

## GENERAL TERMS AND CONDITIONS FOR CONNECTION TO 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 including any modification, extension, or re-enactment thereof and the sub-ordinate legislation made thereunder;;
- “**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 1159 of the Companies Act 2006;
- “**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 Schedule and 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 2007;
- “**Charge(s)**” the charge(s) for the Distributor’s Works as set out in the Offer Letter including any amendments and/or variations to such charges made in accordance with the Agreement;
- “**Client**”, “**Construction Phase Plan**”, “**Contractor**”, “**Designer**”, “**CDM Co-ordinator**”, “**Principal Contractor**” and “**Project**” the meanings given respectively to the expressions “client”, “contractor”, “designer”, “Construction Phase Plan”, “CDM Co-ordinator”, “principal contractor” and “project” in the CDM Regulations;
- “**Conditions**” the meaning given to that expression in the Offer Letter;
- “**Connection**” the installation of the Distributor’s equipment at a Plot in such a way that subject to energisation the Customer may receive a supply of electricity over the Distributor’s System and “Connections” shall be construed accordingly;
- “**Connection Agreement**” the agreement for connection of the Customer’s Electrical Installation at a Plot to the Distributor’s System;
- “**Connection Characteristics**” the service set out in the Schedule;
- “**Connection Point**” the point at which the Customer’s Electrical Installation at a Plot is connected to the Distributor’s System;
- “**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 Electrical Installation**” the electrical installation to be installed by the Customer at a Plot and forms no part of the Agreement. For the purpose of the Agreement all electrical works of any kind that are installed on the Customer’s side of any meter or on the Customer’s side of any cut-out or other device performing a similar function shall be treated as being part of the Customer’s Electrical Installation;
- “**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;

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**“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 CDM Co-ordinator, 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;

**“energised”** or **“energisation”** the taking of any step whereby an electrical current can flow through a Connection Point;

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

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

**“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;

**“Maximum Capacity”** the maximum capacity of each Connection, as stated in the Offer Letter (if any stated);

**“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;

**“Offer Letter”** the letter which incorporates the Schedule and these terms and conditions, making the offer from the Distributor to the Customer to provide the Connection(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;

**“Plot”** an area of land comprising part of the Site and “Plots” shall be construed accordingly;

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

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

**“Schedule”** the schedule annexed to the Offer Letter;

**“Site”** the meaning given to that expression in 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;

**“Substation Accommodation”** the accommodation or any part or parts of it (including all the substation buildings and/or outdoor compound, concrete, plinth, fencing, drainage, fittings and systems ventilation fittings and systems and/or any other accommodation works) as required by the Distributor to house any substation equipment;

**“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 a Connection.

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### **2. PRECONDITIONS AND FORMATION OF CONTRACT**

- 2.1 Nothing in the Agreement requires the Distributor to make a Connection if and to the extent that:
- 2.1.1 the Distributor is prevented from doing so by circumstances not within its control;
  - 2.1.2 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
  - 2.1.3 it is not reasonable for the Distributor to be required to do so.
- 2.2 The Customer shall be deemed to have accepted the Offer letter upon written confirmation of the Customer's instruction to the Distributor to proceed with the Distributor's Works irrespective of whether the Customer has returned a signed copy of the Agreement by that date. Where the Customer has signed and returned a copy of the Agreement prior to issuing written confirmation to proceed with the Distributor's Works, then, where specified, the date of execution shall be the date of formation of the Agreement. Where no date of execution is specified, the date of posting of the signed copy of the Agreement shall be the date of formation of the Agreement.
- 2.3 If the party signing the Agreement is not the Customer then such party shall be deemed to have signed as agent for and on behalf of the Customer and furthermore such party shall be jointly and severally liable to the Distributor in respect of all of the Customer's obligations and responsibilities as set out in the Agreement.
- 2.4 Where and to the extent the Parties agree specific amendments and/or modifications to that which is originally proposed by the Distributor such amendments and/or modifications will, at the Distributor's option, either be reflected in the issue by the Distributor of a revised Offer letter which will supersede the original Offer letter or, alternatively, will be confirmed by the Distributor in a written confirmation of variation. On no account shall commencement of implementation / performance by the Distributor be misconstrued as an acceptance by the Distributor of any amendments, modifications, qualifications, reservations and/or alternative terms and conditions and/or counterproposals put forward by the Customer which are not subsequently reflected in the issue of a revised Offer letter and/or written confirmation by the Distributor.

### **3. DISTRIBUTION CODE**

- 3.1 Both Parties are obliged to comply with their respective obligations in the Distribution Code.
- 3.2 In the event of any conflict between this Agreement and the Distribution Code, the Distribution Code shall prevail.

### **4. ELECTRICITY DISTRIBUTION SYSTEM**

#### **4.1 DISTURBANCE ON THE DISTRIBUTOR'S SYSTEM**

The connected load must not cause disturbances on the Distributor's System and it is essential that the load characteristics comply with the requirements of Engineering Recommendations G5/4 (Limits for Harmonics), P28 and P29. The Customer must submit full details of any load which might cause disturbances before any connection, whether covered by those Engineering Recommendations or not, for the Distributor's consideration. Further information is available from the Distributor on request.

#### **4.2 GENERATION**

The Distributor's prior written consent is required before any generating plant is installed in respect of any Connection. Any such installation should comply with the requirements of the Regulations and the principles of any relevant Engineering Recommendation at that time and from time to time. Precise methods of protection and mode or restriction of operation (including voltage regulation) must be agreed between the Parties and written into the Connection Agreement which must be completed before energisation of such Connection.

### **5. PAYMENTS**

- 5.1 Unless otherwise provided in the Offer Letter, payment of the Charge(s) will be required in full prior to commencement of any of the Distributor's Works.

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- 5.2 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.
- 5.3 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.
- 5.4 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.
- 5.5 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.

### **6. 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 may from time to time be prescribed by the applicable law.

### **7. EXTRA COSTS**

- 7.1 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.
- 7.2 If any matter referred to in Condition 7.1 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.
- 7.3 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.
- 7.4 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.
- 7.5 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.

### **8. DELAYS**

- 8.1 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.
- 8.2 Notwithstanding that there may be a delay in making Connections or electricity supplies available 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 8.2.

### **9. VARIATIONS**

- 9.1 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)).

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- 9.2 If the Customer wishes to amend and/or vary the Customer's Electrical Installation, 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 or change the number of Connections or capacity required the Customer shall give written notice to that effect to the Distributor with such details and information required by the Distributor.
- 9.3 Following the Distributor's receipt of notice referred to in Condition 9.2, 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 9.2.
- 9.4 Any notice referred to in Condition 9.3 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.
- 9.5 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.

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

- 10.1 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 10.2.
- 10.2 The Customer shall:
- (a) grant to the Distributor free of charge all easements, wayleaves, consents 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) if requested by the Distributor at any time, provide a properly completed "Confirmation of Electrical Installation/Extension Form W33/2" for each Connection;
  - (f) 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 install the Distributor's Works;
  - (g) provide to the Distributor a programme of what the Customer envisages is reasonably required for completion and servicing of the Connection(s) (which, for the avoidance of doubt, shall not be binding on the Distributor and time shall not be of the essence);
  - (h) in respect of a Connection required at domestic premises, provide to the Distributor for each Connection a minimum of 20 working days prior written notice requesting the final cable connection visit;
  - (i) 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;
  - (j) in respect of Distributor's Works at domestic premises, be responsible for permanent reinstatement of the Distributor's excavations at the Site, except such excavations as are carried out in existing adopted highways;
  - (k) procure that the Site, the substation site(s) referred to in Condition 10.2(b) and the routes referred to in Condition 10.2(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
  - (l) 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.

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### 11. SUBSTATION ACCOMMODATION

If the Customer is required in the Offer Letter to provide Substation Accommodation then the following provisions shall apply:

- 11.1 The Substation Accommodation must be provided by the Customer at the Customer's expense and/or cost on land the Customer owns or leases.
- 11.2 The Customer shall at the Customer's expense and/or cost obtain the consent of any third party required to allow the Customer to construct and retain the Substation Accommodation and for the Distributor to install and operate the Distributor's Works to be installed in the Substation Accommodation in the Substation Accommodation.
- 11.3 The Customer shall provide the Substation Accommodation in a position approved by the Distributor and in accordance with any guidance drawings and specifications provided by the Distributor to the Customer. All builder's working drawings relating to the provision of the Substation Accommodation must be submitted to the Distributor before the commencement of any such building works and such building works must not be commenced until approval of such builder's working drawings has been obtained from the Distributor.
- 11.4 In respect of a Connection having Connection Characteristics including a service at or above 11 kV:
- (a) The Customer shall make available a 400/230 volts (+10% to -6%), 50 hertz, 45 kVA, 3 phase 4 wire supply of electricity within the Substation Accommodation and install, maintain and provide that service together with such other ancillary service(s) as may be reasonably required by the Distributor at any time or from time to time.
  - (b) As the service will be provided at a high voltage, the Customer's attention is drawn to the provisions of the Distribution Code under which the Distributor is required to prepare, and the Parties will agree, a Site Responsibility Schedule and where determined by the Distributor Operation Diagrams showing the Ownership Boundaries in relation to the Connection Point. The Customer's attention is also drawn to the Electricity at Work Regulations 1989 and the need to ensure that high voltage electrical equipment is operated by competent persons.
  - (c) An emergency trip facility, which in an emergency will allow the Customer to simultaneously disconnect all incoming high voltage feeders at the Connection, shall be provided by the Distributor adjacent to the metering panel within the Substation Accommodation. Should such disconnection occur, the Customer will contact the Distributor to arrange for the Distributor to re-set that trip facility. Re-connection cannot be effected until that emergency trip facility has been re-set.
  - (d) The Customer shall contact the Distributor in order to make arrangements in relation to the setting on the protection relays for the Connection. Further information regarding protection arrangements is available from the Distributor on request.
- 11.5 The Customer shall complete all works relating to the provision of the Substation Accommodation:
- (a) in a good workman like manner with good sound working practices and obtain all necessary consents of any kind (including planning permission and building regulation approval as appropriate);
  - (b) in accordance with the builder's working drawings relating to such works approved by the Distributor in accordance with Condition 11.3;
  - (c) in accordance with the requirements (if any) described in the Schedule; and
  - (d) in compliance with all statutes and regulations relating to such works.
- 11.6 No plant or equipment will be installed in the Substation Accommodation by the Distributor until the building work relating to the provision of the Substation Accommodation has been completed to the satisfaction of the Distributor.

### 12. 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. Any Substation Accommodation accepted by the Distributor will be fitted with a lock by the Distributor, after which time only the Distributor's authorised personnel will be allowed access to that Substation Accommodation. The Customer shall procure that the Distributor has 24 hour unrestricted access to any Substation Accommodation.



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### **13. 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.

### **14. THE CUSTOMER'S ELECTRICAL INSTALLATION**

Save where express written representations are made by the Distributor or any work is done by the Distributor, neither by inspection, non-rejection or connection or energisation nor in any other way does the Distributor give any guarantee or warranty, express or implied, as to the adequacy, safety or other characteristic of the Customer's Electrical Installation or other works and the Distributor shall not be responsible for it or them. The Customer must rely on the Customer's own skill and judgement in all such respects.

### **15. 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 or electricity is illegally abstracted at any Plot whilst such Plot 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 and pay the Distributor the value of such electricity abstracted (based on the Distributor's reasonable estimate of the expenses and/or costs to the Distributor of making that supply of electricity to that Plot).

### **16. 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.

### **17. 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.

### **18. LIMITATION OF LIABILITY**

- 18.1 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.
- 18.2 Neither Party shall be liable for any breach of the Agreement directly or indirectly caused by Force Majeure.
- 18.3 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.
- 18.4 Subject to Condition 18.8 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 18.6.

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- 18.5 Subject to Conditions 18.4 and 18.8 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.
- 18.6 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.
- 18.7 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.
- 18.8 Save as otherwise expressly provided in the Agreement, Condition 18 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.
- 18.9 Each of the Parties agrees that the other Party holds the benefit of Conditions 18.4, 18.5 and 18.6 for itself as trustee and agent for its employees.
- 18.10 Notwithstanding the provisions of Condition 18, 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.
- 18.11 Condition 18 shall survive termination of the Agreement and shall be construed as separate and several terms.

## **19. 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.

## **20. CONSENTS**

- 20.1 The Distributor shall use reasonable endeavours to obtain the Consents necessary to enable the Distributor to carry out the Distributor’s Works.
- 20.2 The Customer shall assist the Distributor in securing the Consents to the extent reasonably required by the Distributor.
- 20.3 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.
- 20.4 In the event that:



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- (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, the Charge(s) and any dates for completion of the Distributor's Works, so far as is fair and reasonable in the circumstances.

- 20.5 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 Charge(s).
- 20.6 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.
- 20.8 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.

## 21. 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 Construction Phase 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 and where the Customer is the Client in terms of the CDM Regulations they shall comply in full with the Client's obligations. 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 Charge(s)) if information supplied to the Distributor is untrue, incomplete or inaccurate.

## 22. EVENTS OF DEFAULT

- 22.1 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 assignation 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 assignation for the benefit of, its creditors;

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

## **GENERAL TERMS AND CONDITIONS FOR CONNECTION TO THE ELECTRICITY DISTRIBUTION SYSTEM**

22.2 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.

22.3 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.

### **23. THE DISTRIBUTOR'S RIGHT TO TERMINATE**

23.1 The offer made in an Offer Letter is made on the basis of the Distributor providing the Connections stated in the Offer Letter for all of the Plots referred to in the Offer Letter.

23.2 If for any reason (other than an agreed amendment and/or variation of the Agreement signed by or on behalf of both Parties) it becomes apparent to the Distributor that:

- (a) the Customer has ceased developing the Site (other than for a temporary cessation of short duration);
- (b) the Customer has disposed of the land upon which any one or more of the Plots requiring Connection would have been constructed;
- (c) the Customer's Electrical Installation is not, and will not, be capable of being connected directly or indirectly to the Distributor's Works in relation to any one or more of the Plots,
- (d) the Customer's Works are not completed within 18 months of the date of acceptance of the Offer Letter or as otherwise agreed in writing between the Parties; and/or
- (e) the Distributor's Works are not completed within 18 months of the date of acceptance of the Offer Letter or as otherwise agreed in writing between the Parties,

then the Distributor may give written notice to the Customer terminating the Agreement and the provisions of condition 24 shall apply.

### **24. EFFECT OF TERMINATION**

24.1 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 (including the cost of installation of the electrical infrastructure to provide each Connection) less –
  - (i) the sums payable or accrued to the Distributor under (a) above; and
  - (ii) any sums already paid for such works.

24.2 For the avoidance of doubt, Condition 24 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.

### **25. 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.

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

26.1 Subject to Condition 26.2 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.

## **GENERAL TERMS AND CONDITIONS FOR CONNECTION TO THE ELECTRICITY DISTRIBUTION SYSTEM**

- 26.2 Either Party may assign or charge any or all of its whole rights under and in terms of the Agreement by way of security.
- 26.3 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.

### **27. 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.

### **28. FORCE MAJEURE**

- 28.1 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.
- 28.2 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.

### **29. 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.

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

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

### **31. 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.

### **32. 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.

### **33. 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.

### **34. 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.

## **GENERAL TERMS AND CONDITIONS FOR CONNECTION TO THE ELECTRICITY DISTRIBUTION SYSTEM**

### **35. CONFIDENTIALITY**

35.1 Subject to Condition 35.2, 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.

35.2 Condition 35.1 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 35 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.

### **36. RIGHTS TO REFER DISPUTES TO THE ENERGY OMBUDSMAN AND THE AUTHORITY**

If the Customer wishes to discuss any of the terms and conditions of the Offer Letter or the Agreement the Customer should contact the Project Manager. If the Project Manager cannot resolve the Customer's enquiry within a reasonable time, the Customer may in certain cases have the right prior to acceptance of the Offer Letter or after entering into the Agreement to approach the Energy Ombudsman. The Energy Ombudsman is able to investigate complaints and disputes for domestic and certain categories of business customers. In any event, where there is a dispute arising out of the terms and conditions of the Offer Letter or the Agreement that cannot be resolved then the Distributor or the Customer may request a determination of any such dispute by the Authority in accordance with the Act, provided that where a dispute relates to the making of a Connection such a request may only be referred to the Authority within a period of 12 months after that Connection was made.

### **37. INTERACTIVE OFFERS**

If during the period for acceptance of this Offer Letter ("the First Offer") the Distributor makes an offer to any person pursuant to the provisions of the Distribution Licence for a new connection or for the modification of an existing connection ("the Second Offer") which if accepted would affect the terms of the First Offer, the Distributor shall:

- (i) at the time of making the Second Offer:
  - (a) inform the recipient(s) of both the First Offer(s) and Second Offer(s) in writing that there is another offer outstanding which may affect them; and
  - (b) be entitled to make the First Offer(s) and Second Offer(s) conditional upon the other outstanding offers not having been or being accepted; and
- (ii) in the event of any of the outstanding offers being accepted be entitled to vary the terms of either offer

If the Distributor is entitled to vary the terms of an offer in accordance with the above provisions it may withdraw the current Offer Letter and make such varied offer as soon as possible and (save where the Authority consents to a longer period) in any event within 3 months of becoming so entitled.

**THIS DOCUMENT COMPRISES THE GENERAL TERMS AND CONDITIONS FOR CONNECTION TO THE ELECTRICITY DISTRIBUTION SYSTEM DATED 1 MAY 2012.**