

## DRAFT – SUBJECT TO CONTRACT

### Cable Identification Extension of Contestability Agreement

This Cable Identification Extension of Contestability Agreement is dated [INSERT] and made between:

- (1) **Western Power Distribution [(South West)/(South Wales)/(East Midlands)/(West Midlands)]\*** plc (company number: 02366894/02366985/ 02366923/ 03600574\*) whose registered office is at Avonbank, Feeder Rd, Bristol BS2 0TB (“WPD”); and
- (2) [Company name] whose registered office is at [address] (the “Connection Provider”).

#### Background

- (A) WPD and the Connection Provider have entered into a framework agreement dated [INSERT] (the “Framework Agreement”).
- (B) As part of WPD's commitment to the development and facilitation of competition in connections WPD has invited the Connection Provider to take part in this Extension of Contestability Initiative (as defined below in clause 1.2).
- (C) The Connection Provider has agreed to take part in this Extension of Contestability Initiative on the terms and conditions set out in this Cable Identification EOC Agreement (as defined below in clause 1.2).

It is agreed as follows:

#### 1. Definitions and interpretation

- 1.1 The terms of this Cable Identification EOC Agreement shall be deemed to be incorporated into and form part of the Framework Agreement for the duration of this Cable Identification EOC Agreement. In the event of any conflict between this Cable Identification EOC Agreement and the Framework Agreement, the terms of this Cable Identification EOC Agreement shall prevail over the conflicting terms of the Framework Agreement solely in respect of the subject matter of this Cable Identification EOC Agreement.
- 1.2 In this Cable Identification EOC Agreement, terms have the meanings given to them in the Framework Agreement unless the context requires otherwise and in addition the following definitions shall apply:

<b>"Authorised Representative"</b>	a representative of the Connection Provider who is sufficiently skilled, trained, qualified and experienced to carry out the activities set out in clause 4;
<b>"Business Hours"</b>	between the hours of 0800 to 1600 on a Working Day;

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\* delete as appropriate

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<b>"Cable Identification EOC Agreement"</b>	this extension of contestability agreement (including any schedules to it) between WPD and the Connection Provider;
<b>"Cable Identification EOC Commencement Date"</b>	the date specified on the front sheet of this Cable Identification EOC Agreement;
<b>"Cable Identification Costs"</b>	the charges payable by the Connection Provider as set out in clause 6;
<b>"Cable Identification EOC Default"</b>	any act, statement, omission or negligence on the part of either party under or in connection with this Cable Identification EOC Agreement in respect of which a party is legally liable to the other whether in contract or tort;
<b>"Cable Identification Order"</b>	has the meaning set out in clause 2.3;
<b>"Cable Identification Services"</b>	the use of intrusive cable identification equipment to identify the LV Cable at a Cable Identification Site from a known source specified by the Connection Provider;
<b>"Cable Identification Site"</b>	the site specified by the Connection Provider at which the Cable Identification Services are to be provided (and <b>"Cable Identification Sites"</b> shall be construed accordingly);
<b>"Competent"</b>	deemed sufficiently competent and skilled to carry out intrusive cable identification including (but not limited to) (a) having achieved all necessary accreditations and/or certifications regarding working on the Distribution System, including as a minimum the following Lloyds Register National Electricity Registration Scheme scopes: (i) LV Network Connection – Operational Activity, and (ii) HV Network Connection – Operational Activity, and (b) being familiar with the operation of intrusive cable identification devices (and <b>"Competence"</b> shall be construed accordingly);
<b>"Confirmation Form"</b>	the form to be signed by the Connection

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Provider's Authorised Representative in accordance with clause 4.4, as set out in Schedule CII

**"Extension of Contestability Initiative"**

the provision by WPD of assistance to the Connection Provider to identify LV Cable, in order to facilitate the Connection Provider working on the LV Distribution System;

**"HV Cable"**

electricity cable carrying 1000V or more;

**"Indemnified Party"**

WPD, any company in the WPD Group and any of their respective servants and agents;

**"LV Cable"**

electricity cable carrying less than 1000V;

**"Unidentified Cable"**

a cable that cannot be identified as either LV Cable or HV Cable by using intrusive cable identification equipment; and

**"WPD Engineer"**

the WPD employee who provides the Cable Identification Services at the Cable Identification Site.

1.3 In this Cable Identification EOC Agreement, unless the context requires otherwise, the principles of interpretation set out in clause 1.2 of the Framework Agreement shall apply.

1.4 The terms set out below apply solely in respect of this Cable Identification EOC Agreement for the duration of this Cable Identification EOC Agreement.

## 2. Orders

2.1 The Connection Provider agrees to request and WPD agrees to carry out the Cable Identification Services on a when needed basis subject to the terms and conditions of this Cable Identification EOC Agreement.

2.2 On each and every occasion the Connection Provider wishes WPD to provide Cable Identification Services, the Connection Provider shall send WPD a written Cable Identification Request not less than ten (10) days before the date on which the proposed Cable Identification Services are to be carried out. The Cable Identification Request shall contain as a minimum:

- (a) the date(s) and time(s); and
- (b) the Cable Identification Sites,

at which the proposed Cable Identification Services are to be carried out.

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- 2.3 WPD shall not be required to provide any Cable Identification Services unless and until it has confirmed the Connection Provider's Cable Identification Request in writing (such accepted Cable Identification Request a "**Cable Identification Order**").
- 2.4 This Cable Identification EOC Agreement shall prevail over any terms and conditions in any Cable Identification Order or Cable Identification Request placed by the Connection Provider, any acknowledgement from WPD of such Cable Identification Order, or in any other correspondence between the parties relating to the subject matter of this Cable Identification EOC Agreement except only to the extent any terms and conditions on the Cable Identification Order do not conflict with this Cable Identification EOC Agreement.
- 2.5 This Cable Identification EOC Agreement and (to the extent that it applies to this Cable Identification EOC Agreement) the Framework Agreement set out the entire agreement and understanding between the parties in respect of the subject matter of this Cable Identification EOC Agreement.
- 2.6 WPD shall not be obliged to accept any Cable Identification Request and shall be entitled to refuse any Cable Identification Request at its sole discretion.
- 2.7 Any company in the WPD Group may provide Cable Identification Services in accordance with this Cable Identification EOC Agreement. Irrespective of the company in the WPD Group that provided the Cable Identification Services the Connection Provider may only enforce its rights and remedies under this Cable Identification EOC Agreement against WPD and for these purposes only any breach of this Cable Identification EOC Agreement by the company in the WPD Group that provided the Cable Identification Services shall be deemed to be a breach by WPD.

### **3. Term**

This Cable Identification EOC Agreement shall be deemed to have commenced on the Cable Identification EOC Commencement Date and shall continue until terminated in accordance with its terms.

### **4. Cable Identification Services**

- 4.1 The Connection Provider shall place a Cable Identification Order on each occasion it wishes WPD to perform Cable Identification Services in accordance with this Cable Identification EOC Agreement.
- 4.2 The Connection Provider shall ensure that:
- (a) the Cable Identification Site is suitably prepared and equipped to allow the Cable Identification Services to be carried out safely and efficiently;

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- (b) all necessary excavation work has been carried out and the relevant cables have been exposed in accordance with the applicable Standard Technique prior to the WPD Engineer's arrival at the Cable Identification Site;
  - (c) all cable records, plans and relevant operational diagrams are available to the WPD Engineer at the Cable Identification Site; and
  - (d) an Authorised Representative is present at the Cable Identification Site throughout the provision of the Cable Identification Services.
- 4.3 WPD shall use reasonable endeavours to procure that the WPD Engineer:
- (a) shall attend the Cable Identification Site on the date and time set out in the Order;
  - (b) shall provide the Cable Identification Services with reasonable care and skill; and
  - (c) is Competent.
- 4.4 The Connection Provider shall procure that the Authorised Representative shall;
- (a) confirm that they are satisfied that the WPD Engineer has carried out the Cable Identification Services appropriately, based on the Authorised Representative's Competence to do so; and
  - (b) sign the Confirmation Form to confirm that they have understood the identification of the relevant cables and that they are able to identify such cables for the purposes of the works to be performed by the Connection Provider at that Cable Identification Site.
- 4.5 If for any reason the WPD Engineer cannot identify a cable, it shall be deemed to be not possible to carry out the Cable Identification Services in respect of such cable and the provisions of clause 4.7 shall apply.
- 4.6 Following the carrying out of the Cable Identification Services and the completion of the Confirmation Form:
- (a) the WPD Engineer shall mark each identified cable(s) in accordance with the method set out in the relevant Standard Technique; and
  - (b) the Connection Provider shall ensure that such marked cables are not tampered with and that such marks are not defaced, obscured or removed, following the marking of the cable(s).
- 4.7 Notwithstanding any other provision in this clause 4, if for any reason it is not possible for the WPD Engineer to carry out the Cable Identification Services (including without

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limitation that it is not possible to identify whether a cable is an LV Cable) the WPD Engineer shall not mark the cable or complete and sign the Confirmation Form.

- 4.8 The Connection Provider shall not, under any circumstances whatsoever, carry out any works on a cable:
- (a) in respect of which the Cable Identification Services have not been carried out;
  - (b) in respect of which the WPD Engineer has attempted to perform the Cable Identification Services but is an Unidentified Cable;
  - (c) which has been identified and marked by the WPD Engineer as LV Cable but:
    - (i) appears on a reasonable inspection to have been tampered with in any way subsequent to such identification; or
    - (ii) on which the marking has been defaced, obscured or removed; or
  - (d) where the Authorised Representative, based on their Competence to do so, is not satisfied that the WPD Engineer has identified or marked cables appropriately.

- 4.9 Notwithstanding any other provision of this Cable Identification EOC Agreement, the Connection Provider shall be solely responsible for any loss or damage arising out of or in connection with any breach of clause 4.8.

### **5. Obligations of the Connection Provider**

- 5.1 The Connection Provider shall ensure that the Authorised Representative is Competent.

- 5.2 The Connection Provider acknowledges that:

- (a) it shall be responsible for the safe handling of all cable and carrying out of all work following the performance of the Cable Identification Services; and
- (b) WPD shall not be responsible for any loss or damage arising out of or in connection with any breach by the Connection Provider of clause 4.8 or failure by the Connection Provider or its officers, employees, agents or sub-contractors to comply with the directions or recommendations of WPD or the WPD Engineer regarding cable, either during or following the performance of the Cable Identification Services.

### **6. Cable Identification Costs and payment terms**

- 6.1 Following the performance of the Cable Identification Services (or, if it was not possible for the WPD Engineer to carry out the Cable Identification Services, following the attempted performance of the Cable Identification Services by the WPD

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Engineer) WPD shall calculate the amount of the Cable Identification Costs due from the Connection Provider in accordance with clause 6.2.

- 6.2 The Cable Identification Costs shall be calculated by reference to the total amount of time spent by the WPD Engineer providing (or attempting to provide) the Cable Identification Services (including, without limitation, travelling to and from the Cable Identification Site).
  - 6.3 Subject to clause 6.4, the rates payable for the WPD Engineer's time shall be published on the WPD website at **[insert website address]** from time to time and shall be calculated by reference to each 3-hour period or part thereof spent by the WPD Engineer providing (or attempting to provide) the Cable Identification Services.
  - 6.4 A higher charge will be payable in respect of any part of the WPD Engineer's time providing (or attempting to provide) the Cable Identification Services which occurs outside of Business Hours. Such higher charge shall be published on the WPD website at **[insert website address]** from time to time and shall be calculated by reference to each 3-hour period or part thereof spent by the WPD Engineer providing (or attempting to provide) the Cable Identification Services outside Business Hours. Where on any occasion the WPD's Engineer's time providing (or attempting to provide) the Cable Identification Services includes time both within and outside Business Hours, the relevant 3-hour period spent providing (or attempting to provide) the Cable Identification Services which falls in both charge rates shall be charged at the higher rate.
  - 6.5 Following calculation of the Cable Identification Costs payable in accordance with clause 6.2, WPD shall invoice the Connection Provider for amounts due in accordance with the process set out in clause 22 of the Framework Agreement.
  - 6.7 Where under this Cable Identification EOC Agreement any party agrees to pay to any other party any sum or to furnish to any other party consideration which (in either case) is consideration for a taxable supply that sum or consideration shall be exclusive of Value Added Tax payable on it and the recipient of the supply shall pay an amount equal to such Value Added Tax in addition to any sum or consideration on receipt of a valid Value Added Tax invoice from the relevant party.
  - 6.8 All amounts due under this Cable Identification EOC Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding or tax or as required by law).
7. **Liability and remedies**
- 7.1 Each party shall inform the other of any Cable Identification EOC Default and afford the other a reasonable opportunity to correct the Cable Identification EOC Default.
  - 7.2 Subject to sub-clause 23.1 of the Framework Agreement, WPD's liability under this Cable Identification EOC Agreement, whether in contract, tort (including negligence),

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breach of statutory duty or otherwise, shall not exceed £5,000 (five thousand pounds) per event or series of connected events.

7.3 Notwithstanding sub-clause 23.8 of the Framework Agreement, the Connection Provider accepts unlimited liability for and shall indemnify the Indemnified Parties and keep them indemnified against any fine, penalty, charge or similar sum claimed by a regulatory body (and all associated legal costs incurred) from an Indemnified Party due to Cable Identification EOC Default by the Connection Provider under this Cable Identification EOC Agreement.

7.4 The Connection Provider will not be liable for loss or damage arising from WPD's negligence or WPD's wilful failure to fulfil its responsibilities under this Cable Identification EOC Agreement.

7.5 Subject to sub-clause 23.1 of the Framework Agreement and clause 7.4 of this Cable Identification EOC Agreement, the Connection Provider shall indemnify each Indemnified Party and keep each Indemnified Party indemnified fully at all times against all demands, damages, losses, costs (including reasonable legal costs), expenses and charges arising from:

- (a) damage to the property of an Indemnified Party;
- (b) death or personal injury of any person; and
- (c) all claims by third parties,

caused by or attributable to any act or omission by the Connection Provider in relation to this Cable Identification EOC Agreement, to the extent permissible by law.

7.6 The Connection Provider undertakes and agrees to take out and maintain all necessary insurance cover in full force and effect at its own cost with an insurance office of repute to cover its liabilities under this Cable Identification EOC Agreement to the extent as would be reasonably expected.

7.7 The Connection Provider shall produce at WPD's reasonable request a copy of the insurance policy or policies relating to this Cable Identification EOC Agreement and the relevant renewal receipts for inspection by WPD.

7.8 The sum insured shall not be less than £5,000,000 for any one event or series of connected events. The Connection Provider shall not self-insure its liabilities under this Cable Identification EOC Agreement without the written consent of WPD.

## **8. Force Majeure**

8.1 If either party is affected by an Event of Force Majeure, the affected party shall immediately give the other party written notification of the nature and extent of the Event of Force Majeure and the parties shall enter into bona fide discussions with a



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view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable.

- 8.2 If the Connection Provider is affected by an Event of Force Majeure and the written notice in relation to the Event of Force Majeure has not been withdrawn within 30 days, WPD may terminate this Cable Identification EOC Agreement with immediate effect by serving a written notice on the Connection Provider. The service of such notice shall be without prejudice to any rights or obligations which have accrued prior to termination.

### **9. Termination**

- 9.1 Without prejudice to any right or remedy either party may have against the other for breach or non-performance of this Cable Identification EOC Agreement, either party may, with immediate effect by notice in writing to the other, terminate this Cable Identification EOC Agreement on or at any time after the happening of any of the following events:

- (a) a material breach of any of the terms and conditions set out in this Cable Identification EOC Agreement provided that where such breach is capable of remedy the party in breach has been advised in writing of the breach and has not rectified it within five (5) days of receipt. For the purposes of this sub-clause a breach shall be considered capable of remedy if time is not of the essence in performance of the obligation and if that party can comply with the obligation within the 10 day period;
- (b) on the occurrence of any one or more of the events set out in sub-clauses 33.3(b) to 33.3(h) of the Framework Agreement;
- (c) on the party for any reason whatsoever being substantially prevented from performing or becoming unable to perform its obligations.

- 9.2 WPD may by notice in writing immediately terminate this Cable Identification EOC Agreement if:

- (a) any event occurs, or circumstances arise which, in the reasonable opinion of WPD, make it no longer commercially desirable or unsafe for WPD to continue with the Cable Identification EOC Agreement; or
- (b) WPD consider termination necessary due to any change in legislation or the conditions of WPD's distribution licence granted pursuant to Section 6(1) (c) of the Electricity Act 1989 or any other legislative requirements.

- 9.3 Notwithstanding sub-clause 33.1 of the Framework Agreement, WPD may terminate this Cable Identification EOC Agreement at any time on 30 days' notice in writing to the Connection Provider.

### **10. Consequences of termination**

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10.1 All rights and obligations of the parties shall cease to have effect immediately upon termination of this Cable Identification EOC Agreement except that termination shall not affect:

- (a) the accrued rights and obligations of the parties at the date of termination; and
- (b) the continued existence and the validity of the rights and obligations of the parties under clauses 7, 10, and 12 which are expressed to survive termination.

10.2 On termination of this Cable Identification EOC Agreement by either Party for any reason, it shall no longer be deemed incorporated into the Framework Agreement.

### **11. Costs and expenses**

Each party shall bear its own costs and expenses incurred in the preparation, execution and implementation of this Cable Identification EOC Agreement.

### **12. Data Protection**

WPD may give the Connection Provider the names and addresses of its employees, agents, contractors and sub-contractors. Where WPD does give the Connection Provider any such information the Connection Provider shall keep such information confidential, shall comply with its obligations under the Data Protection Act 1998 in respect of such information and shall only use it for the purpose of requesting Cable Identification Services from WPD under this Cable Identification EOC Agreement.

### **13. Entire Agreement**

Following the Cable Identification EOC Commencement Date the entire agreement clause in the Framework Agreement shall be deemed (without affecting any previously agreed variations which are still in force) to be varied for the duration of this Cable Identification EOC Agreement to include reference to this Cable Identification EOC Agreement forming part of the Framework Agreement. For the duration of this Cable Identification EOC Agreement this Cable Identification EOC Agreement shall be read and construed together with the Framework Agreement. In the event of any conflict between this Cable Identification EOC Agreement and the Framework Agreement, the terms of this Cable Identification EOC Agreement shall prevail over the conflicting terms of the Framework Agreement solely in respect of the subject matter of this Cable Identification EOC Agreement.

**This Cable Identification EOC Agreement** has been signed on the date stated as the "Date of this Agreement" on page 1 of this Cable Identification EOC Agreement.

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**Schedule CI1**

**(Confirmation Form)**

This confirmation form is a part of the Cable Identification EOC Agreement between:

\_\_\_\_\_ (the "Connection Provider"); and  
Western Power Distribution [(South West)/(South Wales)/(East Midlands)/(West Midlands)]\* ("WPD"), dated \_\_\_\_\_ (the "Cable Identification Agreement"). This Confirmation Form is subject to all the terms and conditions of the Cable Identification EOC Agreement.

<b>Date:</b>	<b>Cable Identification Site:</b>
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**TO BE COMPLETED BY THE CONNECTION PROVIDER**

**By signing this confirmation form, I confirm that:**

- I am certified through:
  - Lloyds Register National Electricity Registration Scheme in relation to LV Network Connection – Operational Activity;\*
  - Lloyds Register National Electricity Registration Scheme in relation to HV Network Connection – Operational Activity;\*
  - Other [insert details of accreditation/ courses relevant to cable identifications activity] \_\_\_\_\_\*

to work on WPD's distribution system, in line with the Cable Identification Extension of Contestability Agreement.

- I am familiar with the operation of intrusive cable identification devices for the identification of low voltage cable (the "Cable Identification Services") and am competent to carry out these works.
- I am duly authorised by the Connection Provider to witness the performance of the Cable Identification Services by WPD's representative(s).
- I consider that the Cable Identification Services in respect of the cable identified overleaf have been carried out appropriately by the WPD Engineer (based on my competency to do so).
- I am confident to identify cables in relation to on-going works by the Connection Provider and will ensure that markings are not tampered with going forward.
- I understand that I am responsible for ensuring that work is only carried out in relation to cables identified as LV Cables by the WPD Engineer and that no work will be carried out on such cables if I am not confident in the identification and markings made by the WPD Engineer.

\* delete as appropriate

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SIGNED BY

Signature.....  
Print Name.....  
Role/ Job Title.....

For and on behalf of [*name of Connection Provider*]

**To be completed by WPD Engineer**

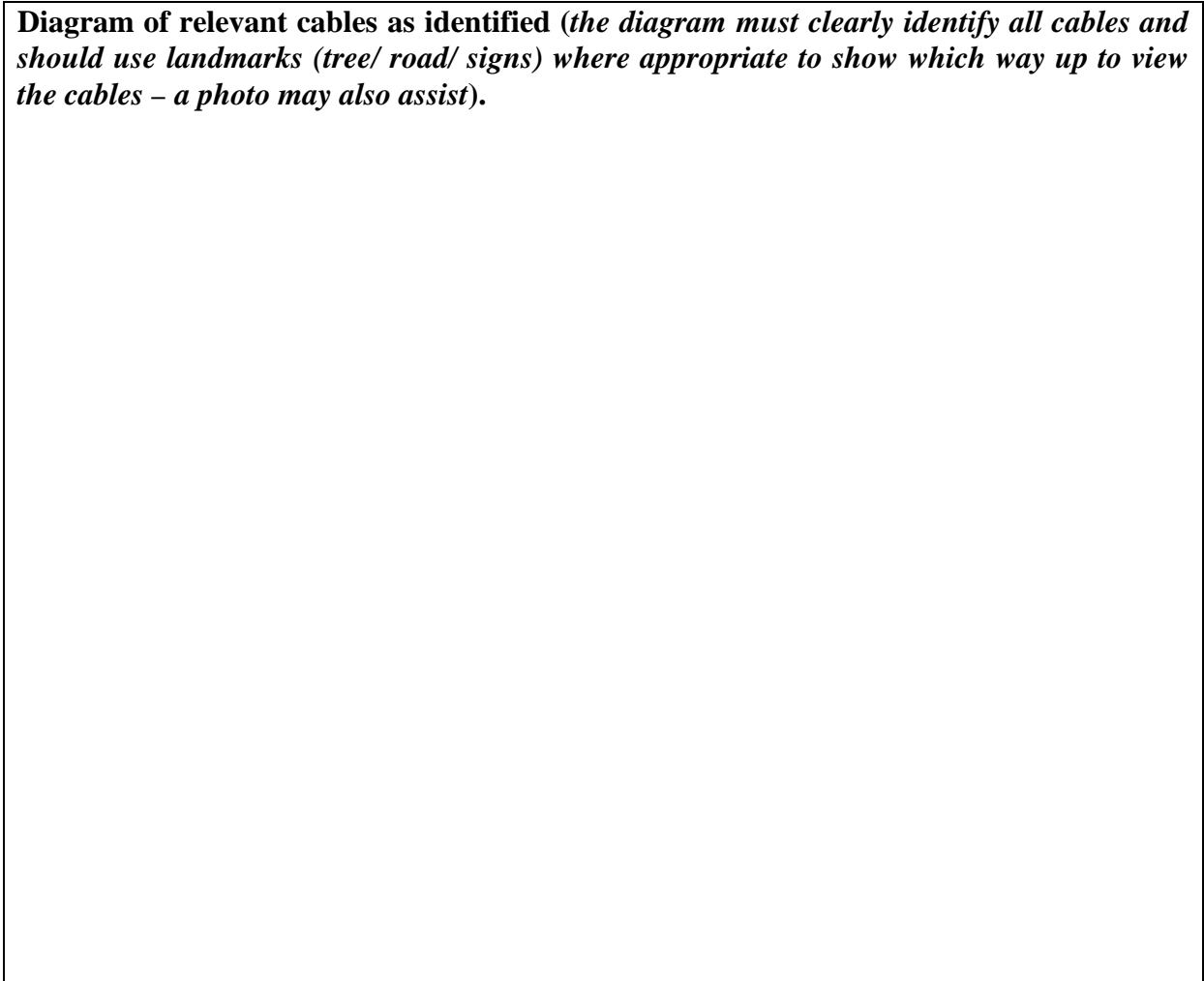
**By signing this confirmation form, I confirm that:**

1. I have completed the Cable Identification Services with reasonable care and skill.
2. I am satisfied that I have been able to properly identify the LV cable.
3. I have identified the cable and have marked it in accordance with the applicable Standard Technique using the following method:

.....[e.g.  
*crimped cable tie*]

3. I have drawn the diagram below to show the position of the identified cable.

**Diagram of relevant cables as identified (*the diagram must clearly identify all cables and should use landmarks (tree/ road/ signs) where appropriate to show which way up to view the cables – a photo may also assist*).**



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SIGNED BY

Signature.....  
Print Name.....  
Role/ Job Title.....

For and on behalf of Western Power Distribution **[(South West)/(South Wales)/(East Midlands)/(West Midlands)]\*** plc (company number: **02366894/02366985/ 02366923/ 03600574\***) whose registered office is at Avonbank, Feeder Rd, Bristol BS2 0TB (“WPD”)

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\* **delete as appropriate**