



Dated [insert date]

FAULT LEVEL LIMITING SERVICE

INSTALLATION AND MANAGEMENT AGREEMENT

ELECTRICITY NORTH WEST LIMITED

&

[INSERT CUSTOMER'S REGISTERED NAME]

**THIS INSTALLATION AND MANAGEMENT AGREEMENT** is made and shall come into effect on [insert here date of signature] ("Effective Date")

**BETWEEN**

Electricity North West Limited,

Company Number 2366949

whose Registered Office is at 304 Bridgewater Place, Birchwood Park, Warrington WA3 6XG

(the "**Company**")

**AND**

[Insert Customer's Registered Name],

Company Number [Insert Co Number]

whose Registered Office is at [Insert Customer's Registered address]

(the "**Customer**")

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

**1. Defined Terms**

1.1 In this Installation and Management Agreement the following capitalised terms have the following meanings:

"**Activation Date**" means any date, following the Effective Date, from when the Company is entitled to activate Fault Level Limiting Service for the Customer as set out in Annex A;

"**Availability Payment**" means a payment from the Company to the Customer during the Trial Period in accordance with the payment schedule in Annex A; **[Note: to be finalised following commercial discussions.]**

"**Bilateral Connection Agreement**" has the meaning set out in Clause 1.1 of Section 1A of DCUSA;

"**Company's Equipment**" has the meaning set out in Section 3 of Schedule 2B of DCUSA and as more specifically shown in Annex A;

"**Competent Person**" means the competent person to be appointed pursuant to Regulation 16 of the Electricity at Work Regulations 1989;

"**Connection Agreement**" means a Bilateral Connection Agreement or a Bespoke Connection Agreement (as defined below), as applicable;

"**COP605**" means the Company's Code of Practice 605, which is available on request from the Company from time to time;

"**Defects Liability Period**" means the period of twelve (12) months from when the Works are lawfully completed;

"**DCUSA**" means the Distribution Connection Use of System Agreement, version 8.0, available at [www.dcusa.co.uk](http://www.dcusa.co.uk);

"**Equipment**" means the Customer's electrical switchgear and other equipment which is to be worked on, tested and commissioned as shown in Annex A;

"**Health and Safety Legislation**" means all relevant health and safety legislation together with approved codes of practice and guidance issued by the Health and Safety Executive, the Health and Safety Commission and British Standards in place from time to time;

"**Material(s)**" means any materials or goods which are either the subject matter of this Installation and Management Agreement (including the Company's Equipment) and/or which are to be incorporated into or are intended for the Works;

"**Customer's Installation**" has the meaning set out in Section 3 of Schedule 2B of DCUSA and as more specifically shown in Annex A;

"**Party**" in Section 3 of Schedule 2B of DCUSA;

"**Premises**" has the meaning set out in in Section 3 of Schedule 2B of DCUSA and as more specifically shown in Annex A;

"**Term**" means the Trial Period and any Renewal Term;

"**Trial Period**" means a period of [insert duration], commencing at 00.01am on [insert] and ending at 11.59pm on [insert]; and

"**Works**" means the works as more particularly described in Annex A.

## 2. Background and Structure

- 2.1 The Customer has agreed to participate in the Company's Respond initiative, which aims to: (i) facilitate active management of fault current using retrofit technologies and commercial services; (ii) maximise the use of existing network assets with no detriment to asset health; (iii) reduce infrastructure improvement costs being passed to customers; and (iv) deliver benefits to regions and the entire UK.
- 2.2 The Company is proposing a solution whereby industrial, commercial and generation customers can operate their equipment to provide a fault current level management service ("**Fault Level Limiting Service**").

2.3 As part of the Fault Level Limiting Service, the Customer agrees to the installation of the Company's Equipment to the Customer's Installation on the Customer's Premises and the management of the Customer Equipment to respond to fault level current in accordance with the terms and conditions of this Installation and Management Agreement.

2.5 Details of the technical and operational matters are set out in Annex A to this Installation and Management Agreement.

2.6 In consideration of the mutual rights and undertakings set out in this Installation and Management Agreement, and of the monetary consideration set out herein, the Parties agree to the terms and conditions set out in this Installation and Management Agreement.

### **3. Connections and Order of Precedence**

3.1 The Customer warrants and represents that, as at the date of this Installation and Management Agreement and for the Term:

- (a) it has a Bilateral Connection Agreement in place with the Company; or
- (b) it has entered into a connection agreement based on the National Terms of Connection; or
- (c) if it does not have a Bilateral Connection Agreement or a connection agreement based on the National Terms of Connection in place with the Company, it has an alternative connection agreement in place with the Company ("**Bespoke Connection Agreement**"); and
- (d) if it has a Bespoke Connection Agreement in place with the Company, it shall immediately provide the Company with a properly executed copy of this Bespoke Connection Agreement.

3.2 The Customer shall indemnify and keep indemnified the Company, its officers, employees and/or agents from and against all costs, losses, liabilities and/or damages that the Company, its officers, employees and/or agents may suffer or incur by reason of the Customer being in breach of Clause 3.1 above.

3.3 For the avoidance of doubt, in the case of conflict or ambiguity:

- (a) the provisions of this Installation and Management Agreement shall take precedence over the Connection Agreement that the Customer has in place with the Company; and
- (b) Clauses 1 – 24 take precedence over Annex A.

#### **4. Commencement and Term**

- 4.1 This Installation and Management Agreement shall commence on the Effective Date and shall, subject to Clause 4.3, automatically terminate at the end of the Trial Period.
- 4.2 The Company shall commence Fault Level Limiting Service from the Activation Date.
- 4.3 At any time prior to the expiry of the Trial Period, or the then current Renewal Period, the Parties may agree to extend the term of this Installation and Management Agreement for further periods of twelve (12) months ("**Renewal Term(s)**") on agreeing such a Renewal Term in writing.

#### **5. Payment**

- 5.1 In consideration of the Customer participating in Fault Level Limiting Service, the Company shall pay the Customer the Availability Payment as determined in accordance with Annex A.
- 5.2 If either the Company fails to make payment on or before the due date then the Customer reserves the right to levy interest on all delayed payments at the rate of 2% above the base rate from time to time of National Westminster Bank Plc.
- 5.3 The Availability Payment does not include Value Added Tax which, if applicable, will be payable in addition thereto at the appropriate current rate.

#### **6. Change of Ownership, Conflicts and Restrictions**

- 6.1 In the event that ownership or occupancy of the Customer Premises changes during the term of this Installation and Management Agreement from the Customer to a third party ("**Third Party Customer**"), the Customer shall use best endeavours to procure that:
  - (a) such change of ownership does not impact this Installation and Management Agreement;
  - (b) the Installation and Management Agreement is novated by the Customer to the Third Party Customer on the same date that ownership or occupancy of the Customer Premises changes from the Customer to the Third Party Customer; and
  - (c) that this Installation and Management Agreement remains in force in accordance with its terms for that Customer Premises and the Third Party Customer (together the "**Required Actions**").
- 6.2 In the event that the Required Actions do not occur for any reason whatsoever:
  - (a) the Company shall be entitled (in its sole discretion) to remove the Materials from the Customer's possession, suspend this Installation and Management Agreement and/or terminate this Installation and Management Agreement; and

(b) the Customer shall indemnify and keep indemnified the Company, its officers, employees and/or agents from and against all costs, losses, liabilities and/or damages that the Company, its officers, employees and/or agents may suffer or incur by reason of the Required Actions not occurring.

6.3 The Customer agrees that it shall not enter into any other demand response activities (which may include Short Term Operating Reserve (STOR), Frequency Response and/or TRIAD) with third parties in relation to the Customer Premises without the prior written consent of the Company (such consent to be at the Company's sole discretion).

6.4 The Customer agrees that it shall not materially alter the Equipment without the prior written consent of the Company (such consent to be at the Company's sole discretion).

## **7. Commencement and Completion**

7.1 The Works will be commenced and completed within a reasonable time of the Effective Date or, if there is a period agreed for the execution of the Works, within the period so agreed as set out in Annex A. The Company may delay commencement of the Works beyond any agreed commencement date and, in the event that there is such a delay to commencement, the execution of the Works shall be extended by such period as is commensurate to such delay.

7.2 In the absence of any instructions from the Customer, the Company shall progress the Works in a sequence and manner which it thinks fit.

7.3 Without limitation to Clause 22, the Company shall not be liable for any delays in the completion of the Works due to causes beyond its reasonable control including any action or inaction of the Customer or inadequate or lack of instruction given by the Customer. If the progress of the Works is delayed due to causes beyond the Company's reasonable control, the Company shall notify the Customer of the nature of the delay and the anticipated effects thereof and the Customer and the Company shall agree on a reasonable extension to the period for execution of the Works (if any period has been agreed).

7.4 The Company shall confirm the date of completion of the Works to the Customer in writing.

## **8. Sub-Contracting**

8.1 The Company reserves the right to sub-contract any or all of the electrical, mechanical, civil and building works aspects of the Works.

**9. Materials, Risk and Retention of Title**

- 9.1 The Company will endeavour to use Materials specified in Annex A, but in the event such Materials are not available, the Company reserves the right to use similar Materials.
- 9.2 The Customer shall sign to acknowledge acceptance of Materials delivered to the Customer's Premises.
- 9.3 The Materials supplied by or on behalf of the Company (whether fixed or unfixed) shall remain the Company's property at all times. The Customer shall hold the Materials as bailee and shall store them in such a way that they can be identified as the Company's property and shall keep them separate from the Customer's own property and the property of any other person.
- 9.4 Although the Materials shall remain the Company's property, they shall be at the Customer's risk from the time of delivery. The Customer shall insure the Materials against loss or damage accordingly and in the event of any such loss or damage occurring shall hold the proceeds of such insurance on trust for the Company.

**10. Guarantee**

- 10.1 Any defective Materials provided by the Company or defective workmanship on the part of the Company shall, if notified in writing to the Company during the Defects Liability Period, be rectified by the Company as soon as practicable after notification by the Customer provided, subject to Clause 10.3, that the Company is satisfied that such defects arise out of defective Materials or defective workmanship.
- 10.2 The Company shall not be liable to make good any defects in the Works which arise from any operation by the Customer, its servants or agents before the date of completion, nor shall the Company be liable for any loss or damage or expenses or costs arising directly or indirectly as a consequence of such operation.
- 10.3 Notwithstanding any other provision of this Installation and Management Agreement, the Company shall have no liability to the Customer in respect of any losses, damages or expenses suffered or incurred by the Customer and shall not be liable to remedy any defects pursuant to this Clause 10 to the extent that such losses, damages or expenses or defects were caused or contributed to by the Customer's failure to correctly maintain or operate the Works in accordance with the recommended codes of practice or other instructions provided to the Customer by the Company.

**11. Standards**

- 11.1 Any electrical installation supplied or installed by the Company pursuant to this Installation and Management Agreement shall comply as appropriate with:

- (a) BS7671:1992 Requirements for Electrical Installation; and/or
  - (b) the Electricity at Work Regulations 1989.
- 11.2 Any mechanical services supplied or installed by the Company pursuant to this Installation and Management Agreement shall be designed and installed in accordance with all relevant standards including the following:
- (a) Chartered Institute of Building Services Engineers Guides, volumes A to H; and
  - (b) HVCA Ductwork Manufacture and Installation Standard DW144.

## **12. Statutory Requirements**

- 12.1 The Customer shall be responsible for ensuring full compliance on its behalf with all statutory requirements and/or any rules and regulations of any competent regulatory authority (including, but not limited to the Health and Safety Legislation) which are in place from time to time during the currency of the Works and which concern the:
- (a) nature and extent of employers liability insurance and public liability insurance;
  - (b) safe and efficient operation of the Works covered by this Installation and Management Agreement; and/or
  - (c) safe working environment for the Company's employees, subcontractors and agents in connection with the execution of the Works.
- 12.2 The Customer shall be responsible for obtaining all statutory consents, permissions and approvals necessary for the execution of the Works.

## **13. Allocation of Responsibilities**

- 13.1 To the extent applicable to the Works and the Fault Level Limiting Services, the Parties shall at all times comply with their respective obligations set out in COP605.
- 13.2 The Company is only responsible for the installation of the Company's Equipment to the Customer's Installation on the Customer's Premises and for providing the Fault Level Limiting Service in accordance with the express requirements of this Installation and Management Agreement.
- 13.3 The Customer and the Company acknowledge and agree that:
- (a) once the Company's Equipment is installed, whether or not the Activation Date has passed, the Company shall have no liability to the Customer for any loss or damage caused to the Customer's Installation, whether due to the operation of the Company's Equipment or the Fault Level Limiting Service or otherwise;



- (b) the Company is under no obligation to maintain the Company's Equipment and/or the Customer's Installation;
  - (c) the Company may use the Company Equipment and the Fault Level Limiting Service on the Customer's Installation;
  - (d) the Customer's Installation shall be designed, built and maintained so as not to suffer damage through the operation of the Company Equipment and the Fault Level Limiting Service and that the Company accepts no liability for such damage to the extent (if any) such damage is attributable to the Customer's failure to so design and build the Customer's Installation;
  - (e) the Customer is responsible for the ongoing maintenance and operation of the Customer's Installation and the Customer's Premises;
  - (f) without limiting Clause 13.3(d), in the event that the Customer modifies the Customer's Installation or Customer Premises during the Term, the Customer shall be responsible for ensuring that the Customer's Installation or Customer Premises remains compatible with the Company Equipment and the Fault Level Limiting Service, and will not cause any diminution in the operation or functionality of the Company Equipment and/or the Fault Level Limiting Service; and
  - (g) in the event that removal of the Company Equipment, or the cessation of the Fault Level Limiting Service (on termination, expiration or the Company exercising its rights pursuant to Clause 19.1) results in any damage to the Customer's Installation or the Customer's Premises, the Customer shall be fully responsible for such damage (unless such damage was caused by the negligent act or omission of the Company).
- 13.4 Insofar as the Company is responsible for the design of the Works or any part thereof, the Company warrants that there has been exercised and will be exercised the skill and care reasonably to be expected of a duly qualified and experienced designer undertaking the design of works similar in scope and character to the Works or such part of the Works.
- 13.5 The Company does not warrant that the Materials supplied under this Installation and Management Agreement will be fully compatible with the Customer's Equipment or other equipment, systems, goods, plant or appliances and the Company shall not be liable for any loss, damage or expense so arising.
- 13.6 The Company shall not be liable for any loss or damage suffered by the Customer or any third party which is caused by faults (whether latent or patent, and whether or not the same have been brought to the Company's attention) in any of the Customer's Installation

or other systems, including, without limitation, the Customer's existing electricity, telephone or computer system or in any of the Customer's appliances.

#### **14. Insurance**

14.1 The Company shall have no responsibility for loss or damage to the Works, the Premises or Materials on Premises. The Customer shall insure the Works, the Premises and Materials on Premises (whether fixed or unfixed) to cover any damage thereto from any cause whatsoever.

14.2 The Company reserves the right to inspect any insurance policy taken out pursuant to this Clause 14 together with the receipt for the last premium.

#### **15. Liability**

15.1 Neither Party shall have any liability to the other Party for any indirect or consequential loss of any kind including but not limited to loss of use, loss of production, loss of revenue, loss of profit, loss of opportunity or any economic loss or expense of any kind suffered by the other Party.

15.2 Each Party's aggregate liability to the other Party under this Installation and Management Agreement in respect of any incident or series of related incidents entitling a Party to claim compensation from the other Party under this Installation and Management Agreement shall not exceed the greater of £[insert number] or one hundred percent (100%) of the Availability Payment.

15.3 Nothing in this Clause 15 shall exclude or limit a Party's liability for personal injury or death caused by its negligence, fraudulent misrepresentation, or for any other matter in respect of which the law provides that liability may not be excluded or limited.

#### **16. Copyright**

16.1 The Customer may use drawings and information supplied by the Company only for the purposes of completing, maintaining, adjusting and repairing the Works. No licence is granted to the Customer to copy or use drawings or information so supplied in order to make or have made spare parts for the Works. Drawings or information supplied by the Company shall not, without the Company's consent, be used, copied or communicated to any third party by the Customer. The Company shall not be liable for any use of any drawings or information for any purpose other than the purpose for which the same was provided.

16.2 Drawings and information supplied by the Customer to the Company shall remain the property of the Customer. The Customer's drawings and information shall not, without the consent of the Customer be used, copied or communicated to a third party by the

Company otherwise than is strictly necessary for the purposes of this Installation and Management Agreement and/or Fault Level Limiting Service.

**17. Publicity**

17.1 The Company shall seek the Customer's permission, which shall not be unreasonably withheld or delayed, to take promotional photographs of the Works and/or write or issue press releases, to support the Respond initiative.

**18. Appointment of an Agent**

18.1 In the event that the Customer appoints a facilities management company or services management company or similar to act as agent and administer the Works on its behalf, it shall inform the Company in writing as soon as possible after the appointment. Where such agent is appointed, the Company shall be entitled to treat all instructions of the agent as instructions of the Customer. The appointment of such agent shall not in any way modify the obligations and responsibilities of the Customer under this Installation and Management Agreement, and the Company shall at all times have the right to communicate directly with the Customer if the circumstances so require. Such circumstances include, but are not limited to, the requirement for emergency works. The Company shall have no liabilities, obligations or responsibilities to the Customer's agent.

**19. Cancellation / Termination**

19.1 Without prejudice to any other remedies available to it, either Party shall be entitled to terminate (and, in the case of the Company, it shall also be entitled to suspend the Works and/or remove the Materials from the Customer's possession) this Installation and Management Agreement if the other Party:

- (a) has not paid all sums due to it under this Installation and Management Agreement in full by the date the same is due;
- (b) is in material breach of this Installation and Management Agreement and (if such breach is remediable) fails to remedy that breach within a period of fourteen (14) days after being notified in writing to do so;
- (c) is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) is the subject of a bankruptcy order, notice or petition;
- (e) has a receiver, liquidator, or administrator appointed to it or is the subject of a winding up order or a resolution for winding up;
- (f) makes a voluntary arrangement with its creditors;

- (g) is the subject of a petition for a winding up order or an administration order; or
- (h) has any distress execution is levied or threatened over any of its assets.

19.2 In addition to the rights of termination in Clause 19.1 above, the Customer may also elect to terminate this Installation and Management Agreement if it has full and proper legitimate business reasons for doing so. In the event of the Customer exercising its right to termination pursuant to this Clause 19.2, it shall provide the Company with:

- (a) a report, of sufficient detail, setting out the Customer's reasons for needing to terminate this Installation and Management Agreement, including details relating to how the Fault Level Management Service was incompatible with the Customer's proper legitimate business reasons; and
- (b) such other reasonable assistance (at the Customer's cost and expense) as requested from time to time to enable the Company to investigate the reasons for the Customer exercising its right to terminate and to report to the Company's regulator in relation to the performance of the Fault Level Limiting Service insofar as it relates to the Customer's receipt of the Fault Level Limiting Service.

19.3 On cessation of the Customer's right to possession of the Materials in accordance with Clause 19.1 (which may follow termination, suspension or removal of the Materials) or at the end of the Term, the Customer shall, at its own expense, make the Materials available to the Company and allow the Company to repossess them.

19.4 The Customer hereby grants to the Company, its employees and agents, an irrevocable licence to enter any Premises where the Materials are stored in order to inspect, repossess or remove the Materials (or any part of it) and the Customer shall provide, or shall procure that a third party provides (as applicable), such assistance as may be reasonably requested by the Company from time to time in order to remove the Materials with the costs of such third party assistance to be agreed in advance and to be payable by the Customer.

## **20. Adjudication and Dispute Resolution**

20.1 The adjudication provisions in Part II of the Housing Grants, Construction and Regeneration Act 1996 shall apply to this Installation and Management Agreement, but otherwise (for the avoidance of doubt) Clause 20.2 and Clause 20.3 shall apply in full to this Installation and Management Agreement.

20.2 Disputes will be discussed, in the first instance, by the management of both Parties in good faith and with a view to reaching an amicable and mutually acceptable resolution. If agreement is not reached within a period of twenty-eight (28) days, however, then the

matter in dispute will be referred to the decision of a single arbitrator agreed by the Parties within a period of twenty-eight (28) days such person who shall, at the request of either Party be appointed by the president for the time being of the Chartered Institute of Arbitrators. Any arbitration shall be conducted in accordance with the Arbitration Act 1996 including any re-enactments thereof or amendments thereto.

- 20.3 Either Party shall have the right to seek appropriate injunctive relief against the other Party in an appropriate court having jurisdiction in the country whose law governs these conditions and provided such court is satisfied that such proceedings have not been brought frivolously or vexatiously all aspects of the dispute the subject of the injunctive proceedings shall be dealt with by such court and not by arbitration.

## **21. Variations**

- 21.1 The Parties may agree variations to this Installation and Management Agreement, and such variations must be recorded in writing and signed by an authorised representative of each Party. Each Party shall negotiate in good faith the terms of any variation proposed by the other.

## **22. Force Majeure**

- 22.1 If the Company is affected by an event of force majeure (which shall mean any circumstances beyond its reasonable control, including, without limitation, any strike, lock-out or other form of industrial action or inability to obtain materials or labour having regard to reasonable profit margins) ("**Force Majeure Event**"), then it shall notify the Customer of the extent and nature of it.
- 22.2 The Company shall not be deemed to be in breach of this Installation and Management Agreement by reason of any delay in performance or non-performance of any of its obligations under the Installation and Management Agreement to the extent that such delay or non-performance is due to a Force Majeure Event of which it has notified the Customer and time for performance of that obligation shall be extended accordingly.
- 22.3. If the Force Majeure Event in question prevails for a continuous period in excess of thirty (30) days from the date of notification of such event, either the Customer or the Company may cancel the Company's engagement under this Installation and Management Agreement.

## **23. Notices**

- 23.1 Any demand notice or other communication given or made under or in connection with this Installation and Management Agreement shall be in writing and shall be given or made to the Company or the Customer as follows:

(a) to the Company: for the attention of the:  
Respond Project Manager, Future Networks, Electricity North West Limited,  
Technology House,  
Lissadel Street, Salford, M6 6AP

(b) to the Customer: for the attention of the:

[insert name and address]

23.2 A demand notice or other communication shall be deemed to have been duly served if delivered by hand, when left at the proper address for service or if sent by prepaid first class post, forty-eight (48) hours after being posted (excluding Saturdays, Sundays and public holidays) provided that where in the case of delivery by hand, such delivery occurs either after 4:00pm on a working day or on a day other than a working day service shall be deemed to occur at 10:00am the next following working day.

#### **24. General Provisions**

24.1 Any failure, delay, relaxation or waiver by either Party in the exercise of its rights under this Installation and Management Agreement shall not be construed as a waiver of such rights, and no single or partial exercise of any such right shall restrict or preclude that Party from any further exercise of any such right and the obligations of the other Party shall continue in full force and effect. The waiver of any right pursuant to this Installation and Management Agreement by either Party shall not be construed as a waiver of the same right in the future or of any other rights in this Installation and Management Agreement.

24.2 In the event that any part of this Installation and Management Agreement shall be nullified or made void by any statute, regulation or order by the decision or order of any Court or other competent body having jurisdiction, the remainder of this Installation and Management Agreement shall remain in full force and effect, and the parties shall negotiate in good faith to agree the terms of a mutually satisfactory provision to reflect as nearly as possible the spirit and intention behind the provisions which is nullified or made void to the extent that spirit and intention is consistent and complies with the laws of that jurisdiction, be construed accordingly, preserving to the fullest permissible extent the intent and agreement of the parties to this Installation and Management Agreement.

24.3 This Installation and Management Agreement, and any documents referred to in it, contains the entire agreement between the Parties in relation to its subject matter. Each of the Parties irrevocably and unconditionally waives any right it may have to claim damages for, and/or to rescind this Installation and Management Agreement because of,

breach of any warranty not expressly contained, or referred to, in this Installation and Management Agreement, or any misrepresentation whether or not contained in this Installation and Management Agreement, unless such misrepresentation was made fraudulently.

24.4 Nothing in this Installation and Management Agreement shall or shall purport to confer on any third party a right to enforce any term of this Installation and Management Agreement for the purposes of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

24.5 This Installation and Management Agreement shall be governed by the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English Courts.

**SIGNED** by (signature) .....  
for and on behalf of the **Company** (print name) .....  
(job title) .....  
(date).....

**SIGNED** by (signature) .....  
for and on behalf of the **Customer** (print name).....  
(job title).....  
(date) .....