

Dated.....

**AGREEMENT FOR LOW VOLTAGE UNDERGROUND LIVE NETWORK
ACCESS ON UNMETERED STREET LIGHTING CONNECTIONS
BETWEEN
WESTERN POWER DISTRIBUTION (SOUTH WEST) plc
[or, delete as appropriate]
WESTERN POWER DISTRIBUTION (SOUTH WALES) plc
AND
[INSERT NAME OF ICP]**

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FORM OF AGREEMENT

THIS AGREEMENT is made the day of 200[]

BETWEEN

Western Power Distribution (South West) plc [or, delete as appropriate] **Western Power Distribution (South Wales) plc**, whose registered office is at Avonbank, Feeder Rd, Bristol BS2 0TB (“WPD”); and

[the Independent Connection Provider] whose registered office is at [] (the “Connection Provider”)

WHEREAS

This agreement is to facilitate arrangements within the geographic area of the Highway Authority defined in Schedule 1 of this Agreement for access to WPD live low voltage underground unmetered single phase street lighting Service Lines more than one metre from the WPD Distributing Main cable as measured along the service cable.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions

1.1 In this agreement except where the context otherwise requires the following shall have the meanings set opposite them:

Accreditation 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 “Accredited” shall be construed accordingly;

The Act Means The Electricity Act 1989 as amended by the provisions of the Utilities Act 2000;

Adoption Agreement Means the agreement between WPD and the

	Highway Authority that facilitates the transfer of ownership of the Connection Assets from the Connection Provider to WPD;
Adoption Date	Means the date the Contestable Connection Works or a part thereof are connected to WPD's Distribution System and Energised;
this Agreement	Means the signed Agreement including the Schedules and any other documents expressly incorporated into it by reference;
Authority	Means the Gas and Electricity Markets Authority as established by Section 1 of the Utilities Act 2000;
Balancing and Settlement Code (BSC)	Means the Balancing and Settlement Code dated 14 th August 2000 including Service Lines and BSC procedures (as therein defined) made under it, as at the Go-live Date;
Consents	Means all consents, licences, permissions, approvals, wayleaves, easements rights over, or interests in land of any kind as may be required for the carrying out, completion and subsequent use of the Contestable Connection Works;
Consent to Connect Form A	Means the Form attached as Schedule 2 to this Agreement;
Consent to Connect Form B	Means the Form attached as Schedule 3 to this Agreement;
Consent to Connect Form C	Means the Form attached as Schedule 4 to this Agreement;
Contestable Assets	means those Contestable Connection Works which will form part of the Distribution System;
Contestable Connection Works	Means all works of any kind to be provided and carried out by the Connection Provider;
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 any Defect relating to the Contestable Assets the period of 2 years after the Adoption Date of the Contestable Assets;
Distributing Main	as defined in the Electricity Safety Quality and Continuity Regulations 2002 as amended from time to time;
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;
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;
Highway Authority	An authority that has responsibility for the provision and maintenance of street lighting within its area;
Licence	means the distribution licence granted to WPD pursuant to Section 6(1)(c) of the Act;
Service Line	as defined in the Electricity Supply Quality and Continuity Regulations 2002, as amended from time to time;
The Specification	Means the specification referred to in Schedule 5;
Working Days	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.

2. Conditions Precedent

- 2.1 Save for this Clause 2, this Agreement shall not come into force until the conditions precedent set out in this Clause 2 have been satisfied or waived in writing by WPD.
- 2.2 The conditions precedent are as follows:
 - (a) The Connection Provider shall be currently contracted by the relevant Highway Authority to carry out the works AND a current Adoption Agreement shall exist between WPD and that Highway Authority.
 - (b) The Connection Provider shall hold appropriate Accreditation.
 - (c) All employees and/or agents and/or sub-contractors shall be technically competent and hold and carry evidence of relevant Accreditation before they commence the Contestable Connection Works.
 - (d) The Connection Provider shall have applied for, received and still have consent to connect under the authorisation given by submission of Consent to Connect Form A, before they commence the Contestable Connection Works.

3. Requirements

- 3.1 Live jointing associated with this Agreement is restricted to live low voltage underground unmetered single phase street lighting Service Lines more than one metre from the WPD Distributing Main cable as measured along the Service Line.
- 3.2 The Connection Provider undertakes and warrants that all physical work will be carried out by a competent workforce in a safe manner to agreed standards and specifications and not to the detriment of other user's of the WPD's Distribution System.
- 3.3 The Connection Provider shall carry out all Contestable Connection Works in accordance with all applicable Connection Provider's policies and procedures (or all applicable WPD policies and procedures if working to WPD safety management system) and shall ensure that all Contestable Connection Works are compliant with the Specification and the Adoption Agreement.

- 3.4 Where the Connection Provider wishes, WPD shall, within a reasonable period of receipt of a written request, supply the Connection Provider 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.
- 3.5 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 and shall not sub-licence, assign or otherwise disclose them to any third party.
- 3.6 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).
- 3.7 The Connection Provider shall only use materials detailed by WPD under the Specification.
- 3.8 The Connection Provider shall warrant that all connections will comply with the Electricity Safety, Quality and Continuity Regulations 2002, BS-7671 and all relevant Statutes and Statutory Instruments.
- 3.9 For the avoidance of doubt emergency work, faults, or work involving the shut down of the Distributing Main are excluded from this Agreement.
- 3.10 Where the planned works form part of a large scheme the Connection Provider shall submit to WPD, for notification purposes a scaled plan showing the extent and number of connections associated with the site or scheme 20 Working Days in advance.
- 3.11 The Connection Provider shall provide WPD with a programme of planned works, a minimum of 5 Working Days in advance, on Consent to Connect Form B to WPD's nominated representative so that WPD is fully aware of when and where work is being undertaken on its Distribution System. Any material variation shall be notified to WPD as soon as reasonably practicable.
- 3.12 The Connection Provider shall not connect any of the proposed Contestable Connection Works until confirmation is received from WPD of its consent to do so. Such consent not to be unreasonably withheld.

- 3.13 The Connection Provider shall ensure that all pre-commissioning tests and checks are satisfactorily completed and recorded prior to energisation. The Connection Provider shall not make any connection which fails the pre-commissioning tests.
- 3.14 The Connection Provider shall ensure that all post-commissioning tests listed in Consent to Connect Forms C are completed and recorded immediately following the energisation of any new connection.
- 3.15 If any of the Contestable Works do not pass the post-commissioning the Connection Provider shall immediately notify WPD and WPD may:
- On safety grounds, under ESQCR Regulation 26, disconnect the Contestable Works from WPD's Distribution System until the Connection Provider undertakes all work necessary to enable the Contestable Works to pass the post-commissioning tests; or
 - Undertake such works and recover the cost thereof from the Connection Provider
- 3.16 The Connection Provider shall ensure that WPD is advised of work completion and provide, within 5 Working Days, for each and every connection a Consent to Connect Form C together with accurately marked up "as constructed" records.
- 3.17 The Connection Provider shall retain all completed Consent to Connect Forms C containing records of all tests undertaken for a period of 7 years and these shall be available for inspection by WPD where reasonably required.
- 3.18 The Connection Provider shall be fully responsible for all liabilities, including ongoing guarantees relating to reinstatement under the New Roads and Street Works Act 1991(NRSWA), Highways Act 1980 (HA) and other legal liabilities associated with activities under his control undertaken pursuant to this Agreement.
- 3.19 The Connection Provider is fully responsible for all necessary street works co-ordination, notifications, charges and penalties together with the provision of and maintenance of all signing, lighting and guarding required for excavation, interim and permanent reinstatement. Excavation shall be sufficient both for jointing and positive identification if multiple cables present.

4. Inspection

- 4.1 WPD will carry out chargeable inspections in accordance with the inspection regime attached as Schedule 6 of this Agreement and the programme of works submitted by the Connection Provider. The Connection Provider will initially be allocated to Inspection Level 1 and will move to lower levels of inspection in accordance with Schedule 6.

- 4.2 Any material failure of any inspection may result in the Connection Provider moving to a higher level of inspection and may result in either the suspension or removal of general consent authorised under Consent to Connect Form A.
- 4.3 If general consent given under Consent to Connect Form A has been withdrawn, the Connection Provider may apply for connection specific consent to connect.
- 4.4 The Connection Provider will pay WPD for inspections as detailed in the Inspection Regime attached as Schedule 6 to this Agreement. Where further inspection is required as a result of identifying a Defect during a previous inspection a charge will also be made for the re-inspection.
- 4.5 Should WPD not receive notification from the Connection Provider of any change to its programme of works in accordance with Clause 3.8 of this Agreement WPD will charge the Connection Provider for an abortive visit.
- 4.6 WPD shall notify the Connection Provider of any Defect in writing as soon as practicable following the inspection. WPD should also notify the Connection Provider's nominated contact verbally whilst on site if possible.
- 4.7 Where, as a result of such inspections, it is shown that the standard of the work is unsatisfactory, the Connection Provider shall indemnify WPD against the costs of any remedial works WPD may be required to undertake to remedy the Defect. The Connection Provider shall also meet the reasonable cost of any further inspections that may be required to verify that any Defects have been remedied.
- 4.8 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 work programme or the Contestable Connection Works not being carried out 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 7.2, by the Connection Provider irrespective of whether any defects are revealed by such uncovering and inspection.
- 4.9 WPD is under no obligation to give the Connection Provider prior notice of WPD's intention to carry out a site inspection.

- 4.10 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.
- 4.11 Notwithstanding any inspections or tests by WPD the Contestable Assets 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 Assets.
- 4.12 WPD may carry out inspections outside the inspection regime but those inspections are not chargeable.

5. Safety

- 5.1 The Connection Provider shall provide its personnel with all necessary safety equipment to enable them to work in a safe manner.
- 5.2 The Connection Provider shall be responsible for safety of the public, e.g. in providing with signing, lighting, guarding (noting that the provisions of the New Road and Street Works Act 1991 might not apply to an un-adopted highway), or in ensuring that energised terminations are not left exposed and are effectively sealed.
- 5.3 Should any unforeseen eventuality relating to WPD's network arise during the course of carrying out the Contestable Connection Works then the Connection Provider shall contact WPD immediately.

6. Force Majeure and System Emergency

If WPD shall be unable to carry out its obligations under this Agreement as a result of:-

- Severe weather conditions; or
- Industrial action by the employees of WPD; or
- The act or default of a person other than an officer, employee or agent of WPD, or a person acting on behalf of an agent thereof; or
- The inability of WPD to obtain any necessary access to any premises (which may include its own premises); or
- The existence of circumstances by reason of which WPD could reasonably expect that if it took the action it would or would be likely to be in breach of an enactment (including any directions given by the Secretary of State under section 96 of the Act); or

- The existence and/or effects of an event qualifying as an emergency within the meaning of Part 2 of the Civil Contingencies Act 2004; or
- Any other circumstances of an exceptional nature beyond the control of WPD

this Agreement shall remain in full force and effect but WPD's obligations shall be suspended without liability for a period equal to the circumstance of Force Majeure or System Emergency.

7. Payments

- 7.1 WPD shall as soon as is reasonably practicable after the end of each month issue an invoice specifying any charges payable.
- 7.2 The Connection Provider shall pay all invoices within 28 days following issue of the invoice.
- 7.3 If any amount remains unpaid after the due date WPD shall be entitled to charge interest on the amount unpaid including interest on Value Added Tax unpaid calculated from day to day at the rate of 5% per annum above the base rate of Lloyds TSB Bank plc, compounded annually, during the period in which the service was provided.

8. Dispute Resolution – Escalation

If any dispute or difference shall arise between the Parties regarding this Agreement either Party may give to the other Party a notice describing the dispute or difference and requiring the dispute or difference to be settled within 14 Working Days of 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 Party 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 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 Party may refer the dispute or difference to adjudication in accordance with Clause 9. Each Party shall bear its own costs and expenses in relation to the foregoing procedure.

9. Dispute Resolution – Adjudication

- 9.1 In the event of any dispute or difference not being resolved in terms of Clause 8 either Party may refer any dispute or difference to adjudication in accordance with the terms of this Clause 9.
- 9.2 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.

- 9.3 If either Party wishes to refer a dispute or difference to adjudication pursuant to this Clause 9, that Party shall give notice of his intention to refer such dispute or difference to adjudication to the other Party and:-
- 9.3.1 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
- 9.3.2 any application to the nominating body referred to in Clause 9.2 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.
- 9.4 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 9.2 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.
- 9.5 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, either Party to the dispute may apply to the original nominator for the nomination of an adjudicator to adjudicate the dispute or difference.
- 9.6 The adjudicator may, with the consent of both Parties, adjudicate at the same time on any dispute or difference under different agreements, which are related to the performance of this Agreement. Both 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.
- 9.7 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 9.3 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.
- 9.8 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.
- 9.9 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.
- 9.10 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.
- 9.11 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 9.11.1 to 9.11.7 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:-
- 9.11.1 apply his own knowledge and/or experience;
- 9.11.2 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;
- 9.11.3 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;
- 9.11.4 require the Parties to carry out tests or additional tests or to open up work or further open up work;
- 9.11.5 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;

- 9.11.6 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
- 9.11.7 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;
- 9.12 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.
- 9.13 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.
- 9.14 Without prejudice to the provisions of Clause 9.12 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.
- 9.15 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.
- 9.16 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.
- 9.17 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.

10. Intellectual Property

- 10.1 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.

- 10.2 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 10.1 in connection with any project and/or other works other than the Contestable Connection Works.
- 10.3 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, (including any “as constructed plans” as delivered to WPD pursuant to Clause 3.13) to any other person including but not limited to the Highway Authority.

11. Assignment and Sub-Contracting

- 11.1 Neither 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 Party, such consent not to be unreasonably withheld or a decision thereon unreasonably delayed.
- 11.2 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.
- 11.3 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 Party.

12. Connection Provider's Liability

- 12.1 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.
- 12.2 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.
- 12.3 The Connection Provider shall indemnify and keep indemnified WPD against all demands, actions, proceedings, damages, losses, costs and expenses (including fines and penalties):-
- 12.3.1 which are made or brought against or incurred or suffered by WPD as a result of or in connection with:-
- 12.3.1.1 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.
- 12.3.2 which are made or brought against or incurred or suffered by WPD as a result of, or in connection with:-
- 12.3.2.1 any breach by the Connection Provider of any obligations of the Connection Provider to any party who is also the grantor of any Consents; and/or
- 12.3.2.2 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

12.3.2.3 failure by the Connection Provider in respect of any legal duty or obligation owed by the Connection Provider to such grantor; and/or

12.3.2.4 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.

13. Limitation of Liability

13.1 Neither Party shall be liable for any breach of this Agreement caused directly or indirectly by Force Majeure or by a System Emergency.

13.2 Subject to Clauses 13.3, 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 Party 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.

13.3 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.

13.4 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 any of the other Parties for:

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

13.4.2 any indirect or consequential loss; or

13.4.3 any losses resulting from the liability of such other Party to any other person howsoever arising, save as provided in Clause 13.3,

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 13.4.1, 13.3.2 or 13.3.3 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.

13.5 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.

13.6 Save as otherwise expressly provided in this Agreement, this Clause 13 in so far as it excludes or limits liability shall override any other provision of this Agreement, provided that nothing in this Clause 13 shall exclude or restrict or otherwise prejudice or affect any of:-

13.6.1 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

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

13.7 Each of the sub-clauses of this Clause 13 shall:-

13.7.1 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

13.7.2 survive termination of this Agreement.

13.8 Each of the Parties agrees that each of the other Parties holds the benefit of Clauses 13.2, 13.3 and 13.4 for itself as trustee and agent for its officers, employees and agents.

13.9 For the avoidance of doubt, nothing in this Clause 13 shall prevent or restrict either Party from enforcing any obligations (including suing for a debt) owed to it under or pursuant to the Agreement.

14. Insurance & Security

14.1 The Connection Provider shall, from the date of the Agreement and for the duration of the Defect Correction Period, keep and maintain:-

14.1.1 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

14.1.2 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.

14.2 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 14.1. WPD shall assess the need for a Connection Provider to provide additional security using the Dun & Bradstreet Corporation assessment scheme.

14.3 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.

14.4 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.

14.5 If, during the period indicated under Clause 14.1 the Connection Provider should no longer meet the criteria set out pursuant to Clause 14.3 the obligations under Clause 14.4 shall apply.

15. Confidentiality

15.1 In this clause "Confidential Information" means all information disclosed, directly or indirectly by WPD to the Connection Provider, including but not limited to information relating to WPD's organisations, finances, processes,

plans, ideas, designs, know-how, software, technology, market opportunities, Connection Providers, business activities and intellectual property rights.

15.2 The Connection Provider must treat all Confidential Information as confidential and use it only for the purposes of this Agreement.

15.3 The restrictions in this clause do not apply to “Confidential Information” which the Connection Provider discloses with the written consent of WPD or the Connection Provider can prove:

- is known at the date of disclosure as evidenced from written records
- is, after the date of disclosure, acquired by it in good faith by an independent third party;
- has in its entirety become public knowledge otherwise than in breach
- is required to be disclosed either by law or by the rules of a relevant stock exchange or regulatory authority; or

16. Termination

16.1 Either 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).

16.2 This Agreement shall terminate automatically on termination of the Adoption Agreement or the agreement between the Highway Authority and the Connection Provider for the carrying out of the Contestable Connection Works for any reason.

16.3 In the event that:-

16.3.1 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

16.3.2 (the 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

16.3.3 (the 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 Connection Provider; or

- 16.3.4 a receiver or an administrative receiver of the Connection Provider is appointed, or
- 16.3.5 the Connection Provider 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
- 16.3.6 no physical work forming part of the Contestable Connection Works has commenced within one year after the date of the Agreement; or
- 16.3.7 the Connection Provider fails to fulfil his obligations in terms of or arising from Clauses 3 or 14;

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

- 16.4 Once WPD has given, and upon the giving of, notice of an event of default pursuant to Clause 16, this Agreement shall terminate.
- 16.5 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.
- 16.6 Clauses 6, 8, 9, 12, 13, 14, 15, 16, 17 and 21 shall survive the termination, for whatever reason, of this Agreement.
- 16.7 Where the Agreement is terminated by WPD under Clause 16.3, 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.

17. Variations

- 17.1 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 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.

20. Compliance with Laws

The Connection Provider must comply with all laws, bylaws, regulations, directives and regulations of any Government or other competent authority and all relevant Codes of Practice, standards, rules and guidelines issued by regulatory or trade bodies when performing this Agreement.

21. Governing Law

This Agreement is governed by, and shall be construed in accordance with English law and subject to Clauses 8 and 9 the courts of England and Wales shall have exclusive jurisdiction.

AS WITNESS whereof the parties have signed below:

SIGNED BY

[name of person]

[position]

For and on behalf of

Western Power Distribution (South West) plc

[or, delete as appropriate] Western Power Distribution (South Wales) plc

SIGNED BY

[name of person]

[position]

For and on behalf of

[name of Connection Provider]

Schedule 1

This Agreement shall only cover the Contestable Connection Works carried out by the Connection Provider as an agent on behalf of the Highway Authority stated below and the Connection Provider shall only carry out Contestable Connection Works within the geographical area of jurisdiction and control of the Highway Authority.

Name of Highway Authority:

Address of Highway Authority:

Schedule 2

**WESTERN POWER DISTRIBUTION
NOTICE OF APPLICATION FOR CONSENT TO CONNECT
“PART A”**



To Western Power Distribution :	
Application for consent to make live connections to WPD’s Distribution System within the geographic area under the jurisdiction and control of: (enter Highway Authority details below)	
Highway Authority Name:	
Highway Authority Address:	
Highway Authority MPAN:	
Period:	From: _____ To: _____
Name of Connection Provider:	
Address of Connection Provider:	
Telephone Contact Number	
Accreditation Reference	

This Form must be satisfactorily completed with respect to the geographic area of the Highway Authority in advance of any live connections being made by the Connection Provider.

Declaration

I certify to the best of my knowledge and belief that the information contained in this Notice of Application for Consent to Connect is correct and complete: and

- The Connection Provider has been appointed by and has agreement with the Highway Authority identified above to carry out certain works for the provision and maintenance of street lighting;
- All works will be carried out in compliance with the signed Agreement for Low Voltage Underground Live Network Access on Unmetered Street Lighting Connections;
- All pre-commissioning tests and checks will be satisfactorily completed prior to energisation;
- All post-commissioning tests and checks will be satisfactorily completed immediately following energisation;
- All connections will comply with the Electricity Safety, Quality and Continuity Regulations 2002, BS-7671 and all relevant Statutory Instruments;
- All persons involved will, prior to making the live connection(s);
 - ✓ be technically competent in all relevant work areas
 - ✓ comply with WPD’s safety requirements
 - ✓ where appropriate, hold current relevant accreditation status in accordance with the National Electricity Registration Scheme and WPD’s assessment scheme

Authorised Signatory: (on behalf of the Connection Provider)	Date:
Name (printed):	
Telephone No:	Mobile:
Consent to Connect granted Authorised Signatory on behalf of WPD:	Date:
Name (Printed):	

Schedule 3

WESTERN POWER DISTRIBUTION NOTICE OF CONNECTION (PART B)



To Western Power Distribution :

For the attention of (see below):			
Highway Authority MPAN:		ICP Job Reference No:	
Highway Authority Name:			
Programme of works for date:			
From			
Name of Connection Provider			
Telephone Contact Number			
Total number of documents attached (including this cover page):			

We will be connecting to the WPD Distribution System and making live the following apparatus: (addresses/plot numbers; please attach a scaled plan where appropriate)

I certify that the information contained in this Notice of Connection is correct and complete and:

- This apparatus will be constructed in accordance with the signed Agreement for Low Voltage Underground Live Network Access on Unmetered Street Lighting Connections and the part which is now proposed to be energised is shown on the attached records relating to the above address;
- Pre- "making live" commissioning tests and checks will be satisfactorily completed and documents available;
- No supplies shall be derived from any Exit Points until post-energisation commissioning tests are completed and an accredited supplier has registered against said Exit Points in accordance with the Master Registration Agreement dated 1 June 1998 (as amended);
- I will carry out post - energisation commissioning tests immediately following energisation and in the event any part of the apparatus covered by this Notice of Connection should fail the post - energisation commissioning tests WPD may, at its reasonable discretion and following notification, undertake such works as are necessary to remedy the failure and recover the cost thereof;
- All necessary consents have been obtained and completed and copies provided;
- All persons involved in making the connection are technically competent and will comply with WPD safety requirements.

I am competent and authorised as a representative of the Connection Provider to state that the electrical apparatus above will be tested by us and made fit for service. All works will be carried out in compliance with The Electricity, Safety, Quality and Continuity Regulations 2002. I understand that formal adoption will only take place on energisation.

Authorised Signatory	Date
Name (printed)	Designation

Please forward this Notice of Connection together with any accompanying documentation to:

For work in South West England : Business Support Unit Lostwithiel Rd Bodmin Cornwall PL31 1DE	For work in South Wales : Business Support Unit Phoenix Way Swansea Enterprise Park Llansamlet Swansea SA7 9HW
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Schedule 4

**WESTERN POWER DISTRIBUTION
CONFIRMATION OF SATISFACTORY TESTING CERTIFICATE
(PART C)**

This Part C must be completed after satisfactory testing for each and every connection and the Form forwarded by the Connection Provider to WPD within 5 Working Days. The Connection Provider shall also retain a copy of this form and shall make such copy available for inspection on demand by WPD.

To Western Power Distribution :

For the attention of (see below):			
Highway Authority MPAN:		ICP Job Reference No:	
Highway Authority Name:			
From:			
Name of Connection Provider (Company):			
Telephone Contact Number			
Total number of pages attached (including this one):			

The following apparatus has been made live (address/plot number/street furniture identification number). A scaled plan is attached.

I am competent and authorised as a representative of the Connection Provider to certify that the information contained in this Confirmation of Satisfactory Testing Certificate is correct and complete and:

- This apparatus has been constructed in accordance with the signed Agreement for Low Voltage Underground Live Network Access on Unmetered Street Lighting Connections and the part which was energised is shown on the attached records relating to the above address.
- I have satisfactorily completed post - energisation commissioning tests (In the event any part of the apparatus covered by this Certificate should fail the post - energisation commissioning tests WPD may, at its reasonable discretion and following notification, undertake such works as are necessary to remedy the failure and recover the cost thereof.
- All necessary consents have been obtained and completed and copies provided.
- Test results are attached which confirm all appropriate post - commissioning tests have been carried out. All works have been carried out in compliance with the Adoption Agreement and complies with The Electricity, Safety, Quality and Continuity Regulations 2002, BS-7671, all relevant Statutory Instruments and where appropriate Engineering Recommendation G81 and WPD associated Framework Appendices.

Insulation resistance:	Value
Continuity	Correct? (Y/N)
Phase rotation/polarity	Correct? (Y/N)
Earth loop impedance	Value

Authorised Signatory:	Date:
Name (printed):	Designation:

Please forward Confirmation of Satisfactory Testing Certificate together with any accompanying documentation to:

For work in South West England : Mapping Centre Osprey Rd Sowton Industrial Estate Exeter Devon EX2 7WP	For work in South Wales : Mapping Centre Lamby Way Rumney Cardiff CF3 2EQ
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Schedule 5

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

Schedule 6

Chargeable Inspection Regime

Activity	Inspection Level 1	Qualifying count and period to move to Level 2	Inspection level 2	Qualifying count and period to move to level 3	Inspection level 3	Qualifying count and period to maintain level 3
Service cable installation, jointing and termination (Connections)	20%	A minimum of 100 connections within 6 months	5%	A minimum of 400 connections within 6 months	2%	Maintain a minimum of 400 connections within 6 months *

* If less than 400 connections are undertaken in the previous six month period then Inspection Level 2 may be applied.

A standard Inspection Charge shall be applied for each visit. The charge will be based on a Technician hourly rate and include travelling and inspection times. The average visit duration shall be deemed to be 3 hours.