or part of any surrender amount and Users will be informed of the quantity of any Surrender Amount that has been allocated following completion of the Rolling Monthly Transfer & Trade System Entry Capacity ("RMTTSEC") process.

National Grid NTS will issue an invitation to participate in the RMTTSEC auction not less than five (5) business days in advance of the auction date.

Please note that this message is being sent by e-mail via the Joint Office of Gas Transporters and web-fax (business hours operational list). An Automated Notification Service (ANS) message will also be issued informing users that the invitation has been published.

If you have any queries regarding the RMTTSEC auction process please contact Sarah Lloyd or myself on +44 (0)1926 65 4057. Alternatively you can e-mail the capacity team regarding any long term capacity issues at [capacityauctions@uk.ngrid.com](mailto:capacityauctions@uk.ngrid.com).

If you have any queries pertaining to the Daily Auctions, please contact Sarah Magee on +44 (0)1926 654 055.

Yours sincerely,

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## Appendix A

**Table 1 – Reserve Prices for Rolling Monthly Transfer & Trade System Entry Capacity (p/kWh/d)**

| <b>ASEP</b>           | <b>Short Code</b> | <b>p/kWh</b> |
|-----------------------|-------------------|--------------|
| Avonmouth LNG         | AV                | 0.0001       |
| Bacton                | BA                | 0.0072       |
| Burton Point          | BP                | 0.0001       |
| Barrow                | BR                | 0.0066       |
| Barton Stacey         | BS                | 0.0001       |
| Cheshire              | CH                | 0.0001       |
| Dynevor Arms LNG      | DA                | 0.0001       |
| Easington             | EA                | 0.0086       |
| Glenmavis LNG         | GM                | 0.0173       |
| Garton                | GR                | 0.0091       |
| Hole House Farm       | HH                | 0.0001       |
| Hatfield Moor Onshore | HM                | 0.0027       |
| Hornsea               | HS                | 0.0088       |
| Hatfield Moor Storage | HT                | 0.0027       |
| Isle of Grain         | IG                | 0.0001       |
| Milford Haven         | MH                | 0.0181       |
| Partington LNG        | PR                | 0.0001       |
| St. Fergus            | SF                | 0.0367       |
| Teesside              | TE                | 0.0082       |
| Theddlethorpe         | TH                | 0.0074       |
| Wytch Farm            | WF                | 0.0001       |

## Appendix B

### TRANSFER AND TRADING SURRENDER TENDER RULES

#### INTRODUCTION

1. These Transfer and Trading Surrender Tender Rules (“**Transfer and Trading Surrender Tender Rules**”) detail and govern the procedure by which a Surrender User may offer and National Grid may accept the surrender of Firm NTS Entry Capacity from that Surrender User for the purposes of provisions in respect of the transfer and trading of Firm NTS Entry Capacity between Aggregate System Entry Points pursuant to Section B2.3 of the Transportation Principal Document forming part of the Uniform Network Code (“UNC TPD”).
2. Defined terms used in these Transfer and Trading Surrender Tender Rules shall, unless the context otherwise requires or otherwise defined herein, have the meanings given to them in the Terms (as defined below) or the Uniform Network Code.

#### SURRENDER OFFERS

1. Surrender Offers must be submitted by a Surrender User via the Create Offers Screen in Gemini in accordance with (and are subject to) these Transfer and Trading Surrender Tender Rules, the attached Terms with the above Reference Number (the “**Terms**”) and the Tender Invitation Notice also with the above Reference Number (the “**Tender Invitation Notice**”).
2. In submitting a Surrender Offer a Surrender User is binding itself to the provisions of these Transfer and Trading Surrender Tender Rules, the Terms and the Tender Invitation Notice and shall be deemed to have offered to grant a Forward Contract to National Grid for a specified amount of Firm NTS Entry Capacity.
3. A Surrender Offer must be made in the form set out on the Create Offers Screen in Gemini, and shall remain open for acceptance by National Grid for at least the period specified in these Transfer and Trading Surrender Tender Rules, the Terms, the Tender Invitation Notice and/or the Uniform Network Code.
4. All Surrender Offers must be completed and submitted strictly in accordance with the Tender Invitation Notice, these Transfer and Trading Surrender Tender Rules and the Terms. No amendments or qualifications are permitted to any Surrender Offer.
5. Each and every Surrender Offer shall be separate to, and independent of, every other

Surrender Offer.

6. A Surrender User may submit not more than two (2) Surrender Offers in respect of an Aggregate System Entry Point for each Available Month pursuant to the Tender Invitation Notice.
7. Every Surrender Offer made shall be given a unique identifying reference number by Gemini. Such unique reference number shall be used to identify the relevant Surrender Offer in any Acceptance Notification.
8. The aggregate Surrender Amount offered by a Surrender User pursuant to all Surrender Offers made by it in respect of an Aggregate System Entry Point for an Available Month in the Forward Delivery Period shall not exceed the Available Firm NTS Entry Capacity held by that Surrender User at that Aggregate System Entry Point for that Available Month.
9. The Forward Value, the Forward Delivery Period, Surrender Amount and Aggregate System Entry Point for every Surrender Offer must be in accordance with the requirements of the Tender Invitation Notice and UNC TPD Section B2.3.
10. Surrender Offers must not be made for speculative purposes. The attention of all Surrender Users is drawn to the representations, warranties and undertakings set out in the Terms.
11. In preparing and submitting its Surrender Offer every Surrender User must first:
  - (a) obtain all information necessary for the preparation of its Surrender Offer;
  - (b) ensure that its Surrender Offer is properly completed and satisfy and verify all matters in relation to its Surrender Offer (each Surrender User being solely responsible and liable for any error or omission in its Surrender Offer);
  - (c) carry out all necessary researches, investigations and enquiries in relation to its Surrender Offer;
  - (d) satisfy itself as to the nature, extent, volume and character of its Surrender Offer and the Tender Documents;
  - (e) satisfy itself as to all other matters which may affect its Surrender Offer and as to the accuracy and sufficiency of its Surrender Offer; and

- (f) obtain all necessary information as to the risks, contingencies and any other circumstances which may reasonably influence or affect its Surrender Offer.
12. Irrespective of whether or not a Tender Acceptance is made in respect of any Surrender Offer(s) National Grid may disclose any information as provided in Clause 11 of the Terms.

#### **TENDER ACCEPTANCES**

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

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

1. There is no payment obligation in respect of a Forward Contract or any Tender Document save as expressly set out in UNC TPD Section B2.3.
2. Surrender Users are solely responsible and liable for all costs, expenses and liabilities incurred in connection with their preparation, submission and operation of a Surrender Offer.

**TERMS AND CONDITIONS**

relating to a

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

with

**NATIONAL GRID GAS PLC**

## TERMS AND CONDITIONS

### 1. DEFINITIONS

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

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

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

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

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

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

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

“**Forward Value**” means in relation to a Forward Contract, the amount payable by National Grid to the Surrender User as determined in accordance with UNC TPD Section B2.3;

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

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



forming part of UK Link;

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

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

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

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

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

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

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

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

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

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

“**UNC TPD**” means the Transportation Principal Document forming part of the Uniform Network Code; and

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

## 2. INTERPRETATION

2.1 In the Tender Documents:

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

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

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

## 3. FORWARD CONTRACT

3.1 Where pursuant to the Tender Invitation Notice a Surrender User submits a Surrender Offer which is received by National Grid during the Offer Window Period and National

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

- (a) the Surrender User shall surrender to National Grid the Forward Capacity (as specified in the Acceptance Notification) over the Forward Delivery Period and at the relevant Aggregate System Entry Point as specified in the Surrender Offer and Acceptance Notification relating to that Forward Contract;
- (b) on surrender of the Forward Capacity by the Surrender User, National Grid will reduce the amount of Available Firm NTS Entry Capacity held by the Surrender User accordingly; and
- (c) National Grid shall be obliged to pay to the Surrender User the Forward Value in accordance with UNC TPD Section B2.3.

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

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

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

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

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

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

- 4.1 Subject to Clauses 4.2, following the service of an Acceptance Notification by National Grid, an amount equal to the Forward Value shall be payable by National Grid to the Surrender User in accordance with Uniform Network Code, Transportation Principal Document, Section S by way of an Invoice Credit adjustment to an Invoice Document issued in the calendar month immediately following the calendar month in respect of which the Forward Capacity relates. For the avoidance of doubt, no such sum shall be payable if National Grid does not serve an Acceptance Notification.
- 4.2 In the event that a Surrender User ceases to be a User, the Tender Documents shall (without prejudice to all and any accrued rights and obligations) terminate on the User Discontinuance Date and no further sums shall be due thereunder in respect of the period following the User Discontinuance Date. All sums under Clause 4.1 shall be pro-rated to the User Discontinuance Date and any necessary apportionments made as appropriate.
- 4.3 There is no payment obligation in respect of any Tender Document save as expressly set out in UNC TPD Section B2.3.

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

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

Surrender User will retain ownership of such Surrender Amount until allocations have been made in accordance with UNC TPD Section B2.3; and

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

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

- (a) the sole or main purpose for which it enters into any forward transaction under the Tender Documents (either alone or in combination with any other transactions) is for limiting the extent to which a business (other than a business carrying out any regulated activity (as that term is defined under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)) operated by it or by any one of its affiliates will be affected by any identifiable risk arising other than as a result of carrying out any regulated activity;
- (b) it is purchasing or selling each Forward Contract granted or purchased pursuant to the Tender Documents for commercial purposes or regulatory obligations and not for investment purposes; and

- (c) it is able to surrender (if a seller) or accept (if a buyer) Firm NTS Entry Capacity which is the subject of any Forward Contract transaction under the Tender Documents.

## **6. LIABILITY**

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

- (a) neither shall be liable to the other for loss arising from any breach of the Tender Documents, other than (but without prejudice to any other provision of the Tender Document which excludes or limits liability in respect of any breach) for loss directly resulting from such breach and which at the relevant date was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:
  - (i) physical damage to the property of the other; and/or
  - (ii) the liability (in law) of such other to any other person for loss in respect of physical damage to the property of such person;
- (b) neither shall in any circumstances be liable in respect of any breach of the Tender Documents to the other for:
  - (i) any loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill, or increased cost of working; or
  - (ii) any indirect or consequential loss; or
  - (iii) except as provided in Clauses 6.1(a)(ii) and 6.5, loss resulting from the liability of the other to any person howsoever and whensoever arising;
- (c) the rights and remedies of the parties pursuant to the Tender Documents exclude and are in place of any rights or remedies of either party in tort (including negligence and nuisance) or (subject to Clause 8) misrepresentation in respect of the subject matter of these Terms or any Tender Document; and accordingly, but without prejudice to Clause 6.5 and Clause 6.6(b), each party (to the fullest extent permitted by law):
  - (i) waives any rights or remedies; and
  - (ii) releases each other from any duties or liabilities,

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

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

## 7. **NOTICES**

- 7.1 The Tender Invitation Notice shall be sent by National Grid by facsimile to the facsimile number that is notified to National Grid by each User for the purpose of sending notices under the Network Code in relation to Firm NTS Entry Capacity.
- 7.2 Surrender Offers shall be submitted by the Surrender User to National Grid by means of the Create Offers Screen in Gemini.
- 7.3 Acceptance Notifications shall be submitted by posting them on the Offer Information Screen in Gemini. No Surrender Offer shall be deemed accepted unless such a Tender Acceptance is so submitted.
- 7.4 Offer Withdrawal Notifications shall be submitted by the Surrender User to National Grid by means of the Create Offers Screen in Gemini.
- 7.5 A facsimile shall be deemed to have been received on completion of despatch by National Grid provided that it receives a transmission report showing transmission in full without any error message.

## **8. ENTIRE AGREEMENT**

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

## **9. VARIATION AND WAIVER**

- 9.1 No variation of the Tender Documents shall be effective unless made in writing and signed by or on behalf of both National Grid and the Surrender User.
- 9.2 None of the provisions of these Terms or of the Tender Documents shall be considered waived by National Grid or the Surrender User unless such waiver is given in writing



and signed by a duly authorised representative of the party making the waiver. No such waiver shall be a waiver of any past or future default or breach or modification of any term, provision, condition or covenant of these Terms or of the Tender Documents or any of them unless and to the extent expressly set forth in such waiver.

## **10. ASSIGNMENT**

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

## **11. CONFIDENTIALITY**

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

- (a) this restriction shall not apply to any information which at the time of disclosure is in the public domain or thereafter comes into the public domain otherwise than as a consequence of a breach by National Grid or the Surrender User of its obligations under this Clause 11;
- (b) nothing in the Tender Documents shall prevent the disclosure of information to any government department or any governmental or regulatory agency having jurisdiction over either National Grid or the Surrender User (including but not limited to the Gas and Electricity Markets Authority), or as required by law or any lawful subpoena or recognised stock exchange or other process in connection with any judicial arbitration or administrative proceeding, or where reasonably necessary to effect the purpose of the Tender Documents;
- (c) nothing in the Tender Documents shall prevent the disclosure by National Grid to third parties of the relevant prices and quantities contained in any Tender Document but only to the extent that such information is disclosed in aggregate with other Users' prices and quantities or in accordance with the Network Code; and

- (d) in the event disclosure to any third party is necessary in order to give effect to the purposes of these Terms or any Tender Document or permissible under this Clause 11, the disclosing party shall use all reasonable endeavours to ensure that such third party shall respect the confidentiality of such information and be bound by the terms of this Clause 11 as if a party thereto.

## **12. THIRD PARTY RIGHTS**

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

## **13. SEVERABILITY**

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

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

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

## **15. GEMINI**

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

availability of Gemini or any part thereof or otherwise arising from the Surrender User's use of Gemini (including but not limited to inability to access or use Gemini or any communication failure or breach of security or confidentiality) whether such loss arises in contract, tort (including negligence) or breach of statutory duty or howsoever arising.