

DATED \_\_\_\_\_ 200[ ]

[NORTHERN ELECTRIC DISTRIBUTION LIMITED][YORKSHIRE ELECTRICITY DISTRIBUTION  
PLC]

and

[INDEPENDENT CONNECTIONS PROVIDER] LIMITED

Draft 06.07.07

NETWORK ACCESS AGREEMENT



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THIS AGREEMENT by way of a deed dated 200[ ] is made BETWEEN:-

- (1) [INDEPENDENT CONNECTIONS PROVIDER] [LIMITED (CN [ ]) whose registered office is at [address]] [of [ ]]] (the “Independent Connections Provider” or “ICP”); and
- (2) [NORTHERN ELECTRIC DISTRIBUTION LIMITED (CN 2906593)] or [YORKSHIRE ELECTRICITY DISTRIBUTION PLC (CN 4112320)] whose registered office is at Lloyds Court, 78 Grey Street, Newcastle upon Tyne, NE1 6AF (the “Distributor”).

## BACKGROUND

- (A) The Distributor is the licensed operator of the Distribution System in the Distribution Services Area (both as defined below).
- (B) The Independent Connections Provider wishes to carry out live jointing work on the Distribution System.
- (C) The Distributor will permit the Independent Connections Provider to carry out live jointing work subject to the terms of this framework Agreement.

IT IS AGREED as follows:-

### 1. INTERPRETATION

1.1 In this Agreement the following expressions have the following meanings:-

- |                      |   |
|----------------------|---|
| “Act”                | means the Electricity Act 1989;   |
| “Adoption”           | means the adoption of the Works by the Distributor strictly in accordance with this Agreement such Works then forming part of the Distribution System and the expressions “Adopt” and “Adopted” shall be construed accordingly;   |
| “Adoption Agreement” | means an agreement for the adoption of assets built by someone other than the Distributor;  |
| “Applicable Laws”    | means as the context requires, all or any laws, statutes, proclamations, bye laws, directives, regulations, statutory instruments, rules, orders, rules of Court, delegated or subordinate legislation, rules of common law, or any European Union legislation in any time or from time to time in force in the United Kingdom and which are or may become applicable to this Agreement, any agreement or document referred to in this Agreement or the performance of the Independent Connections Provider’s obligations under this Agreement and including the Health and Safety at Work Act 1974, industry standards and environmental laws; |
| “Authorised Worker”  | means a worker who is suitably authorised in a manner determined by the Distributor and permitted by the Distributor to perform or assist in the performance of the   |



“Distribution Services”	means the services to be provided by the Distributor under Part C of the Distribution Licence;
“Distribution Services Area”	means the area for which the Distributor is required to provide Distribution Services under Part C of the Distribution Licence;
“Distribution System”	means the electrical distribution system of the Distributor of which the Works will, following Adoption of the Works, form part. The Distribution System shall include any part or parts of the Works that have been Adopted;
“Energised”	means in relation to the Distribution System, means that an electrical current flows along the part of the Distribution System affected by the Works or to which the Works are to be connected, and the expression “Energisation” shall be construed accordingly;
“Group”	means in relation to any person, a subsidiary of that person or a holding company of that person or any other subsidiary of that holding company;
“Highway”	has the meaning given to it by section 48 of the New Roads and Street Works Act 1991;
“Incident Report Centre”	means the Distributor’s nominated point of contact for the reporting of dangerous occurrences involving the Distribution System and its assets;
“Intellectual Property Rights”	<p>means any and all of the following:-</p> <ul style="list-style-type: none"> <li>(a) rights in inventions, patents, registered designs, design rights, know-how, trade marks and service marks (whether registered or not);</li> <li>(b) any trade, brand or business names and any distinctive sounds used to differentiate the goods and services of a business;</li> <li>(c) utility models;</li> <li>(d) copyright (including all such rights in computer software and databases);</li> <li>(e) moral rights; and</li> <li>(f) any rights or forms of protection of a similar nature to any of the above and having equivalent or similar effect to any of them</li> </ul> <p>and all or any other intellectual or industrial property rights whether or not registered or capable of registration in each case whether subsisting now or in the future in the United Kingdom or any other part of the world and including all applications and rights to apply for any of the same</p>

	together with all or any goodwill relating to the same;
“Liabilities”	includes, in relation to any matter, all costs, charges, claims, fines, penalties, expenses, demands, proceedings and other liabilities incurred or suffered (including legal costs) by a person in relation to such matter;
“Live Distribution Asset”	means an energised electrical asset which is part of the Distribution System, save that electrical assets constructed by the Independent Connections Provider shall not be Live Distribution Assets until such assets are Adopted;
“Live Jointing Procedures”	means the procedure set out in [the Requirement] by which any part of the Works is connected to the Distribution System in circumstances when the part of the Distribution System to which the connection is to be made is Energised and “Live Jointing” shall be construed accordingly;
“Nominated Representative”	means the individual appointed as the relevant party’s representative pursuant to clause 7 and any successor to that individual;
“Programme of Works”	means the programme of Works which the Independent Connections Provider shall agree in writing with the Distributor;
“Qualified Suppliers”	means a supplier of any electrical plant, electric line and/or other equipment and/or materials used in connection with the Works approved by the Distributor;
“Regulations”	includes the Act and the Distribution Code and the Electrical Safety, Quality and Continuity Regulations 2002 and the Construction (Design and Management) Regulations 1994 and any amendments made thereto by Parliament (CDM) and any other relevant statute or statutory instrument including, without limitation, the New Roads and Street Act 1991;
“Relevant Information”	means any relevant information provided by the Distributor which is relevant to the performance of the Works;
“Request”	means the written request for LV mains and service asset connection and adoption submitted in the format set out in Schedule 6 which specifies the work to be done;
“Requirements”	means the safety, technical and interface requirements associated with the Works, set out in the current live jointing requirements policy document set out in Schedule 2;
“Restricted Employee”	means an employee of either party who is or has been involved to a material extent in the performance of the Works (or any of them);

“Restricted Period”	means the period of 12 months from termination of this Agreement;
“Site”	means the site (or sites) at which the Works are to be performed;
“Specification”	means the agreed specification for the Works and the materials used in the performance of the Works as described in Part 2 of Schedule 1 together with the Requirements;
“Warranty Period”	means a period of 2 years commencing on the date the Distributor accepts the Completion and Handover Certificate in accordance with clause 4.16; and
“Works”	means the Live Jointing works or phased portion of the works specified in Part 1 of Schedule 1, including all work to be done and all services and things of every kind to be supplied by the Independent Connections Provider under this Agreement to perform the works.

1.2 In this Agreement:-

- 1.2.1 any gender includes any other gender;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 references to persons include bodies corporate, unincorporated associations, governments, states, partnerships and trusts (in each case, whether or not having separate legal personality);
- 1.2.4 references to clauses and Schedules are to clauses of and Schedules to this Agreement;
- 1.2.5 the Schedules form part of this Agreement and the expression “this Agreement” includes the Schedules;
- 1.2.6 the headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement;
- 1.2.7 any reference to a statutory provision includes a reference to any modification, consolidation or re-enactment of the provision from time to time in force and all subordinate instruments, orders or regulations made under it;
- 1.2.8 a reference to any of the parties includes, where appropriate, persons deriving title under it;
- 1.2.9 the eiusdem generis rule shall not apply, so that general words shall not be given a restrictive interpretation by reason of their being preceded or followed by words indicating a particular class of acts, matters or things;
- 1.2.10 “subsidiary” and “holding company” shall have the meaning given to them by section 736 and 736A of the Companies Act 1985;

- 1.2.11 references to any document (including this Agreement) or a provision of a document shall be construed as a reference to that document or provision as from time to time supplemented, varied or replaced; and
- 1.2.12 references to writing include any method of reproducing words in a legible and non-transitory form.

## 2. **TERM**

This Agreement shall start on the Commencement Date and shall continue, subject to termination in accordance with clause 14, during the Contract Period. The Independent Connections Provider acknowledges that this Agreement permits the Independent Connections Provider to perform the Works during the Contract Period only and the authorisation of the Independent Connections Provider to provide the Works shall end at the end of the Contract Period.

## 3. **FRAMEWORK AGREEMENT**

- 3.1 Each Request constitutes a request by the Independent Connections Provider to perform the Works specified. The Distributor shall only be bound by such Request where an authorised representative of the Distributor confirms in writing that the Works can proceed.
- 3.2 Each Request, when accepted by the Distributor in accordance with clause 3.1, shall constitute a separate contract to perform the Works specified and shall be subject to the terms and conditions of this Agreement.

## 4. **THE WORKS**

- 4.1 The Independent Connections Provider shall, with effect from the Commencement Date, carry out and provide the Works and duly complete the same subject to and in accordance with this Agreement and in particular shall comply with the provisions of Schedule 2.
- 4.2 The Distributor hereby permits the Independent Connections Provider to perform the Works on its Distribution System, subject to the Independent Connections Provider's compliance with the terms of this Agreement.
- 4.3 The Independent Connections Provider shall only use Authorised Workers in the performance of the Works. The Independent Connections Provider shall notify the Distributor of any workers which it requires to become Authorised Workers. The Distributor shall authorise such workers in accordance with the criteria and procedures set out in the Specification.
- 4.4 The Independent Connections Provider shall perform the Works in a proper and workmanlike manner, using proper electrical plant, electric lines, apparatus and other equipment and materials, and at all times perform the Works in accordance with Best Industry Practice and with the Specification.
- 4.5 The Independent Connections Provider shall not commence the Works on the Site or otherwise work on any Live Distribution Assets before advising details to and obtaining the written consent of the Distributor's Nominated Representative and agreeing the Programme of Works with the Distributor's Nominated Representative. The Independent Connections Provider shall complete the Daily Whereabouts Sheet for the following day

and submit it to the Distributor's Nominated Representative at the frequency and giving such period of notice as the parties shall agree.

- 4.6 The Independent Connections Provider shall consult on a regular basis with the Distributor's Nominated Representative for the efficient co-ordination of site activities, audits, inspections and remedial works as specified in the Requirements. Accidents, dangerous incidents, faults or damages involving any Live Distribution Assets or any part of the Distribution System shall be reported immediately to the Incident Report Centre and then to the Distributor's Nominated Representative. In addition, the Independent Connections Provider shall be responsible for providing to the Distributor a detailed report on a monthly basis giving a detailed summary of all such matters described in this clause.
- 4.7 Without prejudice to the generality of clause 4.1, the Independent Connections Provider shall proceed with and execute the Works in order to ensure that it is able to comply with:-
- 4.7.1 the Live Jointing Procedures;
  - 4.7.2 its obligations and perform its duties in respect of the agreed Works;
  - 4.7.3 the agreed Programme of Works;
  - 4.7.4 the Regulations and all Applicable Laws and all regulatory or other third party consents, licences, waivers, approvals and exemptions required in connection with the performance of its obligations under this Agreement; and
  - 4.7.5 the health and safety requirements set out in the Requirements (and shall ensure that its sub-contractors so comply) and shall not perform unauthorised interference or encroachment of the safety clearances of the Distribution System. Notwithstanding this, the Independent Connections Provider shall carry out the Works at all times with proper regard to the health and safety of all persons.
- 4.8 The Independent Connections Provider shall:-
- 4.8.1 ensure the adequacy, stability and safety of the Works and Site;
  - 4.8.2 use its best endeavours to perform the Works, whether on public or private land, in such manner as will preserve the good reputation of the Distributor in its relationship now and in the future with any relevant parties;
  - 4.8.3 ensure that the Works are carried out with all due expedition by the Independent Connections Provider and in any event by an Authorised Worker in accordance with the Programme of Works subject to any extension of time which may be granted by the Distributor's Nominated Representative in his absolute discretion, for any delays caused by circumstances beyond the Independent Connections Provider's control, save in the event of Force Majeure as defined in clause 17, whereupon the Distributor's Nominated Representative shall give a reasonable extension of time to the Programme of Works;
  - 4.8.4 purchase all materials identified in the Programme of Works and the Requirements (which shall comply with the Regulations) from Qualified Suppliers or alternatively (subject to availability) from the Distributor on the Distributor's then standard terms and conditions [or from any other supplier

proposed by the Independent Connections Provider and agreed in writing by the Distributor (and at its sole discretion), such agreement to occur prior to any materials being purchased];

- 4.8.5 send all communications to the Distributor's Nominated Representative;
- 4.8.6 be responsible for the following matters at its own cost:-
  - (a) ensuring the condition of the Site is suitable for tests, inspections, commissioning and connections and keeping the Site free of all obstructions;
  - (b) where requested by the Distributor provide a report in respect of the Site prepared by a structural engineer;
  - (c) rectifying all defects and building at the Site prior to any tests, inspections, commissioning and connections being carried out; and
  - (d) procuring a copy of the most current version of the documentation required by the Regulations for the Distributor's use and providing the same to the Distributor prior to any tests, inspections, commissioning or connections carried out by the Distributor (if any).
- 4.9 The Independent Connections Provider shall provide to the Distributor all information:-
  - 4.9.1 as the Distributor requires to ensure that the Works comply with and that the Distributor fulfils its obligations under all Applicable Laws and industry codes of practice; and
  - 4.9.2 relating to any possible risks to health and safety presented by performance of the Works.
- 4.10 To the extent that any Works fall to be carried out within any Highway the Independent Connections Provider shall:-
  - 4.10.1 obtain all necessary consents and licences from all relevant local authorities and perform all the relevant duties under the Regulations;
  - 4.10.2 carry out the Works without undue delay;
  - 4.10.3 comply with all reasonable requirements of the Distributor's Nominated Representative;
  - 4.10.4 comply with all requirements of the relevant local authorities notified to the Independent Connections Provider; and
  - 4.10.5 notwithstanding Adoption of the whole or any part or parts of the Works, the Independent Connections Provider shall remain responsible for all obligations under the New Roads and Street Works Act 1991 relating to those Works.
- 4.11 If the Distributor or the Independent Connections Provider wishes to vary or modify the agreed Works they shall do so in accordance with the provisions of clause 7.
- 4.12 The Independent Connections Provider shall give and procure that its sub-contractors shall give, the Distributor and any person authorised by the Distributor at all reasonable

times access to the Independent Connections Provider's and its sub-contractors premises, machinery, plant, equipment, documentation relating to the Works, directors, officers, employees and agents and to the Works and to all parts of the Site (including vehicular access) in which the Independent Connections Provider and or any of its sub-contractors carries out the Works, to progress, inspect and test the Works and otherwise to monitor the performance by the Independent Connections Provider of its obligations under this Agreement.

- 4.13 Any inspection, checking, testing or approval of the Works by or on behalf of the Distributor shall not relieve the Independent Connections Provider from any obligations under this Agreement.
- 4.14 The Independent Connections Provider shall, on the day of completion of each part of the Works duly sign and provide a Completion and Handover Certificate to the Distributor, in such form as the Distributor reasonably requires, which shall certify that the Works have been completed in all respects in accordance with the terms of this Agreement. The Independent Connections Provider shall provide to the Distributor all reports that are required to be delivered to the Distributor in connection with such certification. The Independent Connections Provider shall also provide the Distributor with the data specified in the Requirements of the electrical plant, electric lines, apparatus and other equipment that have been installed as part of the Works.
- 4.15 Upon completion of the Works and at any time thereafter, the Independent Connections Provider shall provide to the Distributor such data as specified in the Requirements, including any test results as required by the Distributor.
- 4.16 The acceptance by the Distributor of the Completion and Handover Certificate, which acceptance shall be signified by the signature of the certificate by the Distributor and its notification in writing to the Independent Connections Provider of its acceptance, shall signify the operational handover on the Site of the specified mains and substations assets which have, as a result the Works, become electrically part of the Distributor's network. Subject to the requirements in clause 4.14 and 4.15, and any other requirements in the form set out in Schedule 7 of the Adoption Agreement with the Distributor, this operational handover will signify that operational control for the assets will transfer to the Distributor. For the avoidance of doubt, the acceptance by the Distributor of the Completion and Handover Certificate shall in no way prevent the Distributor requiring the Independent Connections Provider to complete the Works if it is found that the Works have not been performed in accordance with the terms of this Agreement.
- 4.17 If any Works are not supplied or performed in accordance with this Agreement, then notwithstanding the issuing by the Distributor of the Completion and Handover Certificate, the Distributor shall be entitled at any time within the Warranty Period:-
- 4.17.1 to re-perform the Works itself or using a sub-contractor all at the Independent Connections Provider's expense in accordance with this Agreement within [seven] days of such request (and the provisions of this clause 4 shall apply to any such re-performed Works). Such costs may be recovered from the Cash Sum specified in clause 16; or
- 4.17.2 whether or not the Distributor has previously required the Independent Connections Provider to re-perform the Works, to treat this Agreement as discharged by the Independent Connections Provider's breach without liability to the Independent Connections Provider.

- 4.18 If the Distributor exercises its right under clause 4.17 to re-perform the Works either itself or using a sub-contractor, then if any other Works have been performed by the Independent Connections Provider and those other Works have not, in the Distributor's reasonable opinion been performed in accordance with the terms of this Agreement, the Distributor may also require (at the Independent Connections Provider's cost and risk) the re-performance of such Works. In such circumstances, the Distributor shall be entitled to recover from the Independent Connections Provider any loss thereby incurred including the additional costs of the Works being re-performed by another contractor and such costs may be recovered from the Cash Sum specified in clause 16.

## **5. DISTRIBUTOR'S OBLIGATIONS**

The Distributor shall be responsible for:-

- 5.1 the general safety and security of the Distribution System. The Distributor shall, to the extent that it is aware of the same, notify the Independent Connections Provider of any specific health and safety issues which arise out of the proposed Works on or in proximity to its network. For the avoidance of doubt, such obligation does not relieve the Independent Connections Provider from any obligation under this Agreement;
- 5.2 providing the Independent Connections Provider with access to the Distribution System at specific points within the network as agreed in writing between the parties; and
- 5.3 providing the Relevant Information the Independent Connections Provider may require in order to perform its obligations under this Agreement.

## **6. THE INDEPENDENT CONNECTIONS PROVIDER'S OBLIGATIONS AND WARRANTIES**

The Independent Connections Provider warrants that:-

- 6.1 it is fully experienced, qualified, equipped, organised and financed to perform its obligations under this Agreement;
- 6.2 the Works will be provided with reasonable care and skill by appropriately trained personnel in accordance with Best Industry Practice and the terms of this Agreement;
- 6.3 it shall only use Authorised Workers in the performance of the Works; and
- 6.4 it shall perform the Works in accordance with the Requirements, Specification, Regulations and all Applicable Laws and regulations relating to the performance of the Works.

## **7. MEETINGS AND CHANGE CONTROL**

- 7.1 The Independent Connections Provider and the Distributor undertake to hold regular meetings at such times and venues as shall be agreed between the parties at which to discuss the performance of the Works and any other issues arising out of this Agreement. The Independent Connections Provider and the Distributor shall appoint Nominated Representatives who shall attend all such meetings, where possible.
- 7.2 Each party shall immediately replace its Nominated Representative as soon as that person is no longer able or willing to carry out the duties of a Nominated Representative and immediately notify the other party of the name and contact details of that person's replacement.

- 7.3 Any Change to the agreed Works requested by the Distributor shall be submitted to the Independent Connections Provider's Nominated Representative who will provide the Distributor's Nominated Representative with a report evaluating the proposed Change which will cover any issues which arise out of such Change. All Changes requested by the Distributor shall be agreed, subject to an agreement on cost and any technical issues which prevent the Change being implemented.
- 7.4 Any Change to the agreed Works requested by the Independent Connections Provider shall be submitted to the Distributor's Nominated Representative who will provide the Independent Connections Provider's Nominated Representative with a report either agreeing to such Change, requiring such amendments to such proposed Change as it shall consider necessary, or rejecting such Change all at its absolute discretion.
- 7.5 With regard to Changes requested by the Independent Connections Provider, if the Distributor agrees that the proposed Change is acceptable, the parties shall use their reasonable endeavours to carry out the Change. In the event that the Distributor decides not to accept any Change proposed by the Independent Connections Provider, it shall notify its decision to the Independent Connections Provider.

## 8. **CONFIDENTIALITY**

- 8.1 The Independent Connections Provider agrees in relation to the Confidential Information belonging to the Distributor that during this Agreement and for three years afterwards:-
- 8.1.1 it shall keep such information confidential and shall not disclose it to any third party; and
- 8.1.2 it shall use such information only in so far as is necessary to perform this Agreement.
- 8.2 The Independent Connections Provider shall be responsible for any unauthorised disclosure or use of the Distributor's Confidential Information made by any of its employees, agents, or sub-contractors and shall take all reasonable precautions to prevent such unauthorised disclosure or use.
- 8.3 The above restriction as to disclosure and use shall not apply to Confidential Information which:-
- 8.3.1 the Independent Connections Provider can demonstrate by documentary evidence has been in its possession prior to disclosure by the Distributor and not subject to any other obligations as to confidentiality;
- 8.3.2 is required to be disclosed by law, regulation or pursuant to an order of a competent authority, or to a professional adviser; or
- 8.3.3 at the time of receipt by the Independent Connections Provider, is in the public domain other than as a result of breach by the Independent Connections Provider of this clause 8.
- 8.4 The Independent Connections Provider acknowledges that, in relation to the Distributor, Confidential Information includes all information relating to the Distribution System and/or the Live Jointing Procedures.

## 9. **INTELLECTUAL PROPERTY RIGHTS**

- 9.1 Nothing in this Agreement shall give the Independent Connections Provider any rights in respect of any specification or Intellectual Property Rights of the Distributor or of the goodwill associated with any of them.
- 9.2 Without prejudice to the right of the Independent Connections Provider or any third party to challenge the validity of any Intellectual Property Rights of the Distributor, the Independent Connections Provider shall not do or authorise any third party to do any act or omit to do any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of the Distributor.
- 9.3 The Independent Connections Provider shall promptly and fully notify the Distributor of any actual, threatened or suspected infringement of any Intellectual Property Rights of the Distributor which comes to the Independent Connections Provider's notice, and of any claim by any third party so coming to the Independent Connections Provider's notice that the activities of the Distributor infringes any rights of any other person and the Independent Connections Provider shall at the request and expense of the Distributor do all such things as may be reasonably required to assist the Distributor in taking or resisting any proceedings in relation to any such infringement or claim.
- 9.4 The Independent Connections Provider shall not, without the prior written authorisation of the Distributor, use any trade marks (including trade names), whether or not registered, belonging to the Distributor or any sign so resembling the trade marks of the Distributor as to be likely to cause confusion or deception during the term of this Agreement and after its expiry or termination.

## 10. **INDEMNITY**

The Independent Connections Provider shall indemnify the Distributor in full against any and all Liabilities awarded against or incurred or paid by the Distributor as a result of or in connection with:-

- 10.1 breach of any warranty given by the Independent Connections Provider in relation to the Works;
- 10.2 any claim that the Works infringe the Intellectual Property Rights of any other person, except to the extent that the claim arises from compliance with any specification supplied by the Distributor;
- 10.3 any claim made against the Distributor in respect of any breach or alleged breach by the Distributor of any statutory provision, regulation or bye-laws or other rule of law arising from the acts or omissions of the Independent Connections Provider or its employees, agents or sub-contractors;
- 10.4 any liability under regulations relating to hazardous substances or under the Environmental Protection Act 1990 in respect of the Works; and
- 10.5 any act or omission of the Independent Connections Provider or its employees, agents or sub-contractors in supplying and performing the Works, including any injury, loss or damage to persons caused or contributed to by any of their negligence or by faulty design, workmanship or materials (except to the extent that the injury, loss or damage is caused by the negligent act or omission of the Distributor).

## 11. **EXTENT OF LIABILITY**

- 11.1 Nothing in this Agreement shall restrict liability for death or personal injury arising from negligence.
- 11.2 The Independent Connections Provider shall be liable for and indemnify the Distributor in full against any and all Liabilities awarded against or incurred or paid by the Distributor as a result of or in connection with:-
- 11.2.1 any third party claim resulting from the Works;
  - 11.2.2 any failure or part failure of the Distribution System caused by the Independent Connections Provider's act or omission or those of its employees, agents or sub-contractors;
  - 11.2.3 any breach of warranty given by the Independent Connections Provider in relation to the Works;
  - 11.2.4 any non-performance of any of the Works or of any of its obligations under this Agreement; and
  - 11.2.5 any act or omission including negligence or any other tort or breach of statutory duty of the Independent Connections Provider or its employees, agents or sub-contractors in performing the Work.
- 11.3 Neither party shall be liable in respect of any indirect, consequential or economic loss, or for any loss of contract, profit, revenue, production or use which arises out of the negligence or breach of contract or other act, omission or default of the Party liable.
- 11.4 Notwithstanding any other provision of this Agreement (without prejudice to clause 11.1) each party's liability arising under or in connection with this Agreement (whether arising from contract, breach of warranty, tort (including negligence), breach of statutory duty, non-fraudulent misrepresentation, under any indemnity or otherwise) shall be limited to and in no circumstances shall exceed £25,000,000 in aggregate.
- 11.5 Notwithstanding any other provision of this Agreement, each party shall only be liable to the other in contract, tort (including negligence), under any indemnity or otherwise for any liability which may result or arise from any act or omission or default of that party, its employees, agents or sub-contractors. Neither party shall be liable to the other in contract, tort (including negligence), under any indemnity or otherwise to the extent that such liability may result or arise from any act or omission or default of the other party, its employees, agents or sub-contractors or from any failure by the other party to comply with its obligations in this Agreement.
- 11.6 The provisions of this clause 11 shall survive the expiry or termination of this Agreement.

## 12. **INSURANCE**

- 12.1 The Independent Connections Provider shall obtain and maintain in effect for the duration of this Agreement the following policies of insurance with an insurer of good standing and acceptable to the Distributor to meet its liabilities under this Agreement and in respect of any act or default for which it may become liable, to indemnify the Distributor in full under the terms of this Agreement or at common law:-

- 12.1.1 employer's liability insurance of not less than £10,000,000 for each and every incident inclusive of costs and expenses;
  - 12.1.2 public liability insurance written on an occurrence basis of not less than £20,000,000 for each claim or series of related claims; and
  - 12.1.3 professional indemnity insurance of not less than £10,000,000 for each claim or series of connected claims.
- 12.2 The Independent Connections Provider shall within five Business Days of a request by the Distributor, provide proof which is reasonably satisfactory to the Distributor, that each such insurance policy is effective, including certificates from the Independent Connections Provider's insurer, written confirmation from the Independent Connections Provider's insurance broker in a form reasonably satisfactory to the Distributor which confirms that the Independent Connections Provider has insurance which complies with the terms and conditions of this Agreement and written confirmation from the Independent Connections Provider's insurer that the premiums are paid up to date.

### 13. **SUSPENSION**

The Independent Connections Provider shall, on the written instruction of the Distributor, immediately suspend the whole of the Works or any part of the Works pursuant to this clause 13. If pursuant to this clause, the Distributor suspends performance of the whole or any part of the Works for one year, the Agreement may be terminated by the Independent Connections Provider at its option by written notice.

### 14. **TERMINATION**

- 14.1 Subject to prior termination under clause 14.2 either party may terminate this Agreement by giving to the other not less than one month's written notice.
- 14.2 The Distributor may terminate any Request and this Agreement with immediate effect by written notice to the Independent Connections Provider on or at any time after the occurrence of an event specified in clause 14.3.
- 14.3 The events are:-
  - 14.3.1 a safety risk occurs in the Works such that in the opinion of the Distributor the continuation of the Works would represent an unacceptable risk to the health and safety of employees, sub-contractors and members of the public;
  - 14.3.2 the Works causing a significant risk to the distribution network assets or its connected customers;
  - 14.3.3 the Independent Connections Provider is in material breach of the Request or this Agreement and that breach cannot be remedied; or
  - 14.3.4 the Independent Connections Provider is in material breach of a material obligation under the Request or this Agreement which can be remedied but the Independent Connections Provider fails to do so within seven days starting on the day after receipt of written notice from the Distributor; or
  - 14.3.5 the Independent Connections Provider commits more than one breach of the Request or this Agreement and the cumulative effect of such breaches is such that the Distributor reasonably believes that the Independent Connections

Provider would continue to deliver a substandard performance in relation to a substantial portion of its obligations under this Agreement over a reasonable period of the remaining portion of this Agreement; or

- 14.3.6 if any representation or warranty made or repeated by the Independent Connections Provider in the Request or this Agreement or any document referred to in it or in connection with the Request or this Agreement or any such document shall prove to have been incorrect or misleading in any respect as of the time made or repeated; or
  - 14.3.7 if the Independent Connections Provider stops payment of its debts or ceases or threatens to cease to carry on its business or substantially the whole of its business or is unable to pay its debts as they fall due or is deemed unable to pay its debts; or
  - 14.3.8 if the Independent Connections Provider becomes or is declared insolvent or a resolution is passed for the winding up of the Independent Connections Provider or the Independent Connections Provider convenes a meeting of its creditors or makes or proposes to make any arrangement or composition with its creditors or becomes subject to any other insolvency procedure in any jurisdiction or any person takes any step to appoint an administrator or a liquidator, administrative receiver, receiver, manager, trustee, custodian or analogous officer is appointed in respect of all or any part of its property, undertaking or assets, or circumstances arise which entitle the court or any person to appoint a receiver and/or manager or administrative receiver or which entitle the court to make a winding up or bankruptcy order or the Independent Connections Provider takes or suffers any similar or analogous action in consequence of debt; or
  - 14.3.9 if it becomes unlawful for the Independent Connections Provider to perform all or any of its obligations under this Agreement or any document referred to in it or any authorisation, approval, consent, licence, exemption, filing, registration or notarisation or other requirement of any governmental, judicial or public body or authority necessary to enable the Independent Connections Provider to comply with its obligations under this Agreement or any document referred to in it or to carry on its business is not obtained or, having been obtained, is modified, revoked, suspended, withdrawn or withheld or fails to remain in full force and effect; or
  - 14.3.10 if the Independent Connections Provider (being a natural person) shall die or become mentally incapacitated, or (being a partnership or other unincorporated association) shall be dissolved or become subject to any bankruptcy or analogous insolvency procedure in any jurisdiction; or
  - 14.3.11 if any event analogous to those set out in clauses 14.3.6 to 14.3.10 shall occur in any jurisdiction in which the Independent Connections Provider is incorporated or resident or carries on business.
- 14.4 For the purposes of clauses 14.3.1 and 14.3.4:-
- 14.4.1 a breach is capable of remedy if time is not of the essence in performance of the obligation and if the Independent Connections Provider can comply with the obligation within the seven day period;
  - 14.4.2 a breach can be material irrespective of whether any actual loss has been incurred or will be incurred as a consequence of the breach or intended breach;

14.4.3 a material breach:-

- (a) means a breach (including an anticipatory breach) which is serious in the widest sense of having a serious effect on the benefit which the Distributor would otherwise derive from a substantial portion of the Request or this Agreement over the term of the Request or this Agreement; and
- (b) includes failure by the Independent Connections Provider to perform the Works in accordance with the Specification or the Requirements.

14.5 The Request or this Agreement may be terminated immediately by the Distributor by notice given at any time to the Independent Connections Provider in the event that the person or persons having Control at the date of this Agreement of the Independent Connections Provider shall cease to have such Control.

## 15. **EFFECTS OF TERMINATION**

15.1 Any expiry or termination of a Request or this Agreement for whatever reason shall not affect any rights or liabilities which have accrued on or before the date of termination or expiry.

15.2 Upon expiry or termination of the Request or this Agreement for any reason:-

- 15.2.1 the provisions of any clause expressed to have effect after expiry or termination of the Request or of this Agreement shall continue to have effect;
- 15.2.2 the Independent Connections Provider shall return, delete or destroy all Confidential Information or other information which has been provided to it by the Distributor in whatever medium in accordance with the instructions of the Distributor;
- 15.2.3 subject as provided in this clause 15, and except in respect of any accrued rights, neither party shall be under any further obligation to the other; and
- 15.2.4 the Independent Connections Provider shall immediately cease performing the Works save that it shall do all such things as shall be necessary to secure the Site and the Works in accordance with Best Industry Practice.

15.3 Following termination of the Request or this Agreement:-

- 15.3.1 either party shall be entitled to exercise any one or more of the rights and remedies given to it under the terms of the Request or this Agreement and the termination of the Request or this Agreement shall not affect or prejudice such rights and remedies; and
- 15.3.2 each party shall be and remain liable to perform all outstanding liabilities under the Request or this Agreement notwithstanding that the other may have exercised one or more of the rights and remedies against it.

## 16. **GUARANTEE/PERFORMANCE BOND AND CASH SUM**

16.1 The Distributor may, if acting reasonably it considers there are defects in electrical plant, electrical lines, all other equipment, apparatus and/or materials used and provided by the Independent Connections Provider for the purpose of the Works and the labour associated with the installation of such equipment and materials, require the

Independent Connections Provider to lodge with the Distributor the Cash Sum for the purpose set out in clause 4.18.

- 16.2 The Independent Connections Provider shall within seven days of a request by the Distributor lodge with the Distributor such Cash Sum. The Cash Sum, less any sums deducted pursuant to clauses 14.17 and 4.18, shall be returned to the Independent Connections Provider within 14 days of the end of the Warranty Period or such earlier period either as the parties agree or a court of competent jurisdiction determines in the event that there are found to be no such defects in electrical plant, electrical lines, all other equipment, apparatus and/or materials used and provided by the Independent Connections Provider for the purposes of the Works and the labour associated with the installation of such equipment and materials.
- 16.3 All electrical plant, electrical lines (as defined in section 64 of the Act) and all other equipment, apparatus and materials used and provided by the Independent Connections Provider for the purpose of the Works and labour associated with the installation of such equipment and materials are guaranteed by the Independent Connections Provider against defects in materials and/or workmanship for the Warranty Period. During the Warranty Period the Independent Connections Provider shall be responsible for, and shall pay to the Distributor on demand, all reasonable costs, fees and expenses incurred and certified as having been incurred by the Distributor in the repair of any defects in such plant, lines, equipment, apparatus and/or materials which are found to be caused by defective materials and/or workmanship or (at the Distributor's discretion) in the replacement of any defective equipment or materials, and, in the case of defective labour, in the re-performance of such labour.
- 16.4 During the Warranty Period the Distributor shall carry out any warranty repair works or maintenance unless it specifically requires the Independent Connections Provider to do so. Where the Independent Connections Provider disputes warranty repair works or maintenance are required, the Distributor shall give the Independent Connections Provider a reasonable opportunity to inspect any sections of the Works that require repair or maintenance. However, if in the opinion of the Distributor, acting reasonably, in the event of an emergency it is not practicable to give the Independent Connections Provider a reasonable opportunity to inspect, the Distributor will arrange for the Independent Connections Provider to be provided with a post rectification report as to the location nature and extent of the defects rectified.
- 16.5 Notwithstanding the provisions of this clause 16, if so required by the Distributor, the Independent Connections Provider will procure that within 30 days of the date of it being so requested, its ultimate holding company shall enter into a parent company guarantee in the form set out in Schedule 3 to this Agreement.

## 17. **FORCE MAJEURE**

- 17.1 "Force Majeure" means any event or circumstance preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including:-
- 17.1.1 acts of God, explosion, flood, lightning, storm, fire or accident;
  - 17.1.2 act of terrorism or malicious damage;
  - 17.1.3 war, hostilities (whether war has been declared or not), invasion, act of foreign enemies;

- 17.1.4 rebellion, revolution, insurrection, military or usurped power or civil war;
  - 17.1.5 riot, civil commotion or disorder;
  - 17.1.6 any non-availability for any reason of the whole or any part of the Internet;
  - 17.1.7 acts, restrictions, regulations, bye-laws, refusals to grant any licences or permissions, prohibitions or measures of any kind on the part of any government authority; and
  - 17.1.8 import or export regulations or embargoes.
- 17.2 If either party is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure, that party shall immediately serve written notice on the other party specifying the nature and extent of the circumstances giving rise to Force Majeure. Subject to service of such notice and to clause 17.4, neither party shall be liable for delay in performing or failure to perform its obligations under this Agreement if such delay or failure results from Force Majeure. Such delay or failure shall not constitute a breach of this Agreement and the time for its performance shall be extended by such period as is equal to the delay by which performance is prevented. If the affected party does not give the notice referred to in this clause 17.2, it forfeits its rights under this clause 17.
- 17.3 If either party is prevented from performance of its obligations for a continuous period in excess of three months by reason of Force Majeure, the other party may terminate this Agreement immediately on service of written notice upon the party so prevented, in which case neither party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist and clause 15 shall apply.
- 17.4 The party claiming to be prevented or delayed in the performance of any of its obligations under this Agreement by reason of Force Majeure shall take all steps as are necessary to bring the Force Majeure event to a close or to find a solution by which the Agreement may be performed despite the continuance of the Force Majeure event and in any event will use all reasonable efforts to mitigate the effects of the Force Majeure event on the performance of its obligations.
- 17.5 So long as the event of Force Majeure subsists, the Distributor may contract with other persons for the performance of the Works which the Independent Connections Provider fails to supply in accordance with this Agreement.

## 18. **NON-SOLICITATION**

- 18.1 For the duration of this Agreement and for the Restricted Period, neither party shall (except with the prior written consent of the other party) solicit (with a view to offering employment) or otherwise seek to entice away from the employment of the other party any Restricted Employee. For the avoidance of doubt, this restriction does not prevent employment arising genuinely from public advertisement placed by either party or a request for employment initiated exclusively by the Restricted Employee.
- 18.2 The restriction set out in clause 18.1 is considered reasonable by the parties and each of them acknowledge (having taken legal advice) that the provisions of clause 18.1 are necessary for the protection of the proprietary and commercial interests of the other.

18.3 In the event of breach by either party of clause 18.1 during the Restricted Period, that party shall pay to the other immediately upon receipt of a written demand (and without prejudice to any other rights and remedies available to that party) a sum equivalent to 50% of the gross annual salary (calculated as at the date of termination) of the relevant Restricted Employee.

## 19. **DISPUTE RESOLUTION**

19.1 If a dispute arises in connection with this Agreement, the Nominated Representatives of the parties shall, in the first instance, use their reasonable endeavours to negotiate in good faith and settle amicably the dispute within two weeks from the day the dispute first arises.

19.2 Should the Nominated Representatives not be able to resolve the dispute between them within two weeks, the dispute shall be referred to senior executives of each of the parties who have the authority to settle the same.

19.3 If the parties' senior executives are unable to resolve the dispute within a further two weeks, the parties will attempt to settle the dispute by mediation in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure.

19.4 To initiate a mediation under clause 19.3, a party must give notice in writing ("ADR Notice") to the other party requesting a mediation in accordance with this clause. A copy of the ADR Notice shall be sent to CEDR by the party giving it.

19.5 The procedure in the CEDR's Model Mediation Procedure will be amended to take account of:-

19.5.1 any relevant provisions in this Agreement; and

19.5.2 any other additional agreement which the parties may enter into in relation to the conduct of the mediation.

19.6 The mediation will start not later than [28] days after the date of any ADR Notice.

19.7 The commencement of a mediation will not prevent the parties commencing or continuing court proceedings or an arbitration.

19.8 Neither party may terminate the mediation until the other party has made its opening presentation and the mediator has met each party for at least one hour. Thereafter, paragraph 14 of the CEDR's Model Mediation Procedure will apply.

## 20. **ASSIGNMENT**

The Independent Connections Provider shall not, without the prior written consent of the Distributor, assign, transfer, charge, dispose of or deal in any other manner with this Agreement or any of its rights or beneficial interests under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement.

## 21. **PUBLICITY**

Neither the Independent Connections Provider nor the Distributor shall, without the prior written consent of the other, advertise, publicly announce or make any communication concerning this Agreement.



to the specific events to which it is stated to relate and not to any other events whether past or future.

23.3 The rights and remedies provided by this Agreement are cumulative and (unless otherwise provided in this Agreement) are not exclusive of any rights or remedies provided by law.

#### 24. **NO PARTNERSHIP, AGENCY OR EMPLOYMENT**

Nothing in this Agreement or any arrangement contemplated by it shall constitute either party a partner, agent, fiduciary or employee of the other party and the execution, completion and performance of this Agreement shall not confer on any party any power to bind or impose any obligations to any third parties on the other party or to pledge the credit of the other party.

#### 25. **VARIATION**

No amendment or variation of the terms of this Agreement shall be effective unless made or confirmed in writing and signed by all the parties to this Agreement.

#### 26. **SEVERANCE**

26.1 If any provision of this Agreement shall be found by any court or body or authority of competent jurisdiction to be invalid or unenforceable, such provision shall be severed from the remainder of this Agreement which shall remain in full force and effect to the extent permitted by law.

26.2 If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision was deleted, the provision in question shall apply with such modifications as may be necessary to make it valid.

#### 27. **PAYMENT**

27.1 If either party does not pay any sum payable under this Agreement when due then without prejudice to the other party's other rights under this Agreement that sum shall bear interest from the due date until payment is made in full, both before and after any judgement at four per cent per annum over National Westminster Bank plc base rate from time to time.

27.2 The Independent Connections Provider shall pay to the Distributor any sum certified as owing to the Distributor under this Agreement (if any) within 14 days of the relevant certificate. In the event of payment not having been made within the 14 day period the Distributor may without further notice deduct from the Cash Sum the certified sum or demand the certified sum be paid under the Performance Bond.

#### 28. **SUB-CONTRACTING**

The Independent Connections Provider shall not sub-contract any of its obligations without the Distributor's prior written consent under this Agreement (such consent to be given or withheld at the sole discretion of the Distributor).

#### 29. **GOVERNING LAW AND JURISDICTION**

29.1 This Agreement is governed by and shall be construed in accordance with the laws of England and Wales.

- 29.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Agreement (or any documents entered into in accordance with its provisions) (in this clause 29, "Proceedings") and, for such purposes, irrevocably submits to the exclusive jurisdiction of the courts of England and Wales.
- 29.3 Each party irrevocably waives any objection which it might at any time have to the courts referred to in this clause 29 being nominated as a forum to hear, determine and settle any Proceedings and agrees not to claim that any such courts are not a convenient or appropriate forum.
- 29.4 Each party agrees that the process by which any Proceedings are begun or any document relating to such Proceedings may be served is in accordance with clause 22. Each party undertakes to maintain an address for service at all times in England and Wales and to notify the other party in advance of any change from time to time of the details of such address in accordance with the manner prescribed for service of communications under clause 22. Nothing contained in this clause 29 shall affect the right to serve process in any other manner permitted by law.

### 30. **RIGHTS OF THIRD PARTIES**

This Agreement does not create, confer or purport to create or confer any benefit or right enforceable by any person not a party to it (except that a person who is a permitted successor to or assignee of the rights of a party to this Agreement shall be deemed to be a party to this Agreement).

### 31. **ENTIRE AGREEMENT**

- 31.1 This Agreement and the documents referred to in it, constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Agreement but without prejudice to the rights and liabilities of the parties accrued before the date of this Agreement.
- 31.2 The terms of this Agreement govern this Agreement and its subject matter to the exclusion of any terms and conditions which the Independent Connections Provider purports to apply at any time or which are implied by trade, custom or course of dealing.
- 31.3 Each of the parties acknowledges and agrees that:-
- 31.3.1 in entering into this Agreement and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement; and
- 31.3.2 its only remedy in respect of statements, representations, warranties or understandings made or repeated in this Agreement or in relation to this Agreement shall be for breach of contract.
- 31.4 Nothing in this clause 31 shall operate to limit or exclude any liability for fraud.

32. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts all of which taken together constitute one and the same document and any party may execute this Agreement by signing any one or more of such counterparts.

IN WITNESS whereof this Agreement by way of a deed has been entered into on the date specified on page 1.

**SCHEDULE 1**

**Part 1 - The Works**

[       ]

**Part 2 - The Specification**

[       ]

**SCHEDULE 2**

**Current Live Jointing Requirements Policy Document**

**SCHEDULE 3**

**Parent Company Guarantee**

**SCHEDULE 4**  
**Adoption Agreement**

**SCHEDULE 5**

Daily Whereabouts Sheet

**SCHEDULE 6**

Form of Request

EXECUTED AS A DEED by )  
[INDEPENDENT CONNECTIONS )  
PROVIDER] LIMITED acting by:-

Director

Director/Secretary

EXECUTED AS A DEED by [NORTHERN )  
ELECTRIC DISTRIBUTION )  
LIMITED]/[YORKSHIRE ELECTRICITY )  
DISTRIBUTION PLC] acting by:- )

Director

Director/Secretary