

SCHEDULE A

WESTERN POWER DISTRIBUTION (SOUTH []) plc.

(“WPD”)

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

DRAFT

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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, detailed in Schedule G, 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 Developer and Connection Provider to WPD of the property in and responsibility for the Contestable Connection Works or of a Section with full title guarantee pursuant to Clause 8 and the expressions "Adopt" and cognate expressions shall be construed accordingly;

"the Adoption Date"

means the date the Contestable Connection Works or a Section of 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 together with the Offer, these Terms for design, Supply, Installation, Commissioning and Adoption of Electricity Connection and Distribution Equipment, and any other documents expressly incorporated into any of them by reference;
"Address for Notices"	for each Party shall be 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;
"Applicable Law"	means at any time any and every law, statute, statutory instrument, proclamation, by-law, directive, decision, regulation, rule, order, notice, rule of court, or delegated or subordinated legislation whether 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 this Agreement:
"Commissioning Requirements"	means the tests which are described in Schedule C;
"the Completion Certificate"	means the Certificate issued by the Connection Provider pursuant to Clause 6 in such form as WPD may from time to time prescribe, a specimen of the current version of which is attached as part of Schedule H to this Agreement;
"the Completion Notice" [is this the Adoption Certificate?]	means the Notice to be given by WPD to the Connection Provider pursuant to Clause 6, in such form as WPD may from time to time prescribe, a specimen of the current version of which is attached as part of Schedule H to this Agreement;
"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 as described in the Offer, the Design and Schedule F;
“the Contestable Design”	means the electrical design and physical layout of the Contestable Assets contained in Schedule B;
“the Customer’s Installation”	Means all electric lines and apparatus not being part of the Distribution System used or to be used by a person and connected or to be connected to the Distribution System;
"Dead"	means at or about zero voltage and disconnected from any electrically charged system;
"Defect"	includes:- <ul style="list-style-type: none"> (a) any defect in materials or workmanship; (b) any defect arising from any act or omission of the Connection Provider or its contractor, and (c) any defect arising as a result of the Connection Provider's Works not complying with the Design and/or the Specification;
“Defect Correction Period”	means in relation to: <ul style="list-style-type: none"> (a) any excavations, or works within excavations, being in either case excavations which are of a depth of 1.5 metres or greater and which form part of the Contestable Connection Works – the period of 3 years, and (b) all the other works which form part of the Contestable Connection Works – the period 2 years, <p>in each case after the Adoption Date of the Contestable Connection Works or, that part containing such excavations or work (as the case may be);</p>

"the Distribution System"	means WPD's system for the distribution of electricity as defined in the Licence;
"Distribution System Enhancement"	means any additional design requirements identified in Schedule E of this Agreement requested by WPD pursuant to clauses 2.9 and 2.10 for the benefit of other consumers;
"Encumbrance"	means any debt, assignment, encumbrance, option, charge, adverse claim, lien, hire purchase, conditional sale or credit sale agreement or any other interest or right of any other person;
"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;
"Exit Point"	means the point of connection at which a supply of electricity may flow between the Distribution System and the Customer's Installation upon Energisation;
"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;
"Good Title"	means the absolute beneficial ownership of WPD free from any Encumbrance;

“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;
“Maximum Power”	shall have the same meaning as in the Act;
“Master Registration Agreement”	means the agreement of that name dated 1 June 1998, as amended;
“Metering Point”	has the meaning given to that term in the MRA;
“MPAS Registration System”	has the meaning given to that term in the MRA;
“the Non-Contestable Design”	means the electrical design, physical layout of WPD’s Works and point of connection information to allow the Connection provider to complete the Contestable Design;
“NRSWA”	means the New Road and Street Works Act 1991;
“the Offer”	means WPD’s written offer to the Connection Provider relating to the Contestable Connection Works, WPD’s Works and WPD’s Services a copy of which is annexed to the Signed Agreement as Schedule B;
"the Parties"	means the Developer, the Connection Provider 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;
“Pre-Adoption Inspection Report”	has the meaning given to it in Clause 5.12;

“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;
"Records"	means such drawings, details, specifications and other documentation in a format and to an accuracy specified by WPD to record the position, depth, location and details of all plant and equipment comprised in the Connection Provider's Works.
"Registered"	means the recording on any MPAS Registration System of a Supplier as being responsible for a Metering Point from a particular date and “Registration” shall be construed accordingly;
"Secretary of State"	has the meaning given to that expression in the Interpretation Act 1978;
"the Signed Agreement"	means the Design, Supply, Installation, Commissioning and Adoption of Electricity Connection and Distribution Equipment Agreement signed by the Parties which expressly incorporates these Terms for Design, Supply, Installation, Commissioning and Adoption of Electricity Connection and Distribution Equipment;
"the Site"	means the site shown, edged pink on the plan, attached as Schedule K;
"the Specification"	means the specification referred to in the Offer and annexed to the Signed Agreement as Schedule C;

“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 G;
“Supplier”	has the meaning given to that term in the MRA;
“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;
“Voluntary Consents”	means all consents, licences, permissions, approvals, wayleaves, easements, rights over or interests in land of any kind which is 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 F;
“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;
“Works Schedule”	has the meaning given to it in Clause 5.5;
“WPD’s Charges”	means the charges payable by the Connection Provider to WPD as specified in the Offer including any variation made from time to time pursuant to this Agreement;

"WPD's Services"

Includes processing the Connection Provider's application for the connection(s) referred to in the Offer; planning such connection(s); preparing the Non-Contestable Design and the Specification; obtaining the Consents referred to in sub-clause 3.6; inspecting, monitoring and testing the Connection Provider's Works; and any other services referred to in the Offer as the same may be varied from time to time pursuant to this Agreement;

"WPD's Works"

means all plant, materials and equipment to be provided and the work to be done by WPD pursuant to this Agreement as briefly described in the Offer and Schedule E as the same may be varied from time to time pursuant to this Agreement.

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 Completion Notice, the Completion Certificate, 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 this 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 WPD shall, within a reasonable period of receipt of a written request, supply the Connection Provider with the Non-Contestable Design and where requested the Contestable Design or part thereof.
- 2.2 Where the Connection Provider wishes to provide the Contestable Design WPD shall, within a reasonable period of receipt of a written request, supply the Connection Provider with all technical information, diagrams and drawings relating to WPD's Distribution System as may be reasonably required to carry out the Contestable Design, construction, installation or commissioning of the Contestable Connection Works.
- 2.3 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. WPD will licence the use of such drawings and other documents by the Connection Provider solely for the purpose of performing its obligations under this Agreement. The Connection Provider 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, except with the prior written consent of WPD.
- 2.4 Where the Connection Provider provides the Contestable Design, or part thereof, the Contestable Design and all variations to the Contestable Design for which the Connection Provider seeks the approval of WPD pursuant to clause 2.12, shall be in accordance with the provisions of this Agreement including Schedule C.
- 2.5 The Connection Provider's Contestable Design for the Contestable Connection Works shall meet the Maximum Power and such other requirements as may be required by the Customer.
- 2.6 The Connection Provider shall submit its Contestable Design to WPD for approval.
- 2.7 WPD shall give approval to the Contestable Design, or a reasoned rejection to the Connection Provider in accordance with the standards of service detailed in Schedule I.

- 2.8 No approval, review or comment, or failure to approve, review or comment by WPD of or on the Contestable Design or the Contestable Connection Works or any other matter shall relieve the Connection Provider of any liability whatsoever or any of its obligations under this Agreement. The Connection Provider has sole responsibility for ensuring that the Contestable Design conforms in all respects the Specifications and standards set out in the documents listed in Schedule C.
- 2.9 WPD may, by notice in writing, and prior to submission by the Connection Provider to WPD of the Contestable Design for approval, request the Connection Provider to undertake works or to include provision in the Contestable Design in order to achieve a Distribution System Enhancement. Upon receiving any such notice, the Connection Provider shall provide a reasonable quotation for doing so. The Connection Provider shall, upon acceptance in writing of its quotation, make and implement the requested modification to the Contestable Connection Works.
- 2.10 WPD may, after the Connection Provider has commenced the physical Contestable Connection Works, by notice in writing, request the Connection Provider to undertake works or to include provision in the Contestable Design in order to achieve a Distribution System Enhancement. Upon receiving any such notice, the Connection Provider shall use all reasonable endeavours to incorporate the Distribution System Enhancement into the Contestable Connection Works and provide a reasonable quotation for doing so, or state reasonable grounds for declining the request, such reply not to be unreasonably delayed. The Connection Provider shall, upon acceptance in writing of its quotation, make and implement the requested modification to the Contestable Connection Works.
- 2.11 Any proposed alterations to the Contestable Design shall be submitted to WPD for approval, such approval not to be unreasonably withheld or delayed.
- 2.12 The Connection Provider shall not vary the Contestable Design in any way without having first obtained the written approval of WPD, such approval not to be unreasonably withheld. Save where the need for a variation arises as a direct result of a Distribution System Enhancement requested by WPD pursuant to Clause 2.9, WPD may make a reasonable charge, and the Connection Provider will pay to WPD, for approval of any variation to the Contestable Design, the amount of any such charge pursuant to Schedule I.
- 2.13 If, prior to the termination of this Agreement, WPD change the working practice or Specification set out under Schedule C, WPD shall notify the Connection Provider and the Customer of such change in accordance with Clause 21 (Variations). The Connection Provider will, with regard any part of Contestable Connection Works not already constructed and adopted, forthwith amend the Contestable Design as necessary and ensure that any change in working practice or Specification is implemented without delay.

3. CONSENTS

- 3.1 The Connection Provider 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. WPD shall, subject to Clause 3.2, on request provide the Connection Provider with all reasonable assistance to obtain such Voluntary Consents.
- 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 Connection Provider 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 Customer 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 Connection Provider 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 Connection Provider 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 Connection Provider shall 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.

4.0 WPD's WORKS

- 4.1 WPD shall be responsible for the preparation of the Specification using WPD standards and national specifications to effect the connection of the Contestable Connection Works to the Distribution System. The Connection Provider will pay WPD any reasonable costs incurred in preparing the Specification.
- 4.2 Provided that WPD:

- 4.2.1 receives payment for each and every amount due under Clause 10.0, on the date specified for payment, and
- 4.2.2 has obtained all the Statutory Consents and Voluntary Consents which WPD is to apply for pursuant to Clause 3.0 in time to permit WPD to carry out and complete WPD's Works in accordance with the Programme, as may be amended from time to time by agreement between WPD and the Connection Provider,

WPD shall carry out and complete WPD's Works in accordance with the Programme, as so amended.

- 4.3 WPD shall promptly notify the Connection Provider in writing if for any reason WPD anticipates that it will not, or may not be able to complete WPD's Works in accordance with the Programme, as so amended. WPD shall use all reasonable endeavours to mitigate or avoid the delay in completing WPD's Works in accordance with the Programme, as amended. WPD shall state in any such notice the reason for the actual or anticipated delay (identifying the event or circumstance considered to be Force Majeure or a System Emergency), the steps being taken to mitigate or avoid delay and the date by which WPD expects to complete WPD's Works. The only rights and remedies (expressed or implied and provided by common law or statute) of the Connection Provider in relation to, or arising from any breach of clause 4.2, or any other delay or failure by WPD in carrying out or completing WPD's Works, shall be the right to require WPD to use all reasonable endeavours to mitigate or avoid such delay, in accordance with this clause 4.3.
- 4.5 WPD's Works shall be carried out in accordance with the Offer and as described in Schedule D.

5. THE CONNECTION PROVIDER'S WORKS PRIOR TO ENERGISATION

The Connection Provider shall ensure that:

- 5.1 the Contestable Connection Works are carried out in such a manner as to enable WPD to carry out WPD's Works and to perform WPD's Services without any delay and/or disruption; and
- 5.2 the Contestable Connection Works and the manner in which they are carried out comply at all times with:
 - 5.2.1 the Non-contestable Design and Contestable Design;
 - 5.2.2 the Specification;
 - 5.2.3 Good Industry Practice; and

- 5.2.4 the requirements of all applicable legislation including the Act, the Electricity Safety, Quality and Continuity Regulations 2002, the New Roads and Street Works Act 1991, the Environmental Protection Act 1990, the Health and Safety at Work Act 1974 and the Town and Country Planning Act 1990.
- 5.3 The Connection Provider shall, within a reasonable period of receipt of a written request, supply WPD with all technical information, diagrams and drawings relating to the design, construction, installation or commissioning of the Contestable Connection Works as WPD may reasonably request from time to time.
- 5.4 The Connection Provider shall, within 7 Working Days of signature of this Agreement, supply WPD with the Programme it intends to follow to construct the Contestable Connection Works and shall thereafter promptly supply WPD with an updated version of the Programme in the event of any material change to the timing or sequence of the Contestable Connection Works.
- 5.5 The Connection Provider shall provide to WPD every 7 calendar days a Works Schedule detailing the daily Contestable Connection Works due to be undertaken within the following 14 calendar days. The Works Schedule shall detail the Contestable Connection Works to be undertaken on the Site in each half-day period.
- 5.6 The Connection Provider shall procure that throughout the duration of the Contestable Connection Works the Connection Provider and its sub-contractors and all its and their respective employees and agents shall be Accredited to carry out the Contestable Connection Works.
- 5.7 Where it would accord with Good Industry Practice for:
- 5.7.1 the suppliers or manufacturers of the materials to be used for the Contestable Connection Works to provide warranties as to the quality and nature of such materials, and/or
- 5.7.2 such warranties to be assignable by the Connection Provider to WPD
- then the Connection Provider will procure such warranties.
- 5.8 Upon request by WPD, the Connection Provider will:
- 5.8.1 assign to WPD such warranties as the Connection Provider has obtained pursuant to Clause 5.7, and/or
- 5.8.2 enforce against suppliers or manufacturers such warranties or other rights as the Connection Provider may have against suppliers or manufacturers at WPD's cost.
- 5.9 The parties acknowledge that in relation to the Contestable Connection Works, WPD shall not be, and one of the Customer or the Connection Provider shall be, "the Client" for the purposes of the Construction (Design and Management)

Regulations 1994. Such one of the Connection Provider or the Customer who is the Client for the purposes of those Regulations, and in the event that neither is the Client for the purposes of those Regulations then the Connection Provider and the Customer jointly and severally undertakes or undertake (as the case may be) to indemnify WPD at all times against all demands, actions, proceedings, damages, losses, costs and expenses which are made or brought against, or incurred or suffered by WPD arising from or in connection with the performance or purported performance by the Connection Provider or the Customer (as the case may be) or the failure by the Connection Provider or the Customer (as the case may be) to perform the duties, obligations, requirements, and responsibilities imposed upon or undertaken by the Connection Provider or the Customer (as the case may be) in connection with the Construction (Design and Management) Regulations 1994.

- 5.10 The Connection Provider shall provide safe and secure access at all reasonable times to all places where the Contestable Connection Works are to be or have been carried out for WPD and its representatives for the purpose of inspecting the Contestable Connection Works and all materials used or intended for use in the Contestable Connection Works and witnessing the carrying out of any Commissioning Requirements.
- 5.11 WPD shall have no authority to give any instructions to or to supervise the Connection Provider, or any contractor, agent or sub-contractor of the Connection Provider provided that WPD may issue any instructions which it reasonably considers to be necessary on safety grounds, and the Connection Provider shall procure that the Connection provider and any such employee, agent or sub-contractor will comply with any such instruction so issued by WPD.

6. INSPECTION

- 6.1 WPD's representatives shall carry out such inspections of the Connection Provider's Works as WPD considers necessary and where appropriate under the inspection regime approved by the Authority under the guidance of the Electricity Connections Steering Group. The number of inspections required will be as stated under Schedule I.
- 6.2 WPD may make additional inspections at its own discretion on a non-chargeable basis.

- 6.3 WPD will make a site visit to carry out an inspection in accordance with the inspection regime and the Programme submitted by the Connection Provider. If the Connection Provider amends its construction programme without informing WPD, and as a consequence WPD is unable to carry out the intended inspection during the site visit WPD will charge the Connection Provider for the abortive visit at the rate stated in Schedule I.
- 6.4 WPD may, upon reasonable grounds, and by giving the Connection Provider reasonable notice in writing to this effect require the Connection Provider to uncover or make openings in any part of the Contestable Connection Works. The Connection Provider shall meet all the costs incurred by the Connection Provider in complying with such notice if inspection of the Contestable Connection Works reveals any material non-compliance with the requirements of this Agreement and WPD shall be liable for all costs incurred by the Connection Provider in complying with such notice if inspection of the Contestable Connection Works fails to reveal any material non-compliance with the requirements of this Agreement. If the notice is to uncover works which WPD was unable to inspect due to the Connection Provider failing to notify WPD of a change to the Programme or the Contestable Connection Works not being carried out, as described in any Works Schedule, all the costs incurred by the Connection Provider and WPD in uncovering and inspecting such works shall be met, and in the case of WPD's costs reimbursed to WPD pursuant to Clause 10.4, by the Connection Provider irrespective of whether any defects are revealed by such uncovering and inspection.
- 6.5 WPD is under no obligation to give the Connection Provider prior notice of WPD's intention to carry out a site inspection.
- 6.6 Neither WPD nor any of its representatives by carrying out any inspections or tests gives any warranty, express or implied as to the adequacy, safety or other characteristics of the Contestable Connection Works and neither WPD nor any of its representatives shall be responsible in any way for the Contestable Connection Works solely by virtue of such inspections or tests.
- 6.7 Notwithstanding any inspections or tests by WPD the Contestable Connection Works shall remain the property of and at the risk of the Connection Provider who shall continue to be liable for them unless and until the Adoption of the Contestable Connection Works.
- 6.8 Where as a result of there being any Defect in the Contestable Connection Works WPD's representatives have to carry out any additional inspections or tests the Connection Provider shall pay WPD's reasonable charges for such inspections or tests in accordance with Schedule I.

7. CONNECTION OF THE CONTESTABLE CONNECTION WORKS AND MAKING LIVE

- 7.1 When the Connection Provider considers that the Contestable Connection Works (or a part thereof) are completed and comply with the requirements of Clause 5.2 the Connection Provider shall:
- 7.1.1 sign and issue to WPD a notice (“the Completion Certificate”) specifying the Contestable Connection Works or that part (as the case may be) to which such Completion Certificate relates and the date and time the Connection Provider intends to perform the Commissioning Requirements (not less than 7 Working Days notice of such Commissioning Requirements shall be given);
 - 7.1.2 attach to the Completion Certificate copies of all relevant test and conformance certificates;
 - 7.1.3 attach to the Completion Certificate a true accurate and complete copy of all relevant Records and shall consent to use the Records and also to incorporate them within WPD’s records and transfer or procure the transfer of the copyright in the Records to WPD;
 - 7.1.4 certify that the Contestable Connection Works are Dead and safe to energise.
- 7.2 The Connection Provider shall provide satisfactory evidence to WPD that all the following requirements have been met:
- 7.2.1 the Voluntary Consents for the Contestable Connection Works are available to be granted to WPD in terms acceptable to WPD to subsequently maintain, repair, replace, renew or use, the Contestable Works and has taken all such steps as would be taken by a reasonably prudent party acting in the capacity of the Connection Provider for the purposes of the Agreement to ensure that the Voluntary Consents are granted to WPD by the party or parties having valid title to grant the Voluntary Consents and that such title is free of any Encumbrance adverse to the validity of the grant of, or to the free exercise of, the Voluntary Consents;
 - 7.2.2 Good Title has been provided to WPD by the Connection Provider over the Contestable Assets to be Energised (insofar as such Good Title has not been provided pursuant to Clause 7.2.1);
 - 7.2.3 all Exit Points which are to be Energised and from which an electricity supply may be taken shall have been registered in accordance with the specifications and procedures listed in Master Registration Agreement;
 - 7.2.4 the Connection Provider has warranted to WPD in terms acceptable to WPD that all necessary Intellectual Property Rights have been acquired;

- 7.2.5 the provision of the CDM file (or section relating to the Contestable Connection Works or the part thereof which is to be Energised (as the case may be)) to WPD;
- 7.2.6 that, if required by WPD, the Customer has entered into a connection agreement with WPD in relation to the connection of that Exit Point to the Distributor's System;
- 7.2.7 the Contestable Connection Works, or such part thereof, have been constructed in accordance with this Agreement and have met those of the Commissioning Requirements which WPD requires are passed before a Make Live Certificate can be issued in respect thereof ; and
- 7.2.8 the Connection Provider has rectified all Defects or other matters previously notified to the Connection Provider under Clause 9.0.
- 7.2.9 the Connection Provider has effected insurance pursuant to Clause 11.0;
- 7.2.10 the Connection Provider has paid such of WPD's Charges as are then due to WPD;
- 7.2.11 the Connection Provider has complied with all other requirements of this Agreement;
- 7.3 The Connection Provider shall notify WPD in writing of the date on which the Contestable Assets offered under the Completion Certificate shall require connection to WPD's Distribution System and Energisation. The minimum period of such notice shall be as stated in Schedule I of the Agreement.
- 7.4 WPD may, by giving the Connection Provider notice in writing to this effect, dispute or object to any of the evidence provided by the Connection Provider pursuant to Clause 7.2, and refuse to Energise the Contestable Connection Works or the part thereof to which such evidence relates (as the case may be). If WPD so notifies the Connection Provider, then the Connection Provider and WPD shall promptly and in good faith discuss and seek to agree whether or not WPD's objections are or disputation is, valid and, if so, the measures to be taken by the Connection Provider to enable WPD to withdraw its objections, or disputation. If the Connection Provider and WPD cannot agree whether or not WPD's objections are, or disputation is, valid, or the measures to be taken by the Connection Provider to enable WPD to withdraw its objections, or disputation, either the Connection Provider or WPD may refer the dispute to the procedure specified in Clause 24.
- 7.5 On receipt by WPD of the Completion Certificate and unless WPD objects to the evidence issued by the Connection Provider to WPD in fulfilment of the Connection Provider's obligations pursuant to Clause 7.2, WPD shall advise the Connection Provider, in accordance with the standards of service detailed under Schedule I, of the date on which WPD shall Energise the Contestable Assets or such part (as the

case may be) and WPD shall use all reasonable endeavours to Energise the Contestable Assets or such part (as the case may be) on such date.

8. HANDOVER AND ADOPTION

- 8.1 Upon and with effect from the handover of the Completion Certificate the Connection Provider will withdraw all persons under their control and inform them no further work is permitted on the Contestable Assets offered for connection under the Completion Certificate.
- 8.2 Upon Energisation of the Contestable Assets or such part (as the case may be) by WPD pursuant to Clause 7.5, the Contestable Assets shall become part of the Distribution System and the Customer 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.
- 8.3 Immediately following Energisation of the Contestable Assets pursuant to Clause 7.5 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.
- 8.4 Following Energisation of the Contestable Assets WPD shall complete the Commissioning Requirements and if any of the Contestable Assets do not pass the Commissioning Requirements to the satisfaction of WPD, WPD may:-
- 8.4.1 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 pass such of the Commissioning Requirements to the satisfaction of WPD; or
- 8.4.2 undertake such works and recover the cost thereof from the Connection Provider;

and WPD shall use all reasonable endeavours to notify the Connection Provider of WPD's decision to exercise its rights under the foregoing provisions of this Clause as soon as reasonably practicable. If the Connection Provider considers that those Contestable Assets should have passed those of the Commissioning Requirements, which were to be completed pursuant to this Clause, to the satisfaction of WPD, or that WPD having undertaken works to those Contestable Assets to enable those Contestable Assets to pass those of the Commissioning Requirements to the satisfaction of WPD the costs thereof which WPD wishes to recover from the Connection Provider are unreasonable, the Connection Provider, by giving written notice to that effect to WPD within 10 Working Days of the receipt by the Connection Provider of WPD's notification of WPD's decision to exercise its rights under this Clause, may object to such disconnection or the amount of such costs as being unreasonable (as the case may be). If the Connection Provider so objects then

the Connection Provider and WPD shall promptly and in good faith discuss whether or not any of such objections by the Connection Provider are valid or the amount of such costs unreasonable. If the Connection Provider and WPD cannot so agree whether or not the Connection Provider's objections to such disconnection are valid, or the amounts of such costs unreasonable (as the case may be) either the Connection Provider or WPD may refer the dispute over the validity of such objections and the amount of such costs, if any, to be paid by the Connection Provider to the procedure specified in Clauses 24 and 25. The Connection Provider will pay the amount of such costs which WPD is to recover from the Connection Provider, or any different amount agreed or determined pursuant to Clauses 24 or 25 to WPD pursuant to Clause 10.

- 8.5 The Applicant shall rectify the matters referred to in the notice under sub-clause 7.2 and after that re-serve a Completion Notice under Clause 6 whereupon this Clause 7 shall apply and this procedure shall be repeated as often as necessary until the Applicant's Works have been completed and the conditions specified in sub-clauses 5.1 and 5.2 have been fulfilled to WPD's satisfaction.
- 8.6 the ownership and property in the Applicant's Works shall be sold and transferred by the Applicant to WPD free from any Encumbrances and the consideration for such sale and transfer shall be the Adoption of the Applicant's Works and WPD's agreement to make the payment referred to in the Offer.

9. DEFECTS

- 9.1 WPD may, as soon as is practicable, after any inspection of the Contestable Connection Works, give notice to the Connection Provider using the Pre-Adoption Inspection Report of any Defect or work which is not in accordance with the Design or Specification or any provision of this Agreement. The Pre-Adoption Inspection Report shall indicate the nature of the defect and recommendation for remedy.
- 9.2 If WPD gives notice under Clause 9.1 to the Connection Provider, the Connection Provider shall promptly and in consultation with WPD conduct all investigations and carry out any remedial works which are necessary in order to remedy such Defect or matter so that the Contestable Connection Works or any such materials (as the case may be) do comply with this Agreement and for the avoidance of doubt the costs of any such remedial works will be borne by the Connection Provider.
- 9.3 Where WPD find the Records presented by the Connection Provider pursuant to Clause 7.1.3 to be incomplete or inaccurate WPD will give notice to the Connection Provider using the Notice of Defect Prior to Energisation Form. Notice of Defect Prior to Energisation Form shall indicate the nature of the defect and recommendation for remedy. For the avoidance of doubt WPD will not Energise the Contestable Connection Works offered for Adoption under the relevant Completion Certificate until WPD is satisfied the Records are complete and accurate.

10. PAYMENT

- 10.1 The Connection Provider shall pay within the period specified in the Offer any amount stated in the Offer as may be amended pursuant to Clause 10.2 as a contribution to the cost of the WPD's Works.
- 10.2 Where at any time WPD considers it is necessary to change the design of WPD's Works, including the Point of Connection, WPD, acting reasonably, shall be entitled to so do and:-

- 10.2.1 if WPD so considers for reasons beyond WPD's reasonable control, then WPD will be entitled to amend (by increasing or decreasing) the Connection Provider's contribution to the cost of WPD's Works specified in the Offer;
- 10.2.2 if WPD so considers for reasons within WPD's control:-
- (a) WPD will not be entitled to increase the Connection Provider's contribution to the cost of WPD's Works, and
 - (b) WPD will be obliged to reimburse the Connection Provider for any reasonable increases in the Connection Provider's costs or expenses which are incurred by the Connection Provider as a result of such changes in the design of WPD's Works.
- 10.3 WPD shall pay to the Connection Provider in respect of any Distribution System Enhancements agreed pursuant to Clause 2.8, any amounts stated in Schedule I following receipt by WPD of the Completion Certificate in relation to the Contestable Connection Works, or any part thereof (as the case may be) incorporating such Distribution System Enhancements but only provided that WPD has not served any notice in relation to the Contestable Connection Works or such part thereof (as the case may be) pursuant to any of Clauses 6.4, 7.4, 8.4, or 9.1.
- 10.4 Any amount payable by one Party to another pursuant to this Agreement shall be paid within 28 days of the receipt by the Party obliged to pay the same of a valid invoice for such amount.
- 10.5 If any amount due under this 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 4% above the base rate of Lloyds TSB Bank plc from the date due until the amount due and any interest accrued thereon has been paid in full.

11. INSURANCE & SECURITY

- 11.1 The Connection Provider shall, from the date of the Agreement and for the duration of the Defect Correction Period, keep and maintain:-
- 11.1.1 public liability insurance in its own name to a minimum level of not less than £3,000,000 per incident or series of incidents arising out of one event against death and personal injury and loss or damage to property; and
 - 11.1.2 employer's liability insurance for a minimum liability of £5,000,000 per incident or series of incidents arising out of any one event or for any higher minimum limit which may be required at any time in order to comply with Applicable Law, and

the Connection Provider shall, whenever reasonably required in writing by WPD, provide confirmation from its insurer that the policies effecting the insurances required by this Clause remain current together with evidence of payment of the last premium due.

- 11.2 The Connection Provider may, according to the Connection Provider's credit rating status, also need to provide additional security for the period indicated in Clause 11.1. WPD shall assess the need for a Connection Provider to provide additional security using the Dun & Bradstreet Corporation assessment scheme.
- 11.3 A Connection Provider obtaining a Dun & Bradstreet Corporation rating of 1 or 2 will not normally be expected to provide additional security beyond that provided as an Accredited Connection Provider under the National Electricity Registration Scheme.
- 11.4 A Connection Provider obtaining a Dun & Bradstreet Corporation rating of 3 or 4, or having no Dun & Bradstreet Corporation rating, or whose net worth is less than WPD's total financial exposure under this Agreement and any other Adoption Agreement held with the Connection Provider that is running concurrently will be required to deliver to WPD within fourteen days of the date of this Agreement additional security in an amount and form and terms all satisfactory to WPD.
- 11.5 If, during the period indicated under Clause 11.1 the Connection Provider should no longer meet the criteria set out pursuant to Clause 11.3 the obligations under Clause 11.4 shall apply.

12. INTELLECTUAL PROPERTY

- 12.1 The copyright and any other intellectual property rights in all drawings, reports, specifications, calculations and other documents created or provided by WPD to the Connection Provider under the provisions of this Agreement shall remain and belong to WPD and WPD shall licence the use thereof by the Connection Provider solely for the purpose of performing its obligations under this Agreement.
- 12.2 Except with the prior written consent of WPD the Connection Provider shall not make copies or permit copies to be made nor permit the use of the items referred to in sub-clause 12.1 in connection with any project and/or other works other than the Contestable Connection Works.
- 12.3 The Connection Provider 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 (including any "as laid plans" as delivered to WPD pursuant to Clause 7.1.3) to any other person including but not limited to the Customer.
- 12.4 The Connection Provider 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 12 infringes that third Party's rights.

- 12.5 The Connection Provider warrants that it owns all intellectual property rights in or relating to the Approved Design, (including the "as-laid plans" referred to in Clause 12.3) and the Contestable Connection Works.

13. CONNECTION PROVIDER'S LIABILITY

13.1 The Connection Provider shall carry the whole risk of loss or damage to every part of the Contestable Connection Works until the Energisation of such part, and shall indemnify and keep indemnified WPD against all demands, actions, proceedings, damages, losses, costs and expenses which are made or brought against or incurred or suffered by WPD in connection with or arising from any part of the Contestable Connection Works prior to Energisation of such part.

13.2 The Connection Provider shall indemnify WPD against reasonable costs incurred or suffered by WPD in remedying any fault or carrying out any repair or rectification on or in connection with any of the Contestable Assets during the Defects Correction Period for such of the Contestable Assets and that whether arising from the design, materials used in or workmanship of such Contestable Assets unless such fault, repair or need for rectification is directly caused by WPD acting in breach of this Agreement.

13.3 The Connection Provider shall indemnify and keep indemnified WPD against all demands, actions, proceedings, damages, losses, costs and expenses (including fines and penalties):-

13.3.1 which are made or brought against or incurred or suffered by WPD as a result of or in connection with:-

13.3.1.1 the Energisation of any Exit Point where that Exit Point is not Registered where no request to Energise that Exit Point has been made by the Supplier in relation to that Exit Point; or

13.3.1.2 the NRSWA which may arise in connection with or as a result of the carrying out or the purported carrying out of the Contestable Connection Works, or the failure by the Connection Provider to fulfil any obligations or liabilities under or arising from the NRSWA (including any Street Works Licence granted thereunder). For the avoidance of doubt WPD shall not Adopt any reinstatement and any future liability will remain with the Party who obtained the licence/notice to open.

13.3.2 which are made or brought against or incurred or suffered by WPD as a result of, or in connection with:-

- 13.3.2.1 any breach by the Connection Provider of any obligations of the Connection Provider to any party who is also the grantor of any Voluntary Consents; and/or
- 13.3.2.2 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 grantor arising from any act or omission by the Connection Provider or any agent or employee of the Connection Provider or other person for whom the Connection Provider is responsible in connection with or in the course of carrying out the Contestable Connection Works; and/or
- 13.3.2.3 failure by the Connection Provider in respect of any legal duty or obligation owed by the Connection Provider to such grantor; and/or
- 13.3.2.4 failure by the Connection Provider to ensure that the officers, employees or agents of the Connection Provider and other persons for whom the Connection Provider is responsible in law conduct themselves upon the property of the said grantor during the carrying out of the Contestable Connection Works in a proper and responsible manner.

14. **LIMITATION OF LIABILITY**

- 14.1 None of the Parties shall be liable for any breach of this Agreement caused directly or indirectly by Force Majeure or by a System Emergency.
- 14.2 Subject to Clauses 14.4 and 14.6, and save where any provision of this Agreement provides for an indemnity no Party (the “Party Liable”) nor any of its officers, employees or agents shall be liable to either of the other Parties 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 physical damage to the property of that one of the other Parties, its officers, employees or agents 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.
- 14.3 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 each of the other Parties, 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.

14.4 Subject to Clause 14.6 and 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 any of the other Parties for:

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

14.4.2 any indirect or consequential loss; or

14.4.3 any losses resulting from the liability of such other Party to any other person howsoever arising, save as provided in Clause 14.3,

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 14.4.1, 14.4.2 or 14.4.3 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.

14.5 The rights and remedies provided by this 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 this Agreement, including without limitation and rights any of the Parties may possess in tort which shall include without limitation 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 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 this Agreement and undertakes not to enforce any of the same except as expressly provided herein.

14.6 Save as otherwise expressly provided in this Agreement, this Clause 14 in so far as it excludes or limits liability shall override any other provision of this Agreement, provided that nothing in this Clause 14 shall exclude or restrict or otherwise prejudice or affect any of:-

14.6.1 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

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

14.7 Each of the sub-clauses of this Clause 14 shall:-

14.7.1 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

- 14.7.2 survive termination of this Agreement.
- 14.8 Each of the Parties agrees that each of the other Parties holds the benefit of Clauses 14.2, 14.3 and 14.4 for itself as trustee and agent for its officers, employees and agents.
- 14.9 For the avoidance of doubt, nothing in this Clause 14 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.

15. FORCE MAJEURE

- 15.1 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:
- 15.2 the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure or System Emergency;
- 15.3 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
- 15.4 the non-performing Party shall use all reasonable efforts to remedy its inability to perform.

16. ASSIGNMENT AND SUB-CONTRACTING

- 16.1 No Party may assign or transfer their respective rights and obligations under or benefits or burdens of this Agreement without the written consent of the other Parties, such consent not to be unreasonably withheld or a decision thereon unreasonably delayed.
- 16.2 The Connection Provider may sub-contract any part of the Contestable Connection Works, provided that the Connection Provider ensures that only appropriately Accredited contractors are engaged in the carrying out or completion the Contestable Connection Works. The sub-contracting by the Connection Provider of any of its obligations under this Agreement shall not relieve the Connection Provider from liability for performance of such obligations in accordance with this Agreement and any such sub-contracting must be on terms and conditions 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 this Agreement.

- 16.3 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 other Parties.

17. CONFIDENTIALITY

- 17.1 Each of the Parties shall keep confidential the terms of the Agreement and all information obtained from either of the other Parties (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 17.2
- 17.2 The provisions of Clause 17.1 shall not apply to information which:-
- 17.2.1 is in or comes into the public domain otherwise than by breach of the Agreement; or
 - 17.2.2 is obtained from a third party which is free to disclose the same; or
 - 17.2.3 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
 - 17.2.4 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
 - 17.2.5 constitutes or forms part of the Contestable Design and any information, designs, plans or other materials or works made available by the Connection Provider to WPD relating to the Contestable Connection Works (including the “as-laid plans” referred to in Clause 12) which information WPD shall be entitled to use without restriction.

18. TERMINATION OF THE AGREEMENT

18.1 Any Party may terminate this Agreement by giving the other Parties 3 months notice in writing (or such lesser period as may be agreed between the Parties).

18.2 In the event that:-

18.2.1 the Connection Provider or the Customer 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; or

18.2.2 (the Customer or Connection Provider not being a company) an interim order or bankruptcy order is made in respect of him under the Insolvency Act 1986 or a voluntary arrangement is proposed in respect of him; or

18.2.3 (the Customer or Connection Provider being a company) an order of the High Court is made or an effective resolution passed for the insolvent winding up or dissolution of the Customer; or

18.2.4 a receiver or an administrative receiver of the Connection Provider or the Customer is appointed, or

18.2.5 either the Connection Provider or the Customer 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(ii) of the Insolvency Act 1986; or

18.2.6 no physical work forming part of the Contestable Connection Works has commenced within one year after the date of the Agreement; or

18.2.7 the Connection Provider fails to fulfil his obligations in terms of or arising from Clause 11; or

18.2.8 a Completion Certificate in respect of Contestable Connection Works, or each section thereof (as the case may be) not having been issued to WPD pursuant to Clause 8;

then is any such case such event shall become an event of default when WPD declares by notice in writing given to the Connection Provider and the Customer that such event has become an event of default provided that at that time the event of default continues unremedied.

18.3 Once WPD has given, and upon the giving of, notice of an event of default pursuant to Clause 19, this Agreement shall terminate.

- 18.4 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.
- 18.5 Clauses 10, 13, 14, 15, 17, 18, 22 and 23 shall survive the termination, for whatever reason, of this Agreement.
- 18.6 Where the Agreement is terminated by WPD under Clause 18.2, the Connection Provider or the Customer (as the case may be) should pay to WPD any reasonable costs incurred by WPD as a result of the termination.

19. SEVERANCE

- 19.1 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.

20. WAIVER

- 20.1 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.

21. VARIATIONS

- 21.1 No variations to this Agreement shall be effective unless made in writing and signed by or on behalf of all Parties, however, each 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 Customer and Connection Provider 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.
- 21.2 Any Party shall at any time be entitled to propose variations to this Agreement by notice in writing to the other Parties. 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, any Party shall be entitled to escalate the matter by means of Clause 24.

22. ENTIRE AGREEMENT

- 22.1 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 Parties or its employees or agents and has made its own investigations into all matters relevant to it.
- 22.2 This Agreement supercedes any prior agreement between the Parties whether written or oral but without prejudice to any rights which may have already accrued to any of the Parties.

23. NOTICES

- 23.1 Any notice, demand, certificate or other communication required to be given or sent under this Agreement to any of the Parties shall be in writing and served personally or by first class post or by fax or by e-mail at the address or fax number or e-mail relevant to Party's address for Notices.
- 23.2 Any notice, demand, certificate or other communication shall be deemed to have been served as follows:
- 23.2.1 if given or delivered personally, at the time when given or delivered; or
- 23.2.2 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
- 23.2.3 if sent by fax, upon transmission; or
- 23.2.4 if sent by e-mail upon transmission provided that the sender of the e-mail is not subsequently notified electronically by his internet service provider with whom such e-mail was sent that such e-mail has not been delivered.
- 23.3 In proving service pursuant to Clause 23 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 23 and delivered into the custody of the postal authorities as a pre-paid first class letter or that the fax was sent or the e-mail was sent (as the case may be).

24. DISPUTE RESOLUTION – ESCALATION

- 24.1 If any dispute or difference shall arise between any of the Parties regarding this Agreement any Party to the dispute or difference may give to the other Parties who are a Party to that dispute or difference 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 those of the Parties giving or receiving that notice shall arrange for a meeting to take place within 7 Working Days or such shorter period as may be appropriate between each of the Parties giving or receiving that notice 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, any of the Parties to the dispute may refer the dispute or difference to adjudication in accordance with Clause 25. Each of the Parties involved in any such dispute or difference shall bear their own costs and expenses in relation to the foregoing procedure.

25. DISPUTE RESOLUTION - ADJUDICATION

- 25.1 In the event of any dispute or difference not being resolved in terms of Clause 24 any Party may refer any dispute or difference to adjudication in accordance with the terms of this Clause 25.
- 25.2 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.
- 25.3 If either Party wishes to refer a dispute or difference to adjudication pursuant to this Clause 25, that Party shall give notice of his intention to refer such dispute or difference to adjudication to the other Party and:-
- 25.3.1 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
- 25.3.2 any application to the nominating body referred to in Clause 25.2 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.
- 25.4 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 25.2 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.
- 25.5 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.

- 25.6 The adjudicator may, with the consent of all the Parties, adjudicate at the same time on any dispute or difference under different agreements, which are related to the performance of this Agreement. All 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.
- 25.7 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 25.3 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 Parties.
- 25.8 Subject to any direction from the adjudicator each of the Parties not making the Referral may send to the adjudicator with a copy to the other Parties, a written statement of the contrary contentions together with any material they wish the adjudicator to consider with due despatch.
- 25.9 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.
- 25.10 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.
- 25.11 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 25.11.1 to 25.11.7 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:-
- 25.11.1 apply his own knowledge and/or experience;
- 25.11.2 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;
- 25.11.3 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 any of the Parties including the results of any tests that have been made;
- 25.11.4 require the Parties to carry out tests or additional tests or to open up work or further open up work;
- 25.11.5 obtain such information as he considers necessary from any employee or representative of any of the Parties provided that before obtaining information from an employee of a Party he has given prior notice to that Party;
- 25.11.6 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
- 25.11.7 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;
- 25.12 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.
- 25.13 The adjudicator and any 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.
- 25.14 Without prejudice to the provisions of Clause 25.12 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.
- 25.15 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.
- 25.16 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.
- 25.17 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.

26. CONSTRUCTION CONTRACT

26.1 Each of the Connection Provider and the Customer will immediately notify WPD in the event of the Customer or the Connection Provider terminating the construction contract between them for the carrying out of the Contestable Connection Works before the Contestable Connection Works have been Adopted.

27. INDEMNITIES

27.1 If any party ("the Indemnified") wishes to take the benefit of any indemnity contained in this Agreement, it shall (but not as a pre-condition):

27.1.1 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;

27.1.2 not admit liability to any third party;

27.1.3 provide, upon request of the Indemnifier, any co-operation, assistance or information as may be reasonably requested which is relevant to such matters; and

27.1.4 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.

27.2 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.

28. GOVERNING LAW

28.1 This Agreement shall be governed by and construed in accordance with the law of England & Wales.

28.2 The parties to this Agreement to 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.