

## SECTION W - CONTRACT RULES<sup>1</sup> -

**ICE FUTURES UK BASE ELECTRICITY FUTURES CONTRACT (EFA)**  
**ICE FUTURES UK PEAK ELECTRICITY FUTURES CONTRACT (EFA)**  
**ICE FUTURES UK BASE ELECTRICITY FUTURES CONTRACT (GREGORIAN)**  
**ICE FUTURES UK PEAK ELECTRICITY FUTURES CONTRACT (GREGORIAN)**

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<sup>1</sup> Amended 20 October 2004, 29 April 2013

<sup>2</sup> Amended 7 December 2005, 29 March 2006, 12 May 2006, Launch of ICE Clear 2008, 3 September 2014

<sup>3</sup> Amended launch of ICE Clear 2008, 29 April 2013

<sup>4</sup> Amended launch of ICE Clear 2008

<sup>5</sup> Amended launch of ICE Clear 2008

<sup>6</sup> Amended launch of ICE Clear 2008

<sup>7</sup> Amended 16 December 2004

### W.1 CONTRACTS FOR THE TRANSFER OF ELECTRICITY BETWEEN ENERGY ACCOUNTS<sup>8</sup>

- (a) The provisions of this Section W and of Sections I and X are applicable to the trading of Electricity Contracts.
- (b) An Electricity Contract shall be for the transfer of the Energy Contract Volume by way of a debit of an Energy Account and the credit of an Energy Account on the Delivery Day and during each Settlement Period of such Delivery Day specified in the Electricity Contract in accordance with, or pursuant to, these Contract Rules, the Administrative Procedures and the Clearing House Procedures. For the purposes of these Contract Rules such crediting and debiting shall, subject to W.7, constitute "delivery".
- (c) The Exchange may offer contracts for trading on the Market or otherwise pursuant to the Regulations for delivery of Electricity during specific settlement periods during a Delivery Day as the Directors may determine from time to time ("Individual Day Contracts"). The Exchange may permit groups of Individual Day Contracts, consisting of two or more Individual Day Contracts, to be traded on the Market or otherwise pursuant to the Regulations in accordance with procedures determined by the Directors from time to time. The composition of any such group of Individual Day Contracts permitted by the Exchange to be traded on the Market may, at the discretion of the Exchange, be based on the composition of contract periods in the EFA Calendar or Gregorian Calendar. For the avoidance of doubt, each Individual Day Contract comprised in a group of Individual Day Contracts shall remain a separate Electricity Contract.

### W.2 QUANTITY

Electricity Contracts shall be for one or more lots of Electricity to be delivered in MWh at a rate of 1 Megawatt per lot for delivery during each Settlement Period of the Delivery Day as specified in the Electricity Contract. The Directors may, in their absolute discretion, determine from time to time that Contracts in respect of Electricity shall be traded and delivered in a minimum number of lots or multiples thereof.

### W.3 OTHER DEFINITIONS<sup>9</sup>

In these Contract Rules and the related Administrative Procedures set out in Section X the following terms shall bear the meanings set out opposite each:

"Appointed ECVNA"	means the ECVNA appointed by the Clearing House in accordance with W.5;
"Balancing and Settlement Code" (BSC)	means the document designated by the Secretary of State and adopted by the National Grid Company plc as the BSC as modified from time to time in accordance with the terms of the Transmission Licence and the BSC Procedures made pursuant thereto;
"BSC Co"	has the meaning given thereto in the BSC as modified and amended from time to time;
"Buyer"	means the Buyer (as defined in Rule A.1) that is the person who is required to nominate a Transferee under Rule W.11(a);
"Clearing House procedures" / "Procedures"	means the procedures of the Clearing House from time to time in force as prescribed under the Clearing House Rules;
"Clearing House Directions"	means any instructions or requests that the Clearing House may issue to the Buyer or Seller from time to time;
"D+" or "D-"	means, in respect of a Contract, in the case of "D+" the number of Business Days immediately after, and in the case of "D-" the number of Business Days immediately before, the day on which the Delivery Day specified in

<sup>8</sup> Amended 29 April 2013

<sup>9</sup> Amended 7 December 2005, 29 March 2006, 12 May 2006, Launch of ICE Clear 2008, Amended 29 April 2013, 3 September 2014

	the Electricity Contract commences ;
“Delivery Failure Costs”	means an amount calculated by the Clearing House based on the imbalance costs a Party may pay or be paid under the BSC attributable to one or more Notification Failures under Rule W.13;
"Delivery Day"	means either :  a) in respect of a Base Contract, the period beginning at 23:00 hours on a day on which an ECVN in respect of a Base Contract is due to become effective, and the transfer from one Energy Account to the other Energy Account is due to be made under that Base Contract in accordance with the terms of these Contract Rules, the Administrative Procedures and the Clearing House procedures, and ending at 23:00 hours on the following day (irrespective of whether this encompasses 23, 24 or 25 sequential hours); or  b) in respect of a Peak Contract, the period beginning at 07:00 hours and ending at 19:00 hours on the same weekday on which an ECVN in respect of a Peak Contract is due to become effective, and the transfer from one Energy Account to the other Energy Account is due to be made under that Peak Contract in accordance with the terms of these Contract Rules, the Administrative Procedures and the Clearing House procedures.
"ECVNA Authorisation"	means the authorisation of the Appointed ECVNA validated by the ECVAAs in accordance with the BSC;
“EFA Calendar”	means the Electricity Forward Agreement calendar (or any Exchange approved industry recognised successor calendar) on which groups of Individual Day Contracts may be based.

In the case of Base Contracts,  
The number of Individual Day Contracts grouped as a month (“Month Contract”) is based on the number of days in an EFA month period, namely 28 days in January, February, April, May, July, August, October and November; 35 days in March, June, September, December. The exception is December 2004 and every December thereafter where the numbering of weeks under the EFA Calendar results in a sixth week for the month.

A Quarter Contract comprises two 28 day Month Contracts and one 35 day Month Contract. The exception is December 2004 and every December thereafter where the numbering of weeks under the EFA Calendar results in a sixth week for the month.

A Season Contract comprises four 28 day Month Contracts and two 35 day Month Contracts and commences April, and October. The exception is December 2004 and every December thereafter where the numbering of weeks under the EFA Calendar results in a sixth week for the month.

In the case of Peak Contracts,  
The number of Individual Day Contracts grouped as a month (“Month Contract”) is based on the number of days in an EFA month period, namely 20 days in January, February, April, May, July, August, October and November; 25 days in March, June, September, December. The exception is December 2004 and every December thereafter where the numbering of weeks under the EFA Calendar results in a sixth week for the month.

A Quarter Contract comprises two 20 day Month Contracts and one 25 day Month Contract. The exception is December 2004 and every December thereafter where the numbering of weeks under the EFA Calendar results in a sixth week for the month.

A Season Contract comprises four 20 day Month Contracts and two 25 day Month Contracts and commences April, and October. The exception is December 2004 and every December thereafter where the numbering of weeks under the EFA Calendar results in a sixth week for the month.

"Electricity"	has the meaning given thereto in the BSC, as modified and amended from time to time;
"Electricity Contract"	means an ICE Futures UK Base Electricity Futures Contract (EFA)/ICE Futures UK Base Electricity Futures Contract (Gregorian) ("Base") and/or an ICE Futures UK Peak Electricity Futures Contract (EFA)/ICE Futures UK Peak Electricity Futures Contract (Gregorian) ("Peak") (as appropriate) made pursuant to these Contract Rules;
"Energy Account "	means either a production or a consumption account established and operated under the BSC in respect of a Party which is used by the Settlement Administration Agent to determine the energy imbalance obligations of that Party;
"Energy Contract Volume"	means, for each Settlement Period of a Delivery Day and an Energy Account, a volume of Electricity calculated by the Clearing House and notified to the Member and the Member's Transferor/Transferee as applicable, that should be notified to the ECVAA in an ECVN in respect of an Electricity Contract;
"Energy Contract Volume Aggregation Agent" (ECVAA)	means the person identified under the BSC to whom ECVNs and ECVNA authorisations must be made and who is responsible for the aggregation and validation of ECVNs and for the validation of the ECVNA Authorisations;
"Energy Contract Volume Notification" (ECVN)	means the notification, including amongst other things of an Energy Contract Volume, submitted by the ECVNA to the ECVAA for each Settlement Period of a Delivery Day in the manner required by the BSC and otherwise in accordance with these Contract Rules, the Administrative Procedures and the Clearing House procedures;
"Energy Contract Volume Notification Agent" (ECVNA)	means the person who is qualified to act as an ECVNA for the purposes of the BSC and who is appointed by the Clearing House and authorised by the Clearing House and the Seller or the Buyer, (or their Transferor and Transferee respectively) as applicable, under Rule W.5, to submit ECVNs in accordance with the BSC, these Contract Rules, the Administrative Procedures and the Clearing House procedures;
"Exchange Delivery Settlement Price" (EDSP)	means, in respect of an Electricity Contract, the settlement price determined by the Directors in accordance with the Administrative Procedures;
"ICE Futures UK Base Electricity Futures Contract: ("Base")	means a contract for delivery of electricity for every Settlement Period for each Delivery Day during the period specified in such contract;
"ICE Futures UK Peak Electricity Futures Contract ("Peak")	means a contract for delivery of electricity for every Settlement Period for each Delivery Day during the period specified in such contract;
"Level 1 Credit Default"	has the meaning given thereto in the BSC, as modified and amended from time to time;
"Level 2 Credit Default"	has the meaning given thereto in the BSC, as modified and amended from time to time;
"Level 1 default notice"	means the notice given by the ECVAA pursuant to the BSC when such Party reaches Level 1 Default in respect of any Settlement Period;
"Month Contract"	means a calendar month of individual Delivery Day contracts;
"MWh"	means megawatt hours;
"Notification Failure"	means an occurrence where an ECVN for a Settlement Period is not made, is made incorrectly, is not accepted or is made, accepted and subsequently rejected;
"Party"	means a party who is bound by the BSC in the participation capacity of a "Trading Party" (as defined in the BSC);

"Party System"	means that part of the Buyer's and/or Seller's, and/or their respective Transferor's or Transferee's, system which enables, inter alia, an ECVNA to submit an ECVN to, or receive information from, the ECVAA;
"Quarter Contract"	means three consecutive months of Individual Day Contracts grouped as follows: January, February and March (first quarter); April, May and June (second quarter); July, August and September (third quarter); and October, November and December (fourth quarter);
"Season Contract"	means six consecutive months of Individual Day Contracts grouped as follows:  "Summer Season Contract" consisting of the months April to September; and  "Winter Season Contract" consisting of the months October to March;
"Seller"	means the Seller (as defined in Rule A.1) that is the person who is required to nominate a Transferor under Rule W.10(a);
"Settlement Administration Agent" ("SAA")	means the agent appointed under the BSC to determine the energy imbalance of a Party's Energy Account under the BSC;
"Settlement Period"	means a 30 minute period in the Delivery Day commencing on the hour or the half-hour;
"Gregorian Calendar"	means the Gregorian calendar representing January, March, May, July, August, October and December as 31 days, April, June, September and November as 30 day months and February as 28 or 29 days, as appropriate
"Transferee"	means a person nominated by the Buyer pursuant to Rule W.11(a)(i);
"Transferor"	means a person nominated by the Seller pursuant to Rule W.10(a)(i);
"Transmission Licence"	means the licence granted pursuant to Section 6(1)(b) of the Electricity Act 1989 in respect of England and Wales, as amended from time to time;
"Transmission System"	means the high voltage wires owned and operated by the holder of the Transmission Licence as amended from time to time.

#### **W.4 PRICE**

- (a) The Electricity Contract price shall be in pounds Sterling per MWh and Electricity Contracts may be traded with minimum fluctuations of £0.01 (1 pence) per MWh.
- (b) The Electricity Contract price shall be exclusive of any charges payable by either the Buyer (or its Transferee) or the Seller (or its Transferor) pursuant to the BSC and any fees payable in respect of the ECVNA Services.
- (c) The Electricity Contract shall be exclusive of any Value Added Tax or any other duty that may be or become payable on the sale or transfer of Electricity under an Electricity Contract and any such taxes or duties shall be borne by the Buyer.

#### **W.5 ENERGY CONTRACT VOLUME NOTIFICATION AGENT APPOINTMENT AND AUTHORISATION**

- (a) In respect of an Electricity Contract to which the Clearing House is a party as the Buyer, for the purposes of delivery, or as otherwise required by the Exchange, the Clearing House shall appoint an ECVNA. The appointment of an ECVNA shall be in accordance with the Clearing House procedures and shall be for such period of time as prescribed by the Clearing House from time to time. Such ECVNA must be authorised to submit ECVNs on behalf of the Transferor and the Clearing House (ECVNA Authorisation) to the ECVAA in accordance with Rule X.7.

In respect of each Settlement Period of each Delivery Day:

- (i) the Seller shall take or procure that its Transferor shall take, such actions as are required to be taken pursuant to the BSC and the BSC Procedures for ECVNA Authorisations to be eligible for validation by the ECVAA;
  - (ii) the Seller shall take, or procure that its Transferor shall take, such actions as are required pursuant to the BSC, BSC Procedures, these Contract Rules, the Administrative Procedures and the Clearing House procedures for a valid ECVNA Authorisation to be in place with the ECVAA for each Settlement Period to allow an ECVN to be made in respect of the relevant Electricity Contract for such Settlement Period.
- (b) In respect of an Electricity Contract to which the Clearing House is a party as the Seller, for the purposes of delivery, or as otherwise required by the Exchange, the Clearing House shall appoint an ECVNA. The appointment of an ECVNA shall be in accordance with the Clearing House procedures and shall be for such period of time as prescribed by the Clearing House from time to time. Such ECVNA must be authorised to submit ECVNs on behalf of the Transferee and the Clearing House (ECVNA Authorisation) to the ECVAA in accordance with Rule X.7.

In respect of each Settlement Period of each Delivery Day of an Electricity Contract:

- (i) The Buyer shall take or procure that its Transferee shall take, such actions as are required to be taken pursuant to the BSC and the BSC Procedures for such ECVNA Authorisations to be eligible for validation by the ECVAA;
- (ii) The Buyer shall take, or procure that its Transferee take, such actions as are required pursuant to the BSC, BSC Procedures, these Contract Rules, the Administrative Procedures and the Clearing House procedures for a valid ECVNA Authorisation to be in place with the ECVAA for each Settlement Period to allow an ECVN to be made in respect of the relevant Electricity Contract for such Settlement Period.

## W.6 ENERGY CONTRACT VOLUME NOTIFICATION<sup>10</sup>

The Clearing House (as appropriate in accordance with Rule W.5) shall procure the submission by the ECVNA appointed pursuant to Rule W.5 and Rule X.7 of an ECVN in respect of the Energy Contract Volume for each Settlement Period for each Delivery Day to the ECVAA in accordance with the information provided by the Clearing House and in accordance with Rule X.8, the Administrative Procedures, the BSC and the Clearing House procedures and any Clearing House Directions.

Where a Buyer or Seller has both Peak and Base Contracts for delivery during a Settlement Period common to both contracts, the ECVN will comprise the aggregated volume for that Settlement Period.

## W.7 DELIVERY UNDER AN ELECTRICITY CONTRACT

For a Settlement Period of a Delivery Day,

- (a) in respect of an Electricity Contract to which the Clearing House is party as the Buyer, delivery shall be effected by the ECVAA validating in accordance with the BSC, the ECVN submitted by the Appointed ECVNA stipulating the Seller's (or its Transferor's) Energy Account and the Clearing House's Energy Account in the ECVN and such ECVN not subsequently being rejected;
- (b) in respect of an Electricity Contract to which the Clearing House is party as the Seller, delivery shall be effected by the ECVAA validating in accordance with the BSC, the ECVN submitted by the Appointed ECVNA stipulating the Buyer's (or its Transferee's) Energy Account and the Clearing House's Energy Account in the ECVN and such ECVN not subsequently being rejected.

## W.8 EXCLUSION OF LIABILITY<sup>11</sup>

- (a) Save as specifically provided in these Contract Rules, the Administrative Procedures, the Clearing House procedures, the Regulations and the Clearing House Rules (and to the extent permitted by law), the Exchange and the Clearing House accept no liability in connection with an Electricity

<sup>10</sup> Amended 12 May 2006

<sup>11</sup> Amended launch of ICE Clear 2008

Contract, its performance, non-performance or its termination whether based on breach of contract, warranty, or tort. In particular, but without limitation, neither the Exchange and/or the Clearing House are responsible for or shall have any liability whatsoever for:

- (i) the availability, or suitability, or unavailability or malfunction of a Party System other than its own Party System or any part thereof;
  - (ii) the performance or non-performance of BSC Co or ECVAA of their respective obligations under the BSC;
  - (iii) the performance or non-performance of any operator of a Party System other than its own Party System or any part thereof; or
  - (iv) the performance or non-performance of an Appointed ECVNA.
- (b) Neither the Buyer nor the Seller, nor their Transferee and Transferor, respectively, shall have any claim against the Exchange or the Clearing House for any loss, cost, damage or expense incurred or suffered as a result of the condition or operation of the Transmission System, the unavailability or malfunction of a Party System or any part thereof or the performance or non-performance of BSC Co or ECVAA or any operator of a Party System or any part thereof except as otherwise expressly provided for in these Contract Rules and the Administrative Procedures.
- (c) Without prejudice to the rights and obligations of any person party to a Corresponding Contract arising pursuant to a Corresponding Contract, a person who is not the Buyer, Seller, the Exchange or the Clearing House shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision contained in an Electricity Contract made pursuant to these Contract Rules.

## **W.9 PAYMENT UNDER AN ELECTRICITY CONTRACT**

- (a) Subject to delivery under W.7 and without prejudice to paragraph (b) of this Rule W.9, the Buyer shall pay the EDSP per each MWh of Electricity specified in the Electricity Contract. Payment will be made by the time referred to in and in accordance with the Administrative Procedures.
- (b) Any difference between the EDSP with respect to the Electricity Contract and the Contract Price shall be accounted for between the parties to the Electricity Contract in accordance with the Clearing House procedures.

## **W.10 SELLER'S OBLIGATIONS**

- (a) In respect of an Electricity Contract to which the Clearing House is party as the Buyer, the Seller shall:
- (i) nominate a Transferor (who may be the Seller itself), to authorise the Appointed ECVNA to:
    - (aa) submit the ECVNA Authorisation in accordance with Rule W.5 and Rule X.7; and
    - (bb) submit an ECVN in accordance with Rule W.6.

The Transferor must be entitled under the BSC to have Energy Accounts, and have such Energy Accounts during each relevant Settlement Period;

- (ii) give the Clearing House details of the Transferor, for the purposes of delivery under Rule W.7, and in accordance with the Administrative Procedures and any other details required by the Clearing House as specified in the Administrative Procedures or the Clearing House procedures from time to time;
- (iii) comply with, and where relevant, procure that its Transferor complies with the applicable provisions of the BSC, these Contract Rules, the Administrative Procedures and the Clearing House procedures (and in particular take all reasonable steps to ensure that the Transferor is not in Level 1 or Level 2 Credit Default in order that the ECVN is validated by the ECVAA for each Settlement Period referred to in the ECVN and not subsequently rejected for credit reasons or as a result of any other default by the Seller or Transferor under the BSC). The

Clearing House must be notified immediately if the Transferor is served with a Level 1 default notice by the ECVAAs or is in Level 1 or Level 2 Credit Default, or may become so in respect of any Settlement Period relevant to the Electricity Contract;

- (iv) make payment in pounds Sterling in London of any amounts due and payable pursuant to these Contract Rules, the Administrative Procedures or the Clearing House procedures; and
  - (v) perform all other obligations imposed on the Seller under these Contract Rules, the Administrative Procedures and the Clearing House procedures.
- (b) The Seller shall be responsible for the performance of all of its obligations under the Electricity Contract, including those which are to be performed by the Transferor (if a different person) on its behalf, and shall perform such obligations in a timely manner. Full performance of the obligations of the Seller under an Electricity Contract by the Transferor, as applicable, in accordance with these Contract Rules shall constitute performance of those obligations of the Seller under such Electricity Contract. The Seller shall be liable to the Clearing House in accordance with Rule W.13 for any failure on the part of its Transferor.
- (c) Subject to Rule W.13(c) any obligation upon the Seller to pay any costs, charges or expenses of any form shall not be borne by the Exchange or the Clearing House.

## W.11 BUYER'S OBLIGATIONS

- (a) In respect of an Electricity Contract to which the Clearing House is party as the Seller, the Buyer is obliged to:
- (i) nominate a Transferee (who may be the Buyer itself), to authorise the Appointed ECVNA to:
    - (aa) submit the ECVNA Authorisation in accordance with Rule W.5 and Rule X.7; and
    - (bb) submit an ECVN in accordance with Rule W.6.
- The Transferee must be entitled under the BSC to have Energy Accounts, and have Energy Accounts during each relevant Settlement Period;
- (ii) give the Clearing House details of the Transferee, for the purposes of delivery under Rule W.7 and in accordance with the Administrative Procedures and any other details required by the Clearing House as specified in the Administrative Procedures or the Clearing House procedures from time to time;
  - (iii) comply with, and where relevant, procure that its Transferee complies with the applicable provisions of the BSC, these Contract Rules, the Administrative Procedures and the Clearing House procedures (and in particular take all reasonable steps to ensure that the Transferee is not in Level 1 or Level 2 Credit Default in order that the ECVN is validated by the ECVAAs for each Settlement Period referred to in the ECVN and not subsequently rejected as a result of any default by the Buyer or its Transferee under the BSC). The Clearing House must be notified immediately if the Transferee is served with a Level 1 default notice by the ECVAAs or is in Level 1 or Level 2 Credit Default or may become so in respect of any Settlement Period relevant to the Electricity Contract;
  - (iv) make payment in pounds Sterling in London of any amounts due and payable pursuant to these Contract Rules, the Administrative Procedures or the Clearing House procedures; and
  - (v) perform all other obligations imposed on the Buyer under these Contract Rules, the Administrative Procedures and the Clearing House procedures.
- (b) The Buyer shall be responsible for the performance of all of its obligations under the Electricity Contract, including those which are to be performed by the Transferee (if different persons) on its behalf, and shall perform such obligations in a timely manner. Full performance of the obligations of the Buyer under an Electricity Contract by the Transferee, as applicable, in accordance with these Contract Rules shall constitute due performance of those obligations of the Buyer under such



Electricity Contract. The Buyer shall be liable to the Clearing House in accordance with Rule W.13 for any failure on the part of its Transferee.

- (c) Subject to Rule W.13(c) any obligation upon the Buyer to pay costs, charges or expenses of any form shall not be borne by the Exchange or the Clearing House.

## **W.12 BUYER'S AND SELLER'S SECURITY<sup>12</sup>**

The Buyer and the Seller may be required to put up such security as the Clearing House may from time to time require pursuant to the Clearing House Rules and such security may be in the form of a bank guarantee or cash or such other form as the Clearing House may accept. Any interest payable by the Clearing House on such cash security will be paid in accordance with the Clearing House procedures.

## **W.13 FAILURE TO PERFORM OBLIGATIONS UNDER AN ELECTRICITY CONTRACT<sup>13</sup>**

Without prejudice to the provisions of these Contract Rules and any other steps or sanctions which may be taken or applied under the Regulations or the Clearing House Rules:

- (a) If, in respect of an Electricity Contract where the Clearing House is party as the Buyer, there is a Notification Failure for a Settlement Period as a result of any failure on the part of the Seller or its Transferor to comply with the applicable obligations under such Electricity Contract, then the Seller shall indemnify the Clearing House in respect of any Delivery Failure Costs directly attributable to that Notification Failure;
- (b) If, in respect of an Electricity Contract where the Clearing House is party as the Seller, there is a Notification Failure for a Settlement Period as a result of any failure on the part of the Buyer or its Transferee to comply with the applicable obligations under an Electricity Contract, then the Buyer shall indemnify the Clearing House in respect of any Delivery Failure Costs directly attributable to that Notification Failure;
- (c) If there is a Notification Failure for a Settlement Period as a result of any failure on the part of the Clearing House as the Buyer or the Seller in (a) and (b) respectively or the appointed ECVNA, to comply with the applicable obligations under an Electricity Contract and in particular those in these Contract Rules and Administrative Procedures, then the Clearing House shall indemnify the Seller or the Buyer in (a) and (b) respectively in respect of any Delivery Failure Costs directly attributable to that Notification Failure up to an amount of one million pounds (£1 million). Where the failure occurs as a result of any act or omission of the Appointed ECVNA, the Clearing House's liability shall be limited to such sums as are recoverable by it from the Appointed ECVNA.

If such a Notification Failure is a result of the Clearing House being in Level 2 Credit Default, and such Level 2 Credit Default is attributable to a Notification Failure as a direct result of the Buyer (or its Transferee) or the Seller (or its Transferor) being in Level 2 Credit Default, then the Buyer or Seller on whose behalf the notification was made, shall indemnify the Clearing House in respect of any Delivery Failure Costs attributable to the Notification Failure on the part of the Clearing House under (a) and /or (b). This shall apply for the relevant Settlement Period and any subsequent Settlement Periods until such time that the Clearing House is no longer in Level 2 Credit Default attributable to the Notification Failure;

- (d) For the purposes of calculating either the Seller's, the Buyer's or the Clearing House's Delivery Failure Costs pursuant to (a), (b) or (c) respectively, the relevant consequences of the Notification Failure shall be considered in isolation from other notifications not made under an Electricity Contract in respect of the Buyer's or Seller's Energy Accounts;
- (e) Without prejudice to (a) above, the Seller shall indemnify the Clearing House against all costs reasonably incurred by the Clearing House in taking steps to mitigate the losses or, charges, expenses or penalties which would otherwise be incurred as a result of the Seller's failure to comply with its obligations under an Electricity Contract;

<sup>12</sup> Amended launch of ICE Clear 2008

<sup>13</sup> Amended launch of ICE Clear 2008

- (f) Without prejudice to (b) above, the Buyer shall indemnify the Clearing House against all costs reasonably incurred by the Clearing House in taking steps to mitigate the losses or, charges, expenses or penalties which would otherwise be incurred as a result of the Buyer's failure to comply with its obligations under an Electricity Contract;
- (g) The Buyer and the Seller acknowledge that the right to be indemnified under this Rule W.13 shall be their sole remedy in respect of any failure by any other party to comply with its obligations in respect of an Electricity Contract. The Buyer and the Seller agree that the provisions of the Regulations and the Clearing House Rules in respect of liability shall prevail to the extent of any inconsistency with the provisions of the BSC applicable to liability as between the Parties in respect of an Electricity Contract made pursuant to these Contract Rules; and
- (h) The Exchange and/or the Clearing House shall under no circumstances be liable for any indirect or consequential loss or loss of profits.

#### **W.14 ARBITRATION AND DISPUTE RESOLUTION<sup>14</sup>**

In respect of any disputes relating to an Electricity Contract, the Buyer and the Seller acknowledge, on behalf of themselves and their Transferee and Transferor respectively, that such disputes shall be determined in accordance with the arbitration provisions in the Regulations. In the event that the Transferor or Transferee takes, or causes any action to be taken pursuant to the BSC the relevant Member shall indemnify the Clearing House for any costs, charges, expenses or penalties arising from such action which may be incurred by the Clearing House.

#### **W.15 FORCE MAJEURE**

- (a) Subject to Rule W.15(e), neither party to an Electricity Contract shall be liable in respect of any failure on its part to authorise an Appointed ECVNA in relation to any Electricity Contract, any failure to make an ECVN or any rejection of any ECVN if performance of such obligation is prevented by Force Majeure. In such case neither party shall be held to be in default under such Electricity Contract and no payment shall be made under Rules W.9 or W.13.
- (b) Force Majeure shall mean the occurrence of any event (including an event under Rule W.15(c)), except those listed in Rule W.15(d), which is outside the reasonable control of the Buyer (or its Transferee), the Seller (or its Transferor) or the Clearing House as the case may be, which prevents an ECVN from being submitted on behalf of a Party to the ECVA, or being received by the ECVA, and thereby prevents the debiting and crediting of the Energy Accounts for a Settlement Period on a Delivery Day or results in an amount other than the Energy Contract Volume being credited and debited.
- (c) An event of Force Majeure in respect of a Settlement Period shall include, without limit:
  - (i) the provisions of the BSC being suspended, or the occurrence of a Contingency Provision as defined in the BSC, so as to prevent the submission of an ECVN in respect of that Settlement Period;
  - (ii) BSC Co suspending the submission of ECVNs under the BSC.
- (d) Subject to Rule W.15(c), the occurrence of the following events shall not give rise to Force Majeure:
  - (i) the refusal or rejection by the ECVA, for whatever reason, of an ECVN submitted by the Appointed ECVNA pursuant to Rule W.7;
  - (ii) the failure of a Party's System; or
  - (iii) the failure of the ECVNA's system which enables, inter alia, the ECVNA to submit an ECVN to, or receive information from, the ECVA.

<sup>14</sup> Amended launch of ICE Clear 2008

- (e) A party to an Electricity Contract shall not be entitled to relief through the occurrence of Force Majeure under this Rule W.15 unless such party has notified the Clearing House and the Exchange as soon as reasonably practicable after such party has become aware (or after it ought reasonably to have become aware) of such Force Majeure, and has continued to seek to perform its obligations in accordance with the Electricity Contract (in which event it shall be entitled to such relief with effect from the commencement of such Force Majeure event).
- (f) Upon request by the Clearing House and/or the Exchange, a party seeking Force Majeure relief under this Rule W.15 shall provide all information required by the Clearing House and/or the Exchange as soon as practicable to assist the Exchange in determining whether an event of Force Majeure has occurred.
- (g) If Force Majeure prevents the affected party from performing its obligations under an Electricity Contract, the Electricity Contract shall be invoiced back by the Clearing House, in accordance with the Clearing House procedures, at a price to be fixed by the Exchange, or a body appointed by the Exchange, in their absolute discretion. Such price shall be binding on the parties and no dispute as to such price may be referred to arbitration but completion of invoicing back shall be without prejudice to the right of either party to refer the question of the existence, extent or duration of the Force Majeure or any default or related dispute to arbitration under the Arbitration Rules.

