

UNMETERED CONNECTIONS ADOPTION AGREEMENT

between

SOUTHERN ELECTRIC POWER DISTRIBUTION PLC

and

[ICP COMPANY NAME]

for unmetered assets owned by

[CONNECTING CUSTOMER (ASSET OWNER) COMPANY NAME]

in **[GEOGRAPHICAL AREA]**

OR

at **[SITE NAME AND ADDRESS]**

Project Reference: [SSEN Project Number]



Contents

FORM OF AGREEMENT	3
SCHEDULE 1: GENERAL CONDITIONS	5
1 Definitions and Interpretation	5
2 ICP’s Obligations.....	7
3 Wayleaves, Permanent Rights and Consents	7
4 Information and Documentation	7
5 Construction	7
6 Inspection	7
7 Adoption.....	8
8 Security	8
9 Intellectual Property	9
10 Liabilities	9
11 Defects Correction	10
12 Force Majeure and System Emergencies	10
13 Assignment.....	10
14 Party Ceasing to Trade	10
15 Termination of Agreement	10
16 Effect of Termination	11
17 Confidentiality	11
18 Waivers and Variations.....	11
19 Entire Agreement	12
20 Notices	12
21 Third Party Rights	12
22 Governing Law	12



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]**, the ICP accepted an offer for adoption dated **[DD/MM/YYYY]** from the Company to provide an adoption agreement for certain unmetered connections to its Distribution System;
- (D) **[Connecting Customer (Asset Owner) Company Name]** has appointed the ICP as its agent to carry out and complete the Works (i.e., new connections and/or transfers and/or disconnections) for the installation of certain new unmetered assets, and/or the replacement and upgrading of certain existing unmetered assets, and/or the permanent disconnection of certain unmetered assets, **in [geographical area] or at [site name and address]**;
- (E) The Company and the ICP entered into the Access Agreement to allow the ICP to access the Company's Distribution System to carry out and complete the Works; and
- (F) The Company has agreed to Adopt the Assets upon the terms of 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:

**Name of Company's
Representative:**

Designation:

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

Name of ICP's Representative:

Designation:

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:

Access Agreement	means the unmetered connections network access agreement between the Company and the ICP dated [DD/MM/YYYY] in relation to unmetered street furniture related works in [geographical area] or at [site name and address];
Accreditation	means appropriate accreditation under the terms of the National Electricity Registration Scheme (“ NERS ”) or such other scheme as replaces it from time to time and “ Accredited ” shall be construed accordingly;
Adoption	means the transfer by the ICP to the Company of the property in and responsibility for the Works or a section thereof with Full Title Guarantee and “ Adopt ” and “ Adopted ” shall be construed accordingly;
Adoption Date	means the date of completion of the Works or any section thereof in accordance with this Agreement and the Access Agreement;
Approved Credit Rating	means monthly credit terms of not less than £100,000 by a reputable credit rating agency approved by the Company;
Assets	means those Works which will form part of the Company’s Distribution System;
Bond	means a bond provided by the ICP in favour of the Company which guarantees against defects in workmanship or materials in the Adopted Works for the duration of the Defects Correction Period;
CDM File	means all information which the ICP is required to keep in terms of and to comply with the Construction (Design and Management) Regulations 2015 in relation to the Works;
Defects Correction Period	means the period of 5 years after the Adoption Date in relation to the Works or, where there is more than one Adoption Date, the 5 years after the last Adoption Date;
Distribution System	has the meaning given to “licensee’s distribution system” in the Company’s distribution licence granted under section 6(1)(c) of the Electricity Act 1989;
Force Majeure	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">(a) a System Emergency;(b) fire, flood, explosion, earthquake, storm or other natural disaster;(c) civil commotion, hostilities (whether war is declared or not), sabotage, terrorist attack, chemical, biological or nuclear contamination;

- (d) the acts of any public authority or imposition of any government sanction, embargo or similar action;
- (e) compliance with any law, judgment, order or decree;
- (f) any labour dispute or strike; or
- (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;

Full Title Guarantee	means the covenant for the title implied by s.3(1) Law of Property (Miscellaneous Provisions) Act 1994 save that the words 'other than any charges encumbrances or rights which the person does not and could not reasonably be expected to know about' are added and s.3(2) shall be deleted in its entirety;
Intellectual Property Rights	Means rights in copyright, patent, trademark, service mark, design right, registered designs, sui generis rights, know-how, confidential information, trade or business names or other similar rights together with applications for any of the foregoing;
Licence	means the Company's distribution licence granted under section 6(1)(c) of the Electricity Act 1989 (as amended by the Utilities Act 2000);
Qualifying Guarantee	means a guarantee in favour of the Company and in such form as may be agreed between Company and the ICP and which is provided by an entity which holds an Approved Credit Rating;
Security	means a Bond or a Qualifying Guarantee;
Statutory Consents	means all consents, licences, permissions and approval of any kind required under any statute or subordinate legislation including planning permission, building regulation approval and permission under section 109 of the New Road and Street Works Act 1991;
Works	means the transfer, permanent or temporary disconnection, reconnection or extension of an existing single phase 230 volt service cable to a piece of street furniture in [geographical area] or at [site name and address] carried out under the Access Agreement.

1.2 In this Agreement:

- 1.2.1 any term importing one 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 to the generality of the preceding words;
- 1.2.4 save where the context requires otherwise any reference to a clause or schedule is a reference to a clause or schedule of this Agreement;
- 1.2.5 headings are for reference only and do not form part of or affect the interpretation of this Agreement; and
- 1.2.6 any reference to a statute, statutory instrument, regulation, rule or order shall be construed as a reference to them as amended or re-enacted from time to time.

2 ICP's Obligations

- 2.1 The ICP shall carry out and complete the Works in accordance with this Agreement and the Access Agreement and perform all other obligations as are identified in this Agreement to be performed by it.
- 2.2 Throughout the duration of the Works the ICP shall maintain Accreditation and ensure that all Works are undertaken by persons holding appropriate Accreditation at the time such works are undertaken.

3 Wayleaves, Permanent Rights and Consents

- 3.1 If, in the Company's sole opinion, the Works require permanent rights wayleaves, pre-wayleaves, easements or Statutory Consents, the Company shall apply for and obtain such rights or consents. The ICP shall provide the Company with all reasonable assistance to obtain such consents and the ICP shall meet the reasonable costs of obtaining the same.
- 3.2 Where the Works are within land under the control of the ICP, the ICP shall, if required, enter into agreements with the Company for any permanent rights wayleaves, pre-wayleaves or easements at no cost to the Company.
- 3.3 Where the Works are on land owned by a third party the Company shall be responsible for obtaining any permissions required for these works:
 - 3.3.1 prior to Adoption including obtaining pre-wayleaves required for access to the third party land by either the Company or the ICP; and
 - 3.3.2 from adoption in accordance with clauses 3.1, 3.2 and 3.3.1 above;provided that the ICP shall give all reasonable assistance requested by the Company to obtain these and shall meet the Company's reasonable costs of obtaining the same.

4 Information and Documentation

- 4.1 The Company shall, within a reasonable period following receipt of a written request, supply the ICP with all technical information, diagrams and drawings relating to the Company's Distribution System as may be reasonably required to carry out the Works.
- 4.2 The ICP shall, within a reasonable period following receipt of a written request, supply the Company with all information (including technical information, diagrams and drawings) relating to the Works as the Company may reasonably request from time to time.

5 Construction

- 5.1 The ICP shall not commence the Works without all necessary permanent rights, wayleaves, pre-wayleaves and Statutory Consents.
- 5.2 The ICP shall construct and install the Works in accordance with this Agreement and the provisions of the Access Agreement.
- 5.3 The Parties acknowledge that in relation to the Works the ICP shall be the "Client" for the purposes of the Construction (Design and Management) Regulations 2015 and the ICP undertakes to indemnify the Company at all times from all liabilities for the performance of its obligations pursuant to the Construction (Design and Management) Regulations 2015 and against demands, actions, proceedings, damages, losses, costs and expenses which are made or brought against or incurred by the Company.
- 5.4 The ICP shall be fully responsible for the Works until they are Adopted by the Company.
- 5.5 The ICP shall indemnify and keep indemnified the Company from any liabilities which may arise from the Works prior to Adoption.

6 Inspection

- 6.1 The Company shall carry out inspections in accordance with clause 9 of the Access Agreement.

- 6.2 The Company reserves the right to access any site it deems necessary to carry out inspections in accordance with clause 6.1 and may inspect any works installed or carried out under this Agreement without prior notification. The ICP shall allow the Company access at all reasonable times to any site for this purpose.
- 6.3 No inspection, checking, testing or approval of the Works or any part thereof by the Company shall relieve the ICP of any of its obligations or liabilities under this Agreement.

7 Adoption

- 7.1 Adoption of the Works or part thereof shall take place when the following conditions are met:
- 7.1.1 all Statutory Consents are vested with the Company;
 - 7.1.2 Full Title Guarantee is provided to the Company in respect of all Assets to be Adopted;
 - 7.1.3 the Works have been performed in accordance with the provisions of this Agreement and the Access Agreement;
 - 7.1.4 the ICP has delivered to the Company as-laid plans of the network to be Adopted;
 - 7.1.5 the ICP warrants that all necessary Intellectual Property Rights have been acquired;
 - 7.1.6 the ICP has provided the Company with the CDM File; and
 - 7.1.7 connection of the Works to the Company's Distribution System.
- 7.2 Following Adoption, the ICP shall treat the Adopted Works in all respects as the property of the Company and from that time as forming part of the Company's Distribution System and comply with all procedures and rules issued by the Company relating to work on or in the vicinity of the Distribution System.

8 Security

- 8.1 In the event that the ICP does not hold an Approved Credit Rating the ICP shall provide to the Company Security on the following basis:
- 8.1.1 the value of the Security to be provided by the ICP will be the amount reasonably assessed by the Company as may be required to rectify defects, or breaches of the Agreement, howsoever caused, in the Adopted Works;
 - 8.1.2 the Security provided by the ICP shall remain in full force and effect for the duration of the Defects Correction Period; and
 - 8.1.3 upon the expiration of the Defects Correction Period and provided that all amounts owed by the ICP in respect of rectification of defects under clause 11 or breaches of the Agreement have been duly and finally paid (including any interest outstanding) the ICP shall be released from the obligation to maintain the Security and the Company shall consent to the revocation of any outstanding Security.
- 8.2 The ICP shall, whenever requested in writing by the Company, provide the Company with any confirmation that the Company reasonably requires that the Security provided by or on behalf of the ICP pursuant to this clause remains current.
- 8.3 The Security may be drawn upon by the Company:
- 8.3.1 to effect remedial works due to defects or breach of this Agreement. The Company will notify the ICP of defects or instance of breach and the proposed course of action by the Company for the correction of the defects or breach. Upon completion of the remedial works the Company will advise the ICP of the cost of the remedial works and the ICP shall make payment of the cost due. If the ICP fails to pay the amount due the Company will draw down an equivalent amount from the Security to recover its costs; and/or
 - 8.3.2 to protect the Company from loss in the event that the ICP ceases to trade.

- 8.4 In the event the Company draws down from the Security the ICP shall to the reasonable satisfaction of the Company and within 14 days of the draw down event renew or maintain the Security at least equal to the aforesaid value and duration.
- 8.5 In the event the ICP fails at any time to provide or maintain the Security to the reasonable satisfaction of the Company, the Company may terminate this Agreement.

9 Intellectual Property

- 9.1 Insofar as the Intellectual Property Rights existing in respect of anything used in or required for the Works or their operation, repair, maintenance or replacement are vested in the ICP the ICP grants to the Company a royalty-free, non-exclusive and irrevocable licence to use, reproduce, modify, adapt and translate any of the works, designs or inventions incorporated in anything used or required as aforesaid for all purposes relating to the Company's Distribution System.
- 9.2 The ICP warrants that all necessary Intellectual Property Rights will be acquired prior to Adoption.
- 9.3 The ICP indemnifies the Company against all reasonable losses, costs and expenses suffered or incurred by the Company arising out of any claim by any third party that the use by the Company of the licensed intellectual property infringes that third party's rights.
- 9.4 Any licence granted pursuant to clause 9.1 shall continue notwithstanding the termination of this Agreement for any reason.

10 Liabilities

- 10.1 The Parties shall not be liable for any breach of this Agreement caused directly or indirectly by Force Majeure or by a System Emergency.
- 10.2 Subject to clause 11 and save where this Agreement provides for an indemnity no Party nor any of its officers, employees or agents shall be liable to any other Party for loss arising from any breach of this Agreement other than for loss directly resulting from such breach and which at the date of this Agreement was reasonably foreseeable as likely to result in the ordinary course of events from such breach and which resulted from physical damage to the property of the other Party, its officers, employees or agents provided that:
- 10.2.1 no Party nor its officers, employees or agents shall in any circumstances whatsoever be liable to any other Party for any:
- 10.2.1.1 loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill;
- 10.2.1.2 indirect or consequential loss; or
- 10.2.1.3 loss resulting from liability of such other Party to any other person howsoever arising.
- 10.2.2 the liability of the Party liable in respect of claims for such loss shall not exceed the sum of £5,000,000 per incident or series of incidents arising out of any one event;
- 10.2.3 notwithstanding clause 10.2.1.2, the ICP shall indemnify the Company against amounts it has a statutory or Licence obligation to pay to consumers (or for the benefit of consumers) in the event or as a result of any failure in the supply of electricity caused directly or indirectly by any defect or fault in the Works; and
- 10.2.4 the Company shall not adopt any reinstatement, and any future liability will remain with the Party who obtained the licence/ notice to open; and
- 10.2.5 each of the sub-clauses of this clause 10.2 shall be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable the other sub-clauses shall remain in full force and effect.
- 10.3 Nothing in this Agreement shall exclude or limit the liability of any Party for death or personal injury resulting from the negligence of that Party or of any of its officers, employees or agents and the Party

liable shall indemnify and keep indemnified the other Party, its officers, employees or agents from and against any and all such loss or liability which that other Party may suffer or incur.

- 10.4 The rights and remedies provided by this Agreement are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of this Agreement including without limitation actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute and releases the Party liable to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein.

11 Defects Correction

- 11.1 The ICP shall bear all reasonable costs incurred by the Company in fault repair or rectification of other defects associated with Adopted Works during the Defects Correction Period unless such faults are caused by the Company.
- 11.2 The ICP shall bear all reasonable costs incurred by the Company in correcting any latent defects associated with Adopted Works subject to the provisions of the Limitation Act 1980 (as amended from time to time).
- 11.3 The Parties acknowledge that all work on Adopted Assets may only be performed by the Company and that the ICP may not correct any defects after adoption.

12 Force Majeure and System Emergencies

- 12.1 Neither Party shall be liable to the other for its inability or failure to perform nor 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 12.2.
- 12.2 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:
- 12.2.1 bring the Force Majeure Event to an end;
 - 12.2.2 to reduce the effect of the Force Majeure Event; and/or
 - 12.2.3 find a solution by which this Agreement may be performed despite the continuance of the Force Majeure Event.

13 Assignment

- 13.1 No Party may assign or transfer the benefit or burden of this Agreement without the written consent of the other Parties, such consent not to be unreasonably withheld or delayed.

14 Party Ceasing to Trade

- 14.1 If the ICP ceases to trade before all of the Works have been Adopted all future obligations under this Agreement on the Company shall cease and this Agreement shall terminate.

15 Termination of Agreement

- 15.1 Any Party may terminate this Agreement by notice in writing in the event that:
- 15.1.1 the other Party shall be in material breach of the Agreement and shall have failed to remedy the same within 28 days after having been served a written notice requiring it to be remedied;
 - 15.1.2 the ICP does not provide or maintain the Security as required under this Agreement.

- 15.1.3 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
- 15.1.4 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 encumbrancer takes possession of, any of its revenues or assets.

16 Effect of Termination

- 16.1 Upon expiry or termination of this Agreement the ICP shall return, delete or destroy any Confidential Information provided to it by the Company.
- 16.2 The termination or expiry of this Agreement shall not affect:
- 16.2.1 the rights or liabilities of any Party accrued prior to and including the date of termination or expiry; or
- 16.2.2 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 3.2, 5.3, 8, 9, 10.2.3, 11.1, 16.2.1, 17 and 22 below and any other provisions of this Agreement necessary for its interpretation or enforcement shall survive termination.

17 Confidentiality

- 17.1 In respect of all Confidential Information relating to the Company the ICP shall during the term of this Agreement and for 5 years after it ends:
- 17.1.1 keep all such information confidential and use it only as far as necessary to perform its obligations under this Agreement; and
- 17.1.2 not disclose any such information to any third party.
- 17.2 Notwithstanding clause 17.1 the ICP may disclose Confidential Information if and to the extent:
- 17.2.1 that information is in or has come into the public domain through no fault of the ICP;
- 17.2.2 the Company has given prior written consent to the disclosure;
- 17.2.3 required by law;
- 17.2.4 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
- 17.2.5 required by any securities exchange on which any Party's securities are listed or traded.

18 Waivers and Variations

- 18.1 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.
- 18.2 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.

18.3 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.

18.4 Any variation of this Agreement is valid only if it is in writing and signed by or on behalf of each Party.

19 Entire Agreement

19.1 With the exception of the Access Agreement, this Agreement and the documents referred to or incorporated in it 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.

20 Notices

20.1 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.

20.2 A notice or other form of communication shall be deemed to have been served as follows:

20.2.1 if given or delivered personally, at the time when given or delivered; or

20.2.2 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, or in Scotland, as appropriate) after the document was delivered into the custody of the postal authorities; or

20.2.3 if sent by email, upon transmission of a read receipt from the addressee.

20.3 In proving service pursuant to clause 20.2 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.

21 Third Party Rights

21.1 This Agreement does not confer any rights on any person or party (other than the Parties to this Agreement) pursuant to the Contracts (Rights of Third Parties) Act 1999.

22 Governing Law

22.1 This Agreement shall be governed by and constructed in accordance with the Laws of England and Wales.

22.2 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).