

**DRAFT – SUBJECT TO CONTRACT**

**FRAMEWORK AGREEMENT RELATING TO NETWORK ACCESS AND  
ADOPTION OF ELECTRICITY CONNECTIONS AND DISTRIBUTION  
EQUIPMENT**

**BETWEEN**

**WESTERN POWER DISTRIBUTION (SOUTH WEST) PLC, WESTERN  
POWER DISTRIBUTION (SOUTH WALES) PLC, WESTERN POWER  
DISTRIBUTION (EAST MIDLANDS) PLC, WESTERN POWER  
DISTRIBUTION (WEST MIDLANDS) PLC**

**AND**

**[CONNECTION PROVIDER]**

**DRAFT – SUBJECT TO CONTRACT**

**CONTENTS**

1.	Definitions and Interpretation.....	6
2.	Term.....	15
3.	Framework Agreement and Site Specific Agreement Process .....	15
4.	Framework Agreement and Extension of Contestability Initiatives.....	16
5.	Design for all Contestable Connection Works.....	18
6.	Distribution System Enhancements for Contestable Connection Works.....	19
7.	WPD's assistance in relation to Design of all Contestable Connection Works....	19
8.	Safety and CDM Regulations.....	20
9.	Materials and Workmanship .....	21
10.	Consents for Contestable Connection Works .....	21
11.	The Connection Provider's obligations for all Contestable Connection Works.....	22
12.	Inspection .....	23
13.	The Connection Provider's Obligations prior to Energisation for all Associated Contestable Works.....	25
14.	WPD's Services and WPD's Work for Associated Contestable Works.....	26
15.	Commissioning and Completion for Associated Contestable Works.....	27
16.	Handover and Adoption of Associated Contestable Assets.....	29
17.	Access to Distribution System for Final Connection Contestable Works.....	30
18.	Switching for Final Connection Contestable Works.....	31
19.	Commissioning and Completion for Final Connection Contestable Works.....	31

**DRAFT – SUBJECT TO CONTRACT**

20.	Adoption of Final Connection Contestable Assets.....	33
21.	Rectification of Defects for all Contestable Connection Works in Defect Correction Period.....	33
22.	Payment.....	33
23.	Liability and Indemnity.....	34
24.	Force Majeure.....	37
25.	Dispute Resolution – Escalation.....	37
26.	Dispute Resolution – Adjudication.....	38
27.	Intellectual Property.....	38
28.	Assignment and Sub-Contracting.....	39
29.	Insurance .....	40
30.	Security .....	40
31.	Confidentiality.....	41
32.	Severance.....	42
33.	Termination.....	42
34.	Construction Contract.....	45
35.	Waiver.....	45
36.	Variations.....	45
37.	Notices.....	45
38.	Entire Agreement.....	46
39.	Counterparts.....	47
40.	Third Party Rights.....	47
41.	Governing Law and Jurisdiction.....	47
42.	Cumulative Remedies.....	47

**DRAFT – SUBJECT TO CONTRACT**

Schedule 1 .....49

Schedule 2 .....59

**DRAFT – SUBJECT TO CONTRACT**

**FORM OF AGREEMENT**

**THIS AGREEMENT** is made on the                      day of                      2015

**BETWEEN**

**Western Power Distribution (South West) plc, Western Power Distribution (South Wales) plc, Western Power Distribution (East Midlands) plc and Western Power Distribution (West Midlands) plc** (company numbers: 02366894, 02366985, 02366923 and 03600574 respectively) whose registered office is at Avonbank, Feeder Rd, Bristol BS2 0TB (“**WPD**”); and

[**company name**] whose registered office is at [**address**] (the “**Connection Provider**”)

together, the "Parties" and each a "Party".

**Background**

- (A) The Connection Provider may be appointed by various Customers to carry out and complete Contestable Connection Works.
- (B) In consideration of the Connection Provider carrying out and completing the Contestable Connection Works in accordance with this Agreement, WPD has agreed to:
  - (i) adopt the Contestable Connection Assets upon their satisfactory completion and the fulfilment by the Connection Provider of its obligations under this Agreement; and
  - (ii) carry out and complete WPD's Works in accordance with this Agreement.
- (C) If the Connection Provider is appointed to carry out and complete Associated Contestable Works, WPD and the Connection Provider will enter into a separate Site Specific Agreement in accordance with Clause 3 of this Framework Agreement. Each Site Specific Agreement will incorporate the terms and conditions set out in this Framework Agreement.
- (D) WPD has agreed to provide such access to the Distribution System as is reasonably required by the Connection Provider to enable it to carry out and complete any Final Connection Contestable Works in accordance with this Agreement.

## DRAFT – SUBJECT TO CONTRACT

- (E) As part of WPD's commitment to the continued development and facilitation of competition in connection works, WPD may from time to time invite the Connection Provider to take part in an Extension of Contestability Initiative.
- (F) If the Connection Provider takes part in an Extension of Contestability Initiative, the Connection Provider may be required to enter into an Extension of Contestability Agreement with WPD in accordance with Clause 4. Each Extension of Contestability Agreement entered into by the Parties will be deemed to be incorporated into this Framework Agreement.

## THE PARTIES AGREE AS FOLLOWS:

### 1. Definitions and Interpretation

- 1.1 In this Agreement and any Site Specific Agreements or Extension of Contestability Agreements formed under it, except where the context otherwise requires, the following shall have the meanings set opposite them:

<b>1990 Act</b>	Means the Town and Country Planning Act 1990 (as amended).
<b>Accreditation</b>	Means holding the relevant accreditation under the National Electricity Registration Scheme operated by Lloyd's Register and "Accredited" shall be construed accordingly.
<b>Act</b>	Means the Electricity Act 1989 as amended by the provisions of the Utilities Act 2000.
<b>Adoption</b>	Means the transfer by the Connection Provider to WPD of the property in and responsibility for the Contestable Assets with full title guarantee and the expression "Adopt" shall be construed accordingly.
<b>Adoption Date</b>	Means the date the Contestable Connection Works or a section of them are connected to the Distribution System and Energised.
<b>Agreement</b>	Means this framework agreement including the Schedules and any other documents incorporated into it.
<b>Applicable Legislation</b>	Means all laws, statutes, statutory instruments, acts, regulations, codes, judgements, orders, directives or determinations which affect the Contestable Connection Works or the performance of any obligations under the Agreement (including but not limited to the NRSWA).
<b>Associated Contestable Assets</b>	Means those Associated Contestable Works that will form part of the Distribution System.

**DRAFT – SUBJECT TO CONTRACT**

<b>Associated Contestable Works</b>	Means all works of any kind to be provided and carried out by the Connection Provider as described in the relevant Site Specific Agreement excluding the Final Connection Contestable Works.
<b>Authority</b>	Means the Gas and Electricity Markets Authority as established by Section 1 of the Utilities Act 2000.
<b>CDM Regulations</b>	Means the Construction (Design and Management) Regulations 2007 and any amendment thereto.
<b>Charges</b>	Means the charges payable by the Customer to WPD as specified in any relevant Connection Offer including any variation made by WPD from time to time.
<b>Commencement Date</b>	Means the date of this Agreement.
<b>Commissioning Requirements</b>	Means the commissioning requirements communicated by WPD to the Connection Provider as annexed to the relevant Site Specific Agreement.
<b>Completion Certificate</b>	Means the completion certificate issued by the Connection Provider to WPD in accordance with the relevant Standard Technique(s).
<b>Connection Offer</b>	Means the relevant written connection offer from WPD to the Customer relating to the Contestable Connection Works as set out in each Site Specific Agreement.
<b>Connection Point</b>	Means the point or points of connection at which electricity may (upon energisation) flow between the Distribution System and the Customer's Installation.
<b>Contestable Assets</b>	Means those Contestable Connection Works that will form part of the Distribution System including any Associated Contestable Assets and any Final Connection Contestable Assets.
<b>Contestable Connection Works</b>	Means the Associated Contestable Works and Final Connection Contestable Works to be carried out by the Connection Provider on the Distribution System.
<b>Contestable Design</b>	Means the electrical design and the physical layout of the Contestable Assets.
<b>CP's Consents</b>	Means all consents, licences, Planning Permissions, approvals, wayleaves, easements, rights over or interests in land of any kind which the Connection Provider shall

**DRAFT – SUBJECT TO CONTRACT**

	obtain and is not a WPD's Consent as may be required for the carrying out, completion and subsequent use of the Contestable Connection Works or any applicable WPD's Works.
<b>Customer</b>	Means the third party who commissions the Contestable Connection Works set out in the relevant Connection Offer to be carried out by the Connection Provider.
<b>Customer's Installation</b>	Means all electrical lines and apparatus not being part of the Distribution System used or to be used by a person and connection or to be connected to the Distribution System.
<b>Dead</b>	Means at or about zero voltage and disconnected from any electrically charged system.
<b>Defect</b>	Means: <ul style="list-style-type: none"> <li>(a) any defect in design, materials or workmanship in the Contestable Connection Works;</li> <li>(b) any defect arising from any act or omission of the Connection Provider or its contractor in the course of carrying out the Contestable Connection Works or any breach of this Contract, and</li> <li>(c) any failure of the Contestable Connection Works to comply with the approved design and/or the Specification.</li> </ul>
<b>Defect Correction Period</b>	Means in relation to: <ul style="list-style-type: none"> <li>(a) any excavations, or works within excavations, being in either case excavations which are of a depth of 1.5 metres greater and which form part of the Contestable Connection Works- the period of 3 years; and</li> <li>(b) all other works which form part of the Contestable Connection Works- the period of 2 years,</li> </ul> <p>in each case after the Adoption Date of the</p>

**DRAFT – SUBJECT TO CONTRACT**

	Contestable Connection Works or, that part containing such excavations or works as the case may be.
<b>Distribution System</b>	Means WPD’s system for the distribution of electricity as defined in the Licence.
<b>Distribution System Enhancement</b>	Means any additional design requirements identified in the relevant Site Specific Agreement required by WPD pursuant to Clause 6 for the benefit of other consumers.
<b>Encumbrance</b>	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.
<b>Energised</b>	Means the taking of any 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.
<b>Event of Force Majeure</b>	<p>Means an event beyond the reasonable control of either Party including but not limited to:</p> <ul style="list-style-type: none"> <li>(a) a strike, lock out or other form of industrial action except in relation to a Party's own workforce, outbreak of hostilities, riot, civil disturbance or acts of terrorism;</li> <li>(b) fire, explosion or flood;</li> <li>(c) theft and malicious damage associated with the Contestable Connection Works; or</li> <li>(d) 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 the State under section 96 of the Act).</li> </ul> <p>No event shall be treated as an Event of Force Majeure if it is attributable to a wilful act or omission or any failure to take reasonable</p>

**DRAFT – SUBJECT TO CONTRACT**

	precautions by a Party or any failure to take reasonable steps to overcome the event.
<b>Extension of Contestability Agreement</b>	Means an extension of contestability agreement between the Connection Provider and WPD in the form set out in Schedule 2, to be entered into in accordance with Clause 4.
<b>Extension of Contestability Initiative</b>	Means an initiative or action aimed at opening up the market for the design, procurement and installation of new assets necessary to accommodate new or modified electricity connections.
<b>Field Control Engineer</b>	Means the person appointed by the Connection Provider to exercise operational control over such a section of the Distribution System relevant to the High Voltage Final Connection Contestable Works to be carried out.
<b>Final Connection Contestable Assets</b>	Means those Final Connection Contestable Works that will form part of the Distribution System.
<b>Final Connection Contestable Works</b>	Means the installation of the connection equipment in such a way that, subject to Energisation, the Associated Contestable Assets are physically able to receive a supply of electricity from the Distribution System or, as the case may be, the Distribution System is physically able to receive a supply of electricity from the Premises including any and all live mains, service and jointing connections and disconnections for metered and unmetered connections to be carried out by the Connection Provider on the Distribution System.
<b>Good Industry Practice</b>	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.
<b>Good Title</b>	Means the absolute beneficial ownership free from any Encumbrance.
<b>Guidance Rates</b>	Means the rates applicable to electricity wayleaves which at the relevant time are those used by WPD having been recommended as acceptable to the members of the National Farmers Union and/or

**DRAFT – SUBJECT TO CONTRACT**

	Farmers Union for Wales and/or Country Land & Business Association or the successors to these bodies.
<b>High Voltage</b>	Means voltages above 1000 volts but lower than 22kV.
<b>HVCC</b>	Means a High Voltage Connection Certificate issued by the Connection Provider to WPD in accordance with the relevant Standard Technique(s).
<b>HVNC</b>	Means a High Voltage Notice of Connection issued by the Connection Provider to WPD in accordance with the relevant Standard Technique(s).
<b>Intellectual Property Rights</b>	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.
<b>LJCC</b>	Means a Live Jointing Certificate of Connection issued by the Connection Provider to WPD in accordance with the relevant Standard Technique(s).
<b>LJNC</b>	Means a Live Jointing Notice of Connection issued by the Connection Provider to WPD in accordance with the relevant Standard Technique(s).
<b>Licence</b>	Means the distribution licence granted to WPD pursuant to Section 6(1) (c) of the Act.
<b>Low Voltage</b>	Means voltages less than 1kV.
<b>Master Registration Agreement</b>	Means the agreement of that name dated 1 June 1998, as amended and the "MRA" shall have the same meaning.
<b>Maximum Power</b>	Has the same meaning given to that term in the Act.
<b>Metering Point</b>	Has the meaning given to that term in the MRA.
<b>MPAS Registration System</b>	Has the meaning given to that term in the MRA.
<b>Non-Contestable Design</b>	Means the electrical design, physical layout of WPD's Works and Point of Connection information provided by WPD to allow the Connection Provider to complete the Contestable Design.
<b>NRSWA</b>	Means the New Road and Street Works Act

**DRAFT – SUBJECT TO CONTRACT**

	1991.
<b>Planning Permission</b>	Means a planning permission granted pursuant to the 1990 Act including planning permission deemed to be granted under Section 36 or 37 of the Act and Section 91(2) of the 1990 Act a development consent order permitted pursuant to the Planning Act 2008 or any certificate of lawful use or proposed lawful use or any confirmation of permitted development rights that authorise development to be undertaken by the Connection Provider pursuant to this Agreement.
<b>Point of Connection</b>	Means the point of connection between the existing Distribution System and the Associated Contestable Connection Works.
<b>Policies</b>	Means any instructions, rules or policies issued by WPD from time to time, including without limitation the Drug and Alcohol Policy, Code of Ethics and Anti-Bribery Policy and all Standard Techniques published on the WPD Technical Information Site applicable to the Contestable Connection Works (as may be amended or updated from time to time.)
<b>Premises</b>	Means the premises or development (including without limitation any land, building or structure, owned or occupied by the Customer), where, or in relation to which, the Contestable Connection Works are to be carried out.
<b>Programme</b>	Means the programme of work detailing the key milestones provided by the Connection Provider allowing the co-ordination of the Contestable Connection Works and WPD's Works as applicable as may be amended from time to time by agreement between WPD and the Connection Provider.
<b>Records</b>	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 Contestable Connection Works, and WPD's Works as applicable.
<b>Registered</b>	Means the recording on the MPAS

**DRAFT – SUBJECT TO CONTRACT**

	Registration System of a Supplier as being responsible for a Metering Point from a particular date and "Registration" shall be construed accordingly.
<b>Regulatory Body</b>	means those government departments and regulatory, statutory and other entities, committees and bodies, present or future, which whether under statute, rules, regulations, codes of practice or otherwise are entitled by any Applicable Legislation to supervise, regulate, investigate or influence the matters dealt with in this Agreement or any other affairs of WPD.
<b>Secretary of State</b>	Has the meaning given to that expression in the Interpretation Act 1978.
<b>Site</b>	Means the site of the Contestable Connection Works as described in the relevant HVNC, LJNC or Site Specific Agreement as applicable.
<b>Site Specific Agreement</b>	Means an agreement between the Connection Provider and WPD in the form set out in Schedule 1 to be entered into in accordance with Clause 3.
<b>Specification</b>	Means the specification set out in the relevant Site Specific Agreement and any relevant Standard Technique(s).
<b>Standard Techniques</b>	Means the WPD standard techniques published on the WPD Technical Information Site applicable to the Contestable Connection Works (as may be amended or updated from time to time.)
<b>Statement of Methodology and Charges for Connections</b>	Means WPD's statement of methodology and charges for connection to the Distribution System as amended, updated or superseded by WPD from time to time.
<b>Supplier</b>	Has the meaning given to that term in the MRA.
<b>System Emergency</b>	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

**DRAFT – SUBJECT TO CONTRACT**

	order to allow WPD to respond to that event in accordance with Good Industry Practice.
<b>Working Days</b>	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.
<b>WPD Group</b>	Means Western Power Distribution (South West) plc, Western Power Distribution (South Wales) plc, Western Power Distribution (East Midlands) plc, Western Power Distribution (West Midlands) plc, the subsidiaries of each of them and any subsidiaries of any holding companies of each of them, "subsidiary" and "holding company" having the meanings ascribed to those terms in Section 1159, Companies Act 2006.
<b>WPD's Central Control Engineer</b>	Means the control engineer at WPD's control centre.
<b>WPD's Consents</b>	Means those wayleaves, easements, rights over or interests in land of any kind and consents, licences, permissions and approvals and Planning Permissions required under any statute or subordinate legislation including building regulation approval that WPD as the Licence holder is the party that may exclusively apply for and/or that WPD and the Connection Provider agree shall be obtained by WPD and are required for the carrying out, completion and subsequent use of the Contestable Connection Works or WPD's Works.
<b>WPD's Services</b>	Means processing the Customer's application for the connection(s) referred to in the relevant Connection Offer; planning such connection(s); preparing the Non-Contestable Design and the Specification; obtaining the Consents referred to in Clause 10; inspecting, monitoring and testing the Contestable Connection Works; and any other services referred to in the relevant Connection Offer as the same may be varied from time to time pursuant to this Agreement.
<b>WPD Technical Information Site</b>	Means the website <a href="http://www.westernpowertechinfo.co.uk">www.westernpowertechinfo.co.uk</a> where WPD publish Standard Techniques.

**DRAFT – SUBJECT TO CONTRACT**

<b>WPD's Works</b>	Means all plants, materials and equipment to be provided and the work to be done by WPD pursuant to this Agreement as described in the relevant Site Specific Agreement as may be varied by WPD from time to time.
--------------------	--

1.2 In this Agreement, and any Site Specific Agreements or Extension of Contestability Agreements formed under it, unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa and words in one gender include any other gender;
- (b) a reference to a statute or other statutory provision includes:
  - (i) any subordinate legislation (as defined in Section 21(1) Interpretation Act 1978) made under it;
  - (ii) any repealed statute or statutory provision which it re-enacts (with or without modification); and
  - (iii) any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it;
- (c) references to either party include its permitted successors in title and permitted assigns; and
- (d) the headings are for convenience only and shall not affect the interpretation of this Agreement, any Site Specific Agreement or any Extension of Contestability Agreement.

**2. Term**

This Agreement shall be deemed to have commenced on the Commencement Date and shall continue in force until terminated by either Party in accordance with the terms of this Agreement.

**3. Framework Agreement and Site Specific Agreement Process**

3.1 This Agreement governs the overall relationship of the Parties and shall apply to any Contestable Connection Works which the Connection Provider undertakes for Adoption by WPD during the term of this Agreement.

3.2 In relation to Associated Contestable Works, this Agreement sets out:

- (a) in Schedule 1 the template form of Site Specific Agreement to be entered into between the Connection Provider and WPD for each set of Associated

## **DRAFT – SUBJECT TO CONTRACT**

Contestable Works for which the Connection Provider is appointed by a Customer to carry out and complete; and

- (b) the terms deemed incorporated into each Site Specific Agreement.
- 3.3 A Site Specific Agreement shall not enter into force, be legally binding or have any effect unless:
- (a) the Site Specific Agreement contains the information required by the template Site Specific Agreement in Schedule 1;
  - (b) the Site Specific Agreement has been signed by the authorised representatives of both Parties to it; and
  - (c) as at the date the Site Specific Agreement is signed, this Agreement has not been terminated.
- 3.4 Each Site Specific Agreement:
- (a) shall be entered into by the Connection Provider and WPD; and
  - (b) shall incorporate the terms and conditions of this Agreement.
- 3.5 Any amendments to this Agreement agreed by WPD and the Connection Provider in accordance with Clause 36 shall be deemed to apply to all Site Specific Agreements whether entered into before or after the date of such amendment (unless the Parties agree otherwise in writing).
- 3.6 This Agreement shall prevail over any terms and conditions in any Site Specific Agreement, any terms and conditions submitted to or by the Connection Provider or (subject to Clause 36) in other correspondence between the Parties relating to the subject matter of this Agreement except only to the extent any terms and conditions in the Site Specific Agreement do not conflict with this Agreement.

## **4. Framework Agreement and Extension of Contestability Initiatives**

- 4.1 As part of WPD's commitment to the continued development and facilitation of competition in the connections market, WPD may, from time to time, invite the Connection Provider to take part in an Extension of Contestability Initiative.
- 4.2 In relation to any Extension of Contestability Initiative, this Agreement sets out:
- (a) in Schedule 2 the template form of Extension of Contestability Agreement that WPD may require the Connection Provider to enter into with WPD in order to take part in an Extension of Contestability Initiative; and

## **DRAFT – SUBJECT TO CONTRACT**

- (b) the terms of any Extension of Contestability Agreement deemed incorporated into this Framework Agreement.
- 4.3 Subject to Clause 4.4, an Extension of Contestability Agreement shall not enter into force, be legally binding or have any effect unless:
  - (a) the Extension of Contestability Agreement contains the information required by the template Extension of Contestability Agreement in Schedule 2;
  - (b) the Extension of Contestability Agreement has been signed by the authorised representatives of both Parties to it; and
  - (c) as at the date the Extension of Contestability Agreement is signed, this Agreement has not been terminated.
- 4.4 Notwithstanding Clause 4.3, the Parties shall be deemed to have entered into a legally binding Extension of Contestability Agreement on the terms provided to the Connection Provider by WPD or published on the WPD Technical Information Site as at the date the Connection Provider:
  - (a) performs any of its obligations under an Extension of Contestability Agreement;
  - (b) carries out any work in accordance with an Extension of Contestability Initiative; or
  - (c) otherwise by its conduct could reasonably be deemed to have accepted the terms of an Extension of Contestability Agreement,

provided that the Parties have not previously entered into a legally binding Extension of Contestability Agreement in relation to the applicable Extension of Contestability Initiative that has either expired or been terminated by either Party for any reason.
- 4.5 Each legally binding Extension of Contestability Agreement entered into by the Parties in accordance with Clauses 4.3 and 4.4 shall be deemed to be incorporated into this Agreement until such time as the Extension of Contestability Agreement is terminated or expires.
- 4.6 In the event of any conflict between this Agreement and the provisions of an Extension of Contestability Agreement, the terms of the Extension of Contestability Agreement shall prevail over the conflicting terms of this Agreement solely in respect of the subject matter of the Extension of Contestability Agreement.

## **DRAFT – SUBJECT TO CONTRACT**

### **5. Design for all Contestable Connection Works**

- 5.1 The Connection Provider accepts full responsibility for any Contestable Design that it undertakes.
- 5.2 The Connection Provider shall exercise such reasonable degree of skill, care and diligence in the undertaking of the Contestable Design as is to be expected of a professionally qualified and competent contractor experienced in the design of works of a similar nature, value, complexity (including in accordance with Clause 6 below) and timescale to the Contestable Connection Works.
- 5.3 The Contestable Design shall meet the Maximum Power and such other requirements as may be required by the relevant Customer.
- 5.4 The Connection Provider shall comply with all procedures and obligations set out in the applicable Standard Technique(s) when undertaking all Contestable Design, including, without limitation, submitting its Contestable Design to WPD for approval where required.
- 5.5 Where a Connection Provider has submitted its Contestable Design to WPD for approval in accordance with the applicable Standard Technique(s), WPD shall give either its approval to the Contestable Design or a reasoned rejection of it to the Connection Provider within a reasonable period of time.
- 5.6 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 with the Specification and the standards set out in any relevant Site Specific Agreement.
- 5.7 Where a Contestable Design has been approved by WPD, 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 or delayed. Save where the need for a variation arises as a direct result of a Distribution System Enhancement requested by WPD pursuant to Clause 6, 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 as set out in the relevant Site Specific Agreement.
- 5.8 If, prior to the termination of this Agreement, WPD changes its working practice or Specification, WPD shall notify the Connection Provider. The Connection Provider will, with regard to any part of the Associated Contestable Works not already constructed and adopted, forthwith amend the Contestable Design as

## **DRAFT – SUBJECT TO CONTRACT**

necessary and ensure that any change in working practice or Specification is implemented without delay save where WPD agrees an alternative timescale.

### **6. Distribution System Enhancements for Contestable Connection Works**

6.1 WPD may, by notice in writing, and prior to submission by the Connection Provider to WPD of the Contestable Design for approval (where such approval is required in accordance with the applicable Standard Technique(s)), request the Connection Provider to undertake works or to amend the Contestable Design in order to achieve a Distribution System Enhancement.

6.2 Where the Connection Provider is not required to submit its Contestable Design to WPD for approval, but in undertaking the Contestable Design considers that a Distribution System Enhancement may be appropriate, it shall submit to WPD sufficient information to allow WPD to assess whether a Distribution System Enhancement is required. If WPD determines that a Distribution System Enhancement is required, WPD may, by notice in writing, request the Connection Provider to undertake works or to amend the Contestable Design in order to achieve the Distribution System Enhancement.

6.3 Upon receiving a notice in accordance with clause 6.1 or 6.2, the Connection Provider shall provide a reasonable quotation for doing so, including a detailed breakdown of the costings on which the quotation is based ("Quotation"). If WPD does not accept the Quotation the Parties shall in good faith negotiate a revised quotation ("Revised Quotation"). If WPD accepts in writing a Quotation or a Revised Quotation the Connection Provider shall make and implement the requested modification to the Contestable Connection Works.

6.4 WPD may, after the Connection Provider has commenced the 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 Quotation or state reasonable grounds for declining the request, such reply not to be unreasonably delayed. If WPD does not accept the Quotation the Parties shall in good faith negotiate a Revised Quotation. If WPD accepts in writing a Quotation or a Revised Quotation the Connection Provider shall make and implement the requested modification to the Contestable Connection Works.

### **7. WPD's assistance in relation to design of all Contestable Connection Works**

7.1 WPD shall, within a reasonable period of receipt of a written request, supply the Connection Provider with:

## **DRAFT – SUBJECT TO CONTRACT**

- (a) all drawings relating to the Distribution System as may be reasonably required to carry out the construction, installation or commissioning of the Contestable Connection Works; and
  - (b) where relevant, the Non-Contestable Design.
- 7.2 There will remain vested in WPD the Intellectual Property 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.

### **8. Safety and CDM Regulations**

- 8.1 The Parties acknowledge that in relation to the Contestable Connection Works, WPD shall not be the "Client" for the purposes of the CDM Regulations. The Connection Provider shall 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 CDM Regulations.
- 8.2 The Connection Provider shall provide its personnel with all necessary safety equipment to enable them to work in a safe manner.
- 8.3 The Connection Provider shall be responsible for the safety of the public, including where required and without limitation in providing appropriate signing, lighting, or guarding (noting that the provisions of the NRSWA might not apply to an un-adopted highway), or in ensuring that Energised terminations are not left exposed and are effectively sealed.
- 8.4 Should any unforeseen eventuality relating to the Distribution System arise during the course of carrying out the Contestable Connection Works then the Connection Provider shall contact WPD immediately.
- 8.5 The Parties acknowledge that they are aware of, and undertake to the other that in relation to the Contestable Connection Works they will duly comply with, the CDM Regulations.

## **DRAFT – SUBJECT TO CONTRACT**

8.6 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 Good Industry Practice, and not to the detriment of other users of the Distribution System.

### **9. Materials and Workmanship**

9.1 The Connection Provider shall only use materials detailed by WPD in the Specification or materials which have been approved in writing by WPD for use.

9.2 Where it would accord with Good Industry Practice for:

(a) 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

(b) such warranties to be assignable by the Connection Provider to WPD

then the Connection Provider will procure such warranties.

9.3 Upon request by WPD, the Connection Provider will:

(a) assign to WPD such warranties as the Connection Provider has obtained pursuant to Clause 9.2, and/or

(b) enforce against suppliers or manufacturers such warranties or other rights as the Connection Provider may have against suppliers or a manufacturer at WPD's cost.

### **10. Consents for Contestable Connection Works**

10.1 The Connection Provider without cost to WPD and before commencement of the Contestable Connection Works shall apply for and obtain the CP's Consents. The form of the CP's Consents shall permit the undertaking and completion of the Contestable Connection Works and the WPD Works, and shall be in such a form that WPD shall benefit from the CP Consent's on Adoption. Unless otherwise agreed with WPD, CP's Consents granting easements, wayleaves and/or rights over land shall be given for the benefit of (or where in a form reasonably acceptable to WPD) transferable or assignable to WPD. WPD shall, subject to Clause 10.2, on request provide the Connection Provider with all reasonable assistance to obtain the CP's Consents.

10.2 WPD reserves the right to include the actual cost of assisting the Connection Provider in applying for and obtaining any CP's Consents and/or WPD's Consents (including the costs of exercising any statutory right and any consequential

## **DRAFT – SUBJECT TO CONTRACT**

- hearing) as part of the Charges whether or not such costs were quantified in the Connection Offer.
- 10.3 The Connection Provider shall ensure that WPD is granted such CP's 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 that shall be given for the benefit of, or (where in a form reasonably acceptable to WPD) transferable or assignable to, WPD.
- 10.4 Where the Contestable Connection Works or WPD's Works are on land owned by a third party the Connection Provider shall apply for and obtain (with the assistance, where reasonably necessary, and subject to Clause 10.2, of WPD) any CP's Consents except where any such consents can only be obtained by WPD as WPD's Consents in which case WPD shall use its reasonable endeavours to apply for and obtain WPD's Consents and the Connection Provider shall reimburse WPD's reasonable costs in obtaining the same.
- 10.5 No CP's Consents obtained by the Connection Provider shall disclose or refer to any consideration or price other than a consideration or price calculated using the Guidance Rates.
- 10.6 The Connection Provider shall on request from WPD provide copies of all CP's Consents to WPD within 7 Working Days of a request to do so.
- 10.7 WPD shall use its reasonable endeavours to apply for and obtain WPD's Consents necessary for WPD's Works and the Connection Provider shall reimburse WPD's reasonable costs in obtaining the same.
- 10.8 Nothing in the Agreement shall require WPD to exercise any compulsory rights to acquire any CP's Consents or WPD's 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.
11. **The Connection Provider's Obligations for all Contestable Connection Works**
- 11.1 The Connection Provider shall ensure that the Contestable Connection Works and the manner in which they are carried out comply at all times with:
- (a) the Connection Provider's applicable procedures;
  - (b) all applicable Policies and Good Industry Practice;
  - (c) the requirements of all Applicable Legislation including the Act, the Electricity Safety, Quality and Continuity Regulations 2002, BS-7671, the

## **DRAFT – SUBJECT TO CONTRACT**

NRSWA, the Health and Safety at Work Act 1971 and the Town and Country Planning Act 1990; and

- (d) the Specification.
- 11.2 To the extent there is any discrepancy or inconsistency between this Agreement and any applicable Standard Technique(s) the provisions of the applicable Standard Technique(s) shall prevail.
- 11.3 This Agreement shall not apply to any emergency work or fault rectification work, save for such works as WPD may require the Connection Provider to carry out to rectify any Defects in the Contestable Connection Works.
- 11.4 The Connection Provider shall be fully responsible for all liabilities, including on-going guarantees relating to reinstatement under NRSWA, the Highways Act 1980 and other legal liabilities associated with activities under its control undertaken pursuant to this Agreement.
- 11.5 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 are present.
- 11.6 The Connection Provider shall satisfy itself in adequate time before commencing any part of the Contestable Connection Works as to the condition of any plant, material or equipment owned or provided by WPD which might in any way affect the Contestable Connection Works and shall inform WPD immediately in writing if any such plant, material or equipment is damaged or in any other way unsuitable.
- 11.7 The Connection Provider shall procure that throughout the duration of all 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.

## **12. Inspection**

- 12.1 WPD shall carry out chargeable inspections in accordance with the Statement of Methodology and Charges for Connections and the relevant Standard Technique(s) for all Contestable Connection Works.
- 12.2 The Connection Provider will pay WPD for inspections as detailed in the Statement of Methodology and Charges for Connections and/or the relevant Standard Technique(s). Where further inspection is required as a result of identifying a Defect during a previous inspection (irrespective of whether or not

## **DRAFT – SUBJECT TO CONTRACT**

- the previous inspection was undertaken within the Statement of Methodology and Charges for Connections and/or the relevant Standard Technique(s)) WPD will be entitled to charge the Connection Provider for the costs of any such further inspections that may be required to verify that any Defects have been remedied.
- 12.3 Should the Connection Provider fail to provide to WPD notification of any change to its Programme WPD may charge the Connection Provider for costs incurred by WPD as a result of any abortive visit.
- 12.4 WPD shall notify the Connection Provider of any Defect in writing as soon as practicable following the inspection. Where practicable, WPD shall also notify the Connection Provider's nominated contact verbally whilst on Site.
- 12.5 Where, as a result of any inspection, WPD is of the reasonable opinion that any Defect exists, the Connection Provider shall indemnify WPD, and keep WPD indemnified, against the reasonable costs of any remedial works WPD may be required to undertake to remedy the Defect or unsatisfactory work.
- 12.6 The Connection Provider shall allow WPD access at all times to all places where the Contestable Connection Works are to be carried out, are in the process of being carried out, or have been carried out, for the purposes of inspecting the Contestable Connection Works and all materials used or intended for use in the Contestable Connection Works.
- 12.7 WPD acting reasonably, may, by giving the Connection Provider reasonable written notice, require the Connection Provider to uncover or make openings in any part of the Contestable Connection Works. The Connection Provider shall bear its own costs and all costs incurred by WPD in complying with such notice if such inspection of the Contestable Connection Works reveals any Defect or material non-compliance with the requirements of this Agreement. WPD shall be liable for all reasonable costs incurred by the Connection Provider in complying with such notice if such inspection of the Contestable Connection Works fails to reveal any Defect or material non-compliance with the requirements of this Agreement.
- 12.8 If WPD serves a notice on the Connection Provider 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, the Connection Provider shall be liable for all costs incurred by the Connection Provider and WPD in uncovering and inspecting such works irrespective of whether any Defects are revealed by such uncovering and inspection. Any costs incurred by WPD shall be reimbursed by the Connection Provider pursuant to Clause 22.
- 12.9 WPD is under no obligation to give the Connection Provider prior notice of WPD's intention to carry out a Site inspection.

## **DRAFT – SUBJECT TO CONTRACT**

- 12.10 In carrying out any inspection or test, neither WPD nor any of its representatives 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 by virtue of such inspections, tests or otherwise.
- 12.11 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.
- 12.12 WPD shall be entitled to carry out additional inspections which fall outside of the Chargeable Inspection Regime at any time. Subject to Clause 12.2, the costs of such additional inspections shall be borne by WPD.
- 12.13 Where WPD finds the Records presented by the Connection Provider pursuant to Clause 15.1 (c) to be incomplete or inaccurate WPD will give written notice to the Connection Provider. The written notice shall indicate the nature of the Defect and recommendation for remedy. 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.

### **13. The Connection Provider's Obligations prior to Energisation for all Associated Contestable Works**

- 13.1 For each set of Associated Contestable Works, the Connection Provider shall ensure that:
- (a) the Associated Contestable 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
  - (b) the Associated Contestable Works and the manner in which they are carried out comply at all times with the Non-Contestable Design and Contestable Design.
- 13.2 The Connection Provider shall, within two weeks of receipt of a written request (or sooner as notified by WPD) supply WPD with all technical information, diagrams and drawings relating to the design, construction, installation or commissioning of the Associated Contestable Works as WPD may reasonably request from time to time.
- 13.3 The Connection Provider shall supply WPD with the Programme it intends to follow to construct all Associated Contestable Works as soon as is reasonably practicable and no later than 5 Working Days prior to the commencement of the Programme. The Connection Provider shall thereafter promptly supply WPD with

## **DRAFT – SUBJECT TO CONTRACT**

an updated version of the Programme in the event of any material change to the timing or sequence of the relevant Associated Contestable Works.

- 13.4 The Connection Provider shall provide to WPD every 5 Working Days a schedule detailing the daily Associated Contestable Works due to be undertaken within the following 14 calendar days which shall detail the Associated Contestable Works to be undertaken in each half-day period.
- 13.5 The Connection Provider shall provide safe and secure access at all reasonable times to all places where the Associated Contestable Works are to be or have been carried out for WPD and its representatives for the purpose of inspecting the Associated Contestable Works and all materials used or intended for use in the Associated Contestable Works and witnessing the carrying out of any Commissioning Requirements.
- 13.6 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 in relation to Associated Contestable Works.

### **14. WPD's Services and WPD's Work for Associated Contestable Works**

- 14.1 WPD shall be responsible for the preparation of the Specification using WPD standards and national specifications to enable the Connection Provider to construct and connect the Associated Contestable Works to the Distribution System.
- 14.2 Provided that WPD:
- (a) receives payment for each and every amount due under Clause 22, on the date specified for payment;
  - (b) receives payment of all Charges due to WPD under or in connection with this Agreement on the date specified for payment; and
  - (c) has obtained all the WPD's Consents which WPD is to apply for pursuant to Clause 10 in time to permit WPD to carry out and complete WPD's Works in accordance with the Programme,

WPD shall carry out and complete WPD's Works in accordance with the Programme.

- 14.3 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. WPD shall use all reasonable endeavours to mitigate or avoid the delay in completing WPD's Works in accordance with the Programme. WPD shall state in any such notice the reason for the actual or

## **DRAFT – SUBJECT TO CONTRACT**

anticipated delay (identifying the event or circumstance considered to be an Event of 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 14.2, 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 14.3.

14.4 WPD's Works shall be carried out in accordance with the relevant Site Specific Agreement.

### **15. Commissioning and Completion for Associated Contestable Works**

15.1 When the Connection Provider considers that the Associated Contestable Works (or a part thereof) are completed and comply with the requirements of Clause 11.1 and 13.1 the Connection Provider shall:

- (a) sign and issue to WPD a notice ("the Completion Certificate") specifying the Associated Contestable 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 5 Working Days' notice of such Commissioning Requirements shall be given);
- (b) attach to the Completion Certificate copies of all relevant test and conformance certificates;
- (c) 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; and
- (d) certify that the Associated Contestable Works are Dead and safe to energise.

15.2 The Connection Provider shall provide satisfactory evidence to WPD that all the following requirements have been met:

- (a) the CP's Consents for the Associated Contestable Works are available to be granted to WPD in terms acceptable to WPD to subsequently maintain, repair, replace, renew or use, the Associated Contestable Works and the Connection Provider 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 CP's Consents are granted to WPD by the party or parties having valid title to grant the CP's 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 CP's Consents;

## DRAFT – SUBJECT TO CONTRACT

- (b) 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 15.2(a));
  - (c) all Connection 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 the Master Registration Agreement;
  - (d) the Connection Provider has warranted to WPD in terms acceptable to WPD that all necessary Intellectual Property Rights have been acquired;
  - (e) the provision of the CDM file (or section relating to the Associated Contestable Works or the part thereof which is to be Energised (as the case may be)) to WPD;
  - (f) that, if required by WPD, the Customer has entered into a connection agreement with WPD in relation to the connection of that Connection Point to the Distribution System;
  - (g) the Associated Contestable 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 the Contestable Assets are Energised by WPD;
  - (h) the Connection Provider has rectified all Defects or other matters previously notified to the Connection Provider under Clause 12;
  - (i) the Connection Provider has effected insurance pursuant to Clause 29;
  - (j) the Customer has paid such of the Charges as are then due to WPD;
  - (k) the Connection Provider has paid all undisputed sums due from the Connection Provider to WPD under or in connection with this Agreement; and
  - (l) the Connection Provider has complied with all other requirements of this Agreement.
- 15.3 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 the Distribution System and Energisation. WPD shall respond to such notification in accordance with the requirements under the Electricity (Standards of Performance) Regulations 2010.
- 15.4 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 15.2, and refuse to consent to Energise the Associated Contestable Works or

## **DRAFT – SUBJECT TO CONTRACT**

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 dispute is, valid and, if so, the measures to be taken by the Connection Provider to enable WPD to withdraw its objections, or dispute. If the Connection Provider and WPD cannot agree whether or not WPD's objections are, or dispute is, valid, or the measures to be taken by the Connection Provider to enable WPD to withdraw its objections, or dispute, either the Connection Provider or WPD may refer the dispute to the procedure specified in Clauses 25 and 26.

- 15.5 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 15.2, WPD shall either:
- (a) advise the Connection Provider, in accordance with the relevant Standard Technique(s), of the date on which WPD shall Energise the Associated Contestable Assets or such part (as the case may be) and WPD shall use all reasonable endeavours to Energise the relevant Contestable Assets or such part (as the case may be) on such date; or
  - (b) provide consent for the Connection Provider to Energise the Associated Contestable Assets or such part (as the case may be) in accordance with the relevant Standard Technique(s).

### **16. Handover and Adoption of Associated Contestable Assets**

- 16.1 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 Associated Contestable Assets offered for connection under the Completion Certificate.
- 16.2 Upon Energisation of the Associated Contestable Assets or such part (as the case may be) pursuant to Clause 15.5, the Associated Contestable Assets shall become part of the Distribution System and the Connection Provider shall, and procure that the Customer shall, treat those Associated Contestable Assets in all respects as the property of WPD and from that time as forming part of the Distribution System.
- 16.3 Immediately following Energisation of the Associated Contestable Assets pursuant to Clause 15.5 WPD shall assume operational responsibility for the Associated Contestable Assets within the relevant Associated Contestable Works. All fault repair work which is required to be carried out on those Associated Contestable Assets from then on, shall be carried out by WPD save for such works as WPD may require the Connection Provider to carry out to rectify any Defects in the Associated Contestable Works.

## **DRAFT – SUBJECT TO CONTRACT**

16.4 Following Energisation of the Associated Contestable Assets the Commissioning Requirements shall be completed and if any of the relevant Associated Contestable Assets do not pass the Commissioning Requirements to the satisfaction of WPD, WPD may:-

- (a) disconnect the Associated Contestable Assets from the Distribution System until the Connection Provider undertakes all work to the Associated Contestable Assets necessary to enable those Associated Contestable Assets to pass such of the Commissioning Requirements to the satisfaction of WPD; or
- (b) undertake or procure such works itself 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 16.4 as soon as reasonably practicable, indicating the nature of the Defect and recommendation for remedy.

16.5 If the Connection Provider disputes:

- (a) whether the Associated Contestable Assets should have passed the Commissioning Requirements to WPD's satisfaction; or
- (b) the costs WPD seeks to recover under 16.4 (b)

it shall give written notice to that effect to WPD within 10 Working Days of the receipt of such notification provided in accordance with Clause 16.4.

16.6 Following receipt of the notice in Clause 16.5 the Connection Provider and WPD shall promptly and in good faith discuss whether any such dispute is reasonable. If the Connection Provider and WPD fail to agree either Party may refer the dispute to the procedure specified in Clauses 25 and 26.

16.7 All payments made by the Connection Provider under this Clause 16, shall be paid in accordance with the process set out in Clause 22.

16.8 Title to and ownership of the Associated Contestable Assets shall transfer to WPD free from any Encumbrances on the date of Adoption of the Associated Contestable Works.

## **17. Access to Distribution System for Final Connection Contestable Works**

17.1 The Connection Provider shall be entitled to access the Distribution System to carry out and complete the Final Connection Contestable Works provided always that such works are fully compliant with the relevant Standard Technique(s) and WPD has consented to such access in accordance with Clauses 17.2 or 17.3.

## **DRAFT – SUBJECT TO CONTRACT**

- 17.2 For Low Voltage Final Connection Contestable Works the Connection Provider shall not commence the Low Voltage Final Connection Contestable Works unless and until WPD has provided consent in respect of the LJNC for the relevant Final Connection Contestable Works.
- 17.3 The Connection Provider shall not commence the High Voltage Final Connection Contestable Works unless and until:
- (a) WPD has provided its prior consent in respect of the relevant HVNC;
  - (b) WPD has agreed a commencement and completion date and time for the relevant Final Connection Contestable Works; and
  - (c) any standby generation or alternative network arrangements have been installed or put in place where notice has been provided by WPD in accordance with the relevant Standard Technique(s).
- 17.4 Any variation to the relevant HVNC or LJNC shall be notified to WPD as soon as reasonably practicable and shall be fully compliant with the relevant Standard Technique(s) and meet with the requirements of Clause 17.2 or 17.3 as applicable.

### **18. Switching for Final Connection Contestable Works**

- 18.1 For all Final Connection Contestable Works, the Connection Provider shall comply with all procedures and obligations set out in the relevant Standard Technique(s).
- 18.2 The Connection Provider shall not carry out any High Voltage switching on the Distribution System without prior instruction from WPD's Central Control Engineer.

### **19. Commissioning and Completion for Final Connection Contestable Works**

- 19.1 The Connection Provider shall ensure that all pre-commissioning tests and checks as required by WPD are satisfactorily completed and recorded prior to Energisation of Final Connection Contestable Works. The Connection Provider shall not make any connection which fails the pre-commissioning tests.
- 19.2 The Connection Provider shall ensure that all post-commissioning tests as required by WPD are completed and recorded immediately following the Energisation of any new connection.
- 19.3 The Connection Provider shall complete all pre-commissioning and post-commissioning tests carried out in respect of the Final Connection Contestable Works in relation to each LJNC or HVNC in line with the relevant Standard Technique(s) and shall provide such evidence and records as may be reasonably

## **DRAFT – SUBJECT TO CONTRACT**

- required by WPD that the required tests have been completed and passed. WPD may carry out its own tests and checks at any time.
- 19.4 If any of the Final Connection Contestable Works do not pass the post-commissioning tests the Connection Provider shall immediately notify WPD and WPD may:
- (a) disconnect the Final Connection Contestable Works from the Distribution System until the Connection Provider undertakes all work necessary to enable the Final Connection Contestable Works to pass the post-commissioning tests; or
  - (b) undertake or procure such works itself and recover all costs incurred thereof from the Connection Provider.
- 19.5 The Connection Provider shall complete the Low Voltage Final Connection Contestable Works within the week proposed in the relevant LJNC. If the Connection Provider fails to complete the Low Voltage Final Connection Contestable Works within the week specified in the relevant LJNC, the Connection Provider shall cease work, WPD's consent provided pursuant to Clause 17.2 shall be deemed to have been withdrawn and the Connection Provider shall be required to recommence the approval process and submit a new LJNC for the relevant Final Connection Contestable Works.
- 19.6 The Connection Provider shall commence and complete the High Voltage Final Connection Contestable Works on the dates and by the time agreed with WPD pursuant to Clause 17.3.
- 19.7 If the Connection Provider fails to commence or complete the High Voltage Final Connection Contestable Works on the dates and by the time agreed pursuant to Clause 17.3, the Connection Provider shall be liable for all costs incurred and/or losses suffered by WPD as a result of such delay.
- 19.8 On completion of the High Voltage Final Connection Contestable Works, the Connection Provider shall return the Distribution System to WPD in accordance with the requirements of relevant Standard Technique(s).
- 19.9 On completion of the Final Connection Contestable Works the Connection Provider shall provide WPD with 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. These records shall be provided in line with the relevant Standard Technique(s).

## **DRAFT – SUBJECT TO CONTRACT**

### **20. Adoption of Final Connection Contestable Assets**

- 20.1 The Final Connection Contestable Assets shall be Adopted by WPD on completion of Energisation and the relevant Final Connection Contestable Assets shall become part of the Distribution System.
- 20.2 Immediately following Adoption of the Final Connection Contestable Assets pursuant to Clause 20.1 WPD shall assume operational responsibility for the Final Connection Contestable Assets within the relevant Final Connection Contestable Works. All fault repair work which is required to be carried out on those Final Connection Contestable Assets from then on, shall be carried out by WPD save for such works as WPD may require the Connection Provider to carry out to rectify any Defects in the Final Connection Contestable Works.
- 20.3 Title to and ownership of the Final Connection Contestable Assets shall transfer to WPD free from any Encumbrances on the date of Adoption of the Final Connection Contestable Works.

### **21. Rectification of Defects for all Contestable Connection Works in Defect Correction Period**

- 21.1 If any Defect becomes apparent during the Defect Correction Period, WPD may in its absolute discretion elect:
- (a) to issue a notice to the Connection Provider to return to the Site to rectify the Defect at no cost to WPD; or
  - (b) to rectify the Defect itself.
- 21.2 The Connection Provider shall indemnify WPD against all costs incurred or suffered by WPD in remedying any Defect in connection with any of the Contestable Assets during the Defects Correct Period, unless such Defects arises directly as a result of any breach by WPD of this Agreement.

### **22. Payment**

- 22.1 WPD shall as soon as is reasonably practicable after the end of each month issue an invoice specifying any charges payable in accordance with the applicable Standard Technique(s).
- 22.2 WPD shall as soon as is reasonably practicable issue an invoice specifying any other sums due from the Connection Provider to WPD under or in connection with this Agreement.
- 22.3 The Connection Provider shall pay all invoices within 28 days of WPD issuing the invoice.

## **DRAFT – SUBJECT TO CONTRACT**

- 22.4 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% above the base rate of the Bank of England and such interest shall accrue from day to day and shall be compounded annually.
- 22.5 The Connection Provider shall pay within the period specified any amount agreed in writing with WPD, as may be amended pursuant to Clause 22.6, as a contribution to the cost of the WPD's Works.
- 22.6 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:-
- (a) if WPD so considers for reasons beyond WPD's reasonable control, then WPD will be entitled to amend (by increasing or decreasing) the amount previously agreed in writing as the Connection Provider's contribution to the cost of WPD's Works;
  - (b) if WPD so considers for reasons within WPD's control:-
    - (i) WPD will not be entitled to increase the Connection Provider's contribution to the cost of WPD's Works, and
    - (ii) 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.
- 22.7 WPD shall pay to the Connection Provider in respect of any Distribution System Enhancements agreed pursuant to Clause 6, any amounts stated in a relevant Connection Offer, or agreed between the Connection Provider and WPD in writing, following receipt by WPD of the Completion Certificate in relation to Associated Contestable 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 Associated Contestable Works or such part thereof (as the case may be) pursuant to any of Clauses 12.7, 15.4, or 16.4.

## **23 Liability and Indemnity**

- 23.1 Nothing in this Agreement shall exclude or limit the liability of either Party for:
- (a) death or personal injury resulting from the negligence of the Party liable or of any of its officers, employees or agents;

**DRAFT – SUBJECT TO CONTRACT**

- (b) fraud or fraudulent misrepresentation;
  - (c) breach of terms implied by section 2 of the Supply of Goods and Services Act 1982; and
  - (d) any other liability which cannot be limited or excluded by applicable law.
- 23.2 Save as otherwise expressly provided in this Agreement nothing in this Clause 23 shall exclude or restrict or otherwise prejudice or affect any of:
- (a) the rights, powers, duties and obligations of either Party which are conferred or created by the Act, the Licence or any regulations made under the Act; or
  - (b) the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, the Licence or otherwise howsoever.
- 23.3 The Connection Provider shall be responsible for the risk of loss or damage to every part of the Contestable Connection Works until the Adoption of such part.
- 23.4 Subject to Clause 23.6 the Connection Provider shall indemnify WPD and keep WPD indemnified fully and on demand against all claims, demands, actions, proceedings, damages, liabilities, losses, costs (including all associated legal costs), expenses and fines which are attributable to any act, omission, default, delay, negligence or breach of statutory duty by or on the part of the Connection Provider made or brought against or incurred or suffered by WPD arising out of or in connection with:
- (a) the carrying out or the purported carrying out of the Contestable Connection Works;
  - (b) any claim by a Regulatory Body due to any default by the Connection Provider arising from or in connection with the Contestable Connection Works;
  - (c) any third party claim in respect of title to the Contestable Assets;
  - (d) any breach or alleged breach by the Connection Provider of any CP's Consents or WPD's Consents or failure by the Connection Provider to obtain and/or maintain the required CP's Consents;
  - (e) 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 Site during the carrying out of the Contestable Connection Works in a proper and responsible manner;

## DRAFT – SUBJECT TO CONTRACT

- (f) any personnel (including without limitation any employee, agent or sub-contractor) who were employed or engaged in executing the Contestable Connection Works bringing a claim against WPD where such a claim arises out of anything done or omitted to be done by the Connection Provider in relation to the employment or engagement of the same during the term of the Agreement and/or arising on or as a result of the termination or expiry of the Agreement (howsoever caused); or
  - (g) the Energisation of any Connection Point where that Connection Point is not Registered where no request to Energise that Connection Point has been made by the Supplier in relation to that Exit.
- 23.5 Subject to Clause 23.1 the liability of either Party in respect of claims for physical damage to the property of the other Party, its officers, employees or agents, shall not exceed the sum of £1 million per incident or series of related incidents.
- 23.6 The Connection Provider shall not be liable for loss or damage arising from WPD's negligence, and/or any breach by WPD of its obligations under this Agreement.
- 23.7 Subject to Clause 23.1 and save where any provision of this Agreement provides for an indemnity, neither Party nor any of its officers, employees or agents shall in any circumstances be liable to the other for:
- (a) any loss of profit, loss of revenue, loss or use, loss of contract or loss of goodwill; or
  - (b) any indirect or consequential loss; or
  - (c) any losses resulting from the liability of such other Party to any other person howsoever arising.
- 23.8 Subject to Clause 23.1 the Connection Provider's total liability to WPD for all matters arising under or in connection with this Agreement shall be limited to £10,000,000 (ten million pounds) per incident or series of incidents arising out of any one event.
- 23.9 Subject to Clause 23.1 WPD shall not be liable for any costs incurred or losses suffered by the Connection Provider or any third party as a result of WPD's failure to provide access to the Distribution System or any delay caused by WPD to the Contestable Connection Works.
- 23.10 Each of the Parties agrees that each of the other Parties holds the benefit of Clauses 23.1, 23.5 and 23.7 for itself as trustee and agent for its officers, employees and agents.

## **DRAFT – SUBJECT TO CONTRACT**

23.11 For the avoidance of doubt, nothing in this Clause 23 shall prevent or restrict either Party from enforcing any obligations (including suing for a debt) owed to it under or pursuant to the Agreement.

### **24. Force Majeure**

24.1 Neither of the Parties shall be liable for any breach of this Agreement caused directly or indirectly by an Event of Force Majeure or by a System Emergency.

24.2 If either Party (the "Affected Party") shall be unable to carry out its obligations under this Agreement due to an Event 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 an Event of Force Majeure or the System Emergency provided that:

- (a) the suspension of performance is of no greater scope and of no longer duration than is required by the Event of Force Majeure or System Emergency;
- (b) no obligation of either Party that arose before the Event of Force Majeure or System Emergency causing the suspension of performance shall be excused as a result of the Event of Force Majeure or System Emergency; and
- (c) the non-performing Party shall use all reasonable efforts to remedy its inability to perform.

### **25. Dispute Resolution – Escalation**

25.1 Any dispute between the Parties with respect to the interpretation of any provision of the Agreement and with respect to the obligations imposed by it on the other Party, shall be resolved as provided for in this Clause 25.

25.2 Neither Party shall commence formal dispute resolution proceedings (to include litigation), until the earlier of:

- (a) the Parties' designated representatives (as referred to in Clause 25.3(a)) jointly concluding that resolution of the dispute through continued negotiation of the matter does not appear likely; and
- (b) 30 Working Days after either Party's written request under Clause 25.3(a) was submitted to the other Party and that other Party has failed to appoint a designated representative.

## **DRAFT – SUBJECT TO CONTRACT**

- 25.3 Prior to the initiation of any formal dispute resolution proceedings (to include litigation), the Parties shall first attempt to resolve their dispute informally, as follows:
- (a) upon the written request of either Party to the other, each Party shall appoint a designated representative for the purpose of endeavouring to resolve such dispute;
  - (b) the designated representatives shall meet as often as either Party reasonably deems necessary in order to gather and provide to the other all information with respect to the matter in issue which the Party believes to be appropriate in connection with its resolution. The designated representatives shall discuss the problem and negotiate with each other in good faith in an effort to resolve the dispute informally;
  - (c) during the course of negotiations, all reasonable requests made by either Party to the other for non-privileged information, reasonably related to the Agreement, shall be honoured in order that each of the Parties may be fully advised of the other's position; and
  - (d) the method of endeavouring to resolve the dispute shall be left to the discretion of the designated representatives.

## **26. Dispute Resolution – Adjudication**

- 26.1 In the event of any dispute or difference not being resolved in accordance with Clause 25 either Party may refer any dispute or difference to adjudication under Part I of the Scheme for Construction Contracts (England and Wales) Regulations (as amended), which Part shall take effect as if it was incorporated into this Clause 26.
- 26.2 The adjudicator shall be appointed by The Chartered Institute of Arbitrators.

## **27. Intellectual Property**

- 27.1 The copyright and any other Intellectual Property Rights in all drawings, reports, specifications, calculations and other documents created or provided by WPD or on behalf of WPD ("WPD IP") to the Connection Provider under the provisions of this Agreement shall remain and belong to WPD and WPD shall grant a licence to the Connection Provider to use the WPD IP solely for the purpose of performing its obligations under this Agreement.
- 27.2 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 27.1 in connection with any project and/or other works other than

## **DRAFT – SUBJECT TO CONTRACT**

- the Contestable Connection Works or Associated Contestable Works associated with the Contestable Connection Works.
- 27.3 The Connection Provider shall not at any time throughout the duration of the Agreement, assign, license or otherwise grant any rights in any WPD IP to any other person including but not limited to the Customer.
- 27.4 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 this Clause 27 infringes that third Party's rights.
- 27.5 The Connection Provider warrants that it owns all Intellectual Property Rights in or relating to the Contestable Design, and the Contestable Connection Works.
- 27.6 The Connection Provider shall grant a licence to WPD to use all Intellectual Property Rights in or relating to the Contestable Design for the purpose of performing its obligations under this Agreement.

### **28. Assignment and Sub-Contracting**

- 28.1 The Connection Provider may not assign or transfer its rights and obligations under or benefits of this Agreement without the written consent of WPD.
- 28.2 WPD may assign the benefit of this Agreement to any other company within the WPD Group.
- 28.3 The Connection Provider may sub-contract any part of the Contestable Connection Works with WPD's written consent (such consent not to be unreasonably withheld) provided that the Connection Provider ensures that only appropriately Accredited contractors are engaged in the carrying out or completion of 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, which are no less onerous than those contained in this Agreement.
- 28.4 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 Connection Provider.

## **DRAFT – SUBJECT TO CONTRACT**

### **29. Insurance**

29.1 The Connection Provider undertakes and agrees to take out and maintain such insurance cover in full force and effect at its own cost to cover its obligations and liabilities arising under or in connection with (i) this Agreement, (ii) any associated Site Specific Agreement, and (iii) any applicable Extension of Contestability Agreement, including but not limited to the following:

- (a) public liability insurance with a limit of indemnity of not less than £5,000,000 per incident or series of incidents arising out of one event against death and personal injury and loss or damage to property;
- (b) 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 Legislation; and
- (c) professional indemnity insurance for a minimum liability of £5,000,000 per incident or series of incidents arising out of any one event.

29.2 The Connection Provider shall:

- (a) prior to signing this Agreement;
- (b) whenever a policy effecting the insurances required by this clause 29 is renewed; and
- (c) whenever reasonably required in writing by WPD,

provide confirmation from its insurer that the policies effecting the insurances required by this Clause 29 remain current together with evidence of payment of the last premium due.

29.3 The Connection Provider's liability insurance policies shall include an indemnity to principals' clause.

### **30. Security**

30.1 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 29.1. WPD shall assess the need for a Connection Provider to provide additional security using the Dun & Bradstreet Corporation assessment scheme.

30.2 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

## **DRAFT – SUBJECT TO CONTRACT**

- as an Accredited Connection Provider under the National Electricity Registration Scheme.
- 30.3 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 all Site Specific Agreements held with the Connection Provider that is running concurrently will be required to deliver to WPD within 10 Working Days of the date of this Agreement additional security in an amount and form and on terms all satisfactory to WPD.
- 30.4 If, at any point during the period indicated under Clause 30.1, the Connection Provider should no longer meet the criteria set out pursuant to Clause 30.2 the obligations under Clause 30.3 shall apply.

### **31. Confidentiality**

- 31.1 Except as referred to in sub-clause 31.2, each Party shall treat as strictly confidential and shall not disclose to any third party any information received or obtained as a result of entering into or performing this Agreement which relates to the provisions or subject matter of this Agreement, or the negotiations relating to this Agreement.
- 31.2 Either Party may disclose information which would otherwise be confidential if and to the extent that:
- (a) it is required to do so by law or any securities exchange or regulatory or governmental body to which it is subject wherever situated;
  - (b) it considers it necessary to disclose the information to its professional advisers, auditors and bankers provided that it does so on a confidential basis;
  - (c) the information has come into the public domain through no fault of that Party;
  - (d) the information 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 which information WPD shall be entitled to use without restriction;  
or
  - (e) each Party to whom it relates has given its consent in writing.

## **DRAFT – SUBJECT TO CONTRACT**

### **32. Severance**

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.

### **33 Termination**

33.1 Either Party may terminate this Agreement, any Site Specific Agreement or any Extension of Contestability Agreement by giving the other Parties 3 months' notice in writing (or such lesser period as may be agreed between the Parties).

33.2 On termination of this Agreement by either Party in accordance with Clause 33.1 all Site Specific Agreements and Extension of Contestability Agreements procured by the relevant Connection Provider shall automatically expire. On termination of any Site Specific Agreement or Extension of Contestability Agreement in accordance with Clause 33.1, the terminating Party may, at its option, terminate this Agreement and any other Site Specific Agreements and Extension of Contestability Agreements procured by the relevant Connection Provider on notice with immediate effect.

33.3 In relation to this Agreement, if:-

- (a) the Connection Provider fails 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 Connection Provider receiving notice from WPD of the occurrence thereof and requiring the same to be remedied; or
- (b) (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
- (c) (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
- (d) a receiver or an administrative receiver of the Connection Provider is appointed, or
- (e) 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

## **DRAFT – SUBJECT TO CONTRACT**

- (f) any steps are taken for the making of an administration order or the appointment of an administrator under the out-of-court procedure under the Enterprise Act 2002 or notice is given of an intention to appoint an administrator in relation to the Connection Provider or any steps are taken for the appointment of a receiver or administrative receiver, or an encumbrancer takes possession of or sells any of the Connection Provider's assets; or
- (g) the Connection Provider makes an arrangement or composition with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally; or
- (h) the Connection Provider ceases to carry on business at any time for 30 consecutive days; or
- (i) no physical work forming part of the Final Connection Contestable Works has commenced within one year after the date of this Agreement; or
- (j) the Connection Provider fails to fulfill his obligations in terms of or arising from Clauses 29 or 30; or
- (k) the Connection Provider commits a breach of health and safety rules or obligations (including but not limited to WPD's Health and Safety Policy); or
- (l) the Connection Provider ceases, or any of its employees or agents cease, to hold any licence or professional qualification or has its name, or any of its employees or agents have their names, removed from any register which is or which WPD considers, necessary or desirable for the performance of its duties under the Agreement

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 ("Event of Default").

### **33.4 In relation to any Site Specific Agreement, if:-**

- (a) the Connection Provider fails in any material respect to conform or comply with any of its obligations under any Site Specific Agreement, and (if such failure is capable of remedy) it is not remedied to the reasonable satisfaction of WPD within 30 days of the Connection Provider receiving notice from WPD of the occurrence thereof and requiring the same to be remedied; or

## DRAFT – SUBJECT TO CONTRACT

- (b) no physical work forming part of the Associated Contestable Works has commenced within one year after the date of the relevant Site Specific Agreement; or
- (c) a Completion Certificate in respect of Associated Contestable Works, or each section thereof (as the case may be) not having been issued to WPD pursuant to Clause 15; or
- (d) WPD has received notification from the Connection Provider in accordance with Clause 34

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.

- 33.5 Once WPD has given, and upon the giving of, notice of an Event of Default pursuant to Clause 33.3 WPD may, at its option, terminate this Agreement on notice with immediate effect. On termination of this Agreement in accordance with this Clause 33.5, all Site Specific Agreements and Extension of Contestability Agreements procured by the relevant Connection Provider shall automatically terminate.
- 33.6 Once WPD has given, and upon the giving of, notice of an Event of Default pursuant to Clause 33.4 WPD may, at its option, terminate the relevant Site Specific Agreement on notice with immediate effect. On termination of any Site Specific Agreement in accordance with Clause 33.6, WPD may, at its option, terminate this Agreement, any Extension of Contestability Agreement and Site Specific Agreements procured by the relevant Connection Provider on notice with immediate effect.
- 33.7 The termination of this Agreement, any Site Specific Agreement or Extension of Contestability Agreement for whatever reason or cause shall be without prejudice to any other rights or obligations which may have accrued or become due between either 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.
- 33.8 Where this Agreement, and Extension of Contestability Agreement or a Site Specific Agreement is terminated by WPD under Clause 33.5 or 33.6, the Connection Provider shall pay to WPD any reasonable costs incurred by WPD as a result of the termination.
- 33.9 Clauses 21, 22, 23, 24, 25, 26, 27, 29, 31, 33, 37, 38, and 41 shall survive the termination, for whatever reason, of this Agreement.

## **DRAFT – SUBJECT TO CONTRACT**

- 33.10 Once an Extension of Contestability Agreement has expired or been terminated by either Party for any reason, it shall no longer be deemed incorporated into the Framework Agreement.

### **34. Construction Contract**

The Connection Provider 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.

### **35. Waiver**

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

### **36. Variations**

- 36.1 No purported variation of the Agreement or a Site Specific Agreement shall be effective unless it is in writing and signed by or on behalf of each of the Parties by its respective authorised representatives. However, each Party shall effect any amendment required to be made to this Agreement or a Site Specific 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.

- 36.2 Either Party shall at any time be entitled to propose variations to this Agreement or a Site Specific 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 or a Site Specific Agreement has not been agreed and put into effect within one month after it has been proposed, either Party shall be entitled to escalate the matter by means of Clause 25.

### **37. Notices**

- 37.1 Subject to Clause 37.4 any notice, request or other communication to be made by one Party to the others under or in connection with this Agreement or a Site Specific Agreement shall be in writing and shall be delivered personally or sent by prepaid first class post, courier fax or e-mail to the other Party as follows:

- (a) If to WPD to:

## DRAFT – SUBJECT TO CONTRACT

Western Power Distribution (South West) plc Avonbank, Feeder Rd, Bristol  
BS2 0TB

Fax: 0117 933 2282

E-mail: [WPDCONNECTIONPOLMIDS@WESTERNPOWER.CO.UK]

(b) If to the Connection Provider, to: [ ]

Fax: [ ]

E-mail [.....]

or to any other persons, addresses or fax numbers as may from time to time be notified by one Party to the other.

37.2 A notice request or other communication sent in accordance with this Clause 37 shall be deemed to have been served:

- (a) at the time of delivery if delivered personally;
- (b) if sent by post, 48 hours after the date of posting; and
- (c) 2 hours after transmission if served by or e-mail on a Working Day prior to 3 p.m. or in any other case at 10 a.m. on the Working Day after the date of dispatch.

37.3 If the deemed time of service is not during normal business hours in the country of receipt, the notice shall be deemed served at or, in the case of e-mails, two hours after the opening of business on the next Working Day of that country.

37.4 Neither Party can serve any proceedings or serve any other documents in any legal action by e-mail.

37.5 Neither Party shall not attempt to prevent or delay the service on it of a notice connected with the Agreement or a Site Specific Agreement.

### 38. Entire Agreement

Each Party acknowledges that:

- (a) this Agreement and the documents referred to in it constitute the entire agreement and understanding of the Parties in relation to the subject matter of this Agreement and supersedes any prior agreements, representations, understandings or arrangements between the Parties (oral or written) in relation to such subject matter (including, without limitation, (i) any previous versions of the Framework Agreement relating to Network Access and Adoption of Electricity Connections and Distribution

## **DRAFT – SUBJECT TO CONTRACT**

Equipment, (ii) the Network Access and Adoption of High and Low Voltage Mains and Services Connections for Metered and Unmetered Connections; and (iii) the Agreement Relating to the Design, Supply, Installation, Commissioning and Adoption of Electricity Connection and Distribution Equipment); and

- (b) it has not relied upon any oral or written representation made to it by the other Party or its employees or agents and has made its own investigations into all matters relevant to it.

### **39. Counterparts**

This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart, when executed, shall be an original of this Agreement and all counterparts shall together constitute one instrument.

### **40. Third Party Rights**

No express term of this Agreement nor any term implied under it is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

### **41. Governing Law and Jurisdiction**

- 41.1 This Agreement and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by the laws of England and Wales.
- 41.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with this Agreement, its subject matter or formation.

### **42. Cumulative Remedies**

Save as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**DRAFT – SUBJECT TO CONTRACT**

**AS WITNESS** whereof the Parties have signed below:

<b>Signed on behalf of Western Power Distribution (South West) plc:</b>  _____	<b>Signed on behalf of Western Power Distribution (West Midlands) plc:</b>  _____
<b>Signed on behalf of Western Power Distribution (South Wales) plc:</b>  _____	<b>Signed on behalf of Western Power Distribution (East Midlands) plc:</b>  _____

**SIGNED BY:**

**Name** .....

**Position** .....

**For and on behalf of**

[Connection Provider]

## Schedule 1

### Site Specific Agreement

This Site Specific Agreement is dated [INSERT] and made between:

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

[company name] whose registered office is at [address] (the “Connection Provider”).

#### Background

- (A) A Customer has appointed the Connection Provider to carry out and complete Associated Contestable Works as described in the Connection Offer dated [INSERT].
- (B) WPD and the Connection Provider have entered into a framework agreement dated [INSERT] (the "Framework Agreement").
- (C) In consideration of the Connection Provider complying with its obligations under the Framework Agreement WPD has agreed to Adopt the Associated Contestable Assets that form part of the Associated Contestable Works.

#### 1. Applicable Terms

- 1.1 Unless otherwise defined in this Site Specific Agreement, terms used in this Site Specific Agreement shall have the meaning given to them in the Framework Agreement.
- 1.2 The terms of the Framework Agreement are incorporated into and form part of this Site Specific Agreement, as varied and amended by the other provisions of this Site Specific Agreement.

#### 2. *Additional Terms*

*[Any additional site specific terms agreed]*

#### [●]. Counterparts

This Site Specific Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart, when executed, shall be an original of this Site Specific Agreement and all counterparts shall together constitute one instrument.

---

\* delete as appropriate

\* delete as appropriate

SIGNED BY

Signature.....

Print Name.....

Designation.....

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

SIGNED BY

Signature.....

Print Name.....

Designation.....

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”)

---

\* *delete as appropriate*

\* *delete as appropriate*

**SCHEDULE 1A  
THE SPECIFICATION**

*(Select correct G81 documentation, i.e. Housing or Commercial)*

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

- a) Energy Networks Association – Engineering Recommendation G81  
Framework for design and planning, materials specification, installation and record for low voltage housing development installations and associated, new, HV/LV distribution substations. Part 1 – Design and Planning;
  
- b) Energy Networks Association – Engineering Recommendation G81  
Framework for design and planning, materials specification, installation and record for low voltage housing development installations and associated, new, HV/LV distribution substations. Part 2 – Materials Specification;
  
- c) Energy Networks Association – Engineering Recommendation G81  
Framework for design and planning, materials specification, installation and record for low voltage housing development installations and associated, new, HV/LV distribution substations. Part 3 – Installation and Records;
  
- a) Energy Networks Association – Engineering Recommendation G81  
Framework for design and planning of industrial and commercial underground connected loads up to and including 11kV. Part 4 – Design and Planning;
  
- b) Energy Networks Association – Engineering Recommendation G81

Framework for materials specification for industrial and commercial underground connected loads up to and including 11kV. Part 5 – Materials Specification;

- c) Energy Networks Association – Engineering Recommendation G81  
Framework for installation and records of industrial and commercial underground connected loads up to and including 11kV. Part 6 – Installation and Records;
- 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) *[any additional documentation required]*.

**SCHEDULE 1B**  
**DESCRIPTION OF WPD's WORKS**

1) Non-contestable Connection Works

*[provide a description of the Non-contestable Connection Works provided by WPD here. The following is an example for illustrative purposes only]*

*Identify, prove dead by spiking and check phase colours on existing HV cable;*

*Make 2 x transition HV straight joints (185 epr Triplex to 0.3 3c AL;*

*Pressure test existing and new HV cables, jointing and switch gear*

*Energise and check phase rotation*

*Outline any removal or disconnection works*

2) Contestable Connection Works provided by WPD

*[provide a description of any Contestable Connection Works provided by WPD here]*

**SCHEDULE 1C**  
**DESCRIPTION OF THE ASSOCIATED CONTESTABLE WORKS**

1) Associated Contestable Works

*[provide a description of the Associated Contestable Works provided by the Connection Provider here. The following is an example for illustrative purposes only]*

*Establish RN2C-T1/21 TLF unit RMU/MU2/16 metering unit;*

*Make off 3 x cable terminations;*

*Supply and lay 185 3c EPR Triplex cable together with 70mm cu bare earth wire;*

*Provide all on-site trenchwork, including all 3mm to dust backfill and reinstatement;*

*Provide detailed recordings of cable route and substation;*

*Provide and install Customer emergency trip button;*

*Provide and install HV CT metering panel and pilot cable;*

*Provide substation accommodation GRP enclosure to WPD Drawing G4112/1 and performance specification;*

*All as WPD drawing No.[ ], dated [ ]*

2) Distribution System Enhancements

Pursuant to Clause 6 the Connection Provider shall provide the following

Distribution System Enhancement at the request of WPD:

*[provide a brief description of those works requested by WPD as a  
Distribution System Enhancement]*

## SCHEDULE 1D

### CP'S CONSENTS

For the purpose of this Schedule D, CP's Consents shall be defined as:

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

The form of document and choice of CP's Consents to be acquired in any particular case shall be at the absolute discretion of WPD.

For the purposes of this Agreement WPD shall require the following CP's Consents:

*[insert appropriate information]*

**SCHEDULE 1E**  
**PAYMENT AND PERFORMANCE DETAILS**

Inspection

Where the inspection regime set out in the Statement of Methodology and Charges for Connections and/or the applicable Standard Technique(s) applies, the Connection Provider will be allocated to the appropriate inspection level based on performance.

WPD will inspect the Contestable Connection Works in accordance with the criteria given in its Statement of Methodology and Charges for Connection to the Distribution System.

Based on the criteria set out under the Statement of Methodology and Charges for Connection to the Distribution System and the Programme provided by the Connection Provider WPD has estimated that *[enter no. of visits]* site visits are required. The total cost of these site visits is calculated in accordance with the inspection charges rates set out in WPD's Statement of Methodology and Charges for Connections and is included within the Connection Charge stated as part of the Connection Offer.

Where WPD believes it is reasonably practicable to do so it has combined a number of inspections under a single visit.

**SCHEDULE 1F  
THE SITE PLAN**

*[attach a drawing at appropriate scale showing the extent of the Site and highlighting in pink the boundary of the Site].*

## Schedule 2

### **[INSERT NAME OF TRIAL]** Extension of Contestability Agreement

This **[INSERT NAME OF TRIAL]** Extension of Contestability Agreement is dated **[INSERT]** and made between:

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

**[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 **[INSERT NAME OF TRIAL]** EOC Agreement (as defined below in Clause 1.2).

It is agreed as follows:

#### **1. Definitions and interpretation**

- 1.1 The terms of this **[INSERT NAME OF TRIAL]** EOC Agreement shall be deemed to be incorporated into and form part of the Framework Agreement for the duration of this **[INSERT NAME OF TRIAL]** EOC Agreement. In the event of any conflict between this **[INSERT NAME OF TRIAL]** EOC Agreement and the Framework Agreement, the terms of this **[INSERT NAME OF TRIAL]** EOC Agreement shall prevail over the conflicting terms of the Framework Agreement solely in respect of the subject matter of this **[INSERT NAME OF TRIAL]** EOC Agreement.
- 1.2 In this **[INSERT NAME OF TRIAL]** 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:

**"[INSERT NAME OF]** this extension of contestability agreement

---

\* *delete as appropriate*

\* *delete as appropriate*

**TRIAL] EOC Agreement"** (including any schedules to it) between WPD and the Connection Provider;

**"Extension of Contestability Initiative"** [insert details of specific Extension of Contestability Initiative]

*[Insert Additional Definitions]*

1.3 In this [INSERT NAME OF TRIAL] 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 [INSERT NAME OF TRIAL] EOC Agreement for the duration of this [INSERT NAME OF TRIAL] EOC Agreement.

## 2. *[Insert Additional Terms]*

### [•]. **Termination**

[•] WPD may by notice in writing immediately terminate this [INSERT NAME OF TRIAL] EOC Agreement if:

- (a) any event occurs, or circumstances arise which, in the reasonable opinion of WPD, make it no longer commercially desirable for WPD to continue with the [INSERT NAME OF TRIAL] 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.

### [•]. **Consequences of Termination**

On termination of this [INSERT NAME OF TRIAL] EOC Agreement by either Party for any reason, it shall no longer be deemed incorporated into the Framework Agreement.

### [•]. **Entire Agreement**

Following the effective date of this [INSERT NAME OF TRIAL] EOC Agreement 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 [INSERT NAME OF TRIAL] EOC Agreement to include reference to this [INSERT NAME OF TRIAL] EOC Agreement forming part of the Framework Agreement. For the duration of this [INSERT NAME OF TRIAL] EOC Agreement

this **[INSERT NAME OF TRIAL]** EOC Agreement shall be read and construed together with the Framework Agreement. In the event of any conflict between this **[INSERT NAME OF TRIAL]** EOC Agreement and the Framework Agreement, the terms of this **[INSERT NAME OF TRIAL]** EOC Agreement shall prevail over the conflicting terms of the Framework Agreement solely in respect of the subject matter of this **[INSERT NAME OF TRIAL]** EOC Agreement.

SIGNED BY

Signature.....

Print Name.....

Designation.....

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

SIGNED BY

Signature.....

Print Name.....

Designation.....

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”)

---

\* *delete as appropriate*

\* *delete as appropriate*