



TERMS AND CONDITIONS

For Connection and Diversionary works

Terms and Conditions

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1. Definitions

- 1.1. The following words and expressions have the meanings set out below unless the context otherwise requires:
- 1.1.1. 'Adverse Ground Conditions' means any ground conditions (including archaeological remains, apparatus belonging to a third party, unexploded ordnance and contamination) which prevent or delay the carrying out of the Works or which render them more expensive to carry out.
- 1.1.2. 'Act' means the Electricity Act 1989.
- 1.1.3. 'Business Day' means all the days of the week excluding Saturday and Sunday and any public holidays in England and Wales.
- 1.1.4. 'Capacity' means the Import Capacity and the Export Capacity.
- 1.1.5. 'Change of Law' means the coming into force after the date of the Notice of any Act of Parliament and any Legislation made under it, any judgement of the Court that changes binding precedent and any guidance, designation, direction or instruction of any competent authority with which the DNO is bound to or requested to comply.
- 1.1.6. 'Connection Agreement' means an agreement in the form available from UK Power Networks, Income Management, Energy House, Hazelwick Business Park, Crawley, West Sussex RH10 1EX.
- 1.1.7. 'Consents' means any permission, consent, approval or licence (statutory or otherwise) that is required to carry out the Works or Your Works.
- 1.1.8. 'Costs' means all expenses and costs incurred including (but not limited to) attributable overheads and any regulated margins thereon provided for in the DNO's published Connection Charging Methodology.
- 1.1.9. 'C/T Settlement Metering' means metering where the full electrical current flow in or out of the Premises is metered indirectly by using current transformers to induce a reference current which is then put through the Settlement Meter.
- 1.1.10. 'Distribution System' means the system for the distribution of electricity belonging to the DNO.
- 1.1.11. 'Diversionary Works' means those elements of the Works identified as such in the Schedule.
- 1.1.12. 'DNO' means the Distribution System owner identified in the Letter.
- 1.1.13. 'Electric Line' and 'Electrical Plant' bear the meaning given to those terms by Section 64 (1) of the Act.
- 1.1.14. 'Energisation' means the first occasion of the operation of any switchgear or the insertion of any fuse or the taking of any other step so as to enable an electrical current to flow to or from the Distribution System via Your Works.
- 1.1.15. 'Exchange Rate' means the exchange rate between £ Sterling and the currency in which the DNO or its affiliate is required to pay for the goods and/or services comprised in or required for the Works and includes any charge made by a bank for effecting or receiving the transfer or changing such currency.
- 1.1.16. 'Exit Point' means the point or points of connection at which a supply of electricity may flow from the Distribution System to Your Installation, which may be better shown in the Schedule.
- 1.1.17. 'Export Capacity' means the maximum flow of electricity expressed in kilovolt amperes set out in the Schedule that may flow into the Distribution System:
- (a) from Your Site; or
 - (b) from each Premises connected thereto where the Works provide for more than one Premises to be connected; or
 - (c) through more than one connection to the Premises where the Works provide for more than one connection to the Premises.
- 1.1.18. 'Full Title Guarantee' means the covenant for title implied by Section 3 (1) of the Law of Property (Miscellaneous Provisions) Act 1994 save that the words 'other than any charges, encumbrances or rights which that person does not or could not reasonably be expected to know about' shall be deleted in their entirety.

- 1.1.19.** 'Force Majeure' means, in relation to either of us, any event or circumstance which is beyond the reasonable control of the Party affected by it and which results in or causes the failure of that Party to perform its obligations under the Notice. Lack of funds is not an event of Force Majeure.
- 1.1.20.** 'GS Payment' means a payment required under the Electricity (Connection Standards of Performance) Regulations 2010 as a result of failure by the DNO to comply with the required standards of performance for connections.
- 1.1.21.** 'Import Capacity' means the maximum flow of electricity expressed in kilovolt amperes set out in the Schedule that may flow from the Distribution System:
- (a) into Your Site; or
 - (b) into each Premises connected thereto where the Works provide for more than one Premises to be connected; or
 - (c) through more than one connection to the Premises where the Works provide for more than one connection to the Premises.
- 1.1.22.** 'Initial Reservation Period' means the period beginning on the first twelve-month anniversary of the date upon which the Works are completed, and ending on the 31 December that calendar year.
- 1.1.23.** 'Lane Rental Scheme' means any scheme for the rental of all or part of the Street operated by a highway authority or similar arrangement introduced pursuant to NRSWA or the Traffic Management Act 2004 that the DNO is required or requested to comply with.
- 1.1.24.** 'Land Rights' means in relation to Your Site, the interest in land upon the terms set out by the DNO following your acceptance of the Notice and in relation to the remainder of the Site the interest in land upon the terms set out by the DNO.
- 1.1.25.** 'Legislation' means:
- (a) any Act of Parliament or subordinate legislation within the meaning of Section 21 (1) Interpretation Act 1978; or
 - (b) any exercise of the Royal Prerogative and any enforceable community right within the meaning of the European Communities Act 1972, in each case within the United Kingdom and includes the Licence.
- 1.1.26.** 'Letter' means the DNO's offer to You to carry out the Works upon these Terms and Conditions and the Schedule.
- 1.1.27.** 'Licence' means the licence (as from time to time modified) issued to the DNO pursuant to Section 6(1)(c) of the Act.
- 1.1.28.** 'Licence Exempt Distribution Network' or 'LEDN' means an electricity distribution system that is the subject of an exemption from the requirement for a licence to distribute electricity granted by the Secretary of State pursuant to section 5(1) of the Act.
- 1.1.29.** 'National Terms of Connection' means the terms of connection published from time to time at www.connectionsterms.co.uk or which may be obtained upon written application from: Energy Networks Association, 6th Floor, Dean Bradley House, 52 Horseferry Road, London SW1P 2AF.
- 1.1.30.** 'Next Reservation Period' means the next period of reservation of capacity which has not yet commenced whether that is the Initial Reservation Period or the relevant Subsequent Reservation Period.
- 1.1.31.** 'Notice' means the Letter, these Terms and Conditions and the Schedule together comprising the notice under Section 16 A(5) of the Act.
- 1.1.32.** 'NRSWA' means the New Roads and Street Works Act 1991.
- 1.1.33.** 'Outstanding Capacity' means (if applicable) the Import Capacity less the Import Capacity taken up at the Exit Points that have been constructed as part of the Works and less the import capacity secured under a Subsequent Notice as calculated the DNO .
- 1.1.34.** 'Party' means You or the DNO as the case may be. 'Parties' means You and the DNO.
- 1.1.35.** 'Plant' means machinery, apparatus, materials, articles and things of all kinds to be provided by the DNO under the Notice other than its equipment required for the purpose of the Works.
- 1.1.36.** 'Premises' includes any land, building or structure.
- 1.1.37.** 'Price' means the price stated in the Notice (as varied in accordance with the Notice) for the carrying out of the Works.

- 1.1.38.** 'Reservation Application' means (if applicable) a letter addressed to the DNO at the Reservation Application Address headed 'Reservation Application' and specifying the DNO's job number quoted on the Letter stating that you wish to reserve the Outstanding Capacity for the Initial Reservation Period or Subsequent Reservation Period as the case may be and confirmation of the address that You require correspondence relating to your reservation to be addressed and attaching a copy of the Notice including these terms and conditions.
- 1.1.39.** 'Reservation Application Address' means UK Power Networks, Projects Gateway, Metropolitan House, Darkes Lane, Potters Bar, Hertfordshire, EN6 1AG.
- 1.1.40.** 'Reservation Charge' means the amount to reserve one kVA of Import Capacity specified by the DNO and set out in the Reservation Information.
- 1.1.41.** 'Reservation Confirmation' means (if applicable) a letter from You addressed to the DNO at the Reservation Application Address headed 'Reservation Confirmation' and specifying the job number quoted on the Letter and confirmation that You wish to reserve the Outstanding Capacity or specified part thereof for the Initial Reservation Period or Subsequent Reservation Period as the case may be in accordance with these terms.
- 1.1.42.** 'Reservation Fee' means the product of the Reservation Charge multiplied by that portion of the Outstanding Capacity to be reserved.
- 1.1.43.** 'Reservation Information' means (if applicable) the information provided in writing by the DNO stating the amount of Outstanding Capacity determined by the DNO that is capable of reservation together with a description of how the Outstanding Capacity was calculated together with the Reservation Charge for the Initial Reservation Period or Subsequent reservation Period as the case may be.
- 1.1.44.** 'Reserve' means to hold Capacity on the Distribution System in accordance with the provisions of paragraph 17 and cognate expressions shall be construed accordingly.
- 1.1.45.** 'Schedule' means the documentation attached to the Letter and any other documentation that may be included with the Letter.
- 1.1.46.** 'Settlement Meter' means an electricity meter used to measure electricity supplied by or sold to an authorised electricity supplier.
- 1.1.47.** 'Site' means the place at which the Works are to be carried out.
- 1.1.48.** 'Speculative Development' has the meaning given to that term in the DNO's Connection Charge Methodology.
- 1.1.49.** 'Street' means any highway, road, lane, footway, alley or passage, any square or court, and any land laid out as a way whether it is for the time being formed as a way or not. Where a street passes over a bridge or through a tunnel the term Street includes the bridge or tunnel.
- 1.1.50.** 'Subsequent Notice' means a subsequent notice issued by the DNO pursuant to section 16(A) of the Act and accepted by You or your tenants, occupiers, agents or any independent distribution network operator to carry out additional works in order to connect Your Installation to the Works and to make use of the Capacity provided by the Works.
- 1.1.51.** 'Subsequent Reservation Period' means (if applicable) each successive calendar year commencing 1 January following the Initial Reservation Period up to a maximum of ten calendar years thereafter.
- 1.1.52.** 'Variation' means any alteration of the Works including any addition, modification or omission or change to the timing or sequencing of the carrying out of the Works.
- 1.1.53.** 'Whole Current Settlement Metering' means metering where the full electrical current flow in or out of the Premises passes directly through the Settlement Meter.
- 1.1.54.** 'Works' means the work described in the Schedule that is to be carried out by the DNO on these Terms and Conditions.
- 1.1.55.** 'You' means you, your agent sub-contractors and their officers, employees, servants and agents and any reference to 'you' and 'your' shall be construed accordingly.
- 1.1.56.** 'Your Installation' means all electrical equipment and apparatus not being part of the Distribution System used or to be used by You and connected to or to be connected to the Distribution System.

- 1.1.57. 'Your Site' means that part of the Site within your occupation or control or over which you enjoy use.
- 1.1.58. 'Your Works' means all works mentioned in the Schedule that You are required to carry out on these Terms and Conditions.
- 1.2. Unless expressly provided to the contrary, any consent required of a Party under these Terms and Conditions shall not be withheld or delayed unreasonably.
- 1.3. The headings in the Terms and Conditions do not form part of them and shall not be taken into consideration in the interpretation or construction of the Notice.
- 1.4. The word 'including' is to be construed without limitation.
- 1.5. Any reference in the Notice to the masculine includes the feminine and any reference to the singular includes the plural and vice-versa in each case.
- 1.6. Any reference to a statute shall be construed as a reference to any statutory instrument, regulation, order or code of practice made under it and as any of the foregoing may be amended or re-enacted from time to time.
- 2.1.3. You are responsible at your own expense for the security of all Plant and the DNO's equipment (and that of its sub-contractors) on Your Site.
- 2.1.4. At the DNO's request You must operate free of charge for the purposes of the Works any suitable lifting equipment belonging to You or under your control that may be on Your Site. You must retain control of and be responsible for the safe working of the lifting equipment.
- 2.2. Consents/Land Rights.
- 2.2.1. You must obtain at your expense any Consents for Your Works free from conditions affecting the DNO's execution of the Works and their subsequent use and which also will allow:
- (i) the Works to be carried out in a continuous and logical progression; and
 - (ii) the Premises to be used for the purpose for which connection to the DNO's Distribution System is required.
- 2.2.2. **Where Your Premises are to be connected to the Distribution System of the DNO in London You must obtain the in principle agreement of the landowner and any occupier of any land (not being a Street maintainable at public expense) to the DNO's installation of any Electric Line and/or any Electrical Plant in their land in the position shown on the plan provided to You by the DNO and upon the terms that the DNO will require. When You have obtained such in principle agreement You must notify the DNO in writing providing the relevant landowner's (and where different its occupier's) name and address and that of their solicitors as it is not until then that the DNO will instruct its solicitors to obtain the Land Rights that it requires from the relevant owner and occupier.**

2. *Your Obligations*

- 2.1. Your Site.
- 2.1.1. **If Your Site is notifiable under The Construction (Design and Management) Regulations 2007 You must notify the DNO upon acceptance of the Notice the name, postal address, telephone number and email address of the CDM Co-ordinator and the Principal Contractor.**
- 2.1.2. You must at your expense give the DNO:
- (i) unobstructed pedestrian and vehicular access (including the provision of any load bearing surfaces required by the DNO) to and within Your Site; and
 - (ii) site facilities, including provision of main services, site huts, parking, storage and a secure facilities compound on Your Site as it shall require to enable it to complete its Works by the date specified in the Schedule for their completion or if no date is stated in the Schedule at such time as shall be required by the DNO when programming the Works.
- 2.2.3. You must provide to the DNO before it carries out its Works, either:
- (i) a copy of the planning permission for Your Works; or
 - (ii) if planning permission is not required for Your Works, confirmation of that fact from the local planning authority or unequivocal counsel's opinion of the same.
- 2.2.4. You must transfer or grant (or procure the transfer or grant of) the Land Rights in relation to Your Site to the DNO with Full Title Guarantee.

- 2.2.5.** Energisation will not take place in any case where the vendor/lessor/grantor of the Land Rights is not legally represented by a solicitor or licensed conveyancer unless the vendor/lessor/grantor provides the DNO's solicitors with independent verification of such person's identity satisfactory to the DNO's solicitors. Such verification will be a declaration and photograph as required in the application for a British Passport.
- 2.3.** Your Works.
- 2.3.1.** You must carry out and complete Your Works and such other works on Your Site that are reasonably necessary to enable the DNO to carry out its Works. You shall carry out such works referred to in this paragraph 2.3.1 at your own cost before the DNO begins its Works on Your Site and they must be of the quality specified by the DNO, comply with relevant Legislation and be carried out in such a manner that will enable the DNO to carry out its Works in a continuous, efficient and logical progression so that the Works can be completed and Energisation can take place on or before the date given in the Notice for completion of the Works.
- 2.3.2.** The DNO may inspect Your Works and where Your Works are not in conformity with your obligations under the Notice You must rectify all shortcomings at your own expense. Each subsequent inspection required by the DNO must be paid for by You and shall be carried out after the DNO's receipt in cleared funds of the re-inspection fee.
- 2.3.3.** You must ensure that Your Works, and any Premises owned, occupied, controlled or to be constructed by You, are designed and so constructed that the operation of the Distribution System shall not cause any nuisance, inconvenience, annoyance or disturbance to any person using or occupying such Premises or those adjoining it.
- 2.4.** Provision of Information and Assistance.
- 2.4.1.** You must give to the DNO, free of charge and within a reasonable time to prevent delay and/or disruption to the Works, all necessary and relevant data and information in your possession or under your control relating to the Works, Your Installation, Your Site and Your Works.
- 2.4.2.** You are responsible for errors, omissions or discrepancies in drawings and written information supplied by You and shall pay the DNO the Costs it incurs as a consequence of such errors, omissions or discrepancies.
- 2.4.3.** You must give at your expense such assistance in connection with the Works as reasonably requested by the DNO.
- 2.5.** Contamination.
- 2.5.1.** It is your responsibility to identify whether Your Site is contaminated and to remove any contamination at your expense before the DNO begins the Works.
- 2.5.2.** The DNO may suspend the Works while contamination, wherever discovered, is removed and recover from You the additional Costs it incurs as a result of such suspension and (if it shall remove the same) removal.
- 2.5.3.** If contamination migrates to or from the Site during or after the Works You shall indemnify the DNO against all Costs, claims, demands and liabilities it incurs as a result of such migration other than those arising from its negligence.
- 2.6.** Connection Agreement.
- 2.6.1.** In the absence of a Connection Agreement made between You and the DNO relating to the Premises at which the Works are to be carried out You shall be bound by section 1 of the National Terms Of Connection. You shall be bound also by section 2 of the National Terms of Connection if the Premises for which the connection is to be provided by the Works will be measured by Whole Current Settlement Metering and by section 3 of the National Terms of Connection if the Premises for which the connection is to be provided by the Works will be measured by C/T Settlement Metering and by section 4 of the National Terms of Connection if the Premises for which the connection is to be provided by the Works is not an LEDN but will be measured on an un-metered settlement basis.
- 2.6.2.** If the Works are for the making or variation of a connection to a LEDN between which and the Distribution System there is no Settlement Meter You will be bound by section 1 and section 3 of the National Terms of Connection and You are and will remain responsible for ensuring that:
- 2.6.2.1** the owner and, if different, the occupier of any Premises connected to the LEDN do not by any act or omission do anything that will cause the owner and, if different, the operator of the LEDN to breach the National Terms of Connection; and
- 2.6.2.2** all connections to the LEDN have electricity consumption measured by whole current

Settlement Metering, C/T Settlement Metering or measured on an un-metered settlement basis.

2.6.3. Subject to paragraph 2.7.2 neither You nor anyone occupying the Premises for which connection to the Distribution System is to be made will have any express or implied entitlement to any Capacity on the Distribution System on and following the 12 month anniversary of completion of the Works beyond that then taken up and used by You and/or such person.

2.7. Breach of Your Obligations.

2.7.1. If You are in breach of any of your obligations under the Notice the DNO's estimate of the Costs that may be incurred by the DNO as a result of such breach shall be added to the Price and the DNO shall be entitled to such extension of time for the performance of its obligations as reasonably it shall require but in all cases equal at least to the period of delay.

2.7.2. If You are in breach of any of your obligations under the Notice and such breach causes the completion of the Works to be delayed beyond the 12 month anniversary of the date given for the completion of the Works in the Notice You and the occupiers of the Premises for which the connection to the Distribution System is to be made shall lose entitlement to Capacity that You and such occupiers may have pursuant to Paragraph 2.6.3 without further notice to You.

3. The DNO's Obligations

3.1. The Works.

3.1.1. The DNO shall, subject to the provisions of the Notice, design, supply and execute the Works with reasonable skill and care but such duty does not extend to determining the existence of Adverse Ground Conditions.

3.2. Conditions.

3.2.1. The DNO shall not be obliged to begin or continue the Works until:

- (i) it has received the Price (or where applicable the next instalment thereof) and any Costs then due under the Notice in cleared funds; and
- (ii) it has obtained the Land Rights and any Consents on such terms as it shall require to carry out the Works; and
- (iii) You have obtained the Consents as

required in paragraphs 2.2.1, 2.2.2 and 2.2.3 and have provided copies of them to the DNO; and

- (iv) You have provided the information required under paragraph 2.1.1 and 2.4.1 and You have provided access to the Site in accordance with paragraph 2.1.2; and
- (v) You have carried out Your Works in conformity with the Notice; and
- (vi) it has given (following satisfaction of the conditions above in this paragraph 3.2.1) notice required by the Traffic Management Act 2004 and NRSWA and any period required to have elapsed before that part of the Works is commenced, has elapsed; and
- (vii) any required reinforcement of the Distribution System and transmission system that does not form part of the Works has been completed.

3.3. Consents and Land Rights.

3.3.1. The DNO shall use reasonable endeavours to obtain, at Your Cost, the Land Rights and the Consents free of conditions that it requires for any Works that are not on Your Site.

3.3.2. If the Consents and/or Land Rights that the DNO requires pursuant to paragraph 3.3.1 cannot be obtained in accordance with its terms, lapse, are terminated or revoked, it may in its absolute discretion exercise its powers under the Act and in such case:

- (i) the DNO may (but shall not be obliged to) exercise its powers under the Act without first having notified You of its intention to do so and without having regard to any comments that You may make;
- (ii) as a condition precedent to it continuing to use such powers You must pay to the DNO its estimate of the Costs of preparing for and exercising those powers, the costs of proceedings before the Lands Tribunal, and of the compensation that it considers may be awarded by the Lands Tribunal; and
- (iii) if the DNO's estimates pursuant to (ii) above are too low You must pay the shortfall before it proceeds further. If its estimates are too high the DNO will repay the excess to You within 21 days of the conclusion of all proceedings.

3.3.3. If the DNO does not within 6 months of your acceptance of the Notice acquire the Land Rights or the Consents under paragraph 2.2.4 or paragraph 3.3.1, or it is not given

access by You as required by paragraph 2.1.2, the DNO's obligations under the Notice may be terminated by it. You may make another request to the DNO to make a connection to its Distribution System.

4. Variations to Works/Your Works

- 4.1. Either Party may at any time propose Variations by notice in writing to the other Party. Subject to paragraph 4.6, no Variation shall be effective unless agreed by both Parties in writing.
- 4.2. As soon as possible after having received a request for, or proposed, a Variation (other than in relation to any required by the DNO under paragraph 4.6 to which the provisions of paragraphs 4.1- 4.4 shall not apply) the DNO will notify You:
 - (i) if, in its reasonable opinion, the Variation will involve an addition to or deduction from the cost of the Works; and
 - (ii) what it then considers to be the effect upon their completion date.
- 4.3. The Cost incurred by the DNO in preparing a Variation requested by You shall be added to the Price whether or not You instruct the DNO to proceed with the Variation.
- 4.4. Within seven (7) days of the DNO's notification under paragraph 4.2 You must confirm in writing whether the DNO is to proceed with the Variation. The Price shall be adjusted accordingly and any increase in the Price shall be paid with your instruction. Any reduction in the Price shall be re-paid to You within twenty-one (21) days of the later of the agreement of the Variation and receipt by the DNO of a request from You to re-pay such reduction in Price. Where Plant or any work or service has been supplied or is being supplied or an order has been placed for it to be supplied, the Costs of the variation shall be paid by You. Once instruction is given the DNO's obligations shall be deemed to have been modified to such an extent as would enable the DNO to fulfil its obligations without any prejudicial effect upon them.
- 4.5. No Variation shall constitute or be construed as a waiver of any of the Terms and Conditions or obligations of either of us.
- 4.6. If before or during the carrying out of the Works, any part of the Works or their means of execution is affected by:

- 4.6.1. Force Majeure and/or
- 4.6.2. the existence of Adverse Ground Conditions; and/or
- 4.6.3. a Change of Law; and/or
- 4.6.4. the absence of any Consents for the Works or by the terms upon which they are granted or an inability to obtain access to any Premises (including those belonging to the DNO); and/or
- 4.6.5. the DNO's existing ducts being unable to be utilised; and/or
- 4.6.6. any Legislation the object or effect of which is intended to achieve the efficient and/ or secure conduct of the 2012 Olympic Games, or the effects of an event for which emergency Regulations have been made under the Civil Contingencies Act 2004; and/ or
- 4.6.7. industrial action by the DNO's employees or its agents except where such industrial action is solely limited to the employees of the DNO; and/or
- 4.6.8. a network system emergency that causes the DNO (or its affiliates) to re-direct its resources and thereby prevents it from completing action required by regulations under which GS Payments may be required; and/or
- 4.6.9. there is a variation or termination of an agreement referred to in paragraph 6.2.4, the DNO shall be entitled to require a Variation to take account of such and any increase or decrease in the Cost to the DNO consequent upon such circumstance or event shall be added to or deducted from the Price and the date for completion of the Works shall be extended by such time as the DNO considers reasonable but in all cases equal at least to the period of delay except where an event described in paragraph 4.6.8 occurs where the DNO shall only be entitled to an extension of time.

5. Hours of Work

- 5.1. You may request that the Works be carried out at times other than the normal working hours (08.00-16.30 Monday to Friday, public holidays excepted). The DNO may carry out the Works outside normal working hours if in the circumstances it shall be practicable to do so and its estimate of the Costs of doing so shall be added to the Price and be paid by

You in advance of it undertaking such work. If the DNO's estimate is too low it will require that You pay the shortfall of any re-estimate made by it before it proceeds further. If its estimate is too high it will repay the excess to You within 21 days of its completion of that element of the Works to which such estimate related.

6. *Payment*

- 6.1. Terms of Payment**
- 6.1.1.** You shall pay the Price at the time(s) stated in the Notice.
- 6.1.2.** If the DNO becomes entitled to claim Costs; an indemnity under these Terms and Conditions; or any other sum, it will submit an invoice to You and You must pay it within thirty (30) days of its date or before Energisation, whichever is the sooner.
- 6.1.3.** For the purposes of the Housing Grants Construction and Regeneration Act 1996 (and this paragraph 6) a payment becomes due fifteen (15) days after receipt of an invoice by You ('payment due date') and final date for payment shall be fifteen (15) days after the payment due date ('final date for payment').
- 6.1.4.** You shall give notice to the DNO not later than 5 (five) days after the payment due date (determined in accordance with paragraph 6.1.3 above) specifying the amount (if any) of the payment made or proposed to be made, and the basis on which the amount was calculated.
- 6.1.5.** Unless You have served notice under paragraph 6.1.6 You shall pay to the DNO the sum referred to in Your notice under paragraph 6.1.4, or if you have not served a notice under paragraph 6.1.4 the sum referred to in the invoice referred to in paragraph 6.1.3) (the 'notified sum') on or before the final date for payment.
- 6.1.6.** You may give written notice to the DNO not later than 1 (one) Business Day prior to the final date for payment (determined in accordance with paragraph 6.1.3) that You intend to pay less than the notified sum (a 'pay less notice'). Any pay less notice shall specify the sum that You consider to be due on the date the notice is served and the basis on which that sum is calculated.
- 6.1.7.** If payment of any sum payable under these Terms and Conditions is delayed past the final date for payment, the Party entitled to payment is entitled to receive interest on the amount unpaid during the period of delay. The interest shall be at the rate of 4% per annum above the base rate of HSBC Bank plc and shall accrue from day-to-day compounded quarterly. Both Parties are entitled to interest without formal notice and without prejudice to any other right or remedy. The DNO shall not pay interest or give credit for interest received on any element of the Price paid by You in advance of the Works.
- 6.1.8.** If You fail to make any payment to which the DNO is entitled, the DNO shall be entitled:
- (i) to stop the Works until the failure has been remedied, by giving seven (7) days, notice to You in which event the Costs of any demobilisation and of the resumption of the Works shall be paid before resumption of the Works; and/or
 - (ii) to terminate the Notice in accordance with paragraph 12.1.1 whether or not the DNO has previously stopped the Works under this paragraph 6.1.8.
- 6.1.9.** All amounts becoming due under the Notice shall be exclusive of Value Added Tax which, subject to express provision to the contrary, shall be payable in addition thereto and at the rate prevailing at the date upon which payment is due.
- 6.1.10.** If the Works include or comprise Diversionary Works, that element of the Price identified in the Notice as being referable to the Diversionary Works is an estimate only. You will bear all Costs suffered or reasonably incurred by the DNO in performing its obligations in this Notice in relation to the Diversionary Works.
- 6.1.11.** If You are a Highway Authority, a Bridge Authority or a Transport Authority (as defined by respectively Sections 86(1), 88(1) and 91(1) of NRSWA) carrying out major highway works, major bridge works or major transport works (as defined respectively by sections 86(3), 88(2) and 91(2) of NRSWA) which affects or may affect the DNO's Apparatus (as defined by Section 105(1) of NRSWA) that is in a Street, the reference to Costs in paragraph 6.1.10 is a reference to the allowable costs of the measures needing to

be taken in relation to that apparatus and which shall be borne by You and the DNO in the proportions prescribed by The Street Works (Sharing of Costs of Works) (England) Regulations 2000.

6.2. Variations to the Price.

The DNO may vary the Price:

6.2.1. if at the later of:

- (i) the date of your acceptance of the Notice; and
- (ii) the date upon which it places its order with its suppliers of materials or plant to be comprised in the Works,

the price of those materials or plant shall have increased from those included in the Price, the Price may be varied by an amount equal to the increase or decrease (if any) in its suppliers' prices for such materials or plant to be comprised in the Works and that are required to be paid by the DNO by reason of the price of the relevant material or plant being less or more than the relevant price therefor in the Price; and/or

6.2.2. to reflect any change in the Exchange Rate between the date of the Letter and the Exchange Rate prevailing at the date upon which its bank transfers the currency to the payee for the goods and/or services comprised in or required for the Works; and/or

6.2.3. if otherwise than solely because of its breach of this Notice, the Works have not been completed within twelve months of the date of your acceptance of the Notice, the portion of the Price that may be increased is that which is referable to that part of the Works as has not been completed at each such twelve month anniversary disregarding that element of the Works which but solely for the DNO's breach of this Notice would have been completed before the relevant 12 month anniversary. The increased Price shall be calculated in accordance with the DNO's Connection Charge Methodology from time to time issued pursuant to the Licence; and/or

6.2.4. if the Price is apportioned between You and/or a third party and/or the DNO and that third party, varies or terminates the relevant agreement for carrying out the relevant works; and/or

6.2.5. in accordance with paragraph 4.6; and/or

6.2.6. upwards or downwards as the case may be to reflect the DNO's Costs in connection with any relevant Lane Rental Scheme or similar that affects the carrying out of the Works to the extent that such Costs are not already included in the Price.

6.3. Additional Costs

6.3.1. If alterations to the design are required reasonably by the DNO otherwise than due to its want of reasonable skill and care the Cost of making those changes and any changes to the Works shall be borne by You.

6.3.2. The Costs of obtaining all Consents and the Land Rights required by the DNO lawfully to carry out and retain the Works shall be paid by You in accordance with paragraph 6.1.2 but in any event before Energisation.

6.3.3. If the DNO installs Electric Lines and/or Electrical Plant for itself and/or others in the Site at the same time as it carries out the Works, the Price of such part of the Works shall be apportioned as provided in its Connection Charge Methodology from time to time issued pursuant to the Licence.

7. *Property In The Works*

7.1. The Works shall form part of the Distribution System and shall be owned, operated and maintained by the DNO.

8. *Copyright of Documents*

8.1. Each Party owns the copyright in all documents and data created or provided by it for use in connection with the Works, Your Works and Your Installation as the case may be and each Party hereby grants a non-exclusive, irrevocable, royalty free licence to the other Party to use such documents and data solely for the purposes of performing their respective obligations under this Notice and in the case of the DNO for the purposes of owning, operating and maintaining its Distribution System. Except with the other Party's prior written consent neither Party shall make copies or permit copies of such documents or data to be made nor may the other Party use or permit those documents or that data to be used other than in accordance with this paragraph 8.1.

9. Force Majeure

- 9.1. The DNO may suspend the progress of the Works at any time owing to Force Majeure.
- 9.2. If suspension as a result of Force Majeure has continued for more than ninety (90) days You or the DNO may terminate the Notice, in which event paragraph 12.3 shall apply.
- 9.3. If following suspension under paragraph 9.1 the DNO proceeds with the Works, You must pay to the DNO, before the DNO resumes the Works, the Costs incurred as a result of the suspension.

10. Liability

- 10.1. Save in respect of any fraudulent misrepresentation it has made or having caused the death of or personal injury to any person by its negligence (as to which in each case no limitation or exclusion of liability shall apply) and subject to paragraph 17.10:
 - 10.1.1. the DNO will be liable to You (and any third party) only for its negligent act or omission that causes delay in completing the Works and then only in the amount of the GS Payment paid or payable in relation to such delay (allowance being made therefrom in respect of any ex gratia payment paid or agreed to be paid) and in respect of physical damage only in a sum or sums that in the aggregate does not exceed the lower of the reasonable Cost of making good any physical damage caused by the DNO and the Price excluding Value Added Tax and after deducting therefrom any discount allowed by the DNO pursuant to the regulations referred to in paragraph 6.
 - 10.1.2. the DNO will not be liable to You for any special, indirect or consequential damage or loss nor for any economic loss, loss of profit, loss of opportunity, loss of savings, loss of goodwill, loss of use, or any like losses.
- 10.2. If the only works to be carried out by the DNO are Diversionary Works and they are otherwise un-related to the making or modification of any connection to the Distribution System paragraph 10.1.1 shall not apply and subject to paragraphs 10.1 and 10.3, the DNO will not be liable to You (or any third party) for breach of these Terms and Conditions or any tortious (including negligent act or omission) or otherwise in a sum or

sums that in the aggregate exceeds the Price excluding Value Added Tax.

- 10.3. Each of us shall be liable to the other for and shall indemnify the other against all claims in respect of personal injury or death arising from our respective negligence and that of our sub-contractors and their and our officers, employees, servants and agents.
- 10.4. If the DNO shall receive any claim in respect of damage or injury to the Premises of a third party arising out of the execution of the Works, it shall report the claim to You who shall then negotiate the settlement of and pay all sums due in respect of such claim. You must indemnify the DNO in respect of the claim and in respect of all proceedings, damages, Costs, charges and expenses relating to such claim but your obligation to indemnify the DNO does not apply to damage caused by the DNO's negligence.
- 10.5. Each of us shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that we can do so without unreasonable inconvenience or cost.
- 10.6. Set off.
- 10.6.1. The DNO shall be entitled but not obliged at any time or times without notice to You to set off any liability of You to the DNO against its liability to You (in either case howsoever arising and whether any such liability is present or future liquidation or un-liquidated). Any exercise by the DNO of its rights under this paragraph shall be without prejudice to any other rights or remedies available to the DNO under the Notice or otherwise.

11. Assignment

- 11.1. You may not assign or transfer the benefit of the Notice to anyone. The DNO may do so without your consent.

12. Termination

- 12.1. Either of us ('the Aggrieved Party') may (without prejudice to any other right or remedy) by written notice to the other ('the Defaulting Party') terminate the Notice with immediate effect if:
 - 12.1.1. the Defaulting Party commits a breach of any of its obligations hereunder and fails to rectify

- the same (and notify the Aggrieved Party of such rectification) within fifteen (15) days of being notified thereof by the Aggrieved Party; or
- 12.1.2.** the Defaulting Party: becomes bankrupt; makes any composition or arrangement with its creditors; has a proposal for a voluntary arrangement for a composition of debts or a scheme of arrangement approved in accordance with the Insolvency Act 1986; has an application made under the Insolvency Act 1986 in respect of itself to the Court for the appointment of an administrator; has a winding up order made or a resolution for a voluntary winding up passed; a receiver or manager of its business or undertaking is duly appointed; has an administrative receiver as defined in the Insolvency Act 1986 appointed; or possession is taken by or on behalf of any creditor of any property of the Defaulting Party.
- 12.2.** You may terminate the Notice on written notice to the DNO, provided that at the date of the Notice the Works and any part of them are not intended to or do not subsequently form part of or comprise works to provide a connection to anyone other than You. If the Works at the date of the Notice are intended to or subsequently form part of or comprise works to provide a connection to anyone other than You the DNO may after consultation with You subsequently terminate the Notice as it sees fit by written notice to You with immediate effect if such other third party does not accept the notice issued to them by the DNO in connection with such works or any such notice is terminated.
- 12.3.** Without prejudice to any antecedent breach of the Notice by the DNO, upon termination of the Notice by either of us, You shall pay to the DNO all undisputed sums then due and payable or accrued under or in connection with the Notice to the extent necessary to indemnify the DNO against the Costs it has reasonably incurred from the date that your application to carry out the Works was received in connection with the preparation and issuing of Notice and in carrying out the Works, including the Costs of materials or goods reasonably ordered for the Works prior to the date of termination.
- 12.4.** If the DNO terminates the Notice in accordance with paragraph 12.1 or paragraph 12.2, in addition to the payments provided above, You shall pay to the DNO the DNO's Costs of vacating the Site or in the case of a termination in accordance with paragraph 12.2 a reasonable proportion of the DNO's costs of vacating the Site.
- 12.5.** The DNO may terminate the Notice at any time if any one or more of the statutory exceptions to the duty to connect set out in Section 17 of the Act shall apply.
- 12.6.** Paragraphs 2.2.4, 2.5.3, 2.6.1, 2.6.2, 6, 7, 8, 10, 12, 13, 14, 15 and 16 shall survive termination of the Notice.
- 12.7.** If the Notice is terminated for any reason the DNO shall be entitled to carry on and complete so much of the Works as it considers necessary to render the same stable and safe or to comply with any condition attaching to any Consent and/ or Land Right and to ensure that its Distribution System can operate not less effectively than before the commencement of the Works. The Cost properly incurred by the DNO in relation thereto shall be borne by You except where the Notice is terminated due to a breach by the DNO.

13. Notices

- 13.1.** Any notice or consent given under the Notice shall have been properly given only if in legible writing and sent by first class prepaid letter post, by hand, or by facsimile transmission to the address of the Party to be served specified in the Notice or in either case to such other address as has been given to that other in accordance with this paragraph 13.
- 13.2.** Any notice given by post shall be deemed to have been given two working days after it was sent and a notice delivered by hand or by facsimile transmission shall be deemed to be served upon actual delivery or transmission.

14. Law

- 14.1.** The Notice shall be governed by and construed in accordance with the law of England and Wales.

15. *Entire Agreement*

- 15.1. The Notice is the entire agreement between us and replaces all previous correspondence and any previous understanding between us. Neither of us has entered the Notice in reliance on any statement that is not set out fully in the Notice. Nothing in this paragraph shall exclude liability for fraud.

16. *Non-Waiver*

- 16.1. None of the provisions of the Notice shall be considered waived by either of us except when such waiver is expressly given in writing.
- 16.2. No delay by act or omission by either of us in exercising any right power privilege or remedy under the Notice shall impair such right power privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right power privilege or remedy shall not preclude any other future exercise thereof or the exercise of any other right power privilege or remedy.

17. *Reservation of Capacity*

- 17.1. You may (but are not obliged to) Reserve the Outstanding Capacity as an integer in kVA on the Distribution System in accordance with the provisions of this paragraph 17.
- 17.2. The right to Reserve Outstanding Capacity is conditional upon:
- 17.2.1. You agreeing as part of the Works to the installation of and the payment to the DNO of the Costs of measurement capability to allow the Outstanding Capacity to be determined in accordance with this Notice;
- 17.2.2. the Works not being only Diversionary Works; and
- 17.2.3. either the Works being for a Speculative Development or You or a third party has not entered into an agreement with a supplier of electricity in connection with the Exit Point.
- 17.3. To Reserve the Outstanding Capacity on the Distribution System You must send the Reservation Application with a copy of the Notice to the DNO at the Reservation Application Address:

- 17.3.1. for reservation during the Initial Reservation Period, not more than four nor less than two calendar months before the start of the Initial Reservation Period; and
- 17.3.2. for reservation during each Subsequent Reservation Period, not more than four nor less than two calendar months before the end of the Initial Reservation Period or the preceding Subsequent Reservation Period (as the case may be).
- 17.4. Within twenty-one days of its receipt of the Reservation Application the DNO shall give You the Reservation Information.
- 17.5. Following Your receipt of the Reservation Information, if You wish to Reserve the Outstanding Capacity or part thereof upon the Distribution System for use at the Exit Point for the Initial Reservation Period or the relevant Subsequent Reservation Period (as the case may be) You must send the Reservation Confirmation to the DNO at the Reservation Application Address within ten days of your receipt of the Reservation Information and at that time pay to the DNO the corresponding Reservation Fee referable to that portion of the Outstanding Capacity that You wish to reserve.
- 17.6. Upon receipt of the Reservation Confirmation and full payment the Reservation Fee in cleared funds the DNO will Reserve that part of the Outstanding Capacity that you have paid to reserve by payment of the Reservation Fee for the Initial Reservation Period or the relevant Subsequent Reservation Period only.
- 17.7. You cannot Reserve any Outstanding Capacity upon the Distribution System for use at the Exit Point in an amount greater than the lesser of the:
- 17.7.1 capacity reserved by You in the Initial Reservation Period; or
- 17.7.2 capacity reserved in the immediately preceding Subsequent Reservation Period.
- 17.8. Where an amount of Outstanding Capacity is not Reserved for the Initial Reservations period or the relevant Subsequent Reservation Period (as the case may be) this paragraph 17 shall cease to apply and You shall have no further right to Reserve such Capacity under this Notice.
- 17.9. Time is of the essence for the purposes of this paragraph 17.

- 17.10. Save in respect of any fraudulent misrepresentation it has made or having caused the death of or personal injury to any person by negligence (as to which in each case no limitation or exclusion of liability shall apply), the DNO's liability to You for breach of its obligations under this paragraph 17 (including negligence) to Reserve Outstanding Capacity pursuant to a notice under paragraph 17.3 is limited to an amount calculated as:

$$\frac{\text{Price x CY}}{\text{Capacity}} = \text{the DNO's liability pursuant to this paragraph 17.10}$$

Where CY is the capacity no longer available.

The capacity that is no longer available is the lesser of the Capacity that You have Reserved in the relevant Reservation Period less the Capacity that DNO has provided to You for that Reservation Period.

- 17.11. If You or a third party require a Connection at the Exit Point the DNO will require such party to enter into the Connection Agreement.

18. *Reference to Ofgem*

- 18.1. If You have followed the DNO's complaints procedure **available at www.ukpowernetworks.co.uk** (navigate to Customer Services then click on the Complaints tab) and You are unable to resolve a dispute about the DNO's duty to connect and the conditions under which that duty is discharged (sections 16-21 of the Act) You have the right to contact the Energy Ombudsman which is the independent ombudsman for gas and electricity consumers. The Energy Ombudsman's contact details are provided below.

Telephone: 0845 055 0760

Fax: 0845 055 0765

Email: enquiries@energy-ombudsman.org.uk

Website: www.energy-ombudsman.org.uk

Energy Ombudsman

PO Box 966

Warrington WA4 9DF

In addition, You can refer the dispute to the Gas and Electricity Markets Authority (known as Ofgem) within twelve months of the date on which your connection was made to our Distribution System. Ofgem will require that You give the DNO and the Energy Ombudsman an adequate opportunity to resolve any complaint or dispute before any action is taken by them. Ofgem's decision will be enforceable as if it were a judgement of the Court and will include such provisions as it considers appropriate which may include who pays its costs in determining the dispute. Ofgem may give directions to us as to the terms on which we are to make or maintain a connection pending determination of the dispute.

Ofgem can be contacted at 9 Millbank, London SW1P 3GE or via their website **www.ofgem.gov.uk**

If You have concerns that cannot be resolved with your normal point of contact in relation to the works, please contact:

*Customer Relations, UK Power Networks,
Fore Hamlet, Ipswich IP3 8AA*

Tel: 0800 028 4587

Email: customer.relations@ukpowernetworks.co.uk

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Registered office: Newington House,
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Registered number: 3870728 registered in England and Wales

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