

DATED _____

Western Power Distribution (South Wales) plc

and

[Insert name of Highway Authority]

**AGREEMENT RELATING TO THE DESIGN, SUPPLY, INSTALLATION,
COMMISSIONING AND ADOPTION OF UNMETERED ELECTRICITY
CONNECTION AND DISTRIBUTION EQUIPMENT**

at

[Insert location]

Western Power Distribution (South Wales) plc
Registered in Wales No. 2366985
Registered Office :
Avonbank, Feeder Road, Bristol BS2 0TB

Western Power Distribution (South Wales) plc
Cofrestrwyd yng Nghymru Rhif 2366985
Swyddfa gofrestredig :
Avonbank, Feeder Road, Bristol BS2 0TB

Western Power Distribution (South Wales) plc.

FORM OF AGREEMENT

THIS AGREEMENT is made the day of 200[]

BETWEEN

- (1) **WESTERN POWER DISTRIBUTION (SOUTH WALES) plc.**, a company incorporated in England and Wales (registered No.2366985) whose registered office is at Avonbank, Feeder Road, Bristol BS2 0TB. (“WPD”); and

- (2) [] whose office is at [] (“the Highway Authority”).

WHEREAS

- (1) The Highway Authority has appointed the Connection Provider to carry out and complete the Contestable Connection Works for Adoption by WPD.

- (2) The Highway Authority has entered into a contract with the Connection Provider to carry out the Contestable Connection Works and the Connection Provider has entered into an Agreement for Low Voltage Underground Live Network Access on Unmetered Streetlighting Connections with WPD.

- (3) The Connection Provider has agreed to construct the Contestable Connection Works in accordance with this Agreement on behalf of the Customer.

- (4) WPD has agreed to Adopt the Contestable Connection Assets upon their satisfactory completion and the fulfilment of certain conditions precedent.

- (5) WPD has agreed to carry out and complete WPD’s Works in accordance with this Agreement.

NOW IT IS AGREED as follows:-

1. In consideration of the Highway Authority complying with its obligations under clause 2 below, WPD shall Adopt the Contestable Connection Works provided that the Connection Provider carries out and completes the Contestable Connection Works and performs all other obligations as are identified in the Agreement for low voltage underground live network access on unmetered streetlighting connections to be performed on its part.
2. The Highway Authority shall in accordance with this Agreement perform all obligations as are identified in this Agreement to be performed on its part.
3. In this Agreement words and expressions shall have the meanings as are respectively assigned to them in the definitions set out in Schedule A.
4. This Agreement incorporates the attached Schedules:-
 - A. WPD's General Conditions for Construction and Adoption;
 - B. the Specification;
 - C. Specification of Land Rights;
5. For the purpose of this Agreement each Party's Address for Notices shall be as follows:-

For WPD

For the Highway Authority

FAX No
e-mail:

Fax No
e-mail:

6. This Agreement shall not take effect until it has been countersigned by WPD.
IN WITNESS whereof the Parties have executed this Agreement the day and year first above written.

SIGNED BY

Signature.....

Print Name.....

Designation.....

For and on behalf of [name of Highway Authority]

SIGNED BY

Signature.....

Print Name.....

Designation.....

For and on behalf of Western Power Distribution (South Wales) plc

SCHEDULE A

WESTERN POWER DISTRIBUTION (SOUTH WALES) plc.

(“WPD”)

**GENERAL CONDITIONS FOR THE DESIGN, SUPPLY,
INSTALLATION, COMMISSIONING AND ADOPTION OF
UNMETERED ELECTRICITY CONNECTION AND DISTRIBUTION
EQUIPMENT**

CONTENTS

CLAUSE NUMBER	HEADING	PAGE
1	Definitions and Interpretation	3
2	Design	8
3	Consents	8
4	Handover and Adoption	9
5	Intellectual Property	10
6	Limitation of Liability	10
7	Force Majeure	12
8	Assignment and Sub-Contracting	13
8	Confidentiality	13
10	Termination of the Agreement	14
10	Severance	14
10	Waiver	14
13	Variations	15
13	Entire Agreement	15
13	Notices	15
16	Dispute Resolution - Escalation	16
17	Dispute Resolution - Adjudication	16
18	Street Lighting Maintenance Contract	19
19	Indemnities	19
20	Governing Law	19

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and expressions shall have the meanings hereby assigned to them:

“Accredited”	means holding relevant accreditation under the National Electricity Registration Scheme operated by Lloyds Register, or at WPD’s discretion, having shown evidence of sufficient expertise or knowledge to carry out the Contestable Connection Works to the required standard and “Accreditation” shall be construed accordingly;
"the Act"	means The Electricity Act 1989 as amended by the provisions of the Utilities Act 2000;
"the Authority"	means the Gas and Electricity Markets Authority as established by Section 1 of the Utilities Act 2000;
"Adoption"	means the transfer by the Highway Authority and Connection Provider to WPD of the property in and responsibility for the Contestable Connection Works or a section thereof with full title guarantee and the expressions "Adopt" and cognate expressions shall be construed accordingly;
"the Adoption Date"	means the date the Contestable Connection Works or a section thereof are connected to WPD’s Distribution System and Energised;
“Agreed Rates”	Means the rates applicable to electricity wayleaves which at the relevant time are as agreed between WPD and the National Farmers Union and/or the Country Landowners Federation or the successors to either of those bodies;
"this Agreement"	means the signed agreement including the Schedules to it and any other documents expressly incorporated into any of them by reference;

"Address for Notices"	Means the address to which notices for each Party are to be sent, as specified in the signed Agreement as the same may be varied by written notice from either Party to the other Party from time to time;
"Connection Provider"	means an Accredited contractor appointed by the Highway Authority to carry out the Contestable Connection Works;
"the Contestable Assets"	means those Contestable Connection Works which will form part of the Distribution System;
"the Contestable Connection Works"	means all works of any kind to be provided and carried out by the Connection Provider;
"the Distribution System"	means WPD's system for the distribution of electricity as defined in the Licence;
"Energisation"	means the movement of any switch or the insertion of any fuse or the taking of any other step so as to enable electrical current to flow to or from the Distribution System to the Contestable Assets or such part thereof (as the case may be) and "Energise" and other cognate expressions shall be construed accordingly;
"Force Majeure"	means any event or circumstance which is beyond the reasonable control of either Party, and which results in or causes the failure of that Party to perform any of its obligations under this Agreement, provided that lack of funds shall not be interpreted as a cause beyond that Party's reasonable control;
"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 operator engaged in the same type of undertaking under the same or similar circumstances;

“Highway Authority’s Installation”	means any equipment, lines, appliances or devices used or to be used by the Highway Authority for the purpose of supplying any lighting system, traffic sign and other equipment (owned or maintained by the Highway Authority and required by it to perform its function as a Highway Authority) on a carriageway where such supplies were or would normally be unmetered;
“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;
"the Licence"	means the distribution licence granted to WPD pursuant to Section 6(1)(c) of the Act;
“Network Access Enabling Agreement”	means the agreement for low voltage underground live network access on unmetered street lighting connections between WPD and the Connection Provider enabling the Connection Provider to carry out Contestable Connection Works for Adoption by WPD, dated [insert date of agreement], as amended from time to time;
"the Parties"	means the Highway Authority and WPD and "Party" shall mean either of them;
“Point of Connection”	means the point of connection between the Distribution System and the Contestable Connection Works;
“the Programme”	means the programme of work detailing key milestones provided by the Connection Provider allowing the co-ordination of the Contestable Connection Works and WPD’s Works;
"Secretary of State"	has the meaning given to that expression in the Interpretation Act 1978;

"the Specification"	means the specification referred to in the Signed Agreement as Schedule B;
"Statutory Consents"	means all consents, licences, permissions and approval of any kind required under any statute or subordinate legislation including planning permission, building regulation approval as only WPD as the Licence holder may apply for and may be required for the carrying out, completion and subsequent use of the Contestable Connection Works or WPD's Works and specified in Schedule C;
"System Emergency"	means an event either on the Distribution System or on the distribution system of another distributor of electricity which results in WPD 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 WPD to respond to that event in accordance with Good Industry Practice;
"Unmetered Connection Agreement"	means the agreement between WPD and the Highway Authority that governs the terms and conditions upon which the Highway Authority's Installation shall be entitled to remain connected to the Distribution System at the Exit Points;
"Voluntary Consents"	means all consents, licences, permissions, approvals, wayleaves, easements, rights over or interests in land of any kind which are not a Statutory Consent as may be required for the carrying out, completion and subsequent use of the Contestable Connection Works or WPD's Works and specified in Schedule C;
"Working Day"	has the meaning given to that term in Section 64 of the Act. For the purpose of timing, a notice received after 3.00 p.m. on a Working Day shall be considered to have arrived the following Working Day;

1.2 In this Agreement:

1.2.1 Any reference to:

- (a) save where the context otherwise requires, a "Clause " or "sub-clause" is a reference to a Clause or sub-clause hereof;
- (b) save where the context otherwise requires, a "Schedule" is a reference to a schedule to this Agreement and a "Paragraph" is a paragraph in a Schedule;
- (c) a statute, statutory instrument, regulation or order shall be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time;
- (d) another agreement, deed, instrument or other document (including the Contestable Design and the Specification) shall be a reference to such agreement, deed, instrument or other document as the same may have been or may from time to time be amended, varied, supplemented or notated;
- (e) the masculine shall include the feminine and any reference to singular shall include the plural and vice versa;
- (f) words denoting natural persons shall include corporations and vice versa;
- (g) "writing" shall include any mode of reproducing words in a legible and non-transitory form;
- (h) "the Connection Provider" shall, where the context permits, include any employee, agent or contractor acting on behalf of the Connection Provider provided that the Connection Provider shall always remain personally liable for the Connection Provider's obligations under the Network Access Enabling Agreement.

1.2.2 the words "including" and "includes" are to be construed without limitation;
and

1.2.3 clause headings are for ease of reference only.

2.0 DESIGN

2.1 Subject always to Clause 2.2, where the Highway Authority wishes, WPD shall, within a reasonable period of receipt of a written request, supply the Highway Authority with all drawings relating to WPD's Distribution System as may be reasonably required to carry out the construction, installation or commissioning of the Contestable Connection Works.

2.2 There will remain vested in WPD the copyright in all drawings, reports, specifications, calculations and other documents created or provided by WPD for use in connection with the Contestable Connection Works including without limitation the drawings referred to in Clause 2.1. WPD will licence the use of such drawings and other documents by the Highway Authority provider solely for the purpose of performing its obligations under this Agreement. The Highway Authority will not make copies or permit copies to be made nor permit the use of the said drawings or other documents in connection with any project and/or works other than the Contestable Connection Works and shall not be entitled to grant any sub-licence, assign or otherwise disclose them to any third party, except with the prior written consent of WPD.

2.3 If, prior to the termination of this Agreement, WPD change the working practice or Specification, WPD shall notify the Connection Provider and the Highway Authority of such change in accordance with Clause 14 (Variations).

3. CONSENTS

3.1 The Highway Authority without cost to WPD and before commencement of the Contestable Connection Works shall apply for and obtain in a form allowing for assignment to WPD all Voluntary Consents as WPD considers reasonably necessary for the Contestable Connection Works on Site. The Highway Authority shall where reasonably requested to do so by WPD use all reasonable endeavours to procure the assignment of Voluntary Consents to WPD. WPD shall, subject to Clause 3.2, on request provide the Highway Authority with all reasonable assistance to obtain such Voluntary Consents and any such assignments.

3.2 WPD reserves the right to include the actual cost of applying for and obtaining any Voluntary Consents (including the costs of exercising any statutory right and any consequential hearing) as part of WPD's Charges whether or not such costs were quantified in the Offer.

3.3 The Highway Authority shall ensure that WPD is granted such Voluntary Consents relating to land or any interest in land which WPD may reasonably require for any part of WPD's Works situated in land owned by the Highway Authority in a form allowing for assignment to WPD.

3.4 Where the Contestable Connection Works or WPD's Works are on land owned by a third party WPD shall apply for and obtain, subject to clause 3.2, any Voluntary Consents as WPD considers reasonably necessary. The Highway Authority may by agreement with and at no cost to WPD apply for any Voluntary Consents on land owned by a third party as WPD considers necessary for the Contestable Connection Works or WPD's Works on terms and conditions acceptable to WPD.

- 3.5 No Voluntary Consents obtained by the Highway Authority shall disclose or refer to any consideration or price other than a consideration or price calculated using Agreed Rates.
- 3.6 WPD shall use its reasonable endeavours to apply for and obtain such Statutory Consents as WPD considers necessary for the Contestable Connection Works or WPD's Works and the Highway Authority shall promptly reimburse WPD's reasonable costs in obtaining the same.
- 3.7 For the avoidance of doubt, nothing in the Agreement shall require WPD to exercise any compulsory rights to acquire any Voluntary Consents or Statutory Consents, any decision by WPD to exercise or to seek to exercise such rights shall be entirely a matter for the sole discretion of WPD.

4. HANDOVER AND ADOPTION

- 4.1 Upon Energisation of the Contestable Assets or such part (as the case may be) by the Independent Connection Provider, the Contestable Assets shall become part of the Distribution System and the Highway Authority and Connection Provider shall treat those Contestable Assets in all respects as the property of WPD and from that time as forming part of the Distribution System.
- 4.2 Immediately following Energisation of the Contestable Assets WPD shall assume operational responsibility for the Contestable Assets within the Contestable Connection Works. All fault repair work which is required to be carried out thereafter thereon, shall be carried out by WPD.
- 4.3 Following Energisation of the Contestable Assets where WPD reasonably consider the Contestable Connection Works do not meet the requirements set out under the Specification, WPD may:-
 - 4.3.1 disconnect the Contestable Assets from the Distribution System until the Connection Provider undertakes all work to the Contestable Assets necessary to enable those Contestable Assets to meet the requirements set out under the Specification to the satisfaction of WPD; or
 - 4.3.2 undertake such works and recover the cost thereof from the Connection Provider;

and WPD shall use all reasonable endeavours to notify the Highway Authority of WPD's decision to exercise its rights under this Clause 4.3.

5. INTELLECTUAL PROPERTY

- 5.1 The copyright and any other Intellectual Property Rights in all drawings, reports, specifications, calculations and other documents created or provided

by WPD to the Highway Authority under the provisions of this Agreement shall remain and belong to WPD and WPD shall licence the use thereof by the Highway Authority solely for the purpose of performing its obligations under this Agreement. The Highway Authority shall not purport to assign, sub-licence or otherwise disclose any drawings, designs, reports, specifications, calculations and other documents created or provided by WPD to the Highway Authority without the prior written consent of WPD.

- 5.2 Except with the prior written consent of WPD the Highway Authority shall not make copies or permit copies to be made nor permit the use of the items referred to in sub-clause 5.1 in connection with any project and/or other works other than the Contestable Connection Works.
- 5.3 The Highway Authority 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 Contestable Connection Works, or the Approved Design to any other person including but not limited to the Connection Provider.
- 5.4 The Highway Authority undertakes to indemnify WPD against all reasonable losses, costs and expenses suffered or incurred by WPD arising out of any claim by any third party that the use by WPD of the Intellectual Property Rights licensed or vested in WPD pursuant to Clause 5 infringes that third party's rights.
- 5.5 The Highway Authority warrants that it owns all Intellectual Property Rights in or relating to the Approved Design and the Contestable Connection Works.

6. **LIMITATION OF LIABILITY**

- 6.1 Neither Party shall be liable for any breach of this Agreement caused directly or indirectly by Force Majeure or by a System Emergency.
- 6.2 Subject to Clause 6.3, and save where any provision of this Agreement provides for an indemnity, neither Party (the "Party Liable") nor any of its officers, employees or agents shall be liable to the other for loss arising from any breach of this Agreement other than for loss directly resulting from such breach and which at the date of the Agreement was reasonably foreseeable as likely to result in the ordinary course of events from such breach in respect of:
 - (a) physical damage to the property of the other Party, its officers, employees or agents; and
 - (b) the liability of the other Party to any other person in respect of physical damage to the property of any person;

provided that the liability of any Party in respect of claims for such loss shall not exceed the sum of £1 million per incident or series of related incidents.

- 6.3 Nothing in this Agreement shall exclude or limit the liability of the Party Liable for death or personal injury resulting from the negligence of the Party Liable or of any of its officers, employees or agents 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 such other Party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents.

6.4 Save where any provision of this Agreement provides for an indemnity neither Party, nor its officers, employees or agents shall in any circumstances whatsoever be liable to the other Party for:

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

6.4.2 any indirect or consequential loss; or

6.4.3 any losses resulting from the liability of such other Party to any other person howsoever arising, save as provided in Clause 6.3,

provided that WPD shall not be entitled to recover under any provision of this Agreement which provides for an indemnity in favour of WPD, any such loss as is described in Clauses 6.4.1, 6.4.2 or 6.4.3 which has been suffered by WPD, but nothing in this proviso shall in any event prevent WPD from recovering under such indemnity any such loss suffered by any person other than by WPD.

6.5 Neither party shall be liable to the other, whether in contract, tort (including negligence), breach of statutory duty or otherwise except to the extent expressly set out in this Agreement.

6.6 Save as otherwise expressly provided in this Agreement, this Clause 6 in so far as it excludes or limits liability shall override any other provision of this Agreement, provided that nothing in this Clause 6 shall exclude or restrict or otherwise prejudice or affect any of:-

6.6.1 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

6.6.2 the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, the Licence or otherwise howsoever.

6.7 Each of the sub-clauses of this Clause 6 shall:-

6.7.1 be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the Parties; and

6.7.2 survive termination of this Agreement.

- 6.8 Each of the Parties agrees that each of the other Parties holds the benefit of Clauses 6.2, 6.3 and 6.4 for itself as trustee and agent for its officers, employees and agents.
- 6.9 For the avoidance of doubt, nothing in this Clause 6 shall prevent or restrict any of the Parties from enforcing any obligations (including suing for a debt) owed to it under or pursuant to the Agreement.

7. FORCE MAJEURE

- 7.1 If any Party ("the Affected Party") shall be unable to carry out its obligations under this Agreement due to a circumstance of Force Majeure or if WPD shall be unable to carry out any of its obligations under this Agreement due to a System Emergency this Agreement shall remain in full force and effect but save as otherwise provided herein each Party's obligations (other than the obligation as to the payment of charges) shall be suspended without liability for a period equal to the circumstance of Force Majeure or the System Emergency provided that:
- 7.2 the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure or System Emergency;
- 7.3 no obligation of any Party that arose before the Force Majeure or System Emergency causing the suspension of performance shall be excused as a result of the Force Majeure or System Emergency; and
- 7.4 the non-performing Party shall use all reasonable efforts to remedy its inability to perform.

8. ASSIGNMENT AND SUB-CONTRACTING

- 8.1 No Party may assign or transfer its respective rights and obligations under or benefits or burdens of this Agreement without the written consent of the other Party, such consent not to be unreasonably withheld or a decision thereon unreasonably delayed.
- 8.2 WPD shall have the right to sub-contract or delegate the performance of any part of its obligations or duties under this Agreement without the prior consent of the Highway Authority.

9. CONFIDENTIALITY

- 9.1 Each of 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 Clause 9.2.

- 9.2 The provisions of Clause 9.1 shall not apply to information which:-
- 9.2.1 is in or comes into the public domain otherwise than by breach of the Agreement; or
 - 9.2.2 is obtained from a third party which is free to disclose the same; or
 - 9.2.3 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
 - 9.2.4 any of the Parties requires to disclose information to employees, agents, directors, officers or advisers who are directly involved in the performance or administration of this Agreement in order to enable that one of the Parties to fulfil their obligations and exercise their rights respectively under or arising from the Agreement and that one of the Parties shall in any such case ensure that such persons are aware of and comply with the obligations undertaken by that one of the Parties pursuant to this Clause; or
 - 9.2.5 any information, designs, plans or other materials or works made available by the Highway Authority to WPD which information WPD shall be entitled to use without restriction.

10. TERMINATION OF THE AGREEMENT

- 10.1 Any Party may terminate this Agreement by giving the other Party 3 months notice in writing (or such lesser period as may be agreed between the Parties).
- 10.2 This Agreement shall terminate automatically on termination of the Network Access Enabling Agreement or the agreement between the Highway Authority and the Connection Provider for the carrying out of the Contestable Connection Works.10.3 In the event that the Highway Authority shall fail in any material respect to conform or comply with any of its obligations under this Agreement, and (if such failure is capable of remedy) it is not remedied to the reasonable satisfaction of WPD within 30 days of the Party so failing receiving notice from WPD of the occurrence thereof and requiring the same to be remedied then such event shall become an event of default when WPD declares by notice in writing given to the Highway Authority that such event has become an event of default provided that at that time the event of default continues unremedied.

- 10.4 Once WPD has given, and upon the giving of, notice of an event of default pursuant to Clause 10, this Agreement shall terminate.
- 10.5 The termination of this Agreement for whatever reason or cause shall be without prejudice to any other rights or obligations which may have accrued or become due between any of the Parties prior to or on the date of termination, and any provisions, rights or obligations stated to take effect on termination shall remain in full force and effect.
- 10.6 Clauses 6, 7, 8, 9, 10, 11, 16, 17, 19 and 20 shall survive the termination, for whatever reason, of this Agreement.
- 10.7 Where the Agreement is terminated by WPD under Clause 10.3, the Highway Authority shall promptly pay to WPD any reasonable costs incurred by WPD as a result of the termination.

11. SEVERANCE

- 11.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction or any competent authority to be invalid or unenforceable, such provision will be severed from this Agreement and the remaining provisions of this Agreement will remain in full force and effect as if such provision had not originally been contained in this Agreement.

12. WAIVER

- 12.1 No act or omission of any 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 any Party in exercising any right or remedy of that Party by itself constitute a waiver of that right or remedy.

13. VARIATIONS

- 13.1 No variation to this Agreement shall be effective unless made in writing and signed by or on behalf of both Parties, however, either Party shall effect any amendment required to be made to this Agreement by the Authority as a result of a change in the Licence or an order made pursuant to the Act or as a result of settling any of the terms hereof and the Highway Authority hereby authorises and instructs WPD to make any such amendment on its behalf and undertakes not to withdraw, qualify or revoke such authority or instruction at any time.
- 13.2 Either Party shall at any time be entitled to propose variations to this Agreement by notice in writing to the other Party. The Parties shall negotiate in good faith the terms of any such variation, but if a variation to the Agreement has not been agreed and put into effect within one month after it

has been proposed, either Party shall be entitled to escalate the matter by means of Clause 17.

14. ENTIRE AGREEMENT

14.1 Each Party acknowledges that this Agreement constitutes the entire agreement between the Parties and that it has not relied upon any oral or written representation made to it by the other Party or its employees or agents and has made its own investigations into all matters relevant to it.

15. NOTICES

15.1 Any notice, demand, certificate or other communication required to be given or sent under this Agreement to either of the Parties shall be in writing and served personally or by first class post or by fax at the address or fax number relevant to Party's address for Notices.

15.2 Any notice, demand, certificate or other communication shall be deemed to have been served as follows:

15.2.1 if given or delivered personally, at the time when given or delivered;
or

15.2.2 if sent by pre-paid first class post, at the expiry of 2 Working Days after the document was delivered into the custody of the postal authorities; or

15.2.3 if sent by fax, upon transmission.

15.3 In proving service pursuant to Clause 15 it shall be sufficient for the Party claiming to have given notice to prove that personal delivery was made or that the envelope containing the notice was properly addressed pursuant to Clause 16 and delivered into the custody of the postal authorities as a pre-paid first class letter or that the fax was sent (as the case may be).

16. DISPUTE RESOLUTION – ESCALATION

16.1 If any dispute or difference shall arise between the Parties regarding this Agreement either Party to the dispute or difference 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 the date of the notice or such shorter period as may be reasonable, having regard to the nature of the dispute. 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. If that dispute or difference is not resolved at that meeting, or otherwise within the remainder of the period specified in that notice, then at the expiry of the said period, either of the Parties may refer the dispute or difference to adjudication in accordance

with Clause 17. Each of the Parties shall bear its own costs and expenses in relation to the foregoing procedure.

17. DISPUTE RESOLUTION - ADJUDICATION

- 17.1 In the event of any dispute or difference not being resolved in terms of Clause 16 either Party may refer any dispute or difference to adjudication in accordance with the terms of this Clause 17.
- 17.2 The adjudicator to decide the dispute or difference in accordance with the terms of this 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 Chartered Institute of Arbitrators.
- 17.3 If either Party wishes to refer a dispute or difference to adjudication pursuant to this Clause 17, that Party shall give notice of his intention to refer such dispute or difference to adjudication to the other Party and:-
- 17.3.1 any agreement by the Parties on the appointment of an adjudicator must be reached with the object of securing the appointment of and the referral of the dispute or difference to the adjudicator within 7 days of the date of the notice of intention to refer; or
- 17.3.2 any application to the nominating body referred to in Clause 17.2 must be made with the object of securing the appointment of and referral of the dispute or difference to the adjudicator within 7 days of the date of the notice of intention to refer.
- 17.4 An adjudicator may resign at any time on giving notice in writing to the Parties to the dispute. In the event that an adjudicator resigns then the provisions of Clause 17.2 shall be applied so as to secure the appointment of a fresh adjudicator so as to seek compliance with the terms of this Clause. In the event of resignation (in the default of any direction by the adjudicator) the fees and expenses of the adjudicator shall be shared equally.
- 17.5 If the adjudicator dies or becomes ill or is unavailable for some other cause and is therefore unable to adjudicate on a dispute or difference referred to him, the Parties may either agree upon an individual to replace the adjudicator or failing agreement, any Party to the dispute may apply to the original nominator for the nomination of an adjudicator to adjudicate the dispute or difference.
- 17.6 The adjudicator may, with the consent of both the Parties, adjudicate at the same time on any dispute or difference under different agreements, which are related to the performance of this Agreement. Both 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.
- 17.7 If an adjudicator is agreed or appointed within 7 days of the notice of intention to refer a dispute or difference to adjudication given by a Party pursuant to Clause 17.3 then the Party giving that notice of intention shall refer the dispute

or difference to the adjudicator (“the Referral”) within 7 days of that notice of intention. If the adjudicator is not agreed or appointed within 7 days of that notice of intention the Referral shall be made immediately on such agreement or appointment. The Referral shall include details of the dispute or difference together with a summary of the contentions, a statement of the remedy which is sought and any material the Party making the Referral wishes the adjudicator to consider. The Referral and its accompanying documentation shall be copied simultaneously to the other Party.

- 17.8 Subject to any direction from the adjudicator the Party not making the Referral may send to the adjudicator with a copy to the other Party, a written statement of the contrary contentions together with any material they wish the adjudicator to consider with due despatch.
- 17.9 The adjudicator shall within 28 days of the Referral and its accompanying documentation reach his decision and forthwith send that decision in writing to the Parties. 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 between 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 his decision.
- 17.10 The terms of appointment of the adjudicator shall include a provision whereby if requested by one of the Parties to the dispute, not later than 7 days from the date of delivering his decision to both Parties, the adjudicator shall provide reasons for that decision.
- 17.11 The adjudicator shall (a) act impartially and independently, (b) set his own procedure (which, unless the Parties otherwise agree, must comply with the requirements of Clauses 17.11.1 to 17.11.7 inclusive), and (c) at his discretion may take the initiative in ascertaining the facts and the law as he considers necessary. In reaching his determination he shall:-
- 17.11.1 apply his own knowledge and/or experience;
 - 17.11.2 be entitled to review and revise any certificate, opinion, decision, requirement or notice issued, given or made under this Agreement as if no such certificate, opinion, decision, requirement or notice had been issued, given or made;
 - 17.11.3 request from the Parties further information to that contained in the notice of Referral and its accompanying documentation or in any written statement provided by either of the Parties including the results of any tests that have been made;
 - 17.11.4 obtain such information as he considers necessary from any employee or representative of either of the Parties provided that before obtaining information from an employee of a Party he has given prior notice to that Party;
 - 17.11.5 obtain from others such information and advice as he considers necessary on technical and on legal matters subject to giving prior

notice to the Parties together with a statement or estimate of the cost involved; and

- 17.11.6 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;
- 17.12 The Parties shall each meet their own costs of the adjudication except that the adjudicator may direct as to who should pay any costs incurred by the adjudicator.
- 17.13 The adjudicator and either Party to the dispute shall not disclose to any other person any information or document provided to him in connection with the adjudication which the Party providing it has indicated is to be treated as confidential, except to the extent that it is necessary for the purposes of, or in connection with the adjudication or any subsequent arbitration or court proceedings.
- 17.14 Without prejudice to the provisions of Clause 17.12 the Parties shall be jointly and severally liable to the adjudicator for his fee and for all expenses reasonably incurred by the adjudicator pursuant to the adjudication.
- 17.15 The decision of the adjudicator shall be binding on the Parties until the dispute or difference is finally determined by arbitration or by court proceedings or by an agreement in writing between the Parties made after the decision of the adjudicator has been given.
- 17.16 The Parties shall, without prejudice to their other rights under this Agreement, comply with the decisions of the adjudicator immediately on delivery of the decision to the Parties. If either Party does not comply with the decision of the adjudicator the other Party shall be entitled to take further proceedings as they consider appropriate.
- 17.17 The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith and this protection from liability shall similarly extend to any employee or agent of the adjudicator.

18. STREET LIGHTING MAINTENANCE CONTRACT

- 18.1 The Highway Authority will immediately notify WPD in the event of the Highway Authority or the Connection Provider terminating the Street Lighting Maintenance Contract between them for the carrying out of the Contestable Connection Works before the Contestable Connection Works have been Adopted.

19. CONDUCT OF CLAIMS

- 19.1 If either party ("the Indemnified") wishes to take the benefit of any indemnity contained in this Agreement, it shall (but not as a pre-condition):
- 19.1.1 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;
 - 19.1.2 not admit liability to any third party;
 - 19.1.3 provide, upon request of the Indemnifier, any co-operation, assistance or information as may be reasonably requested which is relevant to such matters; and
 - 19.1.4 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 keep the Indemnified fully notified at all times of the progress of the litigation or negotiations (as the case may be) and 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.
- 19.2 To the extent that any indemnity contained in this 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 third party shall not be construed as affecting any obligations of the Indemnified Party under common law to mitigate its losses on each occasion.

20. GOVERNING LAW

- 21.1 This Agreement shall be governed by and construed in accordance with the law of England and Wales. Subject to Clause 17, the courts of England and Wales shall have exclusive jurisdiction.
- 21.2 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

Schedule B

The Specification

The Connection Provider shall comply with the specifications laid out under the following documentation as amended from time to time:

- a) Engineering Recommendation G81 Part 1 – Design and Planning Framework Document;
- b) Engineering Recommendation G81 Part 2 – Materials Specification Framework Document;
- c) Engineering Recommendation G81 Part 3 – Installation and Records Framework Document;
- d) WPD Framework Appendix to Design and Planning Framework Document;
- e) WPD Framework Appendix to Material Specification Framework Document;
- f) WPD Framework Appendix to Installation and Records Framework Document;
- g) Balancing and Settlement Code Procedure 520.

Copies of information relating to items a) to f) are available on WPD's web site.

Schedule C

Land rights

For the purpose of this Schedule C Land rights shall be defined as:

- a) a conveyance or transfer to WPD with full title guarantee of the freehold interest in the land on which is to be sited its substation with appurtenant easements in perpetuity; or
- b) the grant to WPD with full title guarantee of a 99 year lease of such land and any appurtenant easements; or
- c) the grant to WPD with full title guarantee of an easement in perpetuity; or
- d) the grant to WPD of a wayleave.

The form of documentation and choice of Land Rights to be acquired in any particular case shall be at the absolute discretion of WPD.