**ENWL UNMETERED TRIPARTITE AGREEMENT**

**Dated DD/MM/YYY**

**ELECTRICITY NORTH WEST Limited (**

**and**

**ICP (**

**and**

**AUTHORITY (**



**AGREEMENT: General Open Contract to Undertake Unmetered Street Electrical Works (Transfers, Connections & Disconnections) within the Geographical Area of** AREA

**ENWL REFERENCE: To be assigned**



**THIS AGREEMENT** is made on the day of

**BETWEEN**

1. **Electricity North West Ltd** (No. 02366949) whose registered office is at Borron Street, Portwood, Stockport, Cheshire, SK1 2JD (**“Electricity North West”**);
2. **ICP**  (a company registered in country with company number number ) whose registered office is at address (the “**ICP**"); and
3. **Authority** whose office is at address (the “**Authority**”);

**BACKGROUND TO THIS AGREEMENT:**

1. The Authority has appointed the ICP to carry out the Street Electrical Fixture Works for Adoption by Electricity North West and the ICP has agreed to carry out the work in accordance with this Agreement.
2. The Authority has agreed to various obligations to Electricity North West as a consequence of the Authority's appointment of the ICP.
3. Electricity North West has agreed to Adopt the Street Electrical Fixture Works upon satisfactory completion and the fulfilment of various conditions under this Agreement.

**IT IS AGREED** as follows: -

1. Definitions and Interpretation
	1. The provisions of Schedule 1 (Definitions and Interpretation) to this Agreement shall have effect.
2. Commencement and Duration
	1. Subject to prior termination in accordance with clause 9, this Agreement shall be deemed to have commenced on the Commencement Date and shall continue for a period of two years unless and until terminated by a Party giving no less than 3 months' written notice to all other Parties to this Agreement.
3. Street Electrical Fixture Works
	1. If the ICP undertakes or carries out any Street Electrical Fixture Works whether partially or completely it shall comply with the requirements (other than the obligations of Electricity North West) in Schedule 2 (Street Electrical Fixture Works), the provisions of which shall have effect.
	2. At all times and for all purposes the procurement and the carrying out of the Street Electrical Fixture Works and in their communications with Electricity North West the Authority agrees that the ICP is acting as agent of the Authority and with its unconditional authorisation.
	3. For the avoidance of doubt, nothing within this Agreement relates to or authorises the ICP to carry out any works on any land that is not a Street and Electricity North West shall not be obliged to Adopt any such works.
4. Consent
	1. The Authority expressly agrees to the Adoption of the Street Electrical Fixture Works by Electricity North West in accordance with the terms of this Agreement.
	2. Upon the Street Electrical Fixture Works being connected to Electricity North West’s network, title to the Street Electrical Fixture Works shall vest in Electricity North West and for the avoidance of doubt the vesting of the Street Electrical Fixture Works (and any part thereof) in Electricity North West is also described as Adoption of the Street Electrical Fixture Works for the purposes of this Agreement.
5. Assignment and Subcontracting
	1. No Party may assign, transfer or novate its respective rights, obligations, benefits or burdens pursuant to this Agreement without the written consent of all of the other Parties, such consent not to be unreasonably withheld or delayed.
	2. The ICP shall not be entitled to subcontract the whole or any part of the management and supervision of the Street Electrical Fixture Works. The ICP may subcontract other aspects of the Street Electrical Fixture Works provided that the ICP ensures that only contractors with appropriate Accreditation are engaged in the carrying out of the Street Electrical Fixture Works. The subcontracting by the ICP of any of its obligations shall not relieve the ICP from liability for the performance of such obligations in accordance with this Agreement.
6. Accreditation
	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 Street Electrical Fixture Works including any part thereof and that no person engaged in the Street Electrical Fixture Works including any part thereof carries out any Street Electrical Fixture Works 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 Street Electrical Fixture Works.
7. Compliance with Law
	1. The Parties shall at all times comply with all applicable Law relating to its performance and obligations pursuant to this Agreement.
8. Defaults in Performance
	1. 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. Any such written notice served on the ICP shall simultaneously be served on the Authority in writing by Electricity North West.
	2. 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 rectify the breach itself it shall do so at the cost of the ICP.
9. Termination
	1. If the ICP and/or the Authority:
		1. becomes Insolvent; or
		2. commit a breach of this Agreement and, if remediable, fail to remedy the breach within 28 days of a written notice by Electricity North West requiring it to do so, such notice to be provided to both the ICP and the Authority; or
		3. acts or fails to act in a manner which causes ENW in its reasonable opinion to believe that there is a material risk to health and safety or a person or a material risk to the continuous supply of electricity on its network; or
		4. persistently breach this Agreement;

then:

Electricity North West may immediately upon written notice to both other Parties, terminate this Agreement.

* 1. The ICP and the Authority shall notify Electricity North West without delay in writing upon the expiry or termination of any of the contractual arrangements between the ICP and the Authority relating to the Street Electrical Fixture Works pursuant to this Agreement. Upon Electricity North West becoming aware of such expiry or termination, Electricity North West may immediately terminate this Agreement upon written notice to both other Parties. The ICP shall immediately cease all Street Electrical Fixture Works upon the earlier of its knowledge of the expiry or termination of any of the contractual arrangements between the ICP and the Authority or the receipt of a written notice of termination from Electricity North West.
	2. The termination of this Agreement shall not affect any accrued liabilities of any Party to this Agreement.
1. Intellectual Property
	1. Subject only to conditions and restrictions placed on use by third parties as notified by a Party in writing to Electricity North West, 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 Street Electrical Fixture Works or any part thereof, for any purpose connected with the maintenance, repair, renewal, alteration or extension of all or part of the Street Electrical Fixture Works including any future works to be carried out, and to grant sub-licences in terms of this licence.
	2. The ICP warrants to Electricity North West that the exercise of the licence granted in clause 10.1 will not infringe the intellectual property rights of any person.
	3. Subject only to conditions and restrictions placed on use by third parties as notified by Electricity North West in writing to the ICP and the Authority, the ICP and the Authority shall be entitled to a royalty free licence to use, reproduce, modify and extend all drawings, specifications and other materials to which any intellectual property rights attach and which are prepared by or on behalf of Electricity North West in relation to the design of the Street Electrical Fixture Works or any part thereof solely for the purpose and in connection with the ICP and/or the Authority performing its respective obligations pursuant to this Agreement.
	4. The Authority and the ICP acknowledge 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:

Any claim by a third party that the provision of the Street Electrical Fixture 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 Street Electrical Fixture Works infringes the intellectual property rights of that third party.

1. Dispute Resolution
	1. The provisions of Part II, Housing Grants, Construction and Regeneration Act 1996 and the Scheme for Construction Contracts (England & Wales) Regulations 1998 shall apply to this Agreement.
	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. 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**”).
	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.
	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 11 and its time limits.
	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 11.2. The Parties shall jointly proceed to use all reasonable endeavours to complete the appointment of the adjudicator.
	6. The Parties may submit representations to the adjudicator not later than 7 days from the receipt of the Referral Notice.
	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.
	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).

* 1. No legal proceedings arising under or in connection with this Agreement may be commenced by any of the parties unless the dispute or difference between the parties has been referred to an adjudicator who has given a decision on that dispute or difference.
	2. The decision of the adjudicator is binding until the dispute is finally determined by legal proceedings or by agreement.
	3. 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.
	4. 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.
	5. 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.
1. Liability and indemnities
	1. No Party excludes or limits its liability under this Agreement for:
		1. death or personal injury caused by its negligence;
		2. fraudulent misrepresentation; or
		3. any other type of liability which cannot by law be excluded or limited.
	2. Subject to clause 12.1 and save where any provision of this Agreement provides for an indemnity, no Party shall be liable hereunder for any loss of use, loss of profit, loss of contract or indirect, special or consequential loss.
	3. Until the expiry of twenty-four (24) calendar months following Adoption of the Street Electrical Fixture 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 Street Electrical Fixture 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.
	4. The ICP shall not be liable pursuant to clause 12.3 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.
	5. From the Commencement Date until the expiry of a period of 6 years from that date the ICP shall maintain an adequate policy of public liability insurance in respect of the liability of the ICP detailed in clause 12.3 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.
	6. 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 Street Electrical Fixture Works within twenty-four (24) calendar months of the Street Electrical Fixture Works being Adopted 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, save to the extent that any claim or action is directly attributable to the actions or inaction of Electricity North West.
	7. Where Electricity North West terminates this Agreement under the provisions of clause 9.1, the Authority unconditionally and irrevocably agrees to indemnify and keep indemnified Electricity North West against any claims, demands, actions, proceedings and all damages, losses, reasonable costs and expenses (**"Losses"**) suffered by it as a result of any failure by the ICP to perform its obligations under or pursuant to this Agreement save for where any such Losses occur after the Authority has provided written notification to Electricity North West in accordance with clause 9.2of this Agreement unless the Losses relate to acts or omissions of the ICP prior to that date or where any such Losses arise as the result of the negligent act or omission of Electricity North West or any of its employees agents, servants, or contractors.
	8. Electricity North West shall not be liable to another Party for loss arising from a breach of this Agreement other than for loss directly resulting from such breach and which at the Commencement Date was reasonably foreseeable as likely to result in the ordinary course of events from such breach and which resulted from:
		1. physical damage to the property of another Party, its officers, employees or agents; and/or
		2. the liability of such other Party to another person for loss in respect of physical damage to the property of another person.
	9. Subject to clause 12.1 Electricity North West limits its liability under this Agreement, whether such liability arises in contract, tort (including without limitation negligence) or otherwise, as follows:
		1. the maximum liability of Electricity North West to another Party shall be limited to £1 million for each claim or series of related claims;
		2. Electricity North West shall not be liable in any event for:

(i) loss of business, use, profit, anticipated profit, contracts, revenues, goodwill or anticipated savings;

(ii) loss of data or use of data; or

(iii) consequential, special or indirect loss or damage;

even if Electricity North West has been advised of the possibility of such loss or damage.

1. Force Majeure
	1. If any Party is unable to carry out its obligations or under this Agreement due to a circumstance of Force Majeure, this Agreement shall remain in full force and effect but save as otherwise provided herein all Parties' obligations shall be suspended without liability for a period equal to the circumstance of Force Majeure provided that:
		1. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
		2. no obligations of any Party that arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure; and
		3. the non-performing Party shall use all reasonable efforts to remedy its inability to perform.
2. Reservations and Disclaimers
	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.
	2. Save to the extent directly attributable to the Standards, 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 Street Electrical Fixture Works or any part thereof, but without derogation from the statutory responsibilities of Electricity North West as licensed electricity distributor.
	3. 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.
3. Payment of fees
	1. The ICP shall pay Electricity North West at the prevailing rates the relevant scale of fees for Street Electrical Fixture Works plus any applicable VAT on such fees and associated with this Agreement as published by Electricity North West and available to the ICP or the Authority on request.
	2. Electricity North West shall be permitted to submit an invoice to the ICP for the fees and applicable VAT at the end of each calendar month for fees accrued within that month and the ICP shall pay the invoiced amount within 30 days of the date of the invoice.
4. Interest on Late Payments
	1. If any amount payable and due under this Agreement remains unpaid, such amount shall bear interest from day to day at four (4) per cent over the 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. The Parties agree that the provisions in this clause 16 are sufficient remedy for non-payment taking into account the subject matter of the Agreement, risk and relative interests and hereby agree that the Late Payment of Commercial Debts (Interest) Act 1998 shall not apply to the Agreement.
5. Insurance
	1. The ICP undertakes to:
		1. take out and maintain appropriate and adequate insurance with a reputable insurance company within the European market for insurance to cover risks associated with the ICP’s obligations in accordance with this Agreement; and
		2. provide a certificate of insurance evidencing the cover provided by such insurance, notifying Electricity North West immediately if any part of these provisions of the insurance is no longer complied with for whatever reason.
	2. The maintenance of insurance in accordance with this clause 17 shall not relieve the ICP of any contractual obligations assumed under this Agreement.
6. Relationship of the Parties

The status of a Party under this Agreement shall be that of an independent contractor. Except as otherwise expressly provided in this Agreement, nothing contained in this Agreement shall be construed as creating a partnership, joint venture or agency relationship between the Parties as granting either Party the authority to bind or contract any obligation in the name of or on the account of the other Party or to make any statements, representations, warranties or commitments on behalf of the other Party. All persons employed by a Party shall be employees of such Party and not of another Party and all costs and obligations incurred by reason of any such employment shall be for the account and expense of such Party.

1. Severability
	1. To the fullest extent permitted by applicable law, the Parties waive any provision of law that would render any provision in this Agreement invalid, illegal or unenforceable in any respect. If any provision of this Agreement is held to be invalid, illegal or unenforceable, in any respect, then such provision will be given no effect by the Parties and shall not form part of this Agreement. To the fullest extent permitted by applicable law and if the rights or obligations of any Party will not be materially and adversely affected, all other provisions of this Agreement shall remain in full force and effect and the Parties will use their best efforts to negotiate a provision in replacement of the provision held invalid, illegal or unenforceable that is consistent with applicable law and achieves, as nearly as possible, the original intention of the Parties.
2. Contracts (Rights of Third Parties) Act 1999
	1. This Agreement is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.
3. Governing Law and Jurisdiction
	1. The interpretation and construction of this Agreement shall be governed by the laws of England and the Parties hereby irrevocably and unconditionally consent to the exclusive jurisdiction of the courts of the English Courts for any action, suit or proceeding arising out of or relating to this Agreement.
4. Confidentiality
	1. Each Party undertakes to the other Parties:
		1. to keep confidential all Confidential Information belonging to another Party;
		2. not to disclose the Confidential Information belonging to another Party without that Party's prior written consent either in whole or in part to any other person save for those of its directors, employees, agents or professional advisers involved in the implementation of this Agreement and provided in all cases that they have a need to know the same: and
		3. to use the Confidential Information of another Party solely in connection with the exercise or enjoyment of rights and/or the performance of obligations under this Agreement and not otherwise for its own benefit or the benefit of any third party.
	2. The provisions of clause 22.1 shall not apply to the whole or any part of the Confidential Information that can be shown by the Receiving Party to be:
		1. disclosed as a requirement of law;
		2. known to the Receiving Party prior to the date of this Agreement otherwise than as a result of being obtained directly or indirectly from the Party disclosing such Confidential Information;
		3. obtained from a third party who lawfully possessed such Confidential Information, and which has not been obtained in breach of a duty of confidence owed to the Disclosing Party; or
		4. in the public domain in the form in which it is possessed by the Disclosing Party obtained other than as a result of a breach of duty of confidence owed to the Disclosing Party by any person.
	3. Each Party agrees to keep the terms of this Agreement confidential and no announcement concerning the transactions contemplated by this Agreement or any ancillary matter shall be made by a Party without the prior approval of the other Parties, unless required to make the information available under The Freedom of Information Act in which case the Party making the disclosure shall inform the other parties of the nature and details of any such disclosure.
	4. The provisions of this clause 22 shall survive termination of this Agreement for any reason.
5. General
	1. A Party’s failure to enforce, at any time or for any period of time, any provision of this Agreement, or to exercise any right or remedy shall not constitute a waiver of that provision, right or remedy or prevent such Party from enforcing any or all provisions of this Agreement and exercising any rights or remedies.
	2. To be effective any waiver must be in writing.
	3. The rights and remedies provided herein are cumulative and do not exclude any other right or remedy provided by law or otherwise available except as expressly set forth herein.
	4. If OFGEM (including any successor body or similar organisation whose decisions could affect the validity of this Agreement in whole or in part) issues any determination, as a result of which a Party reasonably considers that an alteration to the Agreement is required to enable a Party to comply with applicable law, such Party shall be entitled to give notice to the other Parties giving reasonable details of such determination and of the alterations to the Agreement which that Party reasonably considers are so required and all the Parties will meet as soon as practicable after giving of such notice in order to discuss in good faith, whether or not they can agree which alterations (if any) should be made to the Agreement as a result of such determination. The Parties each undertake not to unreasonably withhold or delay the granting of its consent to the alteration of the Agreement. If the Parties fail to agree whether or not any such alterations should be made pursuant to this clause, then a Party may refer the dispute as to whether or not such, or any other alteration should be made to the Agreement as the result of the issue of such determination by OFGEM to the procedure specified in clause 11.

**Schedule 1**

**Definitions and Interpretation**

1. **Definitions**

In this Agreement the following words or expressions shall have the following meanings:

**Accreditation** 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 Street Electrical Fixture Works to the required standard;

**Adopt** the transfer by the Authority and/or the ICP to Electricity North West of the property in and responsibility for Street Electrical Fixture Works and “Adopt” or “Adoption” and cognate expressions shall be construed accordingly;

**Agreement** this document together with the Schedules referred to;

**Authority** the Party identified as such in this Agreement;

**CDM Regulations** the Construction (Design and Management) Regulations 2015;

**Commencement Date** the date entered on page 1 of this Agreement.

**Confidential Information** all information relating to a Party's business and products, including without limitation, operations, plans, market opportunities, customers, know how and trade secrets disclosed to another Party (the "Receiving Party") by on behalf of another Party (the "Disclosing Party") (whether in writing, orally or by any other medium);

**Cost** reasonable and proper cost or expense;

**Electricity North West** Electricity North West Ltd the first Party to this Agreement;

**Electricity North West’s** **Network** the electricity network and associated assets under Electricity North West’s operational control;

**Electricity Safety Management System** 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** any case preventing any Party from performing any or all 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** 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** the Party identified as the Independent Connection Provider in this Agreement;

**Insolvent**, 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;

**Law**:

* + 1. any legislation, including any subordinate legislation;
		2. any enforceable community right within the meaning of section 2 of the European Communities Act 1972;
		3. any judgment of a relevant court of law which establishes binding precedent;
		4. any exercise of the Royal Prerogative; and
		5. any code of practice made under any law,

having application in England and Wales from time to time;

**Live Jointing Regime Document** 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) changes to the works that do not alter the technical characteristics and are materially in accordance with a Specification approved by Electricity North West;

**Parties** the parties that are named in and have executed this Agreement, and **Party** shall be construed accordingly;

**Specification** the document produced by the ICP including adequate descriptions and technical details together with adequate designs and drawings in respect of Street Electrical Fixture Works including variations and submitted by the ICP to Electricity North West;

**Standards** the standards, specifications and requirements relating to the Street Electrical Fixture Works produced by Electricity North West from time to time and imposed on the ICP;

**Street** a street in respect of which the Authority is entitled to grant a street works licence pursuant to Part III of the New Roads and Street Works Act 1991;

**Street Electrical Fixture Works** transfers and disconnections in respect of street lighting, service cables thereto and ancillary works shown and described in the Specification all of which are carried out in Streets and do not require the ICP to obtain the consent of any third-party land owner;

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

**2. Interpretation**

In this Agreement, save where the express provisions of this Agreement otherwise provide:

2.1 words importing the masculine gender include the feminine gender and neuter meaning and vice versa;

2.2 the singular includes the plural, and vice versa;

2.3 any clause headings and indices are for convenience and are not intended to be part of and affect the construction of this Agreement;

2.4 the Schedules (including this Schedule 1) form an integral part of this Agreement and have the same legal effect as if their provisions were set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules;

2.5 all references to agreements, documents or other instruments includes them (subject to relevant approvals) as varied, substituted, novated or assigned from time to time;

2.6 the interpretation rule known as the ‘contra proferentem’ rule shall not apply, nor shall any similar rule or approach to interpretation, and this Agreement shall not be interpreted narrowly against either party to it;

2.7 references to any Party shall, where relevant, be deemed to be references to or to include, as appropriate, their respective lawful successors, assigns or transferees;

2.8 references to the giving of a notice or notification are to be as given in writing;

2.9 references to a number of days, unless otherwise specified, such number refers to calendar days;

2.10 the term “including” or “includes” means including, without limiting the generality of any description preceding such term;

* 1. any reference to a statute, statutory provision, or European directive, order, regulation, code of practice, instrument or other subordinate legislation shall (except where the context otherwise requires) be construed as referring to them as amended and in force from time to time and to any re-enactment re-issue or consolidation (with or without modification); and
	2. any reference to Electricity North West shall include its officers, agents, sub-contractors, representatives and employees.

### Schedule 2

### Street Electrical Fixture Works

1. **Specification of Street Electrical Fixture Works**
	1. Unless otherwise agreed by Electricity North West, the ICP shall give at a reasonable time and in any event not less than ten (10) days prior to commencing Street Electrical Fixture Works, the proposed Specification of those Street Electrical Fixture Works (including any variation) which shall be based on the Standards to Electricity North West for approval. Electricity North West may ask for any reasonable amendment to the Specification (or variation) and the ICP shall amend it accordingly and further submit it to Electricity North West for approval. Any approval to a Specification (including any variation) by Electricity North West shall not be unreasonably withheld or delayed and, in the case of rejection of a Specification, shall give reasonable details of the reasons for that rejection.
	2. Save to the extent directly attributable to the Standards, any approval of a Specification by Electricity North West does not relieve the ICP of any liability for Street Electrical Fixture Works.
	3. The ICP shall be responsible for any discrepancies, errors, or omissions in the drawings and information supplied to Electricity North West, including the Specification (whether approved or disapproved by Electricity North West), and, at its own or the Authority’s own expense, shall immediately upon discovery:
		1. submit a variation to the Specification to Electricity North West, including any further drawings or information, for approval in accordance with section 1.1 of this Schedule 2 (Street Electrical Fixture Works) or otherwise as agreed between the ICP and Electricity North West; and
		2. carry out any alterations or remedial work necessitated by reason of such discrepancies, errors, or omissions.
2. **Carrying out the Street Electrical Fixture Works**

2.1 The Street Electrical Fixture Works and all associated preparation, excavation, bedding and all other associated construction operations shall be carried out in accordance with:

* + 1. the relevant Specification approved by Electricity North West;
		2. Good Industry Practice; and
		3. to the reasonable satisfaction of Electricity North West;
		4. Reinstatements should be in accordance with the New Roads and Street Works Act 1991 "Specification for the Reinstatement of Openings in Highway";
		5. Safety measures for working on the highway should be in accordance with "Safety at Street Works and Road Works Code of Practice";
		6. Noticing Procedures should be in line with the New Road and Street Works Act 1991 and Traffic Management Act 2004.

2.2 The ICP shall provide to Electricity North West on a weekly basis a works schedule detailing the Street Electrical Fixture Works to be carried out on each day (a "**Whereabouts**").

1. **Street Works**

The Street Electrical Fixture Works are only to be installed in a Street and it shall be the responsibility of the ICP or the Authority to obtain and observe the conditions of all notices, consents and street works licences required pursuant to, including but not limited to, the New Roads and Street Works Act 1991; and permissions and/or consents in accordance with the Traffic Management Act 2004, including any requirement to expose, inspect, temporarily or permanently reinstate to the appropriate standard and any other liabilities arising from any statutory obligation in respect of and as a consequence of the Street Electrical Fixture Works.

1. **Variations to a Specification**
	1. Where a variation to the Specification or a new Specification is proposed that is not a Minor Variation a copy of the duly varied Specification must be submitted, prior to commencing or re-commencing the affected Street Electrical Fixture Works by the ICP to Electricity North West for approval in accordance with section 1.1 of this Schedule 2 (Street Electrical Fixture Works).
2. **Street Electrical Fixture Works upon Expiry or Termination**
	1. Unless otherwise agreed in writing between the ICP, Authority and Electricity North West:
		1. if after commencing any Street Electrical Fixture Works they have not been completed by the ICP and Adopted by Electricity North West for whatever reason prior to expiry of this Agreement, the ICP shall complete the Street Electrical Fixture Works in accordance with this Agreement to enable Adoption by Electricity North West; and
		2. if after commencing any Street Electrical Fixture Works they have not been completed by the ICP and Adopted by Electricity North West for whatever reason prior to termination of this Agreement, the ICP shall make safe the Street Electrical Fixture Works, and serve notice in accordance with Section 13 of this Schedule 2.
3. **Minor Variations After Commencement of the Street Electrical Fixture Works**
	1. If the ICP wishes to make Minor Variations to the Street Electrical Fixture Works it shall submit its written proposals for the variation to Electricity North West, approval of which shall not be unreasonably withheld or delayed. Electricity North West shall make its decision within 14 days of the submission of the notice and, if appropriate, give reasons for any refusal or request further information, design or calculations. If the latter case the procedure set out in this section 6.1 of this Schedule 2 (Street Electrical Fixture Works) must be repeated until it is approved or finally refused.
	2. If any variation is approved pursuant to paragraph 6.1 the ICP shall provide Electricity North West with two sets of drawings showing the varied Street Electrical Fixture Works.
4. **Testing**
	1. Upon request by Electricity North West the ICP shall supply to Electricity North West in writing and in a timely manner the full and accurate results of all testing and commissioning undertaken on Street Electrical Fixture Works in accordance with Electricity North West policy requirements as amended from time to time. Electricity North West shall make these policy requirements available to the ICP and to the Authority upon request.
5. **CDM Regulations**

The Parties acknowledge that in relation to the Street Electrical Fixture Works the Authority shall be “the Client” for the purposes of the CDM Regulations and the Authority undertakes to indemnify Electricity North West at all times from all liabilities for the performance of the Authority’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.

1. **Revisions to the Specification**

If the installation of the Street Electrical Fixture Works is not completed by the date specified in the Whereabouts Schedule, Electricity North West may notify the ICP of revisions to the Specification and direct that such revisions are to apply to the Street Electrical Fixture Works or such part of the Street Electrical Fixture Works as Electricity North West shall specify, and in that case, the Specification shall be deemed to be revised accordingly for the purposes of this Schedule 2 (Street Electrical Fixture Works).

1. **Access for Inspection**
	1. The ICP or the Authority shall grant access to inspect the Street Electrical Fixture Works to Electricity North West at all reasonable times and the ICP shall provide any plant or equipment reasonably required to carry out such inspections together with all safety measures and safety equipment necessary in connection with such inspections. If after inspecting, examining, or testing the Street Electrical Fixture Works Electricity North West decides that the Street Electrical Fixture Works or any part thereof is defective or not in accordance with the Specification, Electricity North West may reject it or part thereof and give notice of such rejection to the ICP within a reasonable time, stating the grounds of the rejection in reasonable detail. Upon receipt of such notice of rejection from Electricity North West, the ICP shall repair, replace or procure such Street Electrical Fixture Works, failing which Electricity North West may repair or replace such Street Electrical Fixture Works and the ICP shall indemnify Electricity North West in respect of any costs or losses occasioned by Electricity North West in doing so, payable on demand.
2. **Backfilling**
	1. If reasonably required to do so, by a written notice served by Electricity North West at any time prior to the expiry of twenty-four (24) calendar months following the Adoption of the relevant Street Electrical Fixture Works, the ICP shall as and when required by such notice open up the Street Electrical Fixture Works or any part of the Street Electrical Fixture 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.
	2. If:
		1. the ICP is in breach of section 11.1 of this Schedule 2; or
		2. on inspection by Electricity North West any part of the Street Electrical Fixture Works is found to be in contravention of any requirement of this Agreement,

the ICP must demonstrate or reveal to Electricity North West to the best of its knowledge the extent of the contravention and whether the remainder of the Street Electrical Fixture Works is still in accordance with this Agreement. The ICP shall indemnify Electricity North West in respect of any costs or losses occasioned by Electricity North West arising from the contravention, payable on demand.

1. **Rectification of Defects**
	1. If any defect appears in any part of the Street Electrical Fixture Works either before the whole of the installation of Street Electrical Fixture Works is complete or within 24 calendar months of all the Street Electrical Fixture Works being Adopted due to any breach by the ICP of any term of this Agreement then the following provisions of this section 12 shall apply.
	2. If Electricity North West determines in its sole discretion:
		1. that the ICP is adequately competent to undertake the remedial work required to remedy such defect, then Electricity North West shall give the ICP notice of any work it requires the ICP to carry out to remedy such defect in the Street Electrical Fixture Works and the ICP will arrange for such work to be carried out without delay; or
		2. that the ICP is not adequately competent to undertake the remedial work required to remedy such defect, then Electricity North West shall give the ICP notice of any work it intends to carry out to remedy such defect in the Street Electrical Fixture Works and Electricity North West will arrange for such work to be carried out within a reasonable time; or
		3. acting reasonably, that any remedial work that is required to remedy such defect in the Street Electrical Fixture Works is required as a matter of urgency due to the health and safety of a person or a risk to the continuous supply of electricity, then Electricity North West may elect to carry out such remedial work without notice to the ICP.
	3. Where pursuant to Sections 12.2.2 and 12.2.3 above Electricity North West has undertaken the remedial work with regard to such defects in the Street Electrical Fixture Works or arranged for a third party to undertake such work, the ICP shall indemnify Electricity North West in respect of any costs or losses occasioned by Electricity North West doing so, payable on demand.
2. **Notice of Completion and Records**
	1. When the ICP has completed the installation of the Street Electrical Fixture Works or any part thereof and all associated backfilling and reinstatement, the ICP shall without delay:
		1. serve written notice on Electricity North West to that effect stating:
	* that all or part of the Street Electrical Fixture Works has been completed;
	* the date of connection of the Street Electrical Fixture Works to Electricity North West’s existing distribution system;
	* that the Street Electrical Fixture Works has been completed by the ICP in accordance with the requirements of this Agreement including the Standards;
	* that the Street Electrical Fixture Works have satisfied any applicable testing and commissioning requirements pursuant to clause 7.1 of this Schedule;
	* that the ICP is not aware of any continuing breach by any person other than Electricity North West of any of this Agreement.
		1. supply to Electricity North West two sets of complete and accurate record drawings of the Street Electrical Fixture Works as installed, prepared in accordance with the relevant requirements of the Specification **within five (5) working days of works being undertaken**;
		2. either by itself or jointly with the Authority supply an accurate and updated inventory of street lighting; and
		3. supply to Electricity North West relevant copies of the health and safety file, including an up to date risk assessment covering the scope of the work, for the Street Electrical Fixture Works pursuant to the CDM Regulations.
3. **Working Live on Street Electrical Fixture Works**
	1. The ICP will be permitted to carry out the work necessary to perform the Street Electrical Fixture Works live provided that: -
		1. 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;
		2. the proposed work has been notified by the ICP to Electricity North West in the Street Electrical Fixture Works Schedule;
		3. 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;
		4. at the time work is undertaken the ICP is accredited for live working and has an approved Electricity Safety Management System in place;
		5. the employees of the ICP engaged in live working are accredited and suitably authorised to do so; and
	2. Upon making live of any part or parts of the Street Electrical Fixture Works they shall be Adopted by Electricity North West and shall become part of the Electricity North West’ Network and the ICP or the Authority shall complete the commissioning requirements of those Street Electrical Fixture Works to the reasonable satisfaction of Electricity North West.
	3. If Street Electrical Fixture Works do not comply with the commissioning requirements pursuant to section 14.2 of this Schedule (Street Electrical Fixture Works) then Electricity North West may fulfil the commissioning requirements itself and recover any costs incurred or losses suffered in doing so from either the ICP or the Authority.

|  |
| --- |
| For and on behalf of **Electricity North West** |
| [Signature] |
| [Print Name]  |
| [Position]  |
| For and on behalf of **ICP** |
| [Signature] |
| [Print Name] |
| [Position] |
| For and behalf of **Authority** |
| [Signature] |
| [Print Name] |
| [Position] |