

## GENERAL TERMS AND CONDITIONS FOR DIVERSION OF PART OF THE ELECTRICITY DISTRIBUTION SYSTEM

### 1. MEANINGS

1.1 Any reference in the Agreement and the Conditions to a statute, statutory enactment, licence, regulation, British Standard Requirements, Engineering Recommendation, direction or order or to other agreements includes any amendments and/or variations to them. References to the singular include the plural, and vice versa, and references to natural persons include companies, corporations and other legal entities. The word "including" is to be construed without limitation. Headings do not form part of the Agreement.

1.2 In the Agreement, except where the context otherwise requires, the following expressions shall have the meanings set out below:

**"Act"** the Electricity Act 1989;

**"Affiliates"** any holding company or subsidiary company of the Distributor's, or any company which is a subsidiary of such holding company and "holding company" and "subsidiary" have the meanings given in Section 736 of the Companies Act 1985;

**"Agreement"** the agreement between the Parties created upon the unqualified acceptance by the Customer of the offer from the Distributor set out in the Offer Letter incorporating the Conditions;

**"Authority"** the Gas and Electricity Markets Authority;

**"British Standard Requirements"** the British Standard Requirements for Electrical Installations BS 7671:2001 IEE Wiring Regulations 17<sup>th</sup> Edition;

**"CDM Information Request Form"** the form recording the information obtained by the Distributor from the Customer in relation to the requirements of the CDM Regulations;

**"CDM Regulations"** the Construction (Design and Management) Regulations 1994;

**"Client"**, **"Contractor"**, **"Designer"**, **"Health and Safety Plan"**, **"Planning Supervisor"**, **"Principal Contractor"** and **"Project"** the meanings given respectively to the expressions "client", "contractor", "designer", "health and safety plan", "planning supervisor", "principal contractor" and "project" in the CDM Regulations;

**"Conditions"** the meaning given to that expression in the Offer Letter;

**"Charge(s)"** the charge(s) as set out in the Offer Letter including any amendments and/or variations to such charges made in accordance with the Agreement;

**"Consents"** all or any planning and other statutory consents and all wayleaves, easements, servitudes, rights over land or other consents of any kind required for the Distributor's Works;

**"Customer"** the person to whom the Offer Letter is addressed;

**"Customer's Works"** the works which the Customer has agreed to carry out in accordance with the provisions of the Agreement, including the works (if any) more particularly described in the Schedule;

**"Distribution Code"** the meaning given to that expression in the Distributor's Licence;

**"Distributor"** the meaning given to that expression in the Offer Letter;

**"Distributor's Licence"** the electricity distribution licence granted to the Distributor under the Act;

**"Distributor's System"** the system for the distribution of electricity operated and/or owned by the Distributor;

**"Distributor's Works"** the works which the Distributor has agreed to carry out in accordance with the provisions of the Agreement, including those more particularly described in the Schedule, and any amendments and/or variations agreed between the Parties and which have been included in the Agreement and where the context so admits includes any part or parts of them;

**"Duty Holders"** the duty holders under the CDM Regulations involved in the construction works, including the Planning Supervisor, Principal Contractor, Designers and other Contractors;

**"Energy Networks Association"** the organisation of that name having its head office at 6<sup>th</sup> Floor, Dean Bradley House, 52 Horseferry Road, London, SW1P 2AF;

**“employees”** employees, agents, contractors and/or sub-contractors;

**“Energy Ombudsman”** a dispute resolution service for customers of regulated energy companies;

**“Engineering Recommendation”** an “Engineering Recommendation” issued by the Energy Networks Association;

**“Estimated Cost”** the charge as set out in the Offer Letter including any amendments and/or variations to such charges made in accordance with the Agreement;

**“Force Majeure”** any event or circumstance which is beyond either the Distributor’s or the Customer’s (as the case may be) reasonable control or its employees and which results in or causes its failure to perform any of its obligations under the Agreement, provided that lack of funds shall not constitute Force Majeure, and the expression “Force Majeure” wherever used in the Agreement shall include a System Emergency;

**“Normal Working Hours”** the hours of 8.30 am to 4.30 pm on the days Monday to Friday of any week, excluding any public holiday applicable to the location of the Site;

**“NRSWA”** The New Roads and Street Works Act 1991

**“Offer Letter”** the letter which incorporates these terms and conditions, making the offer from the Distributor to the Customer to provide the Distributor’s Works(s);

**“Operation Diagrams”**, **“Ownership Boundaries”** and **“Site Responsibility Schedule”** the meanings given to those expressions in the Distribution Code;

**“Party”** or **“Parties”** the Distributor and/or the Customer as the case may be;

**“Project Manager”** the person identified as the “Project Manager” in the Offer Letter;

**“Regulations”** the Electricity Safety, Quality and Continuity Regulations 2002;

**“Site”** the meaning given to that expression in paragraph 1 of the Offer Letter;

**“SPPS”** the company registered in Scotland of name SP Power Systems Limited with registered number SC215841 whose registered office is at 1 Atlantic Quay Glasgow G2 8SP;

**“System Emergency”** an event either on the Distributor’s System or elsewhere or on the electricity distribution system of another electricity distributor which results in the Distributor acting in accordance with good electricity industry practice considering it appropriate or being requested to divert resources (whether economical, technical, personnel or otherwise) for the duration of that event in order to allow the Distributor to deal with or respond to that event;

**“Taxes”** Value Added Tax and any other tax, levy, charge or duty related to, or on, the provision of the Distributor’s Works.

## **2. PRECONDITIONS**

Nothing in the Agreement requires the Distributor to carry out the Distributor’s Works if and to the extent that:

- 2.1 the Distributor is prevented from doing so by circumstances not within its control;
- 2.2 the Distributor would or might be in breach of the Regulations and/or any other regulations relating to supply and safety, and it has taken all reasonable steps to prevent such circumstances from occurring and having that effect; and/or
- 2.3 it is not reasonable for the Distributor to be required to do so.

## **3. PAYMENTS**

- 3.1 Unless otherwise provided in the Offer Letter, payment of the Estimated Cost will be required in full prior to commencement of any of the Distributor’s Works.
- 3.2 Unless otherwise provided in the Offer Letter, all other payments due to the Distributor under the Agreement shall be paid by the Customer within 14 days of the date of issue of each invoice issued by the Distributor.
- 3.3 If any payments are not made on or before the due date for payment then, without prejudice to any other right or remedy, subject to the Distributor giving the Customer written notice to that effect, the Distributor may stop work until such payment is made to the Distributor. Any reasonable additional expenses and/or extra costs incurred by the

Distributor from such stoppage, including demobilisation and remobilisation costs, shall be charged to and paid for by the Customer.

- 3.4 All payments to be made by the Customer under the Agreement shall be made in full on or before the date specified for payment without any set-off or counter claim whatsoever.
- 3.5 Without prejudice to any other right or remedy, if any payment due under the Agreement is not made on the date for payment, the Customer shall pay interest to the Distributor at the annual rate of 4% above the base lending rate (or failing the quotation of such rate, at such other reasonably equivalent rate to be decided upon by the Distributor) of the Royal Bank of Scotland plc for the time being and from the date the payment should have been made up to the date of actual payment. Such interest will be calculated on the daily balance due and unpaid.

#### **4. TAXES**

Unless otherwise provided, all amounts stated in the Agreement are stated exclusive of all Taxes and Taxes may be added to such amounts as applicable thereto from time to time.

#### **5. EXTRA COSTS**

- 5.1 In the event of suspension, cancellation or delay of any of the Distributor's Works at the Customer's request, or a delay caused by matters within the Customer's control and/or as a consequence of the Customer carrying out any development at the Site, any reasonable expenses and/or costs incurred by the Distributor as a result of such suspension, cancellation or delay shall be charged to and paid for by the Customer.
- 5.2 If any matter referred to in Condition 5.1 causes the Distributor when excavating street works in a maintainable highway to be delayed in carrying out such works and the Distributor as a result of such delay incurs any charge and/or fine pursuant to the New Roads and Street Works Act 1991 then the Customer shall reimburse the Distributor with the amount of any such charge and/or fine.
- 5.3 The Offer Letter has been prepared on the basis of the Distributor's carrying out the Distributor's Works during Normal Working Hours. The Distributor will charge for any reasonable additional expenses and/or extra costs for work undertaken outside those times at the Customer's request or as a consequence of any actions by the Customer or the Customer's employees.
- 5.4 In the event of unforeseen events, any expenses and/or costs incurred by the Distributor in relation to the Agreement shall, so far as is fair and reasonable in the circumstances, be charged to and paid for by the Customer.
- 5.5 Any expenses and/or costs incurred by the Distributor in relation to the Agreement as a result of changes in any licence, regulatory or statutory obligations shall, so far as is fair and reasonable in the circumstances, be charged to and paid for by the Customer.

#### **6. DELAYS**

- 6.1 If the Distributor shall be delayed in carrying out the Distributor's Works by reason of any of the Customer's or the Customer's employees' acts, defaults or omissions, or in the event of Force Majeure, the Distributor shall be entitled to an extension of any time for completing the Distributor's Works as is fair and reasonable in the circumstances.
- 6.2 Notwithstanding that there may be a delay in carrying out the Distributor's Works in the interests of safety and security of supply, the Distributor cannot lay electricity cables at the Site until the Customer provides the Site cleared of all obstructions, with final ground levels established and permanent road kerbs installed, where that is reasonably required by the Distributor for all such electricity cables and in general the Site is in all respects ready to receive those electricity cables without the risk of them being disturbed or damaged. The Distributor will not be liable for any delay referred to in this Condition 6.2.

#### **7. VARIATIONS**

- 7.1 The terms and conditions of the Agreement are based on the information supplied by the Customer or the Customer's employees to the Distributor. If any of that information is untrue, incomplete or inaccurate, the Distributor may amend and/or vary the terms and conditions of the Agreement (including the Charge(s)).
- 7.2 If the Customer wishes to amend and/or vary the phasing of the development or the layout of the development to be carried out by the Customer at the Site to an extent which may affect the Distributor's Works the Customer shall give written notice to that effect to the Distributor with such details and information required by the Distributor.
- 7.3 Following the Distributor's receipt of notice referred to in Condition 7.2, the Distributor may amend and/or vary the Distributor's Works and also the Charge(s) by giving the Customer written notice to that effect. The Distributor shall also charge the Customer an amount that is reasonable for processing any such amendment or variation referred to in Condition 7.2.

7.4 Any notice referred to in Condition 7.3 may state the amount (if any) to be paid by the Customer to the Distributor and the date upon which such payments shall become due and payable.

7.5 Except where the Distributor is permitted to make amendments and/or variations pursuant to any right or provision to that effect in the Agreement, no amendments and/or variations of the Agreement shall be effective unless made in writing and signed by both Parties.

## **8. THE CUSTOMER'S OBLIGATIONS**

8.1 Notwithstanding any other provisions of the Agreement, any obligation on the Distributor to carry out the Distributor's Works and to meet any time scales are subject to the Customer complying with the Customer's obligations contained in Condition 8.2.

8.2 The Customer shall:

- (a) grant to the Distributor free of charge all easements, wayleaves, servitudes, consents, rights over land or other facilities as the Distributor may require on terms which are reasonably satisfactory to the Distributor for the Distributor's Works;
- (b) provide the Distributor free of charge with such substation site(s) as the Distributor may reasonably require;
- (c) at the Customer's expense and/or cost, afford to the Distributor all facilities reasonably required by the Distributor in respect of the positioning of electric lines, cables and apparatus within, on or under the Site and along routes approved by the Distributor;
- (d) notify the Distributor of any Tree Preservation Orders or other restrictions within the Site. Subject to such notification of such restrictions, the Distributor shall be entitled to fell, lop and cut any trees, shrubs or plants at the Site as the Distributor considers to be reasonably required to carry out the Distributor's Works;
- (e) provide the Site cleared of all obstructions, with final ground levels established and permanent road kerbs installed, where that is reasonably required by the Distributor before the Distributor can commence the Distributor's Works;
- (f) install any plant and equipment specified in the Offer Letter and/or shown on the plan (if any) provided by the Distributor with the Offer Letter;
- (g) in respect of Distributor's Works carried out on the Customer's property, be responsible for permanent reinstatement of the Distributor's excavations at the Site, except such excavations as are carried out in existing adopted highways;
- (h) procure that the Site, the substation site(s) referred to in Condition 8.2(b) and the routes referred to in Condition 8.2(c) are all free of any contamination, pollution or other similar hazards. If any contamination, pollution or similar hazards are present, the Customer shall be responsible for removing the same and any expenses and/or costs associated with such removal; and
- (i) procure that all information supplied by the Customer is true, complete and accurate and is given at the Customer's risk. The Distributor shall not be responsible for checking the accuracy of the information provided by the Customer or the Customer's employees. The Distributor reserves the right to revise the offer and costs should the information provided by the Customer change.

## **9. ACCESS**

The Customer shall procure that full, free and safe access to the Site shall be made available to the Distributor and the Distributor's employees at all times to enable the Distributor to carry out the Distributor's Works and statutory duties.

## **10. ROADS FOOTPATHS AND SERVICE STRIPS**

The Customer shall procure that all roads and footpaths at the Site under which the Distributor's Works are to be laid shall, unless otherwise agreed between the Parties, be the subject of an adoption agreement with the relevant local authority. Where verges are required at the Site for use as service strips for the Distributor's Works they shall, unless otherwise agreed between the Parties, also be the subject of an adoption agreement with the relevant local authority. The minimum verge width provided by the Customer should be 2.0 metres. The Customer must ensure that the owners and/or occupiers of the Site and Plots are made aware that the placing of fences, trees and shrubs on such verges is prohibited. The Distributor may need to excavate such verges at any time and shall not be responsible for reinstating the ground to any standard better than cultivated grass.

## **11. DAMAGE OR THEFT OF THE DISTRIBUTOR'S EQUIPMENT**

If, other than where due to the negligence of the Distributor, the Distributor's apparatus, cables or equipment is damaged, mislaid or stolen at the Site whilst the Site is under the Customer's control or the control of the Customer's employees, the Customer shall reimburse the Distributor with the cost of repair or replacement of such items and any associated expenses and/or costs (based on the Distributor's reasonable estimate of the expenses and/or costs).

## **12. OWNERSHIP OF THE DISTRIBUTOR'S WORKS**

The Distributor's Works are, and shall remain, the Distributor's property and title in the Distributor's Works shall not transfer to the Customer at any time.

## **13. INDEMNITY**

The Customer shall be responsible for and indemnify and keep indemnified the Distributor against all claims for compensation by third parties in respect of damage caused by the carrying out of the Distributor's Works and/or temporary and permanent reinstatement of excavations at the Site to items belonging to third parties (including gardens, trees, shrubs, plants, tiles, walls or footpaths at the Site) which the Distributor used reasonable endeavours to avoid.

## **14. LIMITATION OF LIABILITY**

- 14.1 The Distributor shall not be liable for any damage to gardens, trees, shrubs, plants, tiles, walls or footpaths at the Site where it has used reasonable endeavours to avoid such damage.
- 14.2 Neither Party shall be liable for any breach of the Agreement directly or indirectly caused by Force Majeure.
- 14.3 The only rights and remedies (express or implied and provided by common law or statute) of the Customer in relation to, or arising from, any delay by the Distributor in performing any of the Distributor's obligations, shall be the right to require the Distributor to use all reasonable endeavours to mitigate or avoid such delay. The Distributor shall not be liable for any delay or failure or for the consequence of any delay or failure in performing any of the Distributor's obligations if such a delay or failure is due to or caused by Force Majeure or any act, default or omission on the Customer's part or on the part of the Customer's employees.
- 14.4 Subject to Condition 14.8 and save (subject as hereinafter provided) where any provision of the Agreement provides for an indemnity, neither Party nor any of its employees shall in any circumstances whatsoever be liable to the other Party for any loss of profit, loss of business, loss of revenue, loss of use, loss of contract, loss of anticipated saving, loss of goodwill, or economic loss or any special, indirect or consequential loss or damage of any nature whatsoever, or any losses resulting from the liability of the other Party to any person howsoever arising save as provided in Condition 14.6.
- 14.5 Subject to Conditions 14.4 and 14.8 and save where any provision of the Agreement provides for an indemnity, neither Party (the "Party Liable") nor any of its employees shall be liable to the other Party for loss arising from any breach of the Agreement other than for loss directly resulting from such breach and which at the date of the Offer Letter was reasonably foreseeable as likely to result in the ordinary course of events from such breach and which resulted from physical damage to the property of the other Party, its employees or that of any other person in circumstances in which that other person would be entitled to claim in respect of such damage against such other Party, provided that the liability of either Party in respect of claims for such loss or damage shall not exceed £1,000,000 per incident or series of related incidents.
- 14.6 Nothing in the Agreement shall exclude or limit the liability of the Party Liable for (a) fraudulent misrepresentation or (b) death or personal injury resulting from the negligence of the Party Liable or any of its employees and the Party Liable shall indemnify and keep indemnified the other Party and its employees from and against all such and any loss or liability which the other Party and its employees may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liable or any of its employees.
- 14.7 The rights and remedies provided by the Agreement to the Parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies (express or implied) and provided by common law or statute in respect of the subject matter of the Agreement, including any rights either Party may possess in tort or delict (as applicable) which shall include actions brought in negligence and/or nuisance. Accordingly, the Parties hereby waive to the fullest extent possible all such rights and remedies provided by common law or statute and releases the Party Liable to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in the Agreement and undertakes not to enforce any of the same except as expressly provided in the Agreement.
- 14.8 Save as otherwise expressly provided in the Agreement, Condition 14 in so far as it excludes or limits liability shall override any other provision of the Agreement, provided that nothing in Condition 18 shall exclude or restrict or otherwise prejudice or affect any of:

- (a) the rights, powers, duties and obligations of either the Distributor or the Customer which are conferred or created by the Act, the Distributor's Licence, the CDM Regulations, the Regulations or any other 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 Distributor's Licence or otherwise.

14.9 Each of the Parties agrees that the other Party holds the benefit of Conditions 14.4, 14.5 and 14.6 for itself as trustee and agent for its employees.

14.10 Notwithstanding the provisions of Condition 14, neither the Distributor's nor the Customer's employees shall have any right to veto the rescission or amendment and/or variation of the Agreement.

14.11 Condition 14 shall survive termination of the Agreement and shall be construed as separate and several terms.

## **15. PUBLIC LIABILITY INSURANCE**

Each Party agrees with the other Party to obtain and keep in force and effect at all times a policy or policies of insurance with reputable insurers of good standing covering public liability for injury to persons or damage to property with a policy limit of not less than £5,000,000 per incident or series of related incidents and each Party will pay its own premiums on its own insurance and will provide the other with such reasonable evidence of such insurance as such other Party may reasonably require at any time or from time to time.

## **16. CONSENTS**

16.1 The Distributor shall use reasonable endeavours to obtain the Consents necessary to enable the Distributor to carry out the Distributor's Works.

16.2 The Customer shall assist the Distributor in securing the Consents to the extent reasonably required by the Distributor.

16.3 Any date for completion of the Distributor's Works is subject to the Distributor obtaining and retaining the Consents for the Distributor's Works in a form acceptable to the Distributor within the time required to enable the Distributor to carry out the Distributor's Works in accordance with the Agreement.

16.4 In the event that:

- (a) the Consents are not obtained by a time which would allow for completion of the Distributor's Works by any date for completion of the Distributor's Works;
- (b) the Consents are subject to any condition or payment which is not acceptable to the Distributor or that affects the time for completion of the Distributor's Works;
- (c) the Distributor wishes to amend and/or vary the Distributor's Works to facilitate the giving or obtaining of the Consents; and/or
- (d) any Consent is withdrawn, cancelled, revoked or terminated or the Distributor is prevented or delayed in gaining access to the relevant land,

then the Distributor shall be entitled to amend and/or vary the Distributor's Works, any costs charges or other payments payable by the Customer and any dates for completion of the Distributor's Works, so far as is fair and reasonable in the circumstances.

16.5 If as a result of circumstances beyond the reasonable control of the Distributor, the Distributor incurs additional expenses and/or extra costs in obtaining the Consents (including the costs of exercising or carrying out any statutory rights or obligations or any consequential hearings) or the cost of the Distributor's Works is in excess of that which was assessed by the Distributor when the offer was made, the Distributor may, so far as is fair and reasonable in the circumstances, add such additional expenses and/or extra costs to the costs charges or other payment payable by the Customer .

16.6 If the Distributor, having used reasonable endeavours to secure the requisite Consents, is unable to secure the requisite Consents, the Distributor shall give the Customer notification to that effect.

16.8 The Distributor shall not be required to exercise any power conferred by Schedules 3 or 4 of the Act. Notwithstanding that, the Customer may request that the Distributor exercise such powers. Should the Distributor agree to such a request, the exercise of such powers by the Distributor shall be undertaken by the Distributor at the Customer's expense and/or cost.

## 17. CDM REGULATIONS

The Client has a responsibility to supply the other Duty Holders with relevant information regarding issues of health and safety. The Distributor as a Designer of electrical networks will require from the pre-tender Health and Safety Plan relevant information held on potential risks to health and safety contained within the Project. To ensure effective management of health and safety at the Site, the Distributor while preparing the Distributor's Work's will fully consider all risks identified by the Client and other Duty Holders. The Distributor will comply with the requirements placed upon the Distributor as a Designer under the CDM Regulations. Unless otherwise indicated in the Offer Letter, the Offer Letter has been prepared on the basis that no significant risks or hazards are present at the Site and the Distributor may amend and/or vary the terms and conditions of the Agreement (including the costs charges and other payment payable by the Customer ) if information supplied to the Distributor is untrue, incomplete or inaccurate.

## 18. EVENTS OF DEFAULT

18.1 Either Party can terminate the Agreement by giving notice to that effect to the other Party if:

- (a) a material breach by the other Party remains unremedied for 30 days after service by the Party who is not in breach of notice requiring the other Party to remedy such breach (provided that "material breach" shall not include any circumstances of Force Majeure); or
- (b) the other Party fails to pay any amount owing under the Agreement within 14 days of the due date for payment;  
or
- (c) the other Party becomes insolvent or subject to an administration order; or a petition is presented or an order is made or a meeting is convened to consider a resolution, or a resolution is passed, for its liquidation, winding-up or dissolution or an administration application is made or notice of an intention to appoint an administrator is served in respect of the other Party (otherwise, in each case, than for the purpose of a bona fide solvent amalgamation or reconstruction); or the other Party makes any composition, scheme or arrangement with (or assignment for the benefit of) its creditors or a voluntary arrangement is made in accordance with Part 1 of the Insolvency Act 1986; or a trustee, receiver, administrative receiver or manager is appointed over all or part of its business, property or assets; or for the purposes of Section 123 of the Insolvency Act 1986 the other Party is deemed unable to pay its debts; or, if the other Party is an individual or a partnership, that individual or partnership, or any of its partners, is sequestrated or becomes apparently insolvent or makes any composition, scheme or arrangement with, or grants any trust deed or any assignment for the benefit of, its creditors;

and in each case the Agreement will terminate upon the expiry of such notice.

18.2 The termination of the Agreement for whatever reason or cause shall be without prejudice to any provisions, rights or obligations which may have accrued or became due between the Parties prior to, or on, the date of the termination and any such provisions, rights or obligations shall remain in full force and effect.

18.3 The Distributor can terminate the Agreement by giving notice to that effect to the Customer where the Customer fails to take such steps as may be reasonable to enable the Distributor to comply with any Order or Provisional Order of the Authority under the Act.

## 19. EFFECT OF TERMINATION

19.1 If the Agreement is terminated prior to completion of the Distributor's Works for any reason whatsoever the Customer shall be liable to pay to the Distributor:

- (a) all sums then due and payable or accrued to the Distributor under the Agreement; and
- (b) a sum being the reasonable expenses and/or costs (including profit, on-costs and overheads as appropriate) incurred in respect of all works carried out, or committed to, by the Distributor less –
  - (i) the sums payable or accrued to the Distributor under (a) above; and
  - (ii) any sums already paid for such works.

19.2 For the avoidance of doubt, Condition 19 shall survive termination of the Agreement and will remain in full force and effect until all payments payable to the Distributor under the Agreement have been made in full.

## 20. SEVERANCE

If any provision of the Agreement is held by a Court or other competent authority to be unlawful, void or unenforceable, it shall be deemed to be deleted from the Agreement and shall be of no force and effect and the Agreement shall remain in full force and effect as if such provision had not originally been contained in the Agreement. In the event of any such

deletion the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted.

## **21. ASSIGNMENT AND SUB-CONTRACTING**

- 21.1 Subject to Condition 21.2 below, neither Party shall assign or transfer any or all of its whole rights and obligations under and in terms of the Agreement to another party without the prior written consent of the other Party, provided that consent to any assignment of the Agreement by the Distributor to one of the Distributor's Affiliates shall not be unreasonably withheld or delayed.
- 21.2 Either Party may assign or charge any or all of its whole rights under and in terms of the Agreement by way of security.
- 21.3 Either Party shall have the right to sub-contract the performance of any of its obligations or duties arising under the Agreement. The sub-contracting by either Party of the performance of any obligations or duties under the Agreement shall not relieve that Party from liability for performance of such obligation or duty.

## **22. NON-WAIVER**

Any waiver by either Party of a breach of the Agreement must be in writing and shall not be treated as a waiver of any further breach of the same or any other provision.

## **23. FORCE MAJEURE**

- 23.1 If either Party is unable to carry out any of its respective obligations under the Agreement due to Force Majeure, the Agreement shall continue but, unless otherwise provided for in the Agreement, both the Distributor's and the Customer's respective obligations other than any obligation as to payment shall be suspended without liability for the period of such Force Majeure.
- 23.2 If the period of the suspension of performance exceeds 12 months, then either Party may immediately terminate the Agreement by giving notice to that effect to the other Party.

## **24. NOTICES**

Any notice, demand or other communication required to be given or sent under the Agreement shall be in writing and shall be delivered (a) either by hand or by post to the Customer at the address given for the Customer in the Agreement or (b) either by hand, by post to the Distributor for the attention of the Project Manager at the address given for the Project Manager in the Offer Letter or for the attention of such other person or to such other address notified to the Distributor or the Customer for this purpose.

## **25. SURVIVAL OF RIGHTS AFTER TERMINATION**

Termination of the Agreement shall not affect any rights of the Parties accruing up to the date of termination.

## **26. LAW AND JURISDICTION**

The Agreement shall be construed and implemented: (i) in accordance with English law and (subject to Condition 36) the Parties agree to submit to the non-exclusive jurisdiction of the English and Welsh courts if the whole of the Site is in England and Wales; and (ii) in accordance with Scots law and (subject to Condition 36) the Parties agree to submit to the non-exclusive jurisdiction of the Scottish courts if the whole or any part of the Site is in Scotland.

## **27. ENTIRE AGREEMENT AND REPRESENTATION**

The Agreement contains the entire agreement between the Parties and supersedes all previous agreements between the Parties relating to the Distributor's Works. The Customer acknowledges that the Customer has not entered into the Agreement in reliance wholly or partly on any statement or representation made by the Distributor or on the Distributor's behalf save insofar as such statement or representation is expressly set out in the Agreement.

## **28. CONTRACTS (RIGHTS OF THIRD PARTIES) ACTS 1999**

For the purposes of The Contracts (Rights of Third Parties) Act 1999, or the *jus quaesitum tertio* the Agreement does not create any right or remedy enforceable by any person other than the Parties.

## **29. DISTANCE SELLING REGULATIONS**



If the Customer is a natural person (e.g. not a company or corporation) the Customer has the right to cancel the Agreement by giving notice in writing to that effect to the Distributor at any time within 7 working days after acceptance, unless the Distributor has with the Customer's consent started the Distributor's Works.

### **30. CONFIDENTIALITY**

30.1 Subject to Condition 30.2, each Party shall treat as confidential and shall not disclose to any other person any of the commercial, technical and/or contractual provisions of the Agreement or any commercial, technical or other confidential information relating to the business of the other Party which is disclosed to and/or acquired by that Party subject to this duty of confidentiality during the course of the Agreement.

30.2 Condition 30.1 shall not apply to:

- (a) any disclosure which is necessary for the proper performance of the Agreement;
- (b) any disclosure which is required by law (including any order of a Court of competent jurisdiction) or by the Authority;
- (c) any disclosure to a Party's professional advisers provided always that such professional advisers are bound by duties of confidentiality;
- (d) any disclosure by the Distributor to one of the Distributor's Affiliates provided that the same level of confidentiality as set out in Condition 30 shall apply;
- (e) any disclosure which is agreed by the Parties in advance of disclosure; and/or
- (f) any information which is already in the public domain.

**This document comprises the General Terms and Conditions for Diversion of Part of the Electricity Distribution System dated 1 OCTOBER 12.**