

**NETWORK ACCESS AGREEMENT  
(INDEPENDENT CONNECTION PROVIDER)**

**between**

**SOUTHERN ELECTRIC POWER DISTRIBUTION PLC**

**and**

**[ICP COMPANY NAME]**

**Project Reference: [SSEN Project Number]**



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## FORM OF AGREEMENT

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_.

## BETWEEN

1. Southern Electric Power Distribution plc, registered number 4094290, a Company registered in England and Wales whose registered office is at No. 1 Forbury Place 43 Forbury Road, Reading, RG1 3JH (the **Company**);  
and
2. **[ICP Company Name]**, registered number **[Registered No.]**, a company registered in **[Scotland]** **or [England and Wales]** whose registered office is at **[Registered Address]** (the **ICP**),  
each a "**Party**" and together the "**Parties**".

## WHEREAS

- (A) The Company is a Distribution Network Operator.
- (B) The ICP is an Independent Connection Provider.
- (C) **[On [DD/MM/YYYY], [Customer Company Name], registered number [Registered No.], a company registered in [Scotland] or [England and Wales] whose registered office is at [Registered Address] (the Customer) accepted an offer dated [DD/MM/YYYY] from the Company to provide a connection to its Distribution System at the Point of Connection (the Connection Offer);]**  
**OR**  
**[On [DD/MM/YYYY], the ICP accepted an offer dated [DD/MM/YYYY] from the Company to provide a connection to its Distribution System at the Point of Connection (the Connection Offer). For the purposes of this Agreement and where the context requires the ICP shall also be the "Customer";]**
- (D) **[The Customer has appointed the ICP as its agent to carry out and complete the Contestable Works at the Site; and] delete this sentence if not applicable**
- (E) The Company has agreed to grant the ICP access to the Distribution System in order to carry out those works on the terms set out in this Agreement.

**NOW IT IS AGREED AS FOLLOWS:**

1. In this Agreement words and expressions shall have the meanings as are respectively assigned to them in the Definitions in Schedule 1.
2. In consideration of the Company assuming its obligations under this Agreement, the ICP shall perform all of its obligations under this Agreement in accordance with the provisions of this Agreement.
3. All schedules annexed to this Agreement are hereby incorporated into and made a part of this Agreement as though fully set forth herein.

This Agreement has been entered into on the date stated at the beginning of it (see page 3).

**Signed for and on behalf of the  
Company:**

SOUTHERN ELECTRIC POWER DISTRIBUTION PLC

**Signature:**

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**Name of Company's  
Representative:**

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**Designation:**

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**Signed for and on behalf of the  
ICP:****[ICP COMPANY NAME]****Signature:**

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**Name of ICP's Representative:**

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**Designation:**

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## SCHEDULE 1: GENERAL CONDITIONS

### 1 Definitions and Interpretation

1.1 In this Agreement, except where a different interpretation is necessary in the context, the words and expressions set out below shall have the following meanings:

<b>Accreditation</b>	means appropriate accreditation under NERS and “ <b>Accredited</b> ” shall be construed accordingly;
<b>Adoption</b>	means the transfer by the ICP to the Company of property in and responsibility for the Contestable Connection Works or a section thereof under the terms of an Adoption Agreement;
<b>Adoption Agreement</b>	means an agreement between the Company and the ICP relating, inter alia, to the adoption of the Contestable Connection Works by the Company;
<b>Affected Party</b>	shall have the meaning set out in clause 16.2;
<b>Authorisation of ICPs Procedure</b>	means the Company's Authorisation of ICPs Procedure as set out on the Company Website;
<b>Authorised</b>	means approved by the ICP or a Subcontractor (as the case may be) to carry out the Contestable Connection Works;
<b>Authority</b>	means the Gas and Electricity Markets Authority established by section 1(1) of the Utilities Act 2000 or such other authority as replaces it from time to time;
<b>Charging Methodology Statement</b>	means the Company's “ <b>Charging Methodology Statement</b> ” as set out on the Company Website;
<b>Commencement Date</b>	means the date of this Agreement;
<b>Company Equipment</b>	any equipment provided by the Company to the ICP, to be used by the ICP exclusively in respect to the Contestable Connection Works, including keys for Company sites and all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it;
<b>Company Requirements</b>	means the Company's requirements for Independent Connection Providers as set out on the Company Website;
<b>Company Website</b>	means the Company's website at <a href="http://www.ssen.co.uk">www.ssen.co.uk</a> , as updated from time to time;
<b>Confidential Information</b>	means all information disclosed directly or indirectly by the Company to the ICP including but not limited to information relating to the Company's organisations, finances, processes, plans, ideas, designs, know-how, software, technology, market opportunities, ICPs, business activities and intellectual property rights;
<b>Connection</b>	means a network extension and the assets that will connect the network extension to the Electricity Distribution System at the Point of Connection. For unmetered activities, transfers and disconnections will be treated as within the scope of this definition.

<b>Connection Offer</b>	means the accepted offer from the Company to the <b>[Customer]</b> or <b>[ICP]</b> to provide a Connection, particulars of which are set out in this Agreement;
<b>Connection Voltage</b>	means the level of voltage applicable to the Contestable Connection Works, as stated in the Schedule;
<b>Contestable Connection Works</b>	means the connection of electrical equipment by the ICP to the Distribution System at the Point of Connection pursuant to the Connection Offer;
<b>Customer</b>	means a person who has requested the Company to provide a Connection and who's details are set out in this Agreement;
<b>Distribution Network Operator (or "DNO")</b>	means an Electricity Distributor that is a Distribution Services Provider, in relation to that part of its Distribution System that is within its Distribution Services Area;
<b>Distribution Services Area</b>	means, in relation to an Electricity Distributor, the area (if any) specified as such under its Electricity Distribution Licence;
<b>Distribution Services Provider</b>	means any Electricity Distributor in whose Electricity Distribution Licence the requirements of Section B of the standard conditions of that licence have effect (whether whole or in part);
<b>Distribution System</b>	means the system consisting (wholly or mainly) of electric lines owned or operated by an Electricity Distributor that is used for the distribution of electricity;
<b>Electricity Distributor</b>	means any person who is authorised by an Electricity Distribution Licence to distribute electricity;
<b>Electricity Distribution Licence</b>	means an electricity distribution licence granted or treated as granted under section 6(1)(c) of the Act;
<b>Equipment Use Procedure</b>	means the procedure for the use of Company Equipment by the ICP as set out on the Company Website;
<b>Extra High Voltage (or "EHV")</b>	has the meaning given to it in the Electricity Safety, Quality and Continuity Regulations 2002;
<b>Force Majeure Event</b>	means any act, event or circumstances beyond the control of a Party including those which arises from or are attributable to: <ul style="list-style-type: none"> <li>(a) a System Emergency;</li> <li>(b) fire, flood, explosion, earthquake, storm or other natural disaster;</li> <li>(c) civil commotion, hostilities (whether war is declared or not), sabotage, terrorist attack, chemical, biological or nuclear contamination;</li> <li>(d) the acts of any public authority or imposition of any government sanction, embargo or similar action;</li> <li>(e) compliance with any law, judgment, order or decree;</li> <li>(f) any labour dispute or strike; or</li> <li>(g) the existence and/or effects of an event qualifying as an emergency within the meaning of Part 2 of the Civil Contingencies Act 2004;</li> </ul>

<b>Good Industry Practice</b>	means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced ICP engaged in the same type of undertaking under the same or similar circumstances;
<b>High Voltage (or “HV”)</b>	has the meaning given to it in the Electricity Safety, Quality and Continuity Regulations 2002;
<b>Independent Connection Provider (or “ICP”)</b>	means a person other than the DNO who is appropriately accredited to undertake Contestable Works in relation to the provision of a Connection to the DNO’s Distribution System;
<b>Inspection Charge</b>	means the cost to the Company (including overheads) of carrying out an inspection or attempting to carry out an abortive inspection (as the case may be) in accordance with clause 9 as notified to the ICP by the Company time to time and subject to variation in accordance with clause 10.5;
<b>Inspection Regime</b>	has the meaning given to it in clause 9;
<b>Low Voltage (or “LV”)</b>	has the meaning given to it in the Electricity Safety, Quality and Continuity Regulations 2002;
<b>Made Live</b>	means connection of the Contestable Connection Works or any part thereof to the Company’s Distribution System so as to allow electricity to flow from the Distribution System to such Contestable Connection Works or part thereof and “ <b>Making Live</b> ” and “ <b>Make Live</b> ” shall be construed accordingly;
<b>NERS</b>	means the National Electricity Registration Scheme or such other scheme as replaces it from time to time;
<b>Network Access Agreement</b>	means an agreement between the ICP and the Company which grants the ICP access to the Distribution Network;
<b>Point of Connection</b>	means the point (or points) of connection at which a supply of electricity can flow between the Distribution System and the Contestable Works, as set out in the Connection Offer or otherwise agreed by the parties in writing;
<b>Records Charge</b>	means the cost to the Company (including overhead costs) of updating its GIS records in respect of the Contestable Connection Works or any part thereof as set out on the Company Website;
<b>Safety Management System</b>	means the system of processes, policies, rules and procedures used by a Party, relating to the management of safety risk and compliance with health and safety legislation
<b>Service Line</b>	has the meaning given to it in the Electricity Safety, Quality and Continuity Regulations 2002;
<b>Street Electrical Fixture</b>	has the meaning given to it in the Electricity Safety, Quality and Continuity Regulations 2002;
<b>Subcontractor</b>	means a party who is appointed by the ICP to carry out all or part of the Contestable Connection Works in accordance with clause 11 and who holds the appropriate Accreditation to carry out such Contestable Connection Works; and
<b>System Emergency</b>	means an event on the Company’s Distribution System or the distribution system of another distributor which requires the Company (after being requested to do so and/or acting in



accordance with Good Industry Practice) to divert resources (whether economic, technical, personnel or otherwise) for the duration of that event in order to allow the Company or another distributor (as the case may be) to deal with or respond to that event in accordance with Good Industry Practice.

1.2 In this Agreement:

- 1.2.1 any term importing gender shall include any gender;
- 1.2.2 any term importing the singular includes the plural and vice versa;
- 1.2.3 the words “includes” and “including” are to be construed without limitation;
- 1.2.4 a reference to a “**Company**” shall include any company, corporation or other body corporate, whenever and however incorporated or established;
- 1.2.5 a reference to a “**person**” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.6 the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules;
- 1.2.7 save where the context otherwise requires, any reference to any clause or Schedule or Appendix is a reference to such clause or Schedule or Appendix of or to this Agreement;
- 1.2.8 neither clause headings nor part headings form part of or affect the interpretation of this Agreement; and
- 1.2.9 any reference to an Act or Regulations is a reference to it as amended, extended or re-enacted from time to time.

## 2 Consideration

- 2.1 In consideration of the payment of the sum of £1 by the ICP to the Company (receipt of which the Company acknowledges), the Company permits the ICP to access the Distribution Network on the terms set out in this Agreement.

## 3 Conditions Precedent

- 3.1 The following conditions must be met prior to the ICP, or anyone appointed by the ICP under the terms of this Agreement, commencing the Contestable Connection Works:
  - 3.1.1 [the Customer shall have entered into a contract with the ICP to carry out the Contestable Connection Works or the ICP shall have provided reasonable evidence to the Company confirming that the Customer intends to enter into a contract with the ICP to carry out the Contestable Connection Works;] *delete if not applicable*
  - 3.1.2 the ICP and the Company shall have entered into an Adoption Agreement (if such an agreement is required by the Company for the Contestable Connection Works);
  - 3.1.3 the ICP and any Subcontractors shall be Accredited;
  - 3.1.4 all employees who will be carrying out the Contestable Connection Works shall be Authorised, technically competent and hold and carry evidence of relevant Accreditation before they commence work;
  - 3.1.5 the ICP has obtained all third party rights required to undertake the Contestable Connection Works; and
  - 3.1.6 the ICP has given the Company notice of commencement of the Contestable Connection Works as required under the Company Requirements.



#### **4 Access Rights**

- 4.1 The Company hereby permits the ICP to perform the Contestable Connection Works on its Distribution System subject to and on the terms set out in this Agreement (the “**Access Rights**”).

#### **5 The Contestable Connection Works**

- 5.1 Prior to the commencement of the Contestable Connection Works or any part thereof the ICP shall notify the Company in accordance with the Company Requirements.
- 5.2 The ICP shall:
- 5.2.1 comply with the Company Requirements at all times;
  - 5.2.2 perform the Contestable Connection Works:
    - 5.2.2.1 in a proper and workmanlike manner, with due skill, care and diligence and in accordance with Good Industry Practice, using materials which conform to the Company’s specifications;
    - 5.2.2.2 in accordance with the specifications and standards set out in this Agreement;
    - 5.2.2.3 in accordance with all laws, bylaws, regulations, directives and regulations of any government or other competent authority and all relevant codes of practice, standards, rules and guidelines issued by regulatory or trade bodies; and
    - 5.2.2.4 in a safe manner and not to the detriment of other users of the Distribution System;
  - 5.2.3 comply with the terms of all third party rights required to enable the ICP to undertake the Contestable Connection Works;
  - 5.2.4 be Accredited at all time and shall ensure that any Subcontractors are Accredited at all times;
  - 5.2.5 ensure that all of its employees, and all of any Subcontractors’ employees, carrying out the Contestable Connection Works shall be Authorised, technically competent and hold and carry evidence of relevant Accreditation at all times; and
  - 5.2.6 immediately report to the Company details of any accident, dangerous incident, fault or damage involving any part of the Distribution System. Where a Subcontractor appointed pursuant to clause 11 immediately reports any such accident, dangerous incident, fault, or damage to the Company the ICP shall be deemed to have complied with its obligations to report the same under this clause.
- 5.3 The ICP shall be responsible for all excavation, interim and permanent reinstatement required to carry out the Contestable Connection Works. Any such excavation shall be sufficient for jointing and positive identification if multiple cables are present.
- 5.4 The ICP shall comply with, and be responsible for all liabilities under, the New Roads and Street Contestable Connection Works Act 1991 and Highways Act 1980 and shall undertake any required reinstatement works at its own cost.

#### **6 Use of Company Equipment**

- 6.1 The ICP may request the Company to make available Company Equipment for use in connection to the Contestable Connection Works in accordance with the Equipment Use Procedure.
- 6.2 The ICP shall:

- 6.2.1 ensure that the Company Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner in accordance with any operating instructions and operating manuals;
  - 6.2.2 ensure that the Company Equipment is only used by Authorised, trained and competent persons;
  - 6.2.3 take such steps as may be necessary to ensure that the Company Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
  - 6.2.4 maintain at its own expense the Company Equipment in good and substantial repair in order to keep it in as good an operating condition as it was provided to the ICP (fair wear and tear only excepted) and shall make good any damage to the Company Equipment;
  - 6.2.5 make no alteration to the Company Equipment and shall not remove any existing component(s) from the Company Equipment unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/advanced version of it;
  - 6.2.6 Title and property in all substitutions, replacements, renewals made in or to the Company Equipment shall vest in the Company immediately upon installation;
  - 6.2.7 keep the Company fully informed of all material matters relating to the Company Equipment;
  - 6.2.8 permit the Company or its duly authorised representative to inspect the Company Equipment at all reasonable times and for such purpose to enter any premises at which the Company Equipment may be located, and shall grant reasonable access and facilities for such inspection;
  - 6.2.9 not part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Company Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
  - 6.2.10 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Company in the Company Equipment;
  - 6.2.11 not suffer or permit the Company Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Company Equipment is so confiscated, seized or taken, the ICP shall notify the Company and the ICP shall at its sole expense use its best endeavours to procure an immediate release of the Company Equipment and shall indemnify the Company on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
  - 6.2.12 not use the Company Equipment for any unlawful purpose;
  - 6.2.13 ensure that at all times the Company Equipment remains identifiable as being the Company's property and wherever possible shall ensure that a visible sign to that effect is attached to the Company Equipment;
  - 6.2.14 deliver up the Company Equipment on termination of this agreement or on demand by the Company at such address as the Company requires, or if necessary, allow the Company or its representatives access to any premises where the Company Equipment is located for the purpose of removing the Company Equipment; and
  - 6.2.15 not do or permit to be done anything which could invalidate the insurances referred to in clause 17.
- 6.3 The ICP acknowledges that the Company shall not be responsible for any loss of or damage to the Company Equipment arising out of or in connection with any negligence, misuse,

mishandling of the Company Equipment or otherwise caused by the ICP or its officers, employees, agents and Subcontractors, and the ICP undertakes to indemnify the Company on demand against the same.

## **7 Safety**

- 7.1 The ICP shall ensure that the Contestable Connection Works are carried out:
- 7.1.1 in a safe manner; and
  - 7.1.2 in accordance with the Authorisation of ICPs Procedure, either:
    - 7.1.2.1 under the ICP's Safety Management System; or
    - 7.1.2.2 under the Company's Safety Management System.
- 7.2 The ICP shall be responsible for the safety of the public, including providing signage, lighting and guarding and ensuring that energised terminations are effectively sealed.

## **8 Testing**

- 8.1 The ICP shall maintain records of all tests undertaken in respect to the Contestable Connection Works and provide copies of the same to the Company as requested by the Company.

## **9 Inspection**

- 9.1 The Company shall be entitled to carry out inspections in accordance with the Charging Methodology Statement from time to time or such other inspection regime as replaces it as best industry practices from time to time (the “**Inspection Regime**”).
- 9.2 The Company reserves the right to access any site it deems necessary to carry out inspections in accordance with this clause 9 and may inspect any Contestable Connection Works installed or carried out under this Agreement without prior notification.
- 9.3 The ICP shall initially be allocated to Level 1 of the Inspection Regime.
- 9.4 If the ICP meets the requirements detailed in the Inspection Regime it may be moved to the next level of the Inspection Regime.
- 9.5 Subject to clause 14.2.4, if the ICP, in the Company's reasonable opinion, materially fails any inspection the ICP undertaken under the Inspection Regime, it may be moved back to the previous level of the Inspection Regime.
- 9.6 No inspection of the Contestable Connection Works or any part thereof by the Company shall relieve the ICP of any of its obligations or liabilities under this Agreement.

## **10 Payments**

- 10.1 The ICP shall pay the Company an Inspection Charge in respect of each inspection carried out in accordance with clause 9.
- 10.2 If the ICP fails to notify the Company of a change to its Indicative Programme in accordance with clause 5.1 and as a result the Company is unable to complete an inspection the ICP shall pay an Inspection Charge in respect of such abortive inspection.
- 10.3 The ICP shall pay the Company a Records Charge in respect of the Contestable Connection Works or any part thereof. The Records Charge shall become due to the Company:
- 10.3.1 If the Contestable Connection Works are in respect to an unmetered Connection, at the time the Contestable Connection Works or the relevant part thereof is Adopted; or
  - 10.3.2 in all other cases, prior to commencing the Contestable Connection Works.
- 10.4 The Company shall issue an invoice to the ICP at the end of each month specifying any charges payable. The ICP shall pay all invoices within 30 days of issue.

- 10.5 If any amount remains unpaid after the due date set out in clause 10.2, interest shall accrue on the unpaid amount, calculated from day to day at a rate per annum of 4% above the base rate of the Bank of England from the due date until the amount due and any accrued interest has been paid in full.
- 10.6 The Company may review the Inspection Charge and Records Charge at any time and shall notify the ICP of any change to such charges.

## 11 Subcontracting

- 11.1 The ICP may appoint one or more Subcontractors to carry out all or any part of the Contestable Connection Works where the ICP and such Subcontractors hold suitable Accreditation to do so.
- 11.2 Despite its right to sub-contract pursuant to this clause 11, the ICP shall remain responsible for all acts and omissions of its Subcontractors and the acts and omissions of those employed or engaged by the Subcontractors as if they were its own. An obligation on the ICP to do, or to refrain from doing, any act or thing shall include an obligation on the ICP to procure that its employees, staff and agents and Subcontractors' employees, staff and agents also do, or refrain from doing, such act or thing.
- 11.3 Nothing in this clause 11 shall relieve the ICP of any its obligations or liabilities under this Agreement.

## 12 Term

- 12.1 This Agreement shall, unless terminated earlier in accordance with clause 14, terminate on the earlier of:
- 12.1.1 completion of the Contestable Connection Works; and
  - 12.1.2 expiry or termination of the Connection Offer.

## 13 Suspension

- 13.1 Without prejudice to its other rights or remedies under this Agreement the Company may immediately by written notice suspend the Access Rights upon:
- 13.1.1 the ICP ceasing to be Accredited;
  - 13.1.2 a safety risk occurs in the Contestable Connection Works or in respect to any other works being undertaken by the ICP under any other Network Access Agreement which in the Company's opinion means the continuation of the Contestable Connection Works represents an unacceptable risk to the health and safety of those working on the Contestable Connection Works or the Distribution System or to members of the public;
  - 13.1.3 in the Company's opinion the Contestable Connection Works cause a significant risk to the Distribution System or are not deemed in compliance with the Electricity Safety, Quality and Continuity Regulations 2002;
- in each case a "**Suspension Event**".
- 13.2 A suspension of the Access Rights under clause 13.1 shall cease upon the Company (acting reasonably) being satisfied:
- 13.2.1 that the Suspension Event giving rise to the suspension of the Access Rights has been being resolved to its reasonable satisfaction; and
  - 13.2.2 that the ICP has taken all reasonable steps to prevent a further Suspension Event occurring.

## 14 Termination

- 14.1 The ICP may terminate this Agreement:

- 14.1.1 by four weeks' written notice at any time; or
  - 14.1.2 immediately by written notice if the Company suspends performance of the whole or any part of the Contestable Connection Works in accordance with clause 13 for one year or more.
- 14.2 The Company may terminate this Agreement immediately by written notice if:
- 14.2.1 no physical work forming part of the Contestable Connection Works has commenced within one year of the Commencement Date;
  - 14.2.2 a safety risk occurs in the Contestable Connection Works which in the Company's opinion means the continuation of the Contestable Connection Works represents an unacceptable risk to the health and safety of those working on the Contestable Connection Works or the Distribution System or to members of the public;
  - 14.2.3 in the Company's opinion the Contestable Connection Works cause a significant risk to the Distribution System or are not deemed in compliance with the Electricity Safety, Quality and Continuity Regulations 2002;
  - 14.2.4 the ICP is in material breach of any of its obligations under this Agreement and if such breach is capable of being remedied the ICP fails to remedy it within 30 days of receiving notice from the Company requiring it to do so;
  - 14.2.5 there is a material failure of 5 inspections within a period of 3 months;
  - 14.2.6 the Company terminates any other Network Access Agreement as a result of a breach of that agreement by the ICP;
  - 14.2.7 it becomes unlawful for the ICP to perform all or any of its obligations under this Agreement;
  - 14.2.8 the ICP is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, admits its inability to pay its debts as they fall due, commences negotiations with any one or more of its creditors with a view to the general re-adjustment or re-scheduling of its indebtedness or makes a general assignment for the benefit of, or a composition with, its creditors; or
  - 14.2.9 the ICP takes any corporate action or other steps are taken or legal proceedings are started for its winding up, dissolution or for it to enter into any arrangement or composition for the benefit of creditors or for the appointment of a receiver, administrator, administrative receiver, trustee or similar person of any of its revenues or assets or distress is executed against, or an encumbrance takes possession of, any of its revenues or assets.

## 15 **Effect of Termination**

- 15.1 Upon expiry or termination of this Agreement the ICP shall:
- 15.1.1 return, delete or destroy any Confidential Information provided to it by the Company;
  - 15.1.2 return all Company Equipment to the Company; and
  - 15.1.3 Immediately cease to perform the Contestable Connection Works save that, unless ordered not to do so by the Company in writing, it shall do everything necessary to secure the Contestable Connection Works in accordance with Good Industry Practice.
- 15.2 The termination or expiry of this Agreement shall not affect:
- 15.2.1 the rights or liabilities of either Party accrued prior to and including the date of termination or expiry; or
  - 15.2.2 the continued existence and validity of the rights and liabilities of the Parties under those clauses which are intended expressly or by implication to survive termination or expiry. In particular the provisions of clauses 1, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26,



27, and 28 and any other provisions of this Agreement necessary for its interpretation or enforcement shall survive termination.

## **16 Force Majeure and System Emergency**

- 16.1 Neither Party shall be liable to the other for its inability or failure to perform or delay in performing any of its obligations (other than an obligation to make payments due) under this Agreement caused by a Force Majeure Event provided such Party complies with clause 16.2.
- 16.2 If a Force Majeure Event occurs, then the Party affected (the “**Affected Party**”) shall immediately notify the other Party of the nature and likely duration (if known) of the Force Majeure Event and take all reasonable steps in order to:
- 16.2.1 to bring the Force Majeure Event to an end;
  - 16.2.2 to reduce the effect of the Force Majeure Event; and/or
  - 16.2.3 find a solution by which this Agreement may be performed despite the continuance of the Force Majeure Event.
- 16.3 If the Force Majeure Event continues for a period of 60 days or more the other Party may terminate this Agreement immediately on written notice to the Affected Party provided such Force Majeure Event is continuing at the date of termination.
- 16.4 Unless this Agreement is terminated under clause 16.3 the Affected Party shall notify the other Party as soon as its performance of its obligations under this Agreement is no longer prevented due to the Force Majeure Event.

## **17 Insurance**

- 17.1 The ICP shall maintain in effect for the duration of this Agreement the following policies with a reputable insurer:
- 17.1.1 professional indemnity insurance of not less than £3 million for each and every incident;
  - 17.1.2 employer’s liability insurance of not less than £5 million for each and every incident;
  - 17.1.3 public liability insurance of not less than £5 million for each and every incident or series of related incidents; and
  - 17.1.4 all other insurance typically held by ICPs carrying out this type of work;
- and shall upon request provide the Company with evidence of such insurance and payment of all premiums due under each policy.

## **18 Indemnity**

- 18.1 The Company accepts no responsibility or liability whatsoever for any Contestable Connection Works carried out by the ICP on the Company’s Distribution System under this Agreement including any third party claims resulting from the same. The Company accepts no responsibility or liability whatsoever for matters arising from or associated with accidents, incidents or dangerous occurrences associated with work carried out under this Agreement.
- 18.2 The Company shall be relying upon the ICP’s skill, care, expertise and experience and upon the accuracy of all statements made and any advice given by the ICP in connection with the Contestable Connection Works. The ICP shall indemnify the Company against all loss, damage, costs, legal costs and professional and other expenses of any nature whatsoever incurred or suffered by the Company or by a third party whether direct or indirect (including any economic loss or other loss of turnover, profits, business or goodwill) as a result of such reliance.
- 18.3 The ICP accepts liability for death, personal injury or damage to property howsoever resulting from the ICP’s acts or omissions in connection with the provision of the services or in connection with the Contestable Connection Works or in connection with any other activities

undertaken or any products supplied by the ICP pursuant to or for any purpose related to this Agreement. The ICP shall indemnify the Company against any and all liabilities, losses, damages, costs and expenses of whatsoever nature incurred or suffered by the Company or by any third party whether arising from any disputes, contractual, tortious or other claims or proceedings which seek to recover loss incurred by reason of any such death, personal injury or damage to property.

- 18.4 The ICP shall indemnify the Company on demand against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the ICP to comply with the terms of this Agreement, including, for the avoidance of doubt, any loss due to any penalties levied by the Authority in respect of the performance of the Distribution System as a direct or indirect result of the ICP carrying out the Contestable Connection Works either before or after Adoption.

## **19 Limitation of Liability**

- 19.1 The ICP's liability to the Company under this Agreement shall be limited to the aggregate amount set out in the table below per incident or series of incidents arising out of one event.

<b>Connection Voltage</b>	<b>Aggregate Amount</b>
Low Voltage	£3,000,000 (three million pounds)
High Voltage	£6,000,000 (six million pounds)
Extra High Voltage or above	£9,000,000 (nine million pounds)

- 19.2 The Company shall have no liability to the ICP other than such liabilities which it is prevented from excluding by law. In respect of those liabilities which the Company is prevented by law from excluding the Company's liability to the ICP shall be limited to an aggregate amount of £2 million per incident or series of incidents arising out of one event save where such a limit is itself prohibited by law.

- 19.3 Nothing in this Agreement shall exclude or limit the liability of either Party for:

- 19.3.1 death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
- 19.3.2 fraud or fraudulent misrepresentation; and
- 19.3.3 any other liability which cannot be limited or excluded by applicable law.

## **20 Confidentiality**

- 20.1 In respect of all Confidential Information relating to the Company the ICP shall both during this Agreement and for 5 years after it ends:
- 20.1.1 keep all such information confidential and use it only as far as necessary to perform its obligations under this Agreement; and
  - 20.1.2 not disclose any such information to any third party.
- 20.2 Notwithstanding clause 20.1 the ICP may disclose Confidential Information if and to the extent:
- 20.2.1 that information is in or has come into the public domain through no fault of the ICP;
  - 20.2.2 the Company has given prior written consent to the disclosure;
  - 20.2.3 required by law;



- 20.2.4 required by any regulatory or governmental or other authority with relevant powers to which the ICP is subject or submits (whether or not the requirement for information has the force of law); or
- 20.2.5 required by any securities exchange on which either party's securities are listed or traded.

## **21 Notices**

- 21.1 Any notice or other communication required to be given or sent under this Agreement shall be in writing or by email and served personally or by first class post or by email at the address or email address stated in this Agreement or at such other address and email address as may be notified in writing to the other Party expressly for the purpose of service of documents under this Agreement.
- 21.2 A notice or other form of communication shall be deemed to have been served as follows:
  - 21.2.1 keep all such information confidential and use it only as far as necessary to perform its obligations under this Agreement; and
  - 21.2.2 if given or delivered personally, at the time when given or delivered; or
  - 21.2.3 if sent by pre-paid first class post, at the expiry of 2 Working Days (meaning all days of the week excluding Saturday and Sunday and any public holidays in England and Wales) after the document was delivered into the custody of the postal authorities; or
  - 21.2.4 if sent by email, upon transmission of a read receipt from the addressee.
- 21.3 In proving service pursuant to clause 21.2 it shall be sufficient for the Party claiming to have given notice to prove that personal delivery was made or that the envelope containing the notice was properly addressed as set out above and delivered into the custody of the postal authorities as a pre-paid first class letter or that the email was sent.

## **22 Waiver and Variation**

- 22.1 A waiver of any right, power, privilege or remedy provided by this Agreement must be in writing and may be given subject to any conditions thought fit by the Party giving the waiver. For the avoidance of doubt any omission to exercise, or delay in exercising, any right, power, privilege or remedy provided by this Agreement shall not constitute a waiver of that or any other right, power, privilege or remedy.
- 22.2 A waiver of any right, power, privilege or remedy provided by this Agreement shall not constitute a waiver of any other breach or default by the other Party and shall not constitute a continuing waiver of the right, power, privilege or remedy waived or a waiver of any other right, power, privilege or remedy.
- 22.3 Any single or partial exercise of any right, power, privilege or remedy arising under this Agreement shall not preclude or impair any other or further exercise of that or any other right, power, privilege or remedy.
- 22.4 Any variation of this Agreement is valid only if it is in writing and signed by or on behalf of each Party.

## **23 Severance**

- 23.1 If any provision of this Agreement is held to be invalid or unenforceable by any judicial or other competent authority all other provisions of this Agreement will remain in full force and effect and will not in any way be impaired.
- 23.2 If any provision of this Agreement is held to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted the provision in question will apply with the minimum modifications necessary to make it valid and enforceable.

## **24 Entire Agreement**

- 24.1 This Agreement and the documents referred to or incorporated in it (including any Adoption Agreements) constitute the entire agreement between the Parties relating to the subject matter of this Agreement and supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, between the Parties in relation to the subject matter of this Agreement.

## **25 Assignment and Other Dealings**

- 25.1 The ICP shall not assign, novate or transfer any of its rights or obligations under this Agreement without the prior written consent of the Company.
- 25.2 The Company may at any time assign, novate, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Agreement.

## **26 Third Party Rights**

- 26.1 No one other than a Party to this Agreement shall have any right to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

## **27 Counterparts**

- 27.1 This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall constitute an original but all the counterparts shall together constitute one and the same agreement. This Agreement shall not take effect until it has been executed by all the Parties.

## **28 Governing Law**

- 28.1 This Agreement shall be governed by and constructed in accordance with the Laws of England and Wales.
- 28.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## SCHEDULE 2: DETAILS OF THE CONNECTION OFFER

<b>Site:</b>	[Site name and address]
<b>Project Reference:</b>	[SSEN Project Number]
<b>Point of Connection:</b>	[Description of Point of Connection]
<b>Connection Voltage:</b>	[Low Voltage] OR [High Voltage] OR [Extra High Voltage or above]
<b>ICP:</b>	[ICP Company Name]
<b>Customer:</b>	[Customer Company Name] or [Not Applicable]
<b>Company:</b>	Southern Electric Power Distribution plc
<b>Date of Issue of Connection Offer:</b>	[DD/MM/YYYY]
<b>Date of Acceptance of Connection Offer:</b>	[DD/MM/YYYY]