

Dated

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ELECTRICITY NORTH WEST Ltd	(1)
INDEPENDENT CONNECTION PROVIDER ()	(2)
DEVELOPER ()	(3)

AGREEMENT TO ADOPT
Electricity connection works at

Electricity North West Limited,
Dalton House,
104 Dalton Avenue,
Birchwood Park,
Birchwood,
Warrington.
WA3 6YF

This Agreement is made on

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Between

- (1) **Electricity North West Ltd** (No. 02366949) whose registered office is at Dalton House, 104 Dalton Avenue, Birchwood Park, Birchwood, Warrington, WA3 6YF ("**Electricity North West**");
- (2) **Independent Connection Provider** () of (No.) whose registered office is at ("**ICP**"); and
- (3) **Developer:** () of (No.) whose registered office is at ("**Developer**").

Agreement of the Parties

The Parties hereby agree in terms of the following documents, copies of which are annexed:

- (a) The Conditions
- (b) Schedule 1 to the Conditions (*Definitions and interpretation*)
- (c) Schedule 2 to the Conditions (*Installation of the Electrical Connection Works*)
- (d) Schedule 3 to the Conditions (*Land Rights*)
- (e) Schedule 4 to the Conditions (*Electricity North West Works*)
- (f) Appendix 1 (*Miscellaneous information*)
- (g) Appendix 2 (*Design and Drawings*)
- (h) Appendix 3 (*Specification*)
- (i) Appendix 4 (*Adoption Plan*)
- (j) Appendix 5 (*Electricity North West Works*)

Signed by

For and on behalf of Electricity North West Ltd).....

) Authorised signatory

Name).....

Position within Company).....

).....

) Witness

Name).....

Position within Company).....

For and on behalf of Independent Connections Provider).....

()

) Authorised signatory

Name).....

Position within Company).....

).....

) Witness

Name).....

Position within Company).....

For and on behalf of Developer).....

()

) Authorised signatory

Name).....

Position within Company).....

).....

) Witness

Name).....

Position within Company).....

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CONDITIONS

1 Definitions and interpretation

1.1 The provisions of Schedule 1 (*Definitions and interpretation*) shall have effect.

2 Electricity North West Works

If Appendix 1 contains a statement that Schedule 4 (*Electricity North West Works*) applies then Schedule 4 shall have effect but otherwise Schedule 4 shall be of no effect.

3 The installation of the Electricity Connection Works

If the ICP installs or procures the installation of the Electricity Connection Works it shall comply with the requirements (other than the obligations of Electricity North West) in Schedule 2 (*Installation of Electricity Connection Works*), the provisions of which shall have effect. At all times and for all purposes with regard to the procurement and installation of the Electricity Connection Works and in their communications with Electricity North West the ICP is deemed to be acting as agent of the Developer and with the full authority of the Developer.

4 Land Rights

If Appendix 1 contains a statement that Schedule 3 (*Land rights*) applies then Schedule 3 shall have effect but otherwise Schedule 3 shall be of no effect.

5 Connection to Distribution System

5.1 Upon

- (a) receipt of the ICP's notice under paragraph 16.1 (a) of Schedule 2 (*Notice of completion and records*) that the installation of all or part of the Electricity Connection Works has been completed; and
- (b) confirmation of the date on which all the requirements specified in clause 5.2 will be met;

Electricity North West shall arrange to connect the Electricity Connection Works to Electricity North West's existing distribution system ("Electricity North West's Network").

5.2 The requirements to be met for the purposes of clause 5.1(b) are:

- (a) that Electricity North West is satisfied, as far as it is able to ascertain, that the installation of the Electricity Connection Works has been completed by the ICP in accordance with the requirements of this Agreement; and
- (b) that the Electricity Connection Works have satisfied any applicable testing and commissioning requirements stated in the Specification or otherwise as Electricity North West considers to be appropriate; and
- (c) that the applicable requirements of Schedule 3 (Land Rights), if any, have been satisfied; and
- (d) that Electricity North West has been provided with record drawings of the Electricity Connection Works as required by paragraph 16.1 (b) of Schedule 2; and
- (e) that Electricity North West has been provided with an up to date risk assessment covering the scope of the work as part of the health and safety file as required pursuant to paragraph 16.1 (c) of Schedule 2; and

- (f) the sum of money notified to the ICP and/or Developer by Electricity North West and identified as relating to Electricity North West Works and/or Non-Contestable Works has been paid in full to Electricity North West by the ICP or the Developer as the case may be; and
- (g) that the ICP has confirmed to Electricity North West that it is not aware of any continuing breach by any person other than Electricity North West of any of the following:
 - (i) this Agreement;
 - (ii) any Developer's Deed of Grant; or
 - (iii) any Third Party Land Deed of Grant.

6 Consent

6.1 By signing this Agreement, the Developer expressly agrees to the adoption of the Electricity Connection Works by Electricity North West in accordance with the terms of this Agreement.

7 Advising that Electricity Connection Works are Live

7.1 As soon as any and every part of the Electricity Connection Works has been connected to Electricity North West Network and energised, Electricity North West shall promptly inform the ICP in writing that such part of the Electricity Connection Works has been energised and shall notify the ICP of the date that such works were energised.

7.2 The ICP shall in turn promptly inform the Developer of the details provided by Electricity North West referred to in clause 7.1

7.3 Upon connection of the Electricity Connection Works or any part thereof to Electricity North West's existing distributing system and immediately upon their being energised pursuant to clause 7.1 above title to such connected and energised Electricity Connection Works shall automatically vest in Electricity North West and for the avoidance of doubt the vesting of the Electricity Connection Works (and any part thereof) in Electricity North West is also described as adoption of the Electricity Connection Works for the purposes of this Agreement.

8 Guarantee

8.1 Electricity North West, acting in accordance with Good Industry Practice, shall investigate and satisfy itself that the ICP had an acceptable credit rating before the execution and commencement of this Agreement.

8.2 If Electricity North West, acting in accordance with Good Industry Practice, is not satisfied with the credit rating of the ICP either before the execution and commencement of this Agreement or at any time during the duration of this Agreement then given the ICP's obligations and responsibilities under this Agreement or otherwise unless the ICP and Electricity North West agree an alternative the ICP will deliver to Electricity North West within 10 Working Days of a written request for such being provided by Electricity North West to the ICP a guarantee or other form of security in an amount and on terms and conditions as are satisfactory to Electricity North West.

9 Responsibilities and Assignment

9.1 This Agreement is personal to the Parties hereto save for the solvent reconstruction or amalgamation of the Developer and/or ICP.

9.2 Save as aforesaid, neither benefit nor burden under this Agreement shall be capable of assignment, novation or other transfer.

9.3 If for any reason whatsoever and in any way the ICP shall default in performance of any of its obligations burdens or matters expressed as being the ICP's responsibility under this Agreement then Electricity North West may serve written notice on the ICP requesting that it rectify any such breach under this Agreement as a matter of urgency.

9.4 Should the ICP fail to rectify any breach of this Agreement within 28 days of written notice from Electricity North West requesting that it remedy such breach, then Electricity North West may notify the Developer requiring it to remedy such breach as soon as reasonably practicable. The Developer shall perform and observe or cause to be performed and observed each and all the obligations terms promises conditions and stipulations in this Agreement or to be implied there from so far and to the extent that the ICP was liable to perform and observe them and shall to the same extent be responsible to Electricity North West for any payment due to be made by the ICP and all sums of money, losses, damages, costs, charges and expenses that may become due and payable to Electricity North West by reason of or in consequence of the acts or defaults of the ICP in the performance or observance of this Agreement.

9.5 The Developer unconditionally and irrevocably agrees as a primary obligation to indemnify Electricity North West against any loss suffered by it as a result of any failure by the Developer to perform its obligations under or pursuant to this Agreement save for where any such loss arises as the result of the negligent act or omission of Electricity North West or any of its employees agents, servants, or contractors.

10 Sub-contracting

10.1 The ICP shall not be entitled to subcontract the whole or any part of the management and supervision of the installation of any of the Electricity Connection Works.

11 Accreditation

11.1 The ICP shall ensure that it and all subcontractors it employs or engages hold valid Accreditation to the satisfaction of Electricity North West for the activities they are to undertake in relation to the installation of the Electricity Connection Works or any part thereof and that no person engaged in the installation of the Electricity Connection Works or any part thereof carries out any operation that is not covered by the relevant accreditation scheme for which the ICP and its subcontractor holds Accreditation. For the avoidance of doubt the ICP shall use all reasonable endeavours to notify Electricity North West in writing in advance of its appointment of each of the subcontractors it employs or engages in connection with the Electricity Connection Works.

11.2 The ICP shall whenever required to do so from time to time provide to Electricity North West the name of every person engaged in the installation of the Electricity Connection Works or any part thereof and the name and address of his employer and evidence that every such person is competent and adequately trained for the activities to be undertaken.

12 Termination

12.1 If before the connection of the whole or any part of the Electricity Connection Works the ICP and/or the Developer:

- (a) is or becomes Insolvent; or
- (b) commits any breach of this Agreement or of any Developer's Deed of Grant which it fails to rectify within 28 days of written notice by Electricity North West requiring it to do so, and copies of such notice are to be sent to the other Parties to this Agreement as soon as reasonably practicable.

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Electricity North West may by written notice to the other Parties, terminate this Agreement immediately.

12.2 The termination of this Agreement shall not affect any accrued liabilities of any Party to this Agreement.

13 Intellectual Property

13.1 Electricity North West shall be entitled to an irrevocable, royalty-free licence to use, reproduce modify and extend all drawings, specifications and other material to which any intellectual property rights attach and which are prepared by or on behalf of the ICP in relation to the design of the Electricity Connection Works or any part thereof, for any purpose connected with the maintenance, repair, renewal, alteration or extension of all or part of the Electricity Connection Works including any future works to be carried out, and to grant sub-licences in terms of this licence.

13.2 The ICP warrants to Electricity North West that the exercise of the licence granted in clause 13.1 will not infringe the intellectual property rights of any person.

13.3 The ICP acknowledges that Electricity North West places particular reliance upon the provisions of this Agreement and in addition to any other remedy available to Electricity North West the ICP irrevocably and unconditionally agrees to indemnify Electricity North West in full and on demand and keep Electricity North West so indemnified from and against all claims, demands, actions proceedings and damages, losses, reasonable costs and expenses (including legal and other professional advisers' fees) which are made or brought against or incurred or suffered by Electricity North West, its officers, employees or representatives and whether wholly or in part resulting from the matters listed below whether or not such losses or the consequences of the matters listed below were foreseeable at the date of the entering into of this Agreement:

- (a) Any claim by a third party that the provision of the Electricity Connection Works by the ICP or the use by or on behalf of Electricity North West of any assets used by the ICP in connection with the performance of the Electricity Connection Works infringes the intellectual property rights of that third party

14 Dispute resolution

- 14.1 The provisions of Part II, Housing Grants, Construction and Regeneration Act 1996 and the Scheme for Construction Contracts (England & Wales) Regulations 1998 apply to this Agreement.
- 14.2 A Party may at any time notify the other Parties of its intention to refer a dispute, difference or question arising under, out of, or relating to, this Agreement to adjudication PROVIDED that nothing contained in this paragraph shall authorise reference to adjudication of any question whether the whole or part of the Electricity Connection Works have been carried out and completed to the satisfaction of Electricity North West and on any such question the decision of Electricity North West is expressed to be final. Within 7 days of such notice, the dispute may by further notice be referred to the adjudicator appointed by the President for the time being of the Royal Institute of Chartered Surveyors ("Referral Notice").
- 14.3 The Referral Notice shall set out the principal facts and arguments relating to the dispute. Copies of all relevant documents in the possession of the Party serving the Referral Notice shall be enclosed with such notice. A copy of the Referral Notice and enclosures shall at the same time be sent by the serving Party to the other Parties to this Agreement.
- 14.4 It shall be a condition precedent to the appointment of an adjudicator that he shall notify all Parties that he will comply with this Clause 14 and its time limits.

- 14.5 The adjudicator, unless already appointed, shall be appointed within 7 days of the giving of a notice of intention to refer a dispute to adjudication under Clause 14.2. The Parties shall jointly proceed to use all reasonable endeavours to complete the appointment of the adjudicator.
- 14.6 The Parties may submit representations to the adjudicator not later than 7 days from the receipt of the Referral Notice.
- 14.7 The adjudicator shall notify his decision to all Parties not earlier than 10 and not later than 28 days from receipt of the Referral Notice, or such longer period as is agreed by the Parties after the dispute has been referred. The adjudicator may extend the period of 28 days by up to 14 days, with the consent of the serving Party. The adjudicator's decision shall nevertheless be valid if issued after the time allowed. The adjudicator's decision shall state how the cost of the adjudicator's fee or salary (including overheads) shall be apportioned between the Parties, and whether one Party is to bear the whole or part of the reasonable legal and other costs and expenses of the others, relating to the adjudication.
- 14.8 The adjudicator may take the initiative in ascertaining the facts and the law, and the Parties shall enable him to do so. In coming to a decision the adjudicator shall have regard to how far the Parties have complied with any procedures in the Agreement relevant to the matter in dispute and to what extent each of them has acted promptly, reasonably and in good faith. The adjudicator shall act independently and impartially, as an expert adjudicator and not as an arbitrator. The adjudicator shall have the fullest possible powers to assess and award damages and legal and other costs and expenses and to award interest. In particular, without limitation, the adjudicator may award simple or compound interest from such dates, at such rates and with such rests as he considers meet the justice of the case –

(a) on the whole or part of any amount awarded by him, in respect of any period up to the date of the award;

(b) on the whole or part of any amount claimed in the adjudication proceedings and outstanding at the commencement of the adjudication proceedings but paid before the award was made, in respect of any period up to the date of payment;

and may award such interest from the date of the award (or any later date) until payment, on the outstanding amount of any award (including any award of interest and any award of damages and legal and other costs and expenses).

14.9 The decision of the adjudicator is binding until the dispute is finally determined by legal proceedings or by agreement.

14.10 The Parties shall comply forthwith with any decision of the adjudicator; and shall submit to summary judgment and enforcement in respect of all such decisions.

14.11 If requested by one of the Parties to the dispute, the adjudicator shall provide reasons for his decision. Such requests may only within 14 days of the decision being notified to the requesting Party.

14.12 The adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator, unless the act or omission is in bad faith. Any employee or agent of the adjudicator is similarly protected from liability.

15 Liability and indemnities

15.1 Until the completion of the whole of the Electricity Connection Works the ICP shall be liable for and shall indemnify Electricity North West in respect of any Cost or liability

arising out of any personal injury or death and loss of or any damage to any property caused by or arising out of the installation of the Electricity Connection Works or any part thereof save that the indemnity in respect to any damage to any property shall be limited to £1 million for each and every claim or claims arising from any event,

- 15.2 The ICP shall not be liable pursuant to clause 15.1 to the extent that such injury, death, loss or damage is caused by the negligent act or omission of Electricity North West or any of its employees, agents, servants or contractors.
- 15.3 From the date of completion of the whole of the Electricity Connection Works until the expiry of a period of 6 years from that date the ICP shall maintain a policy of public liability insurance in respect of the liability of the ICP detailed in 15.1 with a limit of indemnity of not less than the amount specified in that regard in Appendix 1 for each occurrence or series of occurrences arising out of any event. Whenever required to do so the ICP shall promptly produce to Electricity North West written confirmation from the ICP's insurer or insurance broker that such insurance policy is in force.
- 15.4 If by reason of any breach by the ICP of any term of this Agreement or any latent defect occurs or comes to the attention of Electricity North West in the Electricity Connection Works within 24 calendar months of the said Works being energised that causes the interruption of supply to any customer of Electricity North West, the ICP shall indemnify Electricity North West against all claims, demands actions proceedings and all damages losses reasonable costs and expenses (including legal and other professional advisers' fees) incurred by Electricity North West as a result of such defect including the amount of any compensation it pays or allows to or for the benefit of such customer pursuant to Law or the terms of Electricity North West's distribution licence up to a maximum of £1 million

15.5 Save as provided in this clause 15, no Party shall be liable hereunder for any loss of use, loss of profit, loss of contract or other indirect or consequential loss.

15.6 The Developer shall be liable to Electricity North West for any breach by the ICP of any term of this Agreement or failure of the ICP to pay any amount due from the ICP to Electricity North West under this Agreement, and the Developer shall be liable to Electricity North West under this Clause 15 and elsewhere in this Agreement as if all references in this Agreement to the ICP were references to the Developer.

16 Force Majeure and System Emergencies.

16.1 If any Party is unable to carry out its obligations or under this Agreement due to a circumstance of Force Majeure or if Electricity North West is unable to carry out its obligations under this Agreement due to a System Emergency this Agreement shall remain in full force and effect but save as otherwise provided herein all Parties obligations (other than obligations as to payment) shall be suspended without liability for a period equal to the circumstance of Force Majeure or System Emergency provided that:

- (a) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure or the System Emergency;
- (b) no obligations of any Party that arose before the Force Majeure or the System Emergency causing the suspension of performance are excused as a result of the Force Majeure or the System Emergency; and
- (c) the non-performing Party shall use all reasonable efforts to remedy its inability to perform.

17 Reservations and disclaimers

- 17.1 Nothing in this Agreement shall derogate from any statutory rights or powers of Electricity North West as electricity distributor appointed under the Electricity Act 1989.
- 17.2 The financial liabilities of Electricity North West under this Agreement, if any, are limited to those expressly set out herein, subject to which Electricity North West shall not have any liability to the ICP nor to any other Party in respect of the cost of the Electricity Connection Works or any part thereof.
- 17.3 Nothing in or done in contemplation of or pursuant to this Agreement shall render Electricity North West liable in respect of the design or construction of the Electricity Connection Works or any part thereof, but without derogation from the statutory responsibilities of Electricity North West as licensed electricity distributor.
- 17.4 No inspection or approval or review, and no omission to inspect or to review or to disapprove shall give rise to any liability on the part of Electricity North West, nor negate or diminish any right or remedy of Electricity North West under this Agreement.

18 Interest on late payments

If any amount due under this Agreement is wrongfully withheld after the relevant date for payment, such amount shall bear interest from day to day at 4 per cent over Bank of England base rate for the time being from the date for payment to and including the date on which such amount is paid.

19 Contracts (Rights of Third Parties) Act 1999

This Agreement is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

Schedule 1

Definitions and interpretation

1 Definitions

In this Agreement:

Accreditation means at any time satisfying the requirements of Electricity North West both at the execution of and for the duration of this Agreement for the ICP and its subcontractors to be qualified to the required standard of the appropriate accreditation body and to hold a valid accreditation registration and certificate issued by such accreditation body recognised by Electricity North West to carry out the construction of the Electricity Connection Works to the required standard.

Adoption Plan means the plan in Appendix 4.

Asset Value means the amount specified as such in Appendix 1.

CDM Regulations means the Construction (Design and Management) Regulations 2007.

Conditions means the conditions set out in this Agreement.

Cost means reasonable and proper cost or expense.

Design means the design and drawings produced by the ICP in Appendix 2 and/or such varied or additional design and drawings as take effect under and for the purposes of this Agreement.

Developer means the Party (if any) identified as such in this Agreement.

Developer's Deed of Grant means a deed of grant of easement and restrictive covenant in respect of the Easement Strip on the Developer's Land, in a form to be agreed between the Developer and Electricity North West (both Parties acting reasonably).

Developer's Land is defined in paragraph 2 of Schedule 3

Easement Strip means any land within 1 metre of each side of any cable forming part of the Electricity Connection Works or such width as specified by Electricity North West design engineer and as is shown on the Adoption Plan

Electricity Connection Works means the electricity cabling, overhead lines, plant connections and ancillary works shown in the Design drawings and described in the Specification including substations but excluding:

- (a) any connections to Electricity North West' Network be made by Electricity North West pursuant to Clause 5 of this Agreement
- (b) the Electricity North West Works; and
- (c) any Non-Contestable Work,

as may be varied in accordance with the provisions of this Agreement

Electricity North West means Electricity North West Ltd the first Party to this Agreement

Electricity North West's Network means the electricity network and associated assets under Electricity North West's operational control.

Electricity North West Works Payment means the sum of money specified as such in Appendix 1

Electricity North West Works means the works to be installed by Electricity North West or its agent pursuant to Schedule 4, a description of which is contained in Appendix 5

Electricity Safety Management System means such current system of working that is approved by Electricity North West to permit an ICP to carry out work in accordance with the Live Jointing Regime Document.

Force Majeure means any case preventing any 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.

Good Industry Practice means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the same type of undertaking under the same or similar circumstances.

ICP means the Party identified as the Independent Connection Provider in this Agreement.

Insolvent means, in relation to a Party, that:

- (a) an order is made or resolution passed for it to be wound up, except in connection with a solvent amalgamation or reconstruction of that Party;
- (b) an appointment is made of a manager, receiver, or administrator in respect of its assets or undertaking;
- (c) an application is made for an administrative order in respect of that Party; or
- (d) it is or is deemed to be unable to pay its debts according to s123 of the Insolvency Act 1986

Land Owner means the Party being registered as the title owner of the land in question.

Land Rights means all such rights as defined in Schedule 3 in on under or over land belonging to the Developer or a third party as are necessary for the construction installation operation repair maintenance renewal and/or use of the Electricity Connection Works or any part thereof or Electricity North West Works as the case may be.

Law means:

- (a) any legislation, including any subordinate legislation;
- (b) any European Union law;
- (c) any judgment of a relevant court of law which establishes binding precedent;
and
- (d) any code of practice made under any law,

having application in England and Wales from time to time

Live Jointing Regime Document means such document as issued from time to time by Electricity North West setting out the procedures in place to control any live jointing works carried out by a suitably accredited ICP.

Minor Variation(s) means changes to the works that do not alter the technical characteristics of the Design and must at all times comply with the Specification in Appendix 3 submitted by the ICP and approved by Electricity North West.

Necessary Consent means any approval or consent required by Law, or required by any public or regulatory authority, in connection with the installation of the Electricity

Connection Works (including, in the case of overhead power lines, such consents as are required under s37 of the Electricity Act 1989 as amended by the Utilities Act 2000).

Non-Contestable Work means any work which as a matter of its policy as published from time to time, Electricity North West generally requires to be carried out by itself and not by other persons.

Operations and Maintenance (O&M) Charges means that charge made to the ICP for anticipated costs of operation repair and maintenance of any equipment installed in excess of the minimum value of an asset that would normally be required to provide the agreed supply capacity in accordance with the Specification.

Parties means the parties as are named in and have executed this Agreement, and **Party** shall be construed accordingly.

Specification means the specification produced by Electricity North West in Appendix 3 or such specification as may be varied pursuant to the provisions of this Agreement.

Street means a street in respect of which the street authority for the area in which the street is situate is entitled to grant a street works licence pursuant to s56, New Roads and Street Works Act 1991.

Systems Emergency means an event either on Electricity North West's Network or on the distribution system of another electricity distributor which results in Electricity North West being requested to divert resources for the period of the event.

Third Party Land is defined in paragraph 3 of Schedule 3.

Third Party Land Deed of Grant means a deed of grant of easement and restrictive covenant in respect of the Service Strip on the Third Party Land, in a form to be

agreed between the owner of Third Party land and Electricity North West (both Parties acting reasonably).

Working Day means any day except a Saturday, Sunday or statutory holiday in England and Wales

Interpretation

- 1.2 Save if a contrary intention is expressed, a Party may discharge any obligation under this Agreement to do any thing by procuring that it be done.
- 1.3 In this Agreement, unless the context requires otherwise:
- (a) **Person** includes any entity having legal capacity;
 - (b) any term importing gender includes any gender;
 - (c) the singular includes the plural and vice versa;
 - (d) any reference to a clause is to a clause of this Agreement;
 - (e) any reference in a schedule to a paragraph is to such paragraph of that schedule;
 - (f) any reference to a schedule or appendix is a reference to such schedule or appendix of or to this Agreement; and
 - (g) any reference to any legislation (whether specific or general) shall be deemed to include any further legislation in force for the time being replacing, supplementing or amending such legislation.
- 1.4 Headings do not affect the construction of this Agreement.

Schedule 2

Installation of the Electricity Connection Works

1 Design of the Electricity Connection Works

1.1 The Electricity Connection Works shall be designed:

- (a) in accordance with the Specification; and
- (b) with the skill and care to be expected of a duly qualified and experienced designer specialising in the design of electrical installations of the character of the Electricity Connection Works.

1.2 Paragraph 1.1 shall not impose any obligation upon the ICP with respect to any design provided by Electricity North West or by another contractor on its behalf.

1.3 Design approval by Electricity North West does not relieve the ICP of any liability for the Electricity Connection Works as set out in this Agreement.

2 Installation of the Electricity Connection Works

The installation of the Electricity Connection Works and all associated preparation, excavation, bedding, backfilling, making good and all other associated construction operations shall be carried out:

- (a) in accordance with:
 - (i) the approved Design; and
 - (ii) the Specification; and
 - (iii) any further design approval by Electricity North West under paragraphs 6 or 8 of this Schedule.

- (b) in a good and workmanlike manner and in accordance with Good Industry Practice; and
- (c) to the reasonable satisfaction of Electricity North West.

3 Compliance with Law

The ICP shall comply with all applicable Law relating to the design and installation of the Electricity Connection Works and the construction operations carried out in connection with the installation of the Electricity Connection Works.

4 Necessary Consents

The ICP shall obtain and comply with the requirements of the Necessary Consents.

5 Street Electricity Connection Works

If any of the Electricity Connection Works are to be installed in any Street then such Street is shown edged blue on the Adoption Plan. It is the responsibility of the ICP to obtain all necessary notices consents and street works licences required pursuant to the New Roads and Street Works Act 1991.

6 Further Design or Variation Before Commencement of Works

- 6.1 Where a variation to the Design is proposed that is not a Minor Variation a copy of the proposed design variation shall be submitted by the ICP to Electricity North West for approval such approval not to be unreasonably withheld or delayed. The proposed design variation shall be submitted for approval not less than 10 Working Days before such further design is proposed to be used for procurement or installation. If reasonably required by Electricity North West the ICP shall amend the proposed design variation and resubmit it to Electricity North West for approval, such approval not to be unreasonably withheld or delayed.

- 6.2 If any variation is approved the Costs and other reasonable and proper fees due to Electricity North West pursuant to this Agreement may be reviewed and the ICP or Developer may as a result of such review be required to pay an additional sum due.

7 Programme

- 7.1 Within 10 Working Days after signing this Agreement and no later than 10 Working Days before the commencement of the installation of the Electricity Connection Works the ICP shall provide to Electricity North West a written programme of works for such installation giving the dates when connections to Electricity North West's existing network will be required (a "Programme of Works"). The Programme of Works shall be agreed with Electricity North West before any work commences. In the event of any material delay to, or alteration to the sequence of such installation, the ICP shall without delay revise such programme accordingly and provide a copy of the revised programme to Electricity North West and seek approval such approval not to be unreasonably withheld or delayed. Provided always that should any point on the Electricity Connection Works require a high voltage connection to Electricity North West's existing network then the said Programme of Works shall be submitted so as to provide at least 60 Working Days' notice of the proposed commissioning date followed by confirmation of the commissioning date 20 Working Days prior to the commissioning date.
- 7.2 Thereafter, every Thursday of every week the ICP shall provide to Electricity North West a completed written weekly whereabouts sheet ("Weekly Whereabouts Sheet") giving details of the Programme of Works for the Electricity Connection Works for the following 7 days. Any changes to the details provided on the Weekly Whereabouts Sheet shall be notified to Electricity North West the day before work is due to be done at any location on a written daily whereabouts sheet ("Daily Whereabouts Sheet")

which gives details of changes to the weekly programme previously notified to Electricity North West.

8 Minor Variations After Commencement of the Electricity Connection Works

8.1 If the ICP wishes to make Minor Variations to the Electricity Connection Works it shall submit its written proposals for the variation to Electricity North West such approval not to be unreasonably withheld or delayed. Electricity North West shall if appropriate give reasons for any refusal or request further information, design or calculations. If the latter case the procedure in this paragraph may be repeated until the proposed variation is approved or refused.

8.2 If any variation is approved pursuant to paragraph 8.1 the ICP shall provide Electricity North West with two sets of drawings showing the varied Electricity Connection Works and such drawings shall form part of or, as the case may require, become the Design for the purposes of this Agreement.

9 Testing

9.1 The ICP shall give Electricity North West not less than 5 Working Days' written notice on the Weekly Whereabouts Sheets of the date and time at which the ICP proposes to carry out any testing of the Electricity Connection Works in accordance with the relevant requirements of the Specification. Any changes to the testing schedule shall be notified in writing on the Daily Whereabouts Sheets.

9.2 If the ICP fails to comply with paragraph 9.1 or carries out any testing other than at the date and time notified to Electricity North West pursuant to paragraph 9.1, Electricity North West may instruct that such testing be repeated at such time as Electricity North West shall specify and the ICP shall comply with such instructions.

9.3 The ICP shall supply to Electricity North West in writing in a timely manner the results of all testing and commissioning undertaken in accordance with this paragraph and in accordance with Electricity North West policy requirements.

10 CDM Regulations

The Parties acknowledge that in relation to the Electricity Connection Works the Developer shall be “the Client” for the purposes of the CDM Regulations and the Developer undertakes to indemnify Electricity North West at all times from all liabilities for the performance of the Developer’s obligations pursuant to the CDM Regulations and against demands, actions, proceedings, damages, losses, reasonable costs and expenses which are made or brought against or incurred by Electricity North West.

11 Revisions to the Specification

If the installation of the Electricity Connection Works is not completed by the date specified in the Programme of Works in clause 7.1, Electricity North West may notify the ICP of revisions to the Specification and direct that such revisions are to apply to the Electricity Connection Works or such part of the Electricity Connection Works as Electricity North West shall specify by Notice, and in that case, the Specification in Appendix 3 shall be deemed to be revised accordingly for the purposes of this Schedule 2, in respect of the Electricity Connection Works or such part thereof.

12 Easement Strip

The ICP and/or the Developer and/or Land Owner shall not erect any structure on or above the Easement Strip save:

- (a) for any structure shown within the Easement Strip on the Design; or

(b) with the written consent of Electricity North West which Electricity North West shall be entitled to withhold in its absolute discretion.

If the Developer or Land Owner sells or grants a lease of any premises connected to the Electricity Connection Works the Developer shall ensure that the aforementioned requirements are documented in the property deeds of the relevant premises to the reasonable satisfaction of Electricity North West prior to the completion of any sale or lease and shall ensure that the Reservation detailed in clause 7 of schedule 3 is included in all sale and/or lease documentation of any part of the said land.

13 Access for inspection

Electricity North West shall be granted access to inspect the Electricity Connection Works at all reasonable times. The ICP shall provide any plant or equipment reasonably required to carry out such inspections and shall provide all safety measures and safety equipment necessary in connection with such inspections.

14 Backfilling

14.1 The ICP shall not cover up any part of the Electricity Connection Works unless prior notice of the ICP's intention to carry out such work has been given to Electricity North West in accordance with clauses 7.1 and 7.2 above.

14.2 If required by written notice served by Electricity North West to do so, the ICP shall as and when required by such notice open up the Electricity Connection Works or any part of the Electricity Connection Works for inspection by Electricity North West, and if the ICP fails to comply with such notice, Electricity North West may itself arrange for and carry out such opening up.

14.3 If:

- (a) the ICP is in breach of paragraph 14.1; or
- (b) on inspection by Electricity North West as provided in paragraph 14.2 any part of the Electricity Connection Works is found to be in contravention of any requirement of this Agreement,

the ICP shall demonstrate to Electricity North West the extent of the contravention and that the rest of the Electricity Connection Works is in accordance with the Agreement and the Cost incurred by Electricity North West pursuant to its rights under paragraph 14.2 and 13.3 shall be paid by the ICP or repaid by the ICP on demand to Electricity North West, but in any other case such Cost shall be repaid by Electricity North West to the ICP.

15 Rectification of defects

15.1 If any defect appears in any part of the Electricity Connection Works either before the whole of the installation of Electricity Connection Works is complete or within 24 calendar months of all the Electricity Connection Works being energised and the final completion certificate being issued by Electricity North West due to any breach by the ICP of any term of this Agreement then the following provisions of this paragraph 15 shall apply.

15.2 Electricity North West shall give the ICP notice of any work it intends to carry out to remedy such defect in the Electricity Connection Works and Electricity North West will arrange for such work to be carried out within a reasonable time.

15.3 If Electricity North West determines, acting reasonably, that any remedial work is required to remedy such defect as a matter of urgency, it may elect to carry out such remedial work without notice to the ICP.

- 15.4 Any Non-Contestable Work required to remedy any defect to which this paragraph 15 applies shall be carried out by Electricity North West.
- 15.5 Save as provided in this clause 15, no Party shall be liable hereunder for any loss of use, loss of profit, loss of contract or other indirect or consequential loss.
- 15.6 The Developer shall be liable to Electricity North West for any breach by the ICP of any term of this Agreement or failure of the ICP to pay any amount due from the ICP to Electricity North West under this Agreement, and the Developer shall be liable to Electricity North West under this clause 15 and elsewhere in this Agreement as if all references in this Agreement to the ICP were references to the Developer.

16 Notice of completion and records

- 16.1 When the ICP has completed the installation of the Electricity Connection Works or any part thereof and all associated backfilling and reinstatement, the ICP shall without delay:
- (a) serve written notice on Electricity North West to that effect;
 - (b) supply to Electricity North West two sets of complete and accurate record drawings of the Electricity Connection Works as installed, prepared in accordance with the relevant requirements of the Specification; and
 - (c) supply to Electricity North West two copies of the health and safety file for the Electricity Connection Works required to be produced pursuant to the CDM Regulations.
- 16.2 Within 28 days of the receipt of written notice that the whole of the Electricity Connection Works are complete and all payments due to Electricity North West have been made then Electricity North West will either:

- (a) issue a final completion certificate or
- (b) issue a notice of required rectification work

Any rectification work shall be completed in accordance with paragraph 15 and the ICP shall then again submit written notice in accordance with this paragraph 16.

17 Payment of fees

17.1 The ICP shall pay Electricity North West's fees as are associated with this Agreement and are invoiced from time to time and VAT on such fees.

17.2 The fees payable under paragraph 17.1 shall be calculated according to the relevant scale of fees in force for the time being as published by Electricity North West and made available to the ICP on demand.

17.3 The fees payable to Electricity North West for Non-Contestable Works and operation and maintenance charges as detailed in Appendix 1 of this Agreement shall be notified to the ICP and/or the Developer prior to the execution of this Agreement and shall be paid in full by the ICP or the Developer on or before the date of execution of this Agreement.

17.4 Any fees payable to Electricity North West for additional Non Contestable Works not previously identified or requested prior to the execution of this Agreement shall be invoiced to the ICP and/or the Developer by Electricity North West and shall be paid by the ICP and/or the Developer.

18 Making Live the Electricity Connection Works

18.1 On each occasion of energising part or all of the Electricity Connection Works the ICP will be permitted to carry out the work necessary to energise the Electricity Connection Works provided that: -

- (a) the scope of the work has been agreed in advance with Electricity North West in accordance with the Electricity North West Live Jointing Regime Document.
- (b) the proposed work has been notified by the ICP to Electricity North West in the Weekly Daily Whereabouts Sheet and Daily Whereabouts Sheets in accordance with paragraph 7 above.
- (c) all live jointing work is carried out by the ICP in accordance with the live working procedures specified in the Electricity North West Live Jointing Regime Document.
- (d) at the time the work is undertaken the ICP is accredited for live working and has an approved Electricity Safety Management System in place.
- (e) those employees of the ICP engaged in live working are accredited and suitably authorised for live working.
- (f) good title to the satisfaction of Electricity North West has been provided to Electricity North West by the ICP and/or Developer and/or the Land Owner in relation to the Electricity Connection Works to be made live.

18.2 Upon making live of any part or parts of the Electricity Connection Works they shall be deemed to be adopted by Electricity North West and shall become part of the Electricity North West' Network and the ICP/Developer shall complete the commissioning requirements of those Electricity Connection Works to the reasonable satisfaction of Electricity North West.

18.3 Should any of the adopted Electricity Connection Works not pass those commissioning requirements set out in 18.2 then Electricity North West may:-

- (a) disconnect the adopted Electricity Connection Works from Electricity North West's Network until the ICP/Developer undertakes all work on the adopted Electricity Connection Works identified by Electricity North West to be necessary to enable those adopted Electricity Connection Works to pass the commissioning requirements to the satisfaction of Electricity North West; or
- (b) elect to carry out such works set out in 18.3 (a) above itself and recover any costs incurred in doing so from the ICP/Developer (as the case may be).

19 Operation of the Electricity Connection Works following energisation

Immediately following the making live of any part of the Electricity Connection Works either by the ICP or by Electricity North West then the said works shall become part of and be operated as part of Electricity North West' Network and the ICP and the Developer shall treat the said works in all respects as the property of Electricity North West.

Schedule 3

Land Rights

1 Application of Schedule 3

Schedule 3 shall apply if and as specified in clause 4 and Appendix 1 together with any additional guidance issued by Electricity North West from time to time regarding land rights. Where there is a conflict between this Agreement and guidance issued by Electricity North West this Agreement will take precedence.

2 Developer's Land

2.1 If Appendix 1 contains a statement that the Electricity Connection Works are to be installed wholly or in part on land in the ownership of the Developer (**Developer's Land**) then:

- (a) Paragraphs 2.2 and 2.3 below shall apply;
- (b) the Developer's solicitors shall provide Electricity North West with official copies of title to the Developer's Land which evidence that the Developer's interest in the Developer's Land is sufficient for the purposes of this Agreement; and
- (c) the Developer must ensure that the Developer's Land is shown edged red on the Adoption Plan; and
- (d) the Developer must ensure that the Electricity Connection Works are to be laid through the yellow coloured Easement Strip shown on the Adoption Plan which strip is shown in the width as specified by Electricity North West design engineer.

- 2.2 Prior to the connection of all or any part of the Electricity Connection Works to Electricity North West's Network the Developer shall execute and deliver to Electricity North West a Developer's Deed of Grant for the Easement Strip and shall if necessary procure that the same be executed by any lessee or mortgagee of the Developer's Land or consent is issued in that respect.
- 2.3 If the position of the Electricity Connection Works as installed in the Developer's Land deviates materially from the line of the Easement Strip shown on the Adoption Plan, the Developer shall, if Electricity North West so requires, enter into (and, if necessary, procure that any relevant lessee or mortgagee enter into) a deed of variation of the Developer's Deed of Grant in such form as Electricity North West may specify, acting reasonably, so as to secure to Electricity North West rights in respect of the Electricity Connection Works on the Developer's Land no less beneficial to Electricity North West than the Deed of Grant is designed to secure or consent is issued in that respect

3 Third Party Land

- 3.1 If Appendix 1 contains a statement that the Electricity Connection Works are to be installed wholly or in part any land which is neither Developer's Land nor any Street **(Third Party Land)** then:
- (a) paragraphs 3.2 and 3.3 below apply;
 - (b) the Developer's solicitors shall produce evidence to Electricity North West that the owners of the Third Party Land have a sufficient interest in the Third Party Land for the purposes of this Agreement; and
 - (c) the Developer shall ensure that the Third Party Land is shown edged green on the Adoption Plan.

- 3.2 Prior to the connection of all or any part of the Electricity Connection Works to Electricity North West's Network the Developer shall procure that each of the owners of the Third Party Land execute and deliver to Electricity North West a Third Party Land Deed of Grant and shall where requested by Electricity North West procure that any such Third Party Land Deed of Grant be executed by any lessee or mortgagee of the Third Party Land.
- 3.3 If the position of the Electricity Connection Works as installed in the Third Party Land deviates materially from the Easement Strip shown on the Adoption Plan the Developer shall, if Electricity North West so requires, procure that each of the owners of the Third Party Land enter into (and, where requested by Electricity North West procure that all or any relevant lessee or mortgagee enter into) a deed of variation of the Third Party Land Deed of Grant, in such form as Electricity North West may specify, acting reasonably, so as to secure to Electricity North West rights in respect of the Electricity Connection Works on the Third Party Land no less beneficial to Electricity North West than the Third Party Deed(s) of Grant is/are designed to secure.

4 Waivers – Highways Act 1980

If Electricity North West is satisfied that there is in existence a relevant signed agreement under section 38 or section 278 of the Highways Act 1980 for the adoption of the road or proposed road in which all of the Electricity Connection Works are to be installed, and there is no reason to believe that the terms of such agreement will not be fulfilled within 12 months after the date of this Agreement Electricity North West may in its absolute discretion grant in writing a waiver of any of the applicable requirements of paragraph 2 and/or paragraph 3 of this Schedule 3 in respect of those Electricity Connection Works.

5 Substations

If the Electricity Connection Works or Electricity North West Works include the provision of any substation, the Developer shall prior to the connection of any substation forming part of the Electricity Connection Works to Electricity North West's Network execute or procure the execution in favour of Electricity North West such transfer or 125 year lease of land as the case may be for the accommodation of the substation as shall have been required by Electricity North West and in Electricity North West agreed form of transfer and/or lease (as the case may be) with such amendments as may have been agreed between the Developer and Electricity North West (both Parties acting reasonably).

6 Overhead Lines

Overhead lines intended to supply more than one customer require the consent of the relevant Secretary of State for the time being. If the ICP elects to build such a line then it will be responsible for obtaining all necessary consents including but not limited to Local Planning Authority approval (Form B) and for obtaining consent pursuant to Section 37 of the Electricity Act 1989 as amended from time to time from the relevant Secretary of State. In advance of connecting any such part of the Electricity Connection Works to Electricity North West' Network the ICP must supply all documentation, consents and licenses required by Electricity North West and as specified in its guidance notes in force from time to time.

7 Reservation

Each sale of part or all of the Developer's Land or the Land Owner's Land (as the case may be) shall contain the following reservation in favour of Electricity North West provided that this will not apply to any lease granted in respect of an apartment;

"Excepting and reserving unto Electricity North West Ltd whose registered office is at Dalton House, 104 Dalton Avenue, Birchwood Park, Birchwood, Warrington, WA3 6YF for the benefit of its electricity undertaking and each and every part thereof the full right and liberty for Electricity North West Ltd by its servants or agents and all persons authorised by it to maintain, use, inspect, relay, renew, repair, replace or remove underground electric cables and conduits or pipes and ancillary equipment within and under the property hereby conveyed/transferred/demised and to enter and be upon the property with or without all necessary machinery plant vehicles and apparatus and to break up so much of the surface of the property as is necessary from time to time for all or any of the purposes aforesaid Electricity North West Ltd doing as little damage as possible and back-filling any excavation so made and reinstating the surface of the property so broken up as soon as practicably possible."

8 Professional Costs

Electricity North West will not be responsible for any professional fees or costs incurred by the ICP or the Developer in negotiating, agreeing, granting, obtaining or completing any rights, deeds, documents or consents unless expressly provided for by this Agreement. For the avoidance of any doubt this includes sums payable to any Third Party Land owner his servants or his agents or his professional advisors.

9 Connection Condition

Electricity North West will not energise or make live any of the Electricity Connection Works for which any requirement has not been satisfied unless the terms of this

Agreement relating to Land Rights and any associated consent or licence are in place and all necessary documents are completed and presented to Electricity North West.

10 Electricity North West Works

Where Electricity North West is required to carry out Electricity North West Works then Electricity North West will use all reasonable endeavours to obtain all Land Rights it requires in order to undertake such works and thereafter access maintain repair and replace them. All such Land Rights will be obtained at Electricity North West cost but the ICP and/or the Developer will provide all reasonable assistance to Electricity North West when requested to do so in order to obtain the necessary Land Rights.

Schedule 4

Electricity North West Works

1 Application of Schedule 4

Schedule 4 shall apply if so provided in Appendix 1 (*Miscellaneous information*).

2. Request and payment for Distributor's Works

- a) Electricity North West shall undertake the Electricity North West Works if the ICP:
 - i) serves a written works order on Electricity North West requiring it to do so; and
 - ii) pays to Electricity North West the Electricity North West Works Payment as set out in a sundry billing invoice sent by Electricity North West to the ICP (subject to paragraph 4), plus VAT on such payment, if and as payable by Law.
- b) Provided always that if the ICP fails to pay the sundry billing invoice on Electricity North West standard terms then Electricity North West shall stop the installation of the Electricity North West Works until receipt of the outstanding payment.
- c) If Electricity North West is prevented from completing its works as a result of events provided for in 2(b) above or 3(b) below and other than by reason of a Systems Emergency then all reasonable costs incurred and resulting from such delay shall be payable by the ICP and/or the Developer.

3. Installation of Distributor's Works

- a) Subject to paragraphs 2a), and 3b), Electricity North West shall:
 - i) design and install Electricity North West Works in accordance with Appendix 5 (*Electricity North West Works*); and

- ii) complete the installation of Electricity North West Works within such period as the ICP and Electricity North West shall have agreed in writing, or in the absence of any such agreement, within a reasonable time.
- b) If Electricity North West is prevented from completing the installation of Electricity North West Works by Force Majeure or a Systems Emergency then Electricity North West shall be entitled to such extension of time for the completion of the installation of Electricity North West Works as is reasonable or necessary in all the circumstances.
- d) The other Parties to this Agreement shall give Electricity North West reasonable access to the land under their ownership or control in which Electricity North West Works or any part of the same are to be installed, and shall procure for Electricity North West similar rights of access if and as required in respect of any Third Party Land.
- e) On completion of Electricity North West Works Electricity North West shall inform the ICP and the Developer.

4. Adjustment to the Electricity North West Works Payment

- a) If the ICP's written works order under paragraph 2a)i) does not require Electricity North West to commence Electricity North West Works until more than 12 months after the date of this Agreement, Electricity North West may by notice served on the ICP prior to commencement of such Electricity North West Works increase the amount of Electricity North West Works Payment in accordance with paragraph 4b).
- b) Any increase in Electricity North West Works Payment under this paragraph shall be in accordance with any changes in Electricity North West published rates and prices for works such as Electricity North West Works between the date of this Agreement and the date on which Electricity North West is required to commence Electricity North West Works pursuant to the ICP's written works order under paragraph 2a)i).