

**SP DISTRIBUTION PLC - GENERAL BILATERAL TERMS AND CONDITIONS FOR
ADOPTION OF CONTESTABLE WORKS**

PART 1 - GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

1.1 The following words and expressions shall (except to the extent that the context otherwise requires) have the meanings hereby assigned to them:-

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| "Accredited" | means Accredited to carry out Contestable Works and/or Accredited for Live Working, as applicable; |
| "Accredited to carry out Contestable Works" | means at any time satisfying the requirements of the Distributor at that time for persons carrying out the design and construction of Contestable Works, which as at the Commencement Date means being accredited for the appropriate work categories under the National Electricity Registration Scheme operated by Lloyds Register; |
| "Accredited for Live Working" | means at any time satisfying the requirements of the Distributor at that time for persons working live on electrical systems such as the Contestable Works, which as at the Commencement Date means being accredited for the appropriate work categories under the National Electricity Registration Scheme operated by Lloyds Register; |
| "Act" | means the Electricity Act 1989 (as amended); |
| "Adopted Contestable Assets" | has the meaning given to it in Condition 16 (Upon and following Making Live – General) of Part 2 (Applicable Terms) of these General Bilateral Terms (as the case may be); |
| "Adoption Date" | means in relation to any of the Contestable Assets the date upon which such of the Contestable Assets are adopted pursuant to Conditions 13 (Pre-Making Live – General) to 16 (Upon and following Making Live – General) of Part 2 (Applicable Terms) of these General Bilateral Terms (as the case may be); |
| "Adoption" | means in relation to any Contestable Assets the operation of Conditions 13 (Pre-Making Live – General) to 16 (Upon and following Making Live – General) of Part 2 (Applicable Terms) of these General Bilateral Terms (as the case may be) in relation to those of the Contestable Assets, and "Adopt" and "Adopted" shall be construed accordingly; |
| "Adoption Agreement" | means the adoption agreement between the Parties; |
| "Agreed Rates" | means the rates applicable to electricity wayleaves or easements in transactions of similar nature to the taking of the Land Rights and which at the relevant time are as agreed between the Distributor (whether or not in co-operation with other holders of distribution licences under the Act) and the National Farmers Union and/or the Country Land and Business Association or the successors to either of those bodies; |
| "Agreement" | means the Adoption Agreement, these General Bilateral Terms entered into by the Parties, together with the Schedule to the Adoption Agreement; |
| "Applicable Law" | means at any time any and every law, statute, statutory instrument, proclamation, by-law, directive, decision, regulation, |

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| | rule, order, notice, rule of court, or delegated or subordinated legislation in effect at that time which in any way affects or impinges upon any of the matters referred to in or required to be done under the Agreement; |
| "Approved Design" | means the Contestable Design (and any variations thereto) approved by the Distributor in accordance with Condition 8 (Design Approval undertaken by Distributor) of Part 2 (Applicable Terms) of these General Bilateral Terms; |
| "Approved Live Working Procedures" | means the live working procedures set out in the Safety Rules of the Distributor and/or the live working procedures of the Contractor where the Contractor is working under its own Safety Rules; |
| "Authority" | means the Gas and Electricity Markets Authority established by Section 1(1) of the Utilities Act 2000 or any successor body; |
| "CDM file" | means the health and safety file prepared in accordance with Regulation 12 of the Construction (Design and Management) Regulations 2015; |
| "Code of Practice" | means the Energy Networks Association Competition in Connections Code of Practice dated July 2015, as may be revised or updated from time to time; |
| "Commencement Date" | means the last date of signing of the Adoption Agreement; |
| "Commissioning Requirements" | means the requirements which are set out in the applicable specification documents detailed at Part 3 (Distributor's Standards) of these General Bilateral Terms (as confirmed by the Distributor, if requested by the Contractor pursuant to Condition 14 (Making Live of the Contestable Works by the Distributor) and 15 (Making Live of the Contestable Works by the Contractor) of Part 2 (Applicable Terms) of these General Bilateral Terms) and of which, in relation to any part of the Contestable Works, the Distributor requires to be satisfied in relation to the Making Live of any part of the Contestable Works; |
| "Competent Authority" | includes any court of competent jurisdiction, tribunal, legislative body, the Secretary of State, the Authority, any local or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or of the European Communities; |
| "Construction Contract" | the contract between the Instructing Party and the Contractor for the carrying out of, <i>inter alia</i> , the Contestable Works; |
| "Construction and Installation Standards" | means the documents (as applicable to the Site) described in Part 3 (Distributor's Standards) of these General Bilateral Terms; |
| "Contestable Assets" | means the Contestable Works which will form part of the Distributor's System; |
| "Contestable Design" | means the electrical design and physical layout of the Contestable Assets set out in Annex C (Specification of Contestable Works) of the Schedule; |
| "Contestable Works" | means the works to be carried out and completed by the Contractor as described in Part 2 (Applicable Terms, Specifications and Payments) of these General Bilateral Terms; |

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| "Contractor" | has the meaning give to it in the Adoption Agreement; |
| "Contractor's Programme" | has the meaning given to it in Condition 9.1 (Construction undertaken by Contractor) of Part 2 (Applicable Terms) of these General Bilateral Terms; |
| "Customer" | means in relation to a Metering Point any person being supplied by electricity at that Metering Point; |
| "Customer Interruption" | means an interruption of the supply of electricity to a Customer which lasts for three minutes or longer (excluding re-interruptions to the supply of electricity to a Customer previously interrupted during the same incident); |
| "Defects Correction Period" | means the period of 2 years after the Adoption Date of the Contestable Works; |
| "Design Standards" | means the document(s) (as applicable to the Site) described in Part 3 (Distributor's Standards) of these General Bilateral Terms; |
| "Distribution Code" | has the meaning given to that expression in the Licence; |
| "Distributor" | has the meaning given to it in the Adoption Agreement; |
| "Distributor's Safety Rules" | means the safety rules for working on the Distributor's System applicable as at the Commencement Date as described in Part 3 (Distributor's Standards) of these General Bilateral Terms; |
| "Distributor's Statement of Methodology" | means the document titled "Statement of methodology and charges for connection to SP Distribution PLC and SP Manweb PLC's Electricity Distribution Systems", as published on the Distributor's website and updated from time to time; |
| "Distributor's System" | has the meaning given to "licensee's distribution system" in the Licence; |
| "Distributor's Works" | means the works to be carried out and completed by the Distributor as described in Part 2 (Applicable Terms, Specifications and Payments) of these General Bilateral Terms; |
| "Energise" | means, in relation to the Instructing Party's Installation or any part thereof, the connection of the Instructing Party's Installation to the Contestable Assets at an Exit Point so as to allow electricity to flow from the Distributor's System to the Instructing Party's Installation or that part thereof (as the case may be) and "Energisation" shall be construed accordingly; |
| "Estimated Value of the Contestable Works" | means such amount as the Distributor acting in accordance with Good Industry Practice may estimate would be the cost to the Distributor of carrying out the Contestable Works; |
| "Exit Point" | means a Metering Point or a connection point for generator connections; |
| "Force Majeure" | means any event or circumstance which is beyond the reasonable control of any Party and which results in or causes the failure of that Party to perform any of its obligations under the Agreement including act of God, strike, lock-out or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, |

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| | accumulation of snow or ice, lack of water arising from weather or environmental problems, other inclement weather conditions, explosion, fault or failure of any electricity, plant or apparatus to the extent that such event or circumstance could not have been prevented by Good Industry Practice, and also including governmental restraint, Act of Parliament, other legislation, by-law and lawful directive, provided further that lack of funds shall not be interpreted as a cause beyond that Party's reasonable control; |
| "Force Majeure Event" | has the meaning given to it in Condition 11 (Force Majeure and System Emergencies) of this Part; |
| "Good Industry Practice" | means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the same type of undertaking under the same or similar circumstances; |
| "I&M Guidance" | has the meaning given to it in Condition 11 (Inspection and monitoring undertaken by Contractor) of Part 2 (Applicable Terms) of these General Bilateral Terms; |
| "Instructing Party" | means the person who appoints the Contractor to carry out Contestable Works in relation to the Site; |
| "Instructing Party's Installation" | means the equipment belonging to the Instructing Party and connected to the Contestable Assets at an Exit Point; |
| "Intellectual Property Rights" | means, patent, design right, trade mark (including any applications for any of the foregoing and whether registered or unregistered), copyright, database right, or other intellectual property rights anywhere in the world; |
| "Land" | includes buildings, structures, erections or constructions of any nature in, on, under or over land; |
| "Land Rights" | means all such rights in, under or over Land as are appropriate for the construction, installation, operation, repair, maintenance, renewal or use of the Contestable Works or, as the case may be, the Distributor's Works and each and every part thereof; |
| "Last Date" | means the date specified as such in Annex C (Specification of Contestable Works) of the Schedule; |
| "Licence" | means the Distributor's distribution licence granted under section 6(1)(c) of the Act; |
| "MPAS Registration System" | has the meaning given to it in the MRA; |
| "MRA" | means the agreement entitled "Master Registration Agreement" dated 1 June 1998, as amended from time to time; |
| "Make Live" | means in relation to the Contestable Assets the connection of the Contestable Assets to the Distributor's System so as to allow electricity to flow from the Distributor's System to the Contestable Assets or such part thereof (as the case may be) and "Making Live" and "Made Live" shall be construed accordingly; |
| "Metering Point" | has the meaning given to it in the MRA; |

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| "Network Enhancement" | means any additional design requirements over those identified in the Contestable Design requested by the Distributor, including any Network Enhancement required by the Distributor pursuant to Condition 5 (Connection Design undertaken by the Contractor) of Part 2 (Applicable Terms) of these General Bilateral Terms for the benefit of other consumers; |
| "NRSWA" | means the New Road and Street Works Act 1991; |
| "Party" | means the Distributor or the Contractor, being together the "Parties"; |
| "Point of Connection" | means the point of connection at which a supply of electricity can flow between the Distributor's System and the Contestable Works; |
| "POC Guidance" | means the Distributor's guidance, specifications, and standards for determining the Point of Connection set out in the documents listed in Part 3 (Distributor's Standards) of these General Bilateral Terms; |
| "RAAdAR" | has the meaning given to it in Condition 18.3 (Notices) of this Part; |
| "Registered" | means the recording on the MPAS Registration System of a Supplier as being responsible for a Metering Point from a particular date and "Registration" shall be construed accordingly; |
| "Regulations" | the Electricity Safety, Quality and Continuity Regulations 2002; |
| "Reinforcement" | means any reinforcement of the Distributor's System which is required to enable the Instructing Party's Installation to be connected and the Contestable Works to be carried out and completed, each in accordance with the Distributor's requirements; |
| "Required Information" | means information, and documents (including paper or electronic formats), drawings or other materials setting out or containing information required by the Distributor with reference to the Contestable Works and the site and neighbourhood thereof and includes information as to the topics set out in Part 3 (Distributor's Standards) of these General Bilateral Terms and documents and others of the nature specified in the said Part; |
| "Safety Rules" | means either the Distributor's Safety Rules or such safety rules of the Contractor which are of an equivalent relevant standard to the Distributor's Safety Rules, in accordance with the Code of Practice; |
| "Schedule" | means the Schedule annexed to the Adoption Agreement; |
| "Secretary of State" | has the meaning given to it under the Interpretation Act 1978; |
| "Shutdown" | means in relation to the Distributor's System or any part thereof (as the case may be) the disconnection of the Distributor's System or such part thereof by the movement of any switch or the removal of any fuse or the taking of any other step so as to stop electricity flowing from the Distributor's System or such part thereof (as the case may be) to any part of the Contestable Works which have not been Adopted; |
| "Site" | means the site at which the Contractor is to carry out the |

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| | Contestable Works, as specified in Part 2 (Applicable Terms, Specifications and Payments) of these General Bilateral Terms; |
| "Statutory Consents" | means all consents, licences, permissions and approval of any kind required under any statute or subordinate legislation including planning permission, building regulation approvals and Street Works Licences, hazardous substances consents, environmental consents and construction consents (under the Construction (Design and Management) Regulations 2015); |
| "Street Works Licence" | means a licence under Section 50 or a written permission under Section 109 of the NRSWA; |
| "Substation Accommodation" | means the accommodation or any part or parts of it (including all substation buildings and/or outdoor compound, concrete, plinth, fencing, drainage, fittings and systems ventilation fittings and systems and/or any other accommodation works) as required by the Distributor to house any substation equipment; |
| "Supplier" | has the meaning given to it in the MRA; |
| "Supply Number" | has the meaning given to it in the MRA; |
| "Supply" | means the supply of electricity to be provided by the Supplier to the Customer at any Exit Point in terms of the agreement between the Supplier and the Customer for the supply of electricity by the Supplier to the Customer at that Exit Point; |
| "System Emergency" | means an event either on the Distributor's System or on the distribution system of another distributor of electricity which results in the Distributor (acting in accordance with Good Industry Practice) considering it appropriate, or being requested, to divert resources (whether economic, technical, personnel or otherwise) for the duration of that event in order to allow the Distributor to deal with or respond to that event in accordance with Good Industry Practice; |
| "Week" | means each period of seven consecutive days starting at 0200 hours on a Monday and ending at 0159 hours on the next following Monday; |
| "Working Day" | means any day other than a Saturday, a Sunday, Christmas Day, New Year's Day, Good Friday, or a day which is a banking holiday within the meaning of the Banking and Financial Dealings Act 1971; and |
| "Works Schedule" | has the meaning given to it in Condition 9.2 (Construction undertaken by Contractor) of Part 2 (Applicable Terms) of these General Bilateral Terms. |

2. INTERPRETATION

2.1 In this Agreement unless the context otherwise requires:-

- 2.1.1 any term importing gender shall include any gender;
- 2.1.2 any term importing the singular includes the plural and vice versa;
- 2.1.3 the words "includes" and "including" are to be construed without prejudice to the preceding generality;
- 2.1.4 save where the context otherwise requires, any reference to a numbered Clause, Paragraph, Part or Condition (as the case may be) is a reference to the

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Clause of the Adoption Agreement, Paragraph of the Schedule or Part or a Condition of these General Bilateral Conditions (as the case may be), so numbered;

- 2.1.5 the Clause, Paragraph, Schedule, Part or Condition headings do not form part of or affect the interpretation of this Agreement but are included for ease of reference only;
- 2.1.6 any reference to a statute, statutory instrument, act, regulation, rule or order shall be construed at any time as a reference to any such item as amended or re-enacted at that time; and
- 2.1.7 any reference to a "person" includes any person, firm, company or other legal entity.

3. DISTRIBUTOR'S WORKS

3.1 Provided that the Distributor:-

- 3.1.1 receives payment of each and every amount due under Conditions 5 (Payments) and 6 (Interest on Late Payment) of this Part, on the date specified for payment thereof, and
- 3.1.2 the Distributor has obtained all the Statutory Consents and Land Rights which the Distributor is to apply for pursuant to this Condition 3 in time to permit the Distributor to carry out and complete the Distributor's Works (if any) in accordance with the programme, detailed in Annex B (Specification of Distributor's Works) of the Schedule (as such programme may be amended from time to time by agreement between the Distributor and the Contractor),

the Distributor shall carry out and complete the Distributor's Works in accordance with such programme (as so amended), but if the Distributor does not:-

- 3.1.3 receive any such amount on the date so specified for payment thereof, the Distributor shall be entitled to cease carrying out the Distributor's Works unless or until that amount and any other amount which has by then become due by the Contractor in terms of the Agreement has been paid to the Distributor, or
- 3.1.4 obtain any of such Statutory Consents or Land Rights within such time,

the Distributor shall not be obliged to carry out any of the Distributor's Works for which such Statutory Consents and Land Rights have not been so obtained, unless and until such Statutory Consents and Land Rights are obtained by the Distributor pursuant to this Condition 3 or such payments have been made (as applicable).

3.2 The Distributor shall promptly notify the Contractor in writing if for any reason the Distributor anticipates that it will not, or may not be able to complete the Distributor's Works in accordance with that programme set out in Annex B (Specification of Distributor's Works) of the Schedule (as so amended). The Distributor shall use all reasonable endeavours to mitigate or avoid any delay in completing the Distributor's Works in accordance with such programme (as so amended). The Distributor shall state in any such notice the reason for the actual or anticipated delay (identifying any event or circumstance considered to be a Force Majeure Event), the steps being taken to mitigate or avoid the delay and the date by which the Distributor expects to complete the Distributor's Works. The only rights and remedies (express or implied and provided by common law or statute) of the Contractor in relation to or arising from, any breach of Condition 3.1 of this Part, or any other delay or failure by the Distributor in carrying out or completing the Distributor's Works, shall be the right to require the Distributor to use all reasonable endeavours to mitigate or avoid such delay, in accordance with this Condition 3.2.

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- 3.3 If the Distributor is delayed in carrying out the Distributor's Works by reason of any of the Instructing Party and/or Contractor's employees' acts, defaults or omissions, the Distributor shall be entitled to an extension of time for completing the Distributor's Works as is fair and reasonable in the circumstances.
- 3.4 In the event of suspension, cancellation or delay of any of the Distributor's Works at the Contractor's request, or a delay caused by matters within the Contractor's control, any reasonable expenses and/or costs incurred by the Distributor as a result of such suspension, cancellation or delay shall be charged to and paid for by the Contractor.
- 3.5 The value of the Distributor's Works is calculated on the basis that the Distributor will be operating during normal working hours. The Distributor shall be entitled to charge for any reasonable additional expenses and/or extra costs for work undertaken outside those times at the Contractors request or as a consequence of any actions by the Contractor or its employees.
- 3.6 The obligations on the Distributor to carry out the Distributor's Works and to meet any timescales are subject to the Contractor complying with their obligations under the Agreement.
- 3.7 The Distributor undertakes to the Contractor that the Distributor's Works, are all the works necessary to allow the Contestable Assets to be connected to the Distributor's System.
- 3.8 The Contractor shall procure that full, free and safe access to the Site shall be made available to the Distributor and the Distributor's employees at all times to enable the Distributor to carry out the Distributor's Works and statutory duties.
- 3.9 The Contractor shall procure that all roads and footpaths at the Site (where applicable), under which the Distributor's Works are to be laid shall, unless otherwise agreed between the Parties, be the subject of an adoption agreement with the relevant local authority. Where verges are required at the Site for use as service strips for the Distributor's Works they shall, unless otherwise agreed between the Parties, also be the subject of an adoption agreement with the relevant local authority. The Contractor must ensure that the owners/occupiers of the Site are made aware that placing fences, trees and shrubs on such verges is prohibited. Should the Distributor need to excavate such verges at any time, it shall not be responsible for reinstating the ground to any standard better than cultivated grass.
- 3.10 The Contractor hereby acknowledges that any or all Intellectual Property Rights in or relating to the Distributor's Works are and shall remain at all times the exclusive property of the Distributor. The Distributor hereby grants to the Contractor a non-exclusive, non-transferable licence to use any Intellectual Property Rights owned by the Distributor in or in relation to the Distributor's Works but only so far as necessary in order to perform the Contractor's obligations under the Agreement.
- 3.11 The Distributor shall notify the Contractor upon the completion of the Distributor's Works pursuant to the Agreement.
- 3.12 Nothing in the Agreement requires the Distributor to carry out the Distributor's Works if and to the extent that:
- 3.12.1 the Distributor is prevented from doing so by circumstances not within its control;
 - 3.12.2 the Distributor would or might be in breach of the Regulations and/or any other regulations relating to supply and safety, and it has taken all reasonable steps to prevent such circumstances from occurring and having that effect; and/or
 - 3.12.3 it is not reasonable for the Distributor to be required to do so.

Substation Accommodation

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- 3.13 If the Contractor is required by the Distributor to provide Substation Accommodation then the following provisions shall apply:
- 3.13.1 the Substation Accommodation must be provided by the Contractor at the Contractor's expense and/or cost on land the Contractor and/or the Customer and/or the Instructing Party owns or leases;
 - 3.13.2 the Contractor shall at the Contractor's expense and/or cost obtain the consent of any third party required to allow the Contractor to construct and retain the Substation Accommodation and for the Distributor to install and operate the Distributor's Works to be installed in the Substation Accommodation.
 - 3.13.3 the Contractor shall provide the Substation Accommodation in a position approved by the Distributor and in accordance with any guidance drawings and specifications provided by the Distributor to the Contractor. All builders working drawings relating to the provision of the Substation Accommodation must be submitted to the Distributor before the commencement of any such building works and such building works must not be commenced until approval of such builder's working drawings has been obtained from the Distributor.
 - 3.13.4 in respect of a Contestable Design for a Supply at or above 11kV:
 - (i) the Contractor shall make available a 400/230 volts (+10% to -6%), 50 hertz, 45 kVA, 3 phase 4 wire supply of electricity within the Substation Accommodation and install, maintain and provide that service together with such other ancillary service(s) as may be reasonably required by the Distributor at any time or from time to time;
 - (ii) as the service will be provided at a high voltage, the Contractor's attention is drawn to the provisions of the Distribution Code under which the Distributor is required to prepare, and the Parties will agree, a site responsibility schedule and where determined by the Distributor operation diagrams showing the ownership boundaries in relation to the Point of Connection. The Contractor's attention is also drawn to the Electricity at Work Regulations 1989 and the need to ensure that high voltage electrical equipment is operated by competent persons; and
 - (iii) an emergency trip facility, which in an emergency will allow the Contractor to simultaneously disconnect all incoming high voltage feeders at the Point of Connection, shall be provided by the Distributor adjacent to the metering panel within the Substation Accommodation. Should such disconnection occur, the Contractor will contact the Distributor to arrange for the Distributor to re-send that trip facility. Reconnection cannot be effected until that emergency trip facility has been reset.
 - 3.13.5 the Contractor shall complete all works relating to the provision of the Substation Accommodation:
 - (i) in a good workmanlike manner with good sound working practices and obtain all necessary consents of any kind (including planning permission and building regulation approval as appropriate);
 - (ii) in accordance with the builder's working drawings relating to such works approved by the Distributor in accordance with Condition 3.13.3 of this Part;
 - (iii) in accordance with the requirements (if any) described in the Design Standards; and

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- (iv) no plant or equipment will be installed in the Substation Accommodation by the Distributor until the building work relating to the provision of the Substation Accommodation has been completed to the satisfaction of the Distributor.

Land Rights for the Distributor's Works

- 3.14 The Distributor shall apply for and use all reasonable endeavours to obtain all Statutory Consents and Land Rights on terms and conditions acceptable to the Distributor in order to allow the Distributor to carry out the Distributor's Works pursuant to Condition 3 of this Part. The Contractor shall on request from, and at the cost of, the Distributor provide the Distributor with all such reasonable assistance as the Contractor can provide in order to assist the Distributor to obtain all Statutory Consents and Land Rights.
- 3.15 All costs which are to be paid by either Party to the other pursuant to this Condition 3 shall be paid pursuant to Condition 5 (Payments) of this Part.

4. CONTESTABLE WORKS

- 4.1 The Contractor shall procure that throughout the period whilst the Contestable Works are being carried out the Contractor and/or its sub-contractors and all its and their respective employees and agents shall be: (i) Accredited to carry out Contestable Works; and (ii) authorised under the relevant Safety Rules for the tasks they are undertaking.
- 4.2 The Contractor shall carry out and complete the Contestable Works in accordance with the Agreement and (as applicable):
 - 4.2.1 the POC Guidance;
 - 4.2.2 the Design Standards;
 - 4.2.3 the Construction and Installation Standards;
 - 4.2.4 the Safety Rules;
 - 4.2.5 the Approved Live Working Procedures;
 - 4.2.6 any Statutory Consents or Street Works Licence; and
 - 4.2.7 the Code of Practice.
- 4.3 The Contractor undertakes to obtain and collate the Required Information, such that it is capable of being delivered to the Distributor for inspection upon reasonable request from the Distributor. The Contractor and the Distributor shall consult as often as may be reasonably necessary to allow the Contractor a reasonable opportunity to understand the requirements of the Distributor and to comply therewith, and the Distributor shall use reasonable endeavours to procure that the Contractor is advised of any new or amended requirement as soon as is reasonably practicable after the same is identified by the Distributor.
- 4.4 The Contractor shall procure that all Exit Points which are to be Made Live and from which an electricity supply may be taken shall have been Registered in accordance with the specifications and procedures set out in the Construction and Installation Standards.
- 4.5 The Parties acknowledge that in relation to the Contestable Works, the Distributor shall not be, and the Contractor shall be, "the Client" for the purposes of the Construction (Design and Management) Regulations 2015.
- 4.6 In the event that despite the foregoing provisions of Condition 4.5 of this Part, the Contractor is not the Client for the purposes of these Regulations then the Contractor undertakes to indemnify the Distributor at all times against all demands, actions, proceedings, damages, losses, costs and expenses which are made or brought against, or incurred or suffered by the Distributor arising from or in connection with the

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performance or purported performance by the Contractor or the Instructing Party (as the case may be) or the failure by the Contractor or the Instructing Party (as the case may be) to perform or the fact that neither the Contractor nor the Instructing Party performs, the duties, obligations, requirements, and responsibilities imposed upon the Contractor or the Instructing Party (as the case may be) by or undertaken by the Contractor or Instructing Party (as the case may be) in connection with the Construction (Design and Management) Regulations 2015.

5. PAYMENTS

- 5.1 The Contractor shall pay on the Commencement Date (or such later date as is specified in Annex A of the Schedule) any amount stated in Annex A of the Schedule as such amount may be amended pursuant to Condition 5.2 of this Part as a contribution to the cost of the Distributor's Works.
- 5.2 Where at any time the Distributor considers it is necessary to change the design of the Distributor's Works the Distributor, acting reasonably, shall be entitled to so do and:-
- 5.2.1 if the Distributor considers such change is required for reasons beyond the Distributor's reasonable control, then the Distributor will be entitled to amend (by increasing or decreasing) the Contractor's contribution to the cost of the Distributor's Works specified in Annex A of the Schedule;
- 5.2.2 if the Distributor considers such change is required for reasons within the Distributor's control:-
- (i) the Distributor will not be entitled to increase the Contractor's contribution to the cost of the Distributor's Works, and
 - (ii) the Distributor will be obliged to reimburse the Contractor for any reasonable increases in the Contractor's costs or expenses which are incurred by the Contractor as a result of such changes in the design of the Distributor's Works except where:
 - (a) the decision to amend the design was made more than 6 months after the Commencement Date; and
 - (b) it is not the case that the decision would have been made within the 6 month period but for delay by the Distributor in carrying out the Distributor's Works.
- In any other event the Distributor will have no liability for any such increases in costs or expenses so incurred by the Contractor.
- 5.3 The Distributor shall pay to the Contractor any amounts stated in Annex A (Payments) of the Schedule at the times respectively specified in Annex A (Payments) of the Schedule for the payment of such amounts.
- 5.4 The Contractor will pay to the Distributor the amounts specified in Annex A (Payments) of the Agreement as being payable by the Contractor and at the times respectively specified in Annex A (Payments) of the Schedule for the payment of such amounts.
- 5.5 The Contractor shall indemnify and keep indemnified the Distributor against all demands, actions, proceedings, damages, losses, costs and expenses (including fines and penalties) suffered or incurred by the Distributor which relate to Customer Interruptions occurring prior to the Adoption Date and/or within the Defects Correction Period which arise directly or indirectly as a result of or in connection with any act or omission of the Contractor in connection with the carrying out or purported carrying out of the Contestable Works.
- 5.6 Any amount payable by one Party to another pursuant to the Agreement shall be paid within 30 days of the receipt by the Party obliged to pay the same of a valid invoice for such amount.

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- 5.7 All amounts mentioned in the Agreement as payable by a Party to the other Party are stated exclusive of Value Added Tax (if any) payable thereon and the Party obliged to pay such amounts shall add to such amounts Value Added Tax at the rate applicable thereto from time to time.
- 5.8 In the event that Reinforcement is required (and the Contractor is liable to pay for such Reinforcement), the Distributor shall be entitled to delay the Making Live of the Contestable Works until such time as all amounts payable by the Contractor to the Distributor in respect of the Reinforcement are received in full.

6. INTEREST ON LATE PAYMENT

- 6.1 If any amount due under the Agreement remains unpaid after the due date for its payment, such amount shall bear interest calculated from day to day at a rate per annum of 2.5% above the base rate (for the time being and from time to time) of The Royal Bank of Scotland plc from the due date until the amount due and any accrued interest thereon has been paid in full. The Parties acknowledge and agree that the amounts set out in this Condition 6 represent a substantial remedy for late payment.

7. INSURANCE AND SECURITY

- 7.1 The Contractor shall, from the Commencement Date until the expiry of 3 years after the Agreement is terminated, keep and maintain with insurers of reputable standing and authorised to do business in the UK:-
- 7.1.1 public liability insurance in its own name to a minimum level of not less than £5,000,000 per incident or series of connected incidents;
 - 7.1.2 professional indemnity insurance in its own name to a minimum level of not less than £1,000,000 per incident or series of connected incidents;
 - 7.1.3 employer's liability insurance for a minimum liability of £5,000,000 per incident or series of connected incidents or for any higher minimum limit which may be required at any time in order to comply with Applicable Law; and
 - 7.1.4 motor insurance, in respect of the vehicles used in connection with the Contestable Works.
- 7.2 The Contractor shall ensure that the public liability insurance policy it is obliged to hold under Condition 7.1.1 of this Part shall contain an indemnity to principals clause under which the Distributor shall be indemnified in respect of claims made against the Distributor arising out of or in connection with the Contestable Works and for which the Contractor is legally liable.
- 7.3 The Contractor shall, whenever reasonably required in writing by the Distributor, produce to the Distributor confirmation from its insurer or insurance broker that the policies affecting the insurances required by Condition 7.1 of this Part remain current together with evidence of payment of the last premium due thereon.
- 7.4 The Distributor shall be entitled, by written notice to that effect given to the Contractor at any time, to require the Contractor to deliver to the Distributor, within 28 days of the giving of such notice, a guarantee or other form of security in an amount and form and on terms and conditions all satisfactory to the Distributor.

8. INTELLECTUAL PROPERTY

- 8.1 The Contractor hereby warrants to the Distributor that it has not at any time prior to the Commencement Date, and shall not at any time throughout the duration of the Agreement, assign, licence or otherwise grant any rights in any Intellectual Property Rights it may have or may acquire in the relevant Contestable Works, or the relevant Contestable Design (including any "as laid plans" as delivered to the Distributor pursuant to Condition

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13 (Pre-Making Live – General) of Part 2 (Applicable Terms) of these General Bilateral Terms), to any other person including but not limited to the Customer or the Instructing Party.

- 8.2 The Contractor hereby assigns to the Distributor the Intellectual Property Rights arising from or relating to each Contestable Design (including any "as laid plans" as delivered to the Distributor pursuant to Condition 13 (Pre-Making Live – General) of Part 2 (Applicable Terms) of these General Bilateral Terms) or the relevant Contestable Works. At the request of the Distributor, the Contractor shall at all times hereafter do all such acts and execute all such documents as may be necessary to secure the vesting in the Distributor of all rights assigned to the Distributor under this Condition 8.2.
- 8.3 Upon any reasonable request by the Distributor, the Contractor will deliver to the Distributor such further information as the Distributor acting in accordance with Good Industry Practice may require in order to enable the Distributor to fully understand the Contestable Design (including such "as-laid plans").
- 8.4 The Contractor warrants that all Intellectual Property Rights necessary to allow the Contractor to fulfil its obligations under this Condition 8 shall be acquired by the Contractor prior to Adoption of the Contestable Assets within the Contestable Works.
- 8.5 The Contractor undertakes to indemnify the Distributor against all reasonable losses, costs and expenses suffered or incurred by the Distributor arising out of any claim by any third party that the use by the Distributor of the Intellectual Property Rights licensed or vested in the Distributor pursuant to this Condition 8 infringes that third party's rights.
- 8.6 The Contractor warrants that it owns all Intellectual Property Rights in or relating to each Contestable Design, (including the "as-laid plans") and each Contestable Works.

9. CONTRACTOR'S LIABILITY

- 9.1 If, other than where due to the negligence of the Distributor, the Distributor's apparatus, cables or equipment is damaged, mislaid or stolen or electricity is illegally abstracted from the Site whilst the Site is under the Contractor's control, the Contractor shall reimburse the Distributor with the cost of repair or replacement of such items and any associated expenses and/or costs and pay the Distributor the value of such electricity abstracted (based on the Distributor's reasonable estimate).
- 9.2 The Contractor shall carry the whole risk of loss or damage to every part of the Contestable Works until the Adoption of the Adopted Contestable Assets pursuant to Conditions 13 (Pre-Making Live – General) to 16 (Upon and following Making Live – General) of Part 2 (Applicable Terms) of these General Bilateral Terms (as applicable) and shall indemnify and keep indemnified the Distributor against all demands, actions, proceedings, damages, losses, costs and expenses which are made or brought against or incurred or suffered by the Distributor in connection with or arising from:
- 9.2.1 any defect in the design of, the materials used in, or workmanship in carrying out, such part of the Contestable Works, prior to the Adoption Date; or
- 9.2.2 any defect arising from any act, default, omission of the Contractor or any agent or employee of the Contractor, or of any other person with whom the Contractor is responsible, in any such case in the carrying out of such part of the Contestable Works.
- 9.3 The Contractor shall indemnify and keep indemnified the Distributor against reasonable costs incurred or suffered by the Distributor in remedying any fault or carrying out any repair or rectification on or in connection with any of the Adopted Contestable Assets during the period:-
- 9.3.1 commencing on the Adoption Date of such Adopted Contestable Assets, and

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- 9.3.2 ending on the expiry of the Defects Correction Period for such Adopted Contestable Assets,
- whether arising from the design, materials used in or workmanship, of such Adopted Contestable Assets (including, where applicable, the chosen Point of Connection) unless such fault, repair or need for rectification is directly caused by:-
- (i) the Distributor acting in breach of the Agreement; or
 - (ii) some person other than the Contractor or any agent or employee of the Contractor or person for whom the Contractor is responsible.
- 9.4 Where the Contestable Works to be carried out by the Contractor includes the identification of a Point of Connection and the design of the Contestable Design, the Contractor shall indemnify and keep indemnified the Distributor against reasonable costs incurred or suffered by the Distributor as a result of, or in connection with, the Contractor's failure to identify that Reinforcement is required in accordance with the POC Guidance prior to the carrying out of the Contestable Works or the Making Live of the Contestable Assets.
- 9.5 The Contractor shall indemnify and keep indemnified the Distributor against all demands, actions, proceedings, damages, losses, costs and expenses (including fines and penalties):-
- 9.5.1 which are made or brought against or incurred or suffered by the Distributor as a result of, or in connection with:-
- (i) where applicable, any failure by the Contractor to ensure that the officers, employees or agents of the Contractor and other persons for whom the Contractor is responsible in law conduct themselves upon the property of the Distributor during the determination of the Point of Connection in a proper and responsible manner; or
 - (ii) the Energisation of any Exit Point as a result of the act or omission of the Contractor, its employees, agents or sub-contractors, where that Exit Point is not Registered and where no request to Energise that Exit Point has been made by the Supplier in relation to that Exit Point; or
 - (iii) the Supply Number for any Exit Point being Registered as a result of the act or omission of the Contractor, its employees, agents or sub-contractors prior to the Adoption of the Contestable Assets containing that Exit Point; or
 - (iv) the NRSWA which may arise in connection with or as a result of the carrying out or the purported carrying out of the Contestable Works or the purported exercise by the Contractor of any rights, or the failure by the Contractor to fulfil any obligations or liabilities under or arising from the NRSWA (including any Street Works Licence granted thereunder); or
- 9.5.2 which are made or brought against or incurred or suffered by the Distributor as a result of, or in connection with:-
- (i) any breach by the Contractor of any obligations of the Contractor to any party who is also the granter of any of the Land Rights; and/or
 - (ii) any such demand, action, proceeding, damage, loss, cost or expense (including fines and penalties) which are made or brought by, or are sought to be recovered by, any such granter arising from any act or omission by the Contractor or any agent or employee of the Contractor or other person for whom the Contractor is

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responsible in connection with or in the course of carrying out the Contestable Works; and/or

- (iii) any failure by the Contractor in respect of any legal duty or obligation owed by the Contractor to such granter; and/or
- (iv) any failure by the Contractor to ensure that the officers, employees or agents of the Contractor and other persons for whom the Contractor is responsible in law conduct themselves upon the property of the said granter during the carrying out of the Contestable Works in a proper and responsible manner.

10. LIMITATION OF LIABILITY

10.1 Nothing in the Agreement shall exclude or limit the liability of either Party for (the "**Party Liable**"):

10.1.1 death or personal injury resulting from a breach of duty by a Party or any of its officers, employees or agents; or

10.1.2 fraud or fraudulent misrepresentation; or

10.1.3 damage caused to the property of third parties,

and the Party Liable shall indemnify and keep indemnified the other Party, its officers, employees or agents from and against all such and any loss or liability which the other Party may suffer or incur by reason of any claim on account of death or personal injury resulting from the breach of duty of the Party Liable or any of its officers, employees or agents.

10.2 Neither Party, nor its officers, employees or agents shall in any circumstances whatsoever be liable to the other Party for:

10.2.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or

10.2.2 any indirect or consequential loss; or

10.2.3 any breach of the Agreement caused directly or indirectly by a Force Majeure Event; or

10.2.4 any losses resulting from the liability of the other Party to any other person howsoever arising, save as provided in Condition 10.1 of this Part,

provided that, and subject to Condition 10.3 of this Part, the exclusions set out above shall not apply in respect of any indemnity granted under the Agreement.

10.3 Where the Agreement provides for an indemnity to be given by the Contractor, the Distributor shall be able to recover the losses referred to in Conditions 10.2.1, 10.2.2 or 10.2.4 of this Part only where that is a loss suffered by any person other than the Distributor.

10.4 The rights and remedies provided by the Agreement to the Parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of the Agreement, including any rights any of the Parties may possess in delict which shall include actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute and releases the other Party Liable to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in the Agreement and undertakes not to enforce any of the same except as expressly provided herein.

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- 10.5 Save as otherwise expressly provided in the Agreement this Condition 10, in so far as it excludes or limits liability, shall override any other provision of the Agreement, provided that nothing in this Condition 10 shall exclude or restrict or otherwise prejudice or affect any of:-
- 10.5.1 the rights, powers, duties and obligations of any of the Parties which are conferred or created by the Act, the Licence or any regulations made under the Act; or
 - 10.5.2 the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, the Licence or otherwise howsoever.
- 10.6 Each of the Parties agrees that each of the other Parties holds the benefit of Conditions 10.1, 10.2 and 10.8 for itself and as agent for its officers, employees and agents.
- 10.7 For the avoidance of doubt, nothing in this Condition 10 shall prevent or restrict the Parties from enforcing any obligations (including suing for a debt) owed to it under or pursuant to the Agreement.
- 10.8 In respect of the Agreement and the activities carried out by the Parties under the Agreement, subject to Conditions 10.1, 10.2 and 10.5 of this Part the following limits of liability shall apply:
- 10.8.1 Subject to Condition 10.8.2 of this Part, neither Party nor any of its officers, employees or agents shall be liable to the other Party for loss arising from any breach of the Agreement other than in respect of:
 - (i) physical damage to property of the other Party, its officers, employees or agents; or
 - (ii) breach of any of its payment obligations (including those set out at Conditions 3.4 (Distributor's Works), 3.5 (Distributor's Works), 5 (Payments) and 9.1 (Contractor's Liability) of this Part),provided that each Party's maximum aggregate liability in contract, delict (including negligence) or otherwise, howsoever arising, for such loss under the Agreement, shall in no event exceed the greater of (a) one million pounds Sterling and (b) the relevant Estimated Value of the Contestable Works per event or series of connected events arising under the Agreement.
 - 10.8.2 Each Party's maximum aggregate liability in contract, delict (including negligence) or otherwise, howsoever arising, in respect of all claims under the indemnities provided for in the Agreement relating to the performance of that Party's obligations under the Agreement shall in no event exceed five million pounds Sterling per event or series of connected events arising under the Agreement.

11. FORCE MAJEURE AND SYSTEM EMERGENCIES

- 11.1 If either Party is unable to carry out its obligations under the Agreement due to a circumstance of Force Majeure, or if the Distributor shall be unable to carry out its obligations under the Agreement due to a System Emergency (a "**Force Majeure Event**"), the Agreement shall remain in full force and effect but, save as otherwise provided herein, all the Parties' obligations (other than obligations as to payment) shall be suspended without liability for a period equal to the circumstance of the Force Majeure Event (as the case may be) provided that:
- 11.1.1 the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure Event;
 - 11.1.2 no obligations of either Party that arose before the Force Majeure Event causing the suspension of performance are excused as a result of the Force Majeure Event; and

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11.1.3 the non-performing Party shall use all reasonable efforts to remedy its inability to perform.

12. SUB-CONTRACTING AND ASSIGNATION

12.1 The Contractor may sub-contract any part of the Contestable Works, provided that the Contractor ensures that only contractors appropriately Accredited are engaged in the carrying out or completion of the Contestable Works. The sub-contracting by the Contractor of any of its obligations under the Agreement shall not relieve the Contractor from liability for performance of such obligations in accordance with the Agreement and any such sub-contracting must be on General Bilateral Terms as to the person employed by the sub-contractor, and the quality of the work and materials used, no less onerous than those contained in the Agreement.

12.2 The Distributor may sub-contract any part of the Distributor's Works.

12.3 Neither Party may assign or transfer their respective rights and obligations under or benefits or burdens of the Agreement without the written consent of the other Party, such consent not to be unreasonably withheld or a decision thereon unreasonably delayed.

13. CONFIDENTIALITY

13.1 The Parties shall keep confidential the terms of the Agreement and all information obtained from the other Party (the Party from whom such information is obtained being the "Disclosing Party") under or in connection with the Agreement and shall not disclose the same to any third party without the written consent of the Disclosing Party except in accordance with Condition 13.2 of this Part.

13.2 The provisions of Condition 13.1 of this Part shall not apply to information which:-

13.2.1 is in or comes into the public domain otherwise than by breach of the Agreement, or

13.2.2 is obtained from a third party which is free to disclose the same, or

13.2.3 must be disclosed by requirement of law or valid legal or regulatory process, in which case the Party required to make such disclosure shall wherever possible notify the Disclosing Party in advance of such disclosures and in any event promptly thereafter, and shall reasonably co-operate with any attempt to maintain confidentiality of such information (which for the avoidance of doubt includes any disclosures permitted under the Employment Rights Act 1996, as amended by the Public Interest Disclosures Act 1998); or

13.2.4 requires to be disclosed to either Party's insurer or insurance broker in connection with an insurance claim arising as a result of the Agreement; or

13.2.5 requires to be disclosed to employees, agents, directors, officers or advisers who are directly involved in the performance or administration of the Agreement in order to enable that Party to fulfil their obligations and exercise their rights respectively under or arising from the Agreement and that Party shall in any such case ensure that such persons are aware of and comply with the obligations undertaken by it pursuant to this Condition 13; or

13.2.6 constitutes or forms part of the Contestable Design and any information, designs, plans or other materials or works made available by the Contractor to the Distributor relating to the Contestable Works (including the "as-laid plans") which information the Distributor shall be entitled to use without restriction.

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14. TERMINATION OF THE AGREEMENT

- 14.1 Without prejudice to any rights that have accrued under the Agreement or any of its rights or remedies, the Distributor may terminate the Agreement with immediate effect at any time by giving written notice to the Contractor in the event that:-
- 14.1.1 the Contractor fails in any material respect to conform or comply with any of its obligations under the Agreement, and (if such failure is capable of remedy) it is not remedied to the reasonable satisfaction of the Distributor within 30 days of the Contractor receiving notice from the Distributor of the occurrence thereof and requiring the same to be remedied; or
 - 14.1.2 in the event that a petition is presented for the winding up of, or notice is given of a general meeting at which a resolution will be considered to wind up, the Contractor or a receiver or an administrative receiver or an administrator of the Contractor is appointed, or any step is taken by any person to appoint an administrator of the Contractor, or the Contractor enters into any composition, scheme or arrangement with (or assignment for the benefit of) its creditors or should be unable to pay its debts within the meaning of Section 123(1)(e) or Section 123(2) of the Insolvency Act 1986, or
 - 14.1.3 no physical work forming part of the Contestable Works has commenced within one year after the Commencement Date; or
 - 14.1.4 a Force Majeure Event prevents, hinders or delays either Party's performance of its obligations under the Agreement for a continuous period of more than 12 months; or
 - 14.1.5 the Contractor fails to fulfil his obligations in terms of or arising from Condition 7.4 (Insurance and Security) of this Part; or
 - 14.1.6 the Construction Contract is terminated.
- 14.2 Without prejudice to any rights that have accrued under the Agreement or any of its rights or remedies, the Contractor may terminate the Agreement with immediate effect at any time by giving written notice to the Distributor in the event that:-
- 14.2.1 the Distributor shall fail in any material respect to conform or comply with any of its obligations under the Agreement, and (if such failure is capable of remedy) it is not remedied to the reasonable satisfaction of the Contractor within 30 days of the Distributor receiving notice from the Contractor of the occurrence thereof and requiring the same to be remedied; or
 - 14.2.2 in the event that a petition is presented for the winding up of, or notice is given of a General Meeting at which a resolution will be considered to wind up, the Distributor, or a receiver, an administrative receiver or an administrator of the Distributor is appointed, or any step is taken by any person to appoint an administrator of the Distributor, or the Distributor enters into any composition, scheme or arrangement with (or assignment for the benefit of) its creditors or should be unable to pay its debts within the meaning of Section 123(1) or Section 123(2) of the Insolvency Act 1986.
- 14.3 Without prejudice to any rights that have accrued under the Agreement or any of its rights or remedies, either Party may terminate the Agreement on giving to the other Party 6 months' written notice provided always that neither Party shall be allowed to terminate for convenience pursuant to this Condition 14.3 where Contestable Works which have commenced remain to be completed by the Contractor
- 14.4 Conditions which expressly or by implication have effect after termination shall continue in full force and effect, including Condition 1 (Definitions), Condition 2 (Interpretation), Condition 5 (Payments), Condition 7 (Insurance and Security), Condition 8 (Intellectual Property), Condition 9 (Contractor's Liability), Condition 10 (Limitation of Liability),

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Condition 13 (Confidentiality), Condition 14 (Termination of the Agreement), Conditions 19 and 20 (Dispute Resolution) and Condition 21 (Proper Law and Jurisdiction), all of this Part.

15. SEVERANCE

- 15.1 If any provision of the Agreement shall be found by any court or administrative body of competent jurisdiction or any Competent Authority to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of the Agreement which shall remain in full force and effect.

16. WAIVERS AND VARIATIONS

- 16.1 No act or omission of a Party shall by itself amount to waiver of any right or remedy of that Party unless expressly stated by that Party in writing nor shall any reasonable delay by a Party in exercising any right or remedy of that Party by itself constitute a waiver of that right or remedy.
- 16.2 No amendments to the Agreement shall have any effect whatsoever unless made in writing and signed on behalf of each of the Parties.

17. ENTIRE AGREEMENT

- 17.1 The Agreement constitutes the entire agreement between the Parties in respect of the subject matter thereof and supersedes any previous agreement or arrangements between the Parties in respect of that subject matter.

18. NOTICES

- 18.1 Subject to Condition 18.4 of this Part, any notice, demand, certificate or other communication required to be given or sent under Conditions 2 to 26 of this Part (inclusive) of the Agreement by either Party shall be in writing and given by hand or sent by first class recorded delivery post to the other Party at the address specified in the Agreement or such other address as may from time to time be notified in writing to the Party giving such notice or other communication by the Party to whom such notice or other communication is given.
- 18.2 Notices to be given in accordance with Condition 18.1 of this Part shall be deemed given, in the case of notice by hand, when given, in the case of notice given by recorded delivery post, two Working Days after the date of posting.
- 18.3 Unless otherwise agreed by the Parties, any notice, demand, certificate or other communication to be given or sent under Part 2 (Applicable Terms) of these General Bilateral Terms by either Party shall be given and sent using the Distributor's Register of Adopted Asset Requests system ("RAAdAR"). Any notices or communications using RAAdAR shall be deemed given when successfully uploaded on to RAAdAR.
- 18.4 This Condition 18 does not apply to documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of Condition 18.1 of this Part, "writing" shall not include e-mail, save that the Parties agree that any notice or communication to be given under Condition 3.2 (Distributor's Works) of this Part may be given by e-mail. Notice given by e-mail shall be deemed given on the next Working Day after sending, provided that no delivery failure notification is received by the sender.

19. DISPUTE RESOLUTION - ESCALATION

- 19.1 If any dispute or difference shall arise between the Parties regarding the Agreement either Party may give to the other Party a notice describing the dispute or difference and requiring the dispute or difference to be settled within 14 Working Days of

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the date of the notice, or such shorter period as may be reasonable, having regard to the nature of the dispute or difference.

- 19.2 Upon receipt of that notice the Parties shall arrange for a meeting to take place within 7 Working Days, or such shorter period as may be appropriate for the purposes of settling that dispute or difference.
- 19.3 If that dispute or difference is not resolved at that meeting, or otherwise within the remainder of the period specified in the notice, then at the expiry of the said period, either of the Parties may require the dispute or difference to be referred to the Managing Director of each of the Parties for resolution within 7 Working Days of referral to them.
- 19.4 Without prejudice to a Party's right to refer a dispute or difference to adjudication at any time in terms of Condition 20 (Dispute Resolution – Adjudication) of this Part, in the event that any dispute or difference is not resolved by this procedure, then either Party may refer the dispute or difference to adjudication in accordance with said Condition 20 (Dispute Resolution – Adjudication). Each Party shall bear their own costs and expenses in relation to the foregoing procedure.

20. DISPUTE RESOLUTION – ADJUDICATION

- 20.1 Either Party may at any time refer a dispute or difference to adjudication in accordance with the terms of this Condition 20.
- 20.2 The time periods stated in this Condition 20 exclude Christmas Day, Good Friday and bank holidays.
- 20.3 The adjudicator to decide the dispute or difference in accordance with the terms of the Agreement shall be either a person agreed by the Parties or, on the application of the Party who is seeking the appointment of the adjudicator, appointed by the Institution of Civil Engineers.
- 20.4 If a Party wishes to refer a dispute or difference to adjudication pursuant to this Condition 20, that Party shall give notice of its intention to refer such dispute or difference to adjudication to the other Party. The notice must give a brief description of the dispute and the decision that Party wishes the adjudicator to make.
- 20.5 The Parties may choose an adjudicator jointly; or a Party may ask the nominating body referred to in Condition 20.3 of this Part to appoint an adjudicator. An adjudicator must be appointed within 7 days of the notice of adjudication being given under Condition 20.4 of this Part. The nominating body must choose an adjudicator within four days of the request being made to it.
- 20.6 Within 7 days of a Party giving a notice of adjudication under Condition 20.4 of this Part that Party shall refer the dispute or difference to the appointed adjudicator, giving details of the dispute or difference, the contentions which are founded upon, the decision sought and any information and supporting documentation founded upon. All of this shall be provided to the other Party at the same time.
- 20.7 An adjudicator may resign at any time on giving notice in writing to the Parties. In the event that an adjudicator resigns then the provisions of Condition 20.3 of this Part shall be applied so as to secure the appointment of a new adjudicator. In the event of resignation the fees and expenses of the adjudicator shall be shared equally, except where directed otherwise by the adjudicator.
- 20.8 The adjudicator may, with the consent of both Parties, adjudicate at the same time on any dispute or difference under different agreements, which are related to the performance of the Agreement. The Parties may agree to extend the period within which the adjudicator may reach a decision in relation to all or any of these disputes or differences.
- 20.9 A communication between a Party and the Adjudicator shall be communicated to the other Party at the same time.

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- 20.10 The adjudicator (a) shall act impartially and independently, (b) shall set the procedure for the adjudication (which shall, amongst other things, allow for the other Party to respond to the referral and accompanying information and documentation submitted to the adjudicator under Condition 20.6 of this Part), and (c) may take the initiative in ascertaining the facts and the law. In reaching a decision the adjudicator may:-
- 20.10.1 apply his/her own knowledge and/or experience;
 - 20.10.2 review and revise any certificate, opinion, decision, requirement or notice issued, given or made under the Agreement as if no such certificate, opinion, decision, requirement or notice had been issued, given or made;
 - 20.10.3 direct either Party to provide further information and/or to take any other action which the adjudicator considers necessary to reach a decision on the dispute or difference; obtain from others such information and advice as the adjudicator considers necessary on technical and/or legal matters subject to giving prior notice to the Parties; and
 - 20.10.4 give directions as to the timetable for the adjudication, any deadlines, or limits to the length of written documents or the number of documents to be supplied or the number of persons attending any adjudication meeting or hearing;
- 20.11 If a Party does not comply with any direction within the time stated by the adjudicator, the adjudicator may continue the adjudication and may make a decision based on the information and evidence received.
- 20.12 The adjudicator shall decide the dispute or difference and shall notify the decision and reasons in writing to each Party within 28 days of the referral and its accompanying documentation being issued under Condition 20.6 of this Part. The Party who has made the referral may consent to allowing the adjudicator to extend the period of 28 days by up to 14 days. By agreement among the Parties after the referral has been made, a longer period than 28 days may be notified jointly by the Parties to the adjudicator within which to reach a decision.
- 20.13 The adjudicator may, within 5 days of giving his/her decision to the Parties, correct the decision to remove a clerical or typographical error arising by accident or omission.
- 20.14 The Parties shall each meet their own costs of the adjudication except that the adjudicator may direct who should pay the adjudicator's fees and expenses and in what proportions.
- 20.15 Without prejudice, and subject, to any direction made by the adjudicator pursuant to Condition 20.11 of this Part the Parties shall be jointly and severally liable to the adjudicator for the adjudicator's fees and for all expenses reasonably incurred by the adjudicator pursuant to the adjudication.
- 20.16 The decision of the adjudicator shall be binding on the Parties until the dispute or difference is finally determined by court proceedings or by an agreement in writing between the Parties made after the decision of the adjudicator has been given.
- 20.17 The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his/her functions as adjudicator unless the act or omission is in bad faith and this protection from liability shall extend to any employee or agent of the adjudicator.

21. PROPER LAW AND JURISDICTION

The Agreement shall be governed by and construed in all respects in accordance with the law of Scotland and the Parties submit to the exclusive jurisdiction of the Scottish Courts.

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22. VARIATIONS TO THE AGREEMENT

- 22.1 If the Authority or any part thereof issues any determination or guidance, which the Distributor reasonably considers requires alteration to the Agreement in order to enable the Distributor to comply with Applicable Law including the Licence, the Distributor shall be entitled to give notice to the Contractor giving reasonable details of such determination or guidance (as the case may be) and of the alterations to the Agreement which the Distributor reasonably considers are so required and the Distributor and the Contractor will meet as soon as practicable after the giving of such notice in order to discuss in good faith, whether or not they can agree which alterations (if any) should be made to the Agreement as a result of such determination or guidance.
- 22.2 The Contractor undertakes not to unreasonably withhold, or to unreasonably delay a decision on the granting of, the agreement of the Contractor to the Agreement being altered as specified in any notice given by the Distributor to the Contractor pursuant to Condition 22.1 of this Part, provide that the Contractor will not be regarded as unreasonably withholding its agreement to such alterations if the making of such alterations would result in the Contractor:-
- 22.2.1 being in breach of any of its other contractual obligations, and/or
- 22.2.2 incurring or suffering costs or expense which the Distributor has not undertaken to reimburse the Contractor.
- 22.3 In the event of the Contractor and the Distributor agreeing the alterations (if any) which are to be made to the Agreement pursuant to this Condition 22 following an issue of a notice by the Distributor to the Contractor pursuant to Condition 22.1 of this Part, the Distributor is hereby authorised to make such alterations to the Agreement on behalf of and as attorney for the Contractor.
- 22.4 If the Parties fail to agree whether or not any such alterations should be made pursuant to this Condition 22 following the issue of a notice by the Distributor to the Contractor pursuant to Condition 22.1 of this Part, either Party may refer the dispute as to whether or not such, or any other alterations should be made to the Agreement as a result of the issue of such determination or guidance by the Authority or any part thereof, to the procedure specified in Conditions 19 and 20 (Dispute Resolution) of this Part.

23. CONSTRUCTION CONTRACT

The Contractor will immediately notify the Distributor in the event of any Construction Contract terminating before the relevant Contestable Works have been Adopted.

24. INDEMNITIES

- 24.1 If any Party ("**the Indemnified**") wishes to take the benefit of any indemnity contained in the Agreement, it shall (but not as a pre-condition):
- 24.1.1 give the Party who is giving the indemnity ("**the Indemnifier**") prompt notice in writing of any claim being made or action threatened in writing or brought against the Indemnified;
- 24.1.2 not admit liability to any third party;
- 24.1.3 provide, upon request of the Indemnifier, any co-operation, assistance or information as may be reasonably requested which is relevant to such matters; and
- 24.1.4 permit the Indemnifier (at the Indemnifier's expense) to conduct any litigation that may ensue and all negotiations for settlement of the claim provided always that in the event that the Indemnifier exercises its entitlement so to do, the Indemnifier shall:

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- (i) keep the Indemnified fully notified at all times of the progress of the litigation or negotiations (as the case may be); and
 - (ii) shall give the Indemnified reasonable opportunity to consider and comment upon any material decisions to be taken in respect thereto, and shall comply with any reasonable comments which the Indemnified shall make.
- 24.2 If (a) the Indemnified considers that any litigation or negotiations referred to in Condition 24.1 of this Part is or are not being adequately or properly pursued or conducted, or (b) the Indemnifier has not complied with any comments made by the Indemnified under Condition 24.1.4(ii) of this Part, the Indemnified shall have the right to refer the matter to the respective Managing Directors or Chief Executive Officers of the Indemnifier and the Indemnified in order for them to discuss the matter and negotiate in good faith with a view to resolving the matter. The specific format for and timing of such discussions and negotiations will be left to the discretion of those Managing Directors or Chief Executive Officers (each acting reasonably).
- 24.3 To the extent that any indemnity contained in the Agreement covers damage, loss, costs or expenses (including fines and penalties) incurred by one of the Parties as opposed to damage, loss, costs or expenses (including fines and penalties) incurred by any third party, such indemnity shall not be construed as affecting any obligations of the Indemnified Party under common law to mitigate its losses on each occasion.

25. CONFLICT

- 25.1 If there is an inconsistency between any of the provisions of the Agreement and the provisions of any of those documents listed at Part 3 (Distributor's Standards) of these General Bilateral Terms, the provisions of the Agreement shall prevail.

26. NO PARTNERSHIP OR AGENCY

Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party the agent of the other Party, nor authorise either Party to make or enter into any commitments for or on behalf of the other Party.

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PART 2 – APPLICABLE TERMS

This Part sets out the additional terms which shall be applicable to the Agreement.

DETERMINATION OF POINT OF CONNECTION

1. Determination of Point of Connection undertaken by the Contractor

- 1.1 Where the Contractor has elected to determine the Point of Connection, the Contractor warrants to the Distributor that it has determined its own Point of Connection in accordance with the POC Guidance.
- 1.2 The Distributor shall provide all such information as is reasonably required by the Contractor in order for the Contractor to determine the Point of Connection, in accordance with the Code of Practice.
- 1.3 In the event that the Distributor allows the Contractor to access information on the Distributor's premises for the purposes of determining the Point of Connection, the Contractor shall comply with all policies and instructions of the Distributor in relation to such access.
- 1.4 No approval, review or comment or failure to approve, review or comment by the Distributor of or on the Point of Connection or any matter relating to it shall relieve the Contractor of any liability whatsoever or any of its obligations under the Agreement, or any part thereof or variation thereto, the Contractor having the sole responsibility for ensuring that the design and location of the Point of Connection conforms in all respects with the POC Guidance and the other provisions of the Agreement.

Reinforcement

- 1.5 The Distributor will make available all such information as is reasonably required by the Contractor, in order for the Contractor to determine whether any Reinforcement is required.
- 1.6 In the event that the Contractor intends to determine its own Point of Connection and identifies that Reinforcement is required, the Contractor shall notify the Distributor of such required Reinforcement.
- 1.7 In such circumstances the Distributor must determine the Point of Connection and design and carry out the Reinforcement. Such determination and Reinforcement shall be carried out in accordance with the Distributor's Statement of Methodology and the Code of Practice.
- 1.8 The Distributor will provide, within the timescales set out in its Licence, an indication of the work schedule for such Reinforcement (including estimated timings for completion of the Reinforcement works) and an estimate of associated costs.

2. Determination of Point of Connection undertaken by the Distributor

- 2.1 Where the Contractor requests the Distributor to determine the Point of Connection, such request shall be made, and the Distributor shall determine the Point of Connection, in accordance with the Distributor's Statement of Methodology, the Code of Practice and the provisions of the Agreement.

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STATUTORY CONSENTS AND LAND RIGHTS

3. Contractor obtaining Land Rights and Statutory Consents

- 3.1 The Contractor, without cost to the Distributor, and before commencement of the Contestable Works (except only to the extent, if any, that it is not necessary for such lawful commencement) shall:-
- 3.1.1 apply for and obtain the Statutory Consents; and
 - 3.1.2 obtain the Land Rights,
- and shall ensure that at all times during the carrying out and completion of the Contestable Works that the Contractor holds such Statutory Consents and Land Rights.
- 3.2 The Distributor shall on request from, and at the cost of, the Contractor provide the Contractor with all such reasonable assistance as the Distributor can provide in order to assist the Contractor to obtain the Land Rights and Statutory Consents, such costs (if any) to be paid by the Contractor to the Distributor shall be paid pursuant to Condition 5 (Payments) of Part 1 (General Terms and Conditions) of these General Bilateral Terms.
- 3.3 If the Distributor, having used reasonable endeavours to secure the Land Rights and Statutory Consents is unable to secure the requisite Land Rights and Statutory Consents, the Distributor shall give the Contractor notification to that effect.

4. Distributor obtaining Land Rights on the Contractor's behalf

- 4.1 Subject as hereinafter provided, the Distributor, on request from and at the Contractor's cost, shall use reasonable endeavours to obtain the Land Rights. The Contractor shall on request from, and at the cost of, the Distributor provide the Distributor with all such reasonable assistance as the Contractor can provide in order to assist the Distributor to obtain all of the Land Rights, provided, for the avoidance of doubt:
- 4.1.1 nothing in the Agreement, including this Condition 4, shall require the Distributor to exercise any compulsory rights to acquire any Land Rights, and any decision by the Distributor to exercise or seek to exercise such rights shall be entirely a matter for the sole discretion of the Distributor, and
 - 4.1.2 no deed or document containing or specifying any of the Land Rights shall disclose or refer to any consideration or price other than a consideration or price calculated using the Agreed Rates.
- 4.2 The Distributor shall notify the Contractor as soon as practicable after the Distributor obtains such of the Land Rights as are necessary to allow the Contractor lawfully to commence, carry out or complete (as the case may be) the Contestable Works and the Contractor shall not commence any of the Contestable Works for which the Land Rights have to be obtained in order to allow the Contractor to lawfully commence the same until such time as the Distributor has so notified the Contractor.

CONNECTION DESIGN

5. Connection Design undertaken by the Contractor

- 5.1 The Contractor undertakes to the Distributor that the Contestable Design has been designed, and that all variations thereto shall be designed, in each case by the Contractor in accordance with the POC Guidance and the specifications and standards set out in the documents listed in Part 3 (Distributor's Standards) of these General Bilateral Terms.

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- 5.2 No approval, review or comment, or failure to approve, review or comment by the Distributor of or on the Contestable Design or the Contestable Works or any other matter shall relieve the Contractor of any liability whatsoever or any of its obligations under the Agreement, or any part thereof or variation thereto, the Contractor having the sole responsibility for ensuring that the design of the Contestable Works (including the Contestable Design) conforms in all respects with the POC Guidance and the specifications and standards set out in the documents listed in Part 3 (Distributor's Standards) of these General Bilateral Terms and the other provisions of the Agreement.
- 5.3 The Contractor shall include in the Contestable Design any Network Enhancement requested by the Distributor at any time prior to the Contractor commencing to carry out any of the physical Contestable Works affected by that Network Enhancement, and the Distributor shall pay the reasonable costs of such inclusion. The Contractor shall use all reasonable endeavours to include in the Contestable Design any Network Enhancement requested by the Distributor after the Contractor has commenced the physical Contestable Works affected by that Network Enhancement, and the Distributor shall pay the reasonable costs of such inclusion.
- 5.4 Within 2 Working Days of a request by the Contractor made after the Commencement Date, the Distributor shall issue to the Contractor, the Supply Numbers for each Exit Point included in the Contestable Assets.

6. Connection Design undertaken by Distributor

- 6.1 Where the Contractor requests the Distributor to undertake the Connection Design, such request shall be made, and the Distributor shall provide the Connection Design to the Contractor, in accordance with the Distributor's Statement of Methodology and the provisions of the Agreement.

DESIGN APPROVAL

7. Design Approval undertaken by Contractor

- 7.1 Where the approval of the Contestable Design is undertaken by the Contractor, the Contractor shall nevertheless submit the approved Contestable Design to the Distributor for inspection, in accordance with the Code of Practice.

8. Design Approval undertaken by Distributor

- 8.1 Where the Contractor does not undertake approval of the Contestable Design, the Contractor must submit the Contestable Design to the Distributor for approval.
- 8.2 The Contractor shall not commence carrying out the Contestable Works unless and until the Contestable Works form part of an Approved Design pursuant to this Condition 8. The Distributor shall not be obliged to connect to the Distributor's System, or Make Live or allow to be Made Live or to Adopt any Contestable Assets which were installed prior to the design thereof becoming part of the then Approved Design pursuant to this Condition 8.
- 8.3 The Contractor undertakes to the Distributor that the Contestable Design has been designed, and that all variations thereto for which the Contractor seeks the approval of the Distributor pursuant to Condition 8.7 of this Part shall be designed, in each case by the Contractor in accordance with the specifications and standards set out in the documents listed in Part 3 (Distributor's Standards) of these General Bilateral Terms.
- 8.4 No approval, review or comment, or failure to approve, review or comment by the Distributor of or on the Contestable Design or the Contestable Works or any other matter shall relieve the Contractor of any liability whatsoever or any of its obligations under the Agreement, or any part thereof or variation thereto, the Contractor having the sole

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responsibility for ensuring that the design of the Contestable Works (including the Contestable Design) conforms in all respects with the specifications and standards set out in the documents listed in Part 3 (Distributor's Standards) of these General Bilateral Terms and the other provisions of the Agreement.

- 8.5 The Contractor shall include in the Approved Design (including obtaining the approval of the Distributor pursuant to Condition 8.7 of this Part to any consequential variation) any Network Enhancement requested by the Distributor at any time prior to the Contractor commencing to carry out any of the physical Contestable Works affected by that Network Enhancement, and the Distributor shall pay the reasonable costs of such inclusion.
- 8.6 The Contractor shall use all reasonable endeavours to include in the Approved Design (including obtaining the approval of the Distributor pursuant to Condition 8.7 of this Part to any consequential variation) any Network Enhancement requested by the Distributor after the Contractor has commenced the physical Contestable Works affected by that Network Enhancement, and the Distributor shall pay the reasonable costs of such inclusion.
- 8.7 The Contractor shall not vary the Approved Design in any way without first having obtained the written approval of the Distributor, such approval not to be unreasonably withheld. Save where the need for a variation arises as a direct result of a Network Enhancement requested by the Distributor pursuant to Conditions 8.5 and 8.6 of this Part, the Distributor may make a reasonable charge, for considering for approval, or the approval of any variation to the Contestable Design and the Contractor will pay the amount of any such charge to the Distributor pursuant to Condition 5.6 (Payments) of Part 1 (General Terms and Conditions) of these General Bilateral Terms.
- 8.8 Within 2 Working Days of a request by the Contractor made after the Date of the Agreement, the Distributor shall issue to the Contractor, the Supply Numbers for each Exit Point included in the Contestable Assets.

CONSTRUCTION PRIOR TO MAKING LIVE

9. Construction undertaken by Contractor

- 9.1 The Contractor shall, no later than the Commencement Date, provide the Distributor with an indicative programme (containing such information as the Distributor may reasonably require) showing the programme which the Contractor intends to follow in carrying out and completing the Contestable Works (the "Contractor's Programme") and in the event of the Contractor thereafter making any material alteration to the timing or sequence of any of the Contestable Works as shown on such programme, the Contractor shall promptly provide the Distributor with an up-dated version of such programme showing the effect of such material alterations.
- 9.2 The Contractor shall, where requested by the Distributor, provide to the Distributor:
- 9.2.1 before commencing to carry out the Contestable Works; and
- 9.2.2 on every Wednesday thereafter
- a works schedule detailing the Contestable Works (including any Commissioning Requirements) due to be carried out during the Week following such commencement and each such Wednesday (as the case may be), each such Schedule being a "Works Schedule".
- 9.3 Without prejudice to the other obligations of the Contractor under the Agreement, the Contractor shall ensure that only materials which: (i) are of good quality; (ii) are in accordance with Good Industry Practice; and (iii) satisfy the requirements set out in the documents listed at Part 3 (Distributor's Standards) of these General Bilateral Terms, shall be used in the carrying out and completion of the Contestable Works, and that where it would accord with Good Industry Practice for the suppliers or manufacturers

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of such materials to provide warranties as to the quality and nature of such materials, which, as the case may be, may be assignable by the Contractor to the Distributor, then the Contractor shall procure such warranties.

- 9.4 Upon being requested by the Distributor so to do, the Contractor will:-
- 9.4.1 assign to the Distributor such warranties as the Contractor has obtained pursuant to Condition 9.3 of this Part; and/or
 - 9.4.2 enforce, at the Distributor's cost, against such suppliers or manufacturers such warranties or other rights as the Contractor may have against such suppliers or manufacturers.

10. Construction undertaken by Distributor

- 10.1 Any construction carried out by the Distributor will be carried out in accordance with Condition 2 (Distributor's Works) of Part 1 (General Terms and Conditions) of these General Bilateral Terms.

INSPECTION AND MONITORING

11. Inspection and monitoring undertaken by Contractor

- 11.1 Subject to Condition 11.4 of this Part, the Contractor will self-inspect its works in accordance with the Distributor's guidance document: "*Inspection and Monitoring of Networks Constructed by Independent Connection Providers*" (as amended and updated from time-to-time) (the "**I&M Guidance**"). The Contractor warrants that any photographs/other evidence sent to the Distributor are true and accurate and shall be retained by the Contractor at least until the Defects Correction Period has expired.
- 11.2 The Contractor shall, and shall procure that the Instructing Party shall, allow the Distributor access at all reasonable times to all places where the Contestable Works are to be or have been carried out for the purpose of carrying out a periodic inspection, of the Contestable Works and all materials used or intended for use in the Contestable Works and witnessing the carrying out of any Commissioning Requirements thereon.
- 11.3 The Distributor shall, as soon as is practicable and in any case no later than the next Working Day after any such inspection give the Contractor notice of any defect or any other matter of which the Distributor has become aware during such inspection and which is considered by the Distributor not to comply with the Agreement. If the Distributor gives notice under this Condition 11 to the Contractor, the Contractor shall promptly and in consultation with the Distributor conduct all investigations and carry out any remedial works which are necessary in order to remedy such defect or matter so that the Contestable Works or any such materials (as the case may be) do comply with the Agreement and for the avoidance of doubt the costs of any such remedial works will be borne by the Contractor.
- 11.4 In the event that the Distributor identifies defects of the nature described in Condition 11.3 of this Part which cause the Contractor to have achieved "unsatisfactory performance" in respect of Scheme 2 (as defined in the I&M Guidance), the Contractor may be required by the Distributor to change inspection schemes (the process for which is set out in more detail in the I&M Guidance) in respect of future projects.
- 11.5 Notwithstanding the fact that the Contractor may, if it achieves the highest performance level in Scheme 2 (defined in the I&M Guidance), be entitled to self-inspect its works with no planned inspection and monitoring from the Distributor, the Distributor may carry out an inspection or issue any instructions if it reasonably considers such action to be necessary on safety grounds, and the Contractor shall procure that the Contractor and any such employee, agent or sub-contractor will comply with any such instruction so issued by the Distributor.

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11.6 The Distributor may, upon reasonable grounds, and by giving the Contractor reasonable notice in writing to this effect require the Contractor to uncover or make openings in any part of the Contestable Works. The Contractor shall meet all the costs incurred by the Contractor in complying with such notice if inspection of the Contestable Works reveals any material non-compliance with the requirements of the Agreement and the Distributor shall be liable for all reasonable costs incurred by the Contractor in complying with such notice if inspection of the Contestable Works fails to reveal any material non-compliance with the requirements of the Agreement. If the notice is to uncover works which the Distributor was unable to inspect due to the Contractor failing to notify the Distributor of a change to the Contractor's Programme or the Contestable Works not being carried out as described in any Works Schedule, all the costs incurred by the Contractor and the Distributor in uncovering and inspecting such works shall be met, and in the case of the Distributor's reasonable costs reimbursed to the Distributor pursuant to Condition 5.6 (Payments) of Part 1 (General Terms and Conditions) of these General Bilateral Terms, by the Contractor irrespective of whether any defects are revealed by such uncovering and inspection.

12. Inspection and monitoring undertaken by Distributor

12.1 Where the Contractor requests the Distributor to undertake inspection and monitoring of the Contestable Works, such request shall be made, and the Distributor shall perform such inspections and monitoring in accordance with the Distributor's Statement of Methodology and the provisions of the Agreement.

MAKING LIVE OF CONTESTABLE WORKS

13. Pre-Making Live - General

13.1 When the Contractor considers that the Contestable Works or any part thereof have or has been completed to a stage where Making Live of the Contestable Works or such part thereof is required, the Contractor shall:-

13.1.1 if it requires the Distributor to Make Live the Contestable Works, submit a Third Party Connection Request application to the Distributor in accordance with Condition 14.2 (Making Live of the Contestable Works by the Distributor) of this Part; or

13.1.2 if it elects to carry out the Making Live of the Contestable Works itself, submit a Request to Connect to SP (Metered) Form to the Distributor in accordance with Condition 15.2 (Making Live of the Contestable Works by the Contractor) of this Part; and

13.1.3 in each case, before Making Live takes place, provide to the Distributor:

- (i) satisfactory evidence that the Land Rights and Statutory Consents necessary to lawfully carry out, complete and commission (and subsequently maintain, repair, replace, renew or use) the Contestable Works are available to be granted to the Distributor on terms acceptable to the Distributor (acting reasonably);
- (ii) satisfactory evidence that valid and marketable title will be obtained by the Contractor over the Contestable Assets to be Made Live;
- (iii) true, accurate and complete "as laid plans" of the Contestable Works or the part thereof which is to be Made Live (as the case may be) in accordance with the Distributor's applicable procedures;
- (iv) the CDM file (or section relating to the Contestable Works or the part thereof which is to be Made Live (as the case may be)) to the Distributor; and

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- (v) satisfactory evidence that the Contractor has rectified all defects or other matters previously notified to the Contractor under Condition 11 (Inspection and monitoring undertaken by Contractor) of this Part.
- 13.1.4 Making Live may not take place until such time as there is an agreement in place with the Distributor in relation to the connection of the Exit Points to the Distributor's System.
- 13.1.5 As regards the Land Rights for the Contestable Works, and without prejudice to Condition 13.1.3 of this Part:-
- (i) the Distributor may specify the form of deed or document to be adopted by the Contractor for any of the Land Rights, and in that event the relevant Land Right shall be granted in that form, except to the extent the Distributor has given consent to any variation or amendment thereof;
 - (ii) no deed or document containing or specifying any of the Land Rights shall disclose or refer to any consideration or price other than a consideration or price calculated using Agreed Rates;
 - (iii) the Contractor shall upon the date of issuing of a Third Party Connection Request Application or Request to Connect to SP (Metered) Form (as applicable) proceed (if it has not already done so) to take all necessary steps and do every act or thing necessary to procure that with effect from the said date the Distributor can proceed to have the Land Rights, as soon as possible, fully and effectually vested in the Distributor and to the extent that vesting occurs after the date of issue of the Third Party Connection Request Application or Request to Connect to SP (Metered) Form (as applicable), shall hold the Land Rights in trust for and on behalf of the Distributor.

14. Making Live of the Contestable Works by the Distributor

- 14.1 This section relates to circumstances where the Contractor has elected for the Distributor to Make Live the Contestable Works or any part thereof.
- 14.2 The Contractor shall complete and issue to the Distributor a "Third Party Connection Request Application" specifying the Contestable Works to which such Third Party Connection Request Application relates, and the date on which those of the Commissioning Requirements in relation to the Contestable Works or that part (as the case may be) which the Distributor requires to be passed, will be passed.
- 14.3 The Contractor shall give the Distributor reasonable notice of the date, which date shall not be before any date specified for the purposes of this Condition 14 in Annex C (Specification of Contestable Works) of the Schedule, on which the Contractor would like the Contestable Works or any part thereof (as the case may be) to be Made Live by the Distributor.
- 14.4 The Distributor may, by giving the Contractor notice in writing to this effect, object to any of the evidence provided by the Contractor pursuant to Condition 13.1 (Pre-Making Live – General) of this Part, or dispute that the Contractor has fulfilled its obligations under Conditions 13.1.3 and 13.1.4 (Pre-Making Live – General) of this Part, and refuse to Make Live the Contestable Works or the part thereof to which such evidence relates. Such notice must be given within 10 Working Days of the Distributor receiving the Contractor's Third Party Connection Request Application and the evidence issued and provided by the Contractor in fulfilment of its obligations pursuant to Condition 13.1 (Pre-Making Live – General) of this Part.

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- 14.5 If the Distributor so notifies the Contractor, then the Contractor and the Distributor shall promptly and in good faith discuss and seek to agree whether or not the Distributor's objections are or disputation is, valid and, if so, the measures to be taken by the Contractor to enable the Distributor to withdraw its objections, or disputation, and refusal to Make Live the Contestable Works or such part (as the case may be).
- 14.6 If the Contractor and the Distributor cannot so agree whether or not the Distributor's objections are, or disputation is, valid, or the measures to be taken by the Contractor to enable the Distributor to withdraw its objections, or disputation, and its refusal to Make Live the Contestable Works (or such part, as the case may be) either the Contractor or the Distributor may refer the dispute over the validity of such objections, or disputation, or the measures, if any, to be taken by the Contractor to enable the Distributor to withdraw its objections, or disputation, and its refusal to Make Live the Contestable Works or such part (as the case may be) to the procedure specified in Conditions 19 and 20 (Dispute Resolution) of Part 1 (General Terms and Conditions) of these General Bilateral Terms.
- 14.7 If the Distributor does not deliver to the Contractor a notice of objection in accordance with Condition 14.4 of this Part, the Distributor will meet the timescales set out in its Licence for Making Live unless an earlier date is agreed between the Distributor and the Contractor. The Distributor will use its reasonable endeavours to agree an earlier date if requested to do so by the Contractor.
- 14.8 Upon or immediately following the Making Live of the Contestable Works, the Distributor shall complete the Commissioning Requirements of those Adopted Contestable Assets within the Contestable Works.
- 14.9 The Contractor shall have the right to request, prior to Making Live, that the Distributor provides it with a definitive list setting out the Commissioning Requirements that the Distributor requires to be satisfied. If so requested, the Distributor shall provide such list within five Working Days.

15. Making Live of the Contestable Works by the Contractor

- 15.1 This section relates to circumstances where the Contractor has elected that it will Make Live the Contestable Works or any part thereof, itself.
- 15.2 The Contractor shall complete and issue to the Distributor a "Request to Connect to SP (Metered) Form" (provided to the Contractor by the Distributor in hard copy or by electronic means, as the case may be) specifying the Adopted Contestable Assets to which that Request to Connect to SP (Metered) Form relates, and the date on which those of the Commissioning Requirements in relation to the Contestable Works or that part (as the case may be) which the Distributor requires to be passed, will be passed.
- 15.3 Prior to the Making Live of the Contestable Works the Contractor shall ensure that the proposed carrying out of such work has been notified in a Work Schedule provided to the Distributor.
- 15.4 The Contractor shall give the Distributor reasonable notice of the date on which the Contractor intends to Make Live the Contestable Works, provided that where the Contractor wishes a Shutdown or requests any further operational support from the Distributor, at least 20 days' notice shall be given to the Distributor.
- 15.5 The Distributor may, by giving the Contractor notice in writing to this effect, object to any of the evidence provided by the Contractor pursuant to Condition 13.1 (Pre-Making Live – General) of this Part, or dispute that the Contractor has fulfilled its obligations under Conditions 13.1.3 and 13.1.4 (Pre-Making Live – General) of this Part, and prevent the Contractor from Making Live the Contestable Works or the part thereof to which such evidence relates. Such notice must be given within 10 Working Days of the Distributor receiving the Contractor's "Request to Connect to SP (Metered) Form" pursuant to Condition 15.2 of this Part and the evidence issued and provided by the Contractor in

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fulfilment of its obligations pursuant to Condition 13.1 (Pre-Making Live – General) of this Part.

- 15.6 If the Distributor so notifies the Contractor, then the Contractor and the Distributor shall promptly and in good faith discuss and seek to agree whether or not the Distributor's objections are or disputation is, valid and, if so, the measures to be taken by the Contractor to enable the Distributor to withdraw its objections, or disputation and to allow the Contractor to Make Live the Contestable Works.
- 15.7 If the Contractor and the Distributor cannot so agree whether or not the Distributor's objections are, or disputation is, valid, or the measures to be taken by the Contractor to enable the Distributor to withdraw its objections, or disputation either the Contractor or the Distributor may refer the dispute over the validity of such objections, or disputation, or the measures, if any, to be taken by the Contractor to enable the Distributor to withdraw its objections, or disputation to the procedure specified in Conditions 19 and 20 (Dispute Resolution) of Part 1 (General Terms and Conditions) of these General Bilateral Terms.
- 15.8 Upon or immediately following the Making Live of any part or parts of the Contestable Works by the Contractor, the Contractor shall complete the Commissioning Requirements of the Adopted Contestable Assets within such part or parts (as the case may be), and as soon as the Contractor is satisfied that such of the Commissioning Requirements of those Adopted Contestable Assets have been passed the Contractor shall sign and issue to the Distributor a certificate specifying the Adopted Contestable Assets to which that certificate relates and the date on which those Adopted Contestable Assets passed those of the Commissioning Requirements to which certificate shall be attached copies of all relevant test and conformance certificates.
- 15.9 The Contractor shall have the right to request, prior to Making Live, that the Distributor provides it with a definitive list setting out the Commissioning Requirements that the Distributor requires to be satisfied.

16. Upon and following Making Live – General

- 16.1 All work carried out at any time on any of the Adopted Contestable Assets shall be carried out and completed in accordance with all the procedures and rules issued by the Distributor relating to work on or in the vicinity of the Distributor's System at that time.
- 16.2 Upon and with effect from the Making Live of Contestable Works (or any part thereof) by the Distributor or the Contractor (those assets included within the Contestable Works being "Adopted Contestable Assets") those Adopted Contestable Assets shall become part of the Distributor's System and the Instructing Party and Contractor shall treat those Adopted Contestable Assets in all respects as the property of the Distributor and from that time as forming part of the Distributor's System.
- 16.3 Immediately following Making Live of the Contestable Works by the Distributor or the Contractor, the Distributor shall assume operational responsibility for the Adopted Contestable Assets within the Contestable Works. Subject to where specifically provided for in the Agreement, all fault repair work which is required to be carried out thereafter thereon, shall be carried out by the Distributor.
- 16.4 If any of the Adopted Contestable Assets do not pass to the reasonable satisfaction of the Distributor those of the Commissioning Requirements which were to be completed pursuant to Conditions 14.8 (Making Live of the Contestable Works by the Distributor) or 15.8 (Making Live of the Contestable Works by the Contractor) of this Part, the Distributor may:-
- 16.4.1 disconnect the Adopted Contestable Assets from the Distributor's System until the Contractor undertakes all work to the Adopted Contestable Assets necessary to enable those Adopted Contestable Assets to pass such of the Commissioning Requirements to the reasonable satisfaction of the Distributor; or

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- 16.4.2 undertake such works and recover the reasonable cost thereof from the Contractor.
- 16.5 The Distributor shall use reasonable endeavours to notify the Contractor of the Distributor's decision to exercise its rights under Condition 16.4 of this Part as soon as reasonably practicable.
- 16.6 If the Contractor considers that:
- 16.6.1 those Adopted Contestable Assets should have passed to the reasonable satisfaction of the Distributor those of the Commissioning Requirements which were to be completed pursuant to Condition 14.8 (Making Live of the Contestable Works by the Distributor) or 15.8 (Making Live of the Contestable Works by the Contractor) of this Part, or
- 16.6.2 the Distributor having undertaken works to those Adopted Contestable Assets to enable those Adopted Contestable Assets to pass those of the Commissioning Requirements to the reasonable satisfaction of the Distributor, the costs thereof which the Distributor wishes to recover from the Contractor are unreasonable,
- then the Contractor, by giving written notice to that effect to the Distributor within 10 Working Days of the receipt by the Contractor of the Distributor's notification of the Distributor's decision to exercise its rights under Condition 16.4 of this Part, may object to such disconnection or the amount of such costs as being unreasonable (as the case may be).
- 16.7 If the Contractor so objects then the Contractor and the Distributor shall promptly and in good faith discuss whether or not any of such objections by the Contractor are valid or the amount of such costs unreasonable.
- 16.8 If the Contractor and the Distributor cannot so agree whether or not the Contractor's objections to such disconnection are valid, or the amounts of such costs unreasonable (as the case may be) then either the Contractor or the Distributor may refer the dispute over the validity of such objections and the amount of such costs, if any, to be paid by the Contractor to the procedure specified in Conditions 19 and 20 (Dispute Resolution) of Part 1 (General Terms and Conditions) of these General Bilateral Terms.
- 16.9 The Contractor will pay the amount of such costs which the Distributor is to recover from the Contractor, or any different amount agreed or determined pursuant to Conditions 19 and 20 (Dispute Resolution) of Part 1 (General Terms and Conditions) of these General Bilateral Terms to the Distributor pursuant to Condition 5.6 (Payments) of Part 1 (General Terms and Conditions) of these General Bilateral Terms.

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PART 3 – DISTRIBUTOR'S STANDARDS

1. Specifications include but not limited to the following:

1.1 Electricity Networks Association Documents:

Engineering Recommendation G81 - Framework for design and planning, materials specification and installation and record for greenfield low voltage housing estate installations and associated, new, HV/LV distribution substations:

- Part 2: Design and Planning
- Part 2: Materials Specification
- Part 3: Installation and Records

1.2 SP Power Systems Safety Rules Electrical and Mechanical 4th Edition:

- Including all supporting documentation.

1.3 The following documents, as amended from time to time, are all available at:

<http://www.spenergynetworks.co.uk/pages/documents.asp>

Please note that the below list is for guidance only and is subject to review and amendment. The most recent versions of all of the specification documents are available by following the above link.

| Reference | Document Title |
|------------------|-------------------------------------------------------------------------------------------------------------|
| ASSET-01-015 | New Connections Contractor Approval Policy |
| ASSET-01-021 | Asset Inspection and Condition Assessment Policy |
| ASSET-04-020 | Auditing and Escalation Regime |
| BATT-06-001 | Approved Equipment Register - Batteries |
| BUPR-22-015 | Recording of Electrical Assets by Contractors |
| CAB-04-008 | Assessment of Third Party LV Cable Jointing Systems |
| CAB-04-009 | Policy & Application Guide for 11kV Polymeric Cables |
| CAB-06-001 | Approved Equipment Register - Cables & Cable Accessories |
| CAB-15-003 | Handling & Installation of Cables up to and Including 33kV |
| CON-04-005 | Register of Adopted Asset Requests (RAdAR) for Contestable Connection Projects |
| CON-04-006 | Project Completion Process for Contestable Works |
| CON-04-007 | Operating Regime for Contestable Network Construction on Greenfield Housing Sites |
| EART-01-002 | Low Voltage Earthing Policy |
| - | Distribution Low Voltage Earthing Manual (To be read alongside EART-01-002) |
| EART-02-003 | Earthing and Bonding at Secondary Substations |

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| | |
|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| EART-06-001 | Approved Equipment Register - Earthing |
| EPS-02-005 | Installation & Record Framework for Greenfield Low Voltage Housing Estate Underground Networks and Associated, New, HV/LV Distribution Substations |
| EPS-02-006 | Installation and Record Framework for Industrial and Commercial Underground Connected Loads Up To and Including 11kV |
| EPS-03-027 | Materials Specification Framework for Greenfield Low Voltage Housing Estate Underground Network Installations and Associated, new, HV/LV Distribution Substations |
| EPS-03-031 | Materials Specification Framework for Industrial and Commercial Underground Connected Loads Up To and Including 11kV |
| EPS-06-001 | Approved Equipment Register - Surge Arresters |
| ESDD-02-012 | Framework for design and planning for low voltage housing developments underground network installations and associated, new, HV/LV distribution substations |
| OHL-02-015 | Code of Practice for the Provision of LV Supplies to Equipment Associated with Transmission Towers |
| OHL-03-099 | Specification for 11kV And 33kV Overhead Lines of Unearthed Construction on Single and "H" Type Wood Poles |
| OPSAF-13-001 | (PSMSP 5.1) Authorisation Procedures |
| SUB-02-006 | Secondary Substation Installation & Commissioning Specification |
| SUB-02-013 | Policy and Specification for the Interface with Independent Distribution Network Operators Installation |
| SUB-02-613 | Electrical Insulation Testing of HV Equipment up to 33kV |
| SUB-02-613 Appendix 2 | Electrical Insulation Testing of HV equipment up to 33kV – Flow Chart |
| SUB-03-013 | Specification for Prefabricated Substation Housings for 12kV and 36kV switchboards |
| SUB-03-017 | General Specification For The Civil Engineering And Building Design And Construction Of Secondary Substations |
| SUB-03-018 | Specification for Prefabricated Glass Reinforced Plastic Enclosures |
| SUB-03-025 | General Specification for Civil Engineering and Building Design and Construction of Primary Substations |
| SUB-03-026 | General Specification for Civil Engineering and Building Design and Construction of 132kV Substations |
| SUB-03-034 | General Specification for Civil Engineering and Building Design and Construction of 275 and 400kV Substations |
| SWG-06-001 | Approved Equipment Register - Switchgear |
| TRAN-06-001 | Approved Equipment Register- Transformers & Bushings |
| TSE-06-001 | Approved Equipment Register - Tools and Special Equipment |