

# **Terms and Conditions**

## **Unmetered Connections**

## TERMS AND CONDITIONS

### 1 DEFINITIONS

1.1 The following words and expressions have the meanings set out below unless the context otherwise requires:

- “Adverse Ground Conditions”** means any ground conditions (including archaeological remains apparatus belonging to a third party, unexploded ordnance and contamination) which prevent or delay the carrying out of the Works or which render them more expensive to carry out;
- “Act”** means the Electricity Act 1989;
- “Change of Law”** means the coming into force after the date of the Letter of any Act of Parliament and any Legislation made under it, any judgement of the Court that changes binding precedent and any guidance, designation, direction or instruction of any competent authority with which the DNO is bound to or requested to comply;
- “Capacity”** means the maximum flow of electricity expressed in kilovolt amperes that may flow from the Distribution System:
- (a) into your Site;
  - (b) into each Premises connected thereto where the Works provide for more than one Premises to be connected;
  - (c) through more than one connection to the Premises where the Works provide for more than one connection to the Premises.
- “Consents”** means any permissions, consent, approval or licence statutory or otherwise that is required to carry out the Works or Your Works;
- “Costs”** means all expenses and costs incurred including attributable overheads;
- “Distribution System”** means the system for the distribution of electricity belonging to the DNO;
- “Diversionary Works”** means those elements of the Works identified as such in the Letter;
- “The DNO”** means the Distribution System owner identified in the Letter;
- “Energisation”** means the first occasion of the operation of any switchgear or the insertion of any fuse or the taking of any other step so as to enable an electrical current to flow to or from the Distribution System, *via* Your Works;
- “Exchange Rate”** means the exchange rate between £ sterling and the currency in which the DNO is required to pay for the goods and/or services comprised in or required for the Works and includes any charge made by a bank for effecting or receiving the transfer or changing of such currency;
- “Full Title Guarantee”** means the covenant for title implied by section 3 (1) of the Law of Property (Miscellaneous Provisions) Act 1994 save that the words *“other than any changes encumbrances or rights which that person does not or could not reasonably be expected to know about”* shall be deleted in their entirety;

<b>“Force Majeure”</b>	means in relation to either of us any event or circumstance which is beyond the reasonable control of the party affected thereby and which results in or causes the failure of that party to perform its obligations under the Agreement. Lack of funds shall not be an event of Force Majeure;
<b>“GS Payment”</b>	means a payment required under the Electricity (Connection Standards of Performance) Regulations 2010 as a result of failure by the DNO to comply with the required standards of performance for connections;
<b>“Land Rights”</b>	means the transfer to the DNO of the freehold interest in the land on which is to be its substation (if relevant) with easements for its electric lines and access, or the grant to the DNO of a 99 year lease of such land and such easements, or the grant of an easement for its electric lines and access, all such rights to be in such form as the DNO shall require;
<b>“Legislation”</b>	means:- <ul style="list-style-type: none"> <li>(a) any Act of Parliament or subordinate legislation within the meaning of section 21 (1) Interpretation Act 1978; or</li> <li>(b) any exercise of the Royal Prerogative and any enforceable community right within the meaning of the European Communities Act 1972, in each case within the United Kingdom and includes the Licence;</li> </ul>
<b>“Letter”</b>	means the letter from the DNO to you notifying or agreeing the price for the works and referring to these terms and conditions;
<b>“Licence”</b>	means the licence (as from time to time modified) issued to the DNO pursuant to Section 6(1)(c) of the Act;
<b>“Notice”</b>	means these Terms and Conditions and the Letter together comprising a notice under Section 16 of the Act;
<b>“NRSWA”</b>	means the New Roads and Street Works Act 1991;
<b>“Order Form”</b>	means the DNO’s standard Unmetered Connections New Works Order Form completed by You and delivered to the DNO requesting the DNO to undertake the Works;
<b>“Plant”</b>	means machinery, apparatus, materials, articles and things of all kinds to be provided by the DNO under the Notice other than its equipment required for the purposes of the Works;
<b>“Premises”</b>	includes any land, building or structure;
<b>“Price”</b>	means the price for the Works as stated in the Letter (as varied in accordance with the Letter and/or these Terms and Conditions);
<b>“Schedule of Rates”</b>	means the schedule of prices for un-metered connections work published from time to time by the DNO which can be obtained by request in writing to: Head of Highway Services, Metropolitan House, Darkes Lane, Potters Bar, EN6 1AG;
<b>“Site”</b>	means the place at which the Works are to be carried out;
<b>“Site Facilities”</b>	shall include, without limitation, provision of main services, site huts, parking, storage and a secure facilities compound;

<b>“Street”</b>	means any highway, road, lane, footway, alley or passage, any square or court, and any land laid out as a way whether it is for the time being formed as a way or not. Where a street passes over a bridge or through a tunnel the term Street includes the bridge or tunnel.
<b>“TMA”</b>	means the Traffic Management Act 2004;
<b>“UMS Agreement”</b>	means an agreement for the connection of unmetered installations to the DNO’s Distribution System on the DNO’s standard form which can be found at <a href="http://www.ukpowernetworks.co.uk">www.ukpowernetworks.co.uk</a> or by written request to UK Power Networks, Income Management, Energy House, Hazlewick Business Park, Crawley, West Sussex RH10 1EX;
<b>"Variation"</b>	means any alteration of the Works including any addition, modification or omission;
<b>"Works"</b>	means the work described in the Letter that is to be carried out by the DNO on these Terms and Conditions;
<b>“Works for Road Purposes”</b>	means as defined in NRSWA;
<b>"You"</b>	means the person you, your agent sub-contractors and their officers, employees, servants and agents and any reference to “you” and “your” shall be construed accordingly;
<b>"Your Installation"</b>	means all electrical equipment and apparatus not being part of the Distribution System used or to be used by you and connected to or to be connected to the Distribution System;
<b>“Your Site”</b>	means that part of the Site within your occupation or control;
<b>"Your Works"</b>	means Your Installation, the works described in paragraphs 2.3.2, 2.3.3 and 2.3.4, and all works described in the Letter or otherwise notified to you in writing by the DNO that you are required to carry out on these Terms and Conditions.

- 1.2 Unless expressly provided to the contrary any consent required of a party under these Terms and Conditions shall not be withheld or delayed unreasonably.
- 1.3 The headings in the Terms and Conditions do not form part of them and shall not be taken into consideration in the interpretation or construction of the Terms and Conditions.
- 1.4 The word "including" is to be construed without limitation.
- 1.5 Any reference in these Terms and Conditions to the masculine includes the feminine and any reference to the singular includes the plural and vice-versa in each case.
- 1.6 Any reference to a statute shall be construed as a reference to any statutory instrument, regulation, order or code of practice made under it and as any of the foregoing may be amended or re-enacted from time to time.

## **2 YOUR OBLIGATIONS**

### **2.1 Your Site**

- 2.1.1 You must at your own expense give the DNO:

- (i) Unobstructed pedestrian and vehicular access (including the provision of any load bearing surfaces required by the DNO) to and within Your Site; and
- (ii) Site Facilities on Your Site,

as the DNO shall require to enable it to properly carry out its obligations under paragraph 3 so as to allow it to complete its Works by the date specified in the Letter, or otherwise agreed between you and the DNO, for their completion.

- 2.1.2 You are responsible at your own expense for the security of all Plant and the DNO's equipment (and that of its sub-contractors) on Your Site.
- 2.1.3 At the DNO's request you must operate free of charge of the purposes of the Works any suitable lifting equipment belonging to you or under your control that may be on Your Site. You must retain control of and be responsible for the safe working of the lifting equipment.
- 2.1.4 If Your Site is notifiable under the Construction (Design and Management) Regulations 2007 you must notify the DNO of the name, postal address, telephone number and e-mail address of the CDM Co-ordinator and Principal Contractor.

## **2.2 Consents/Land Rights**

- 2.2.1 You must obtain at your expense any Consents for Your Works free from conditions affecting the DNO's execution of the Works and their subsequent use and which also will allow:
  - (i) the Works to be carried out in a continuous and logical progression; and
  - (ii) the Premises to be used for the purpose for which connection to the DNO's Distribution System is required.
- 2.2.2 You must provide to the DNO before it carries out its Works, either:
  - (i) a copy of the planning permission for Your Works; or
  - (ii) if planning permission is not required for Your Works, confirmation of that fact from the local planning authority or unequivocal counsel's opinion of the same approved by the DNO.
- 2.2.3 You must transfer or grant (or procure the transfer or grant) to the DNO with Full Title Guarantee the Land Rights in relation to the Works to be carried out on Your Site.
- 2.2.4 Energisation will not take place in any case where the vendor/lessor/grantor of the Land Rights is not legally represented by a solicitor or licensed conveyancer unless the vendor/lessor/grantor provides the DNO's solicitors with independent verification of such person's identity satisfactory to the DNO's solicitors. Such verification will be a declaration and photograph as required in the application form for a British Passport.
- 2.2.5 Where the Works comprise Works for Road Purposes, or otherwise where you are undertaking excavation works in a Street, you are responsible for serving any notices pursuant to the TMA or NRSWA or obtaining and road permits required for the Works. If the DNO agrees to serve such notices on your behalf you will be required to pay any Costs associated with serving such notices in addition to the Price, unless the Quotation specifies that such Costs are included in the Price.

## **2.3 Your Works**

- 2.3.1 You must carry out and complete Your Works and such other works on Your Site that are reasonably necessary to enable the DNO to carry out its Works. You shall carry out such works referred to in this paragraph at your own cost before the DNO begins its Works and they must be of the quality specified by the DNO, comply with relevant Legislation and be carried out in such a manner as will enable the DNO to carry out its Works in a continuous, efficient and logical progression.

- 2.3.2 Except where otherwise agreed with the DNO, Your Works shall include (without limitation) the following:
- (i) the excavation and reinstatement of all trenches required on your Site to a boundary point agreed with the DNO;
  - (ii) laying appropriate ducting in such trenches on Your Site as required for the Works;
  - (iii) running a drawstring through the ducting on Your Site to enable the DNO to pull the cables through.
- 2.3.3 You may by written notification to the DNO choose to undertake any excavation and ducting work required in a Street and in which case such excavation and ducting shall comprise part of Your Works.
- 2.3.4 In respect of paragraphs 2.3.2 and 2.3.3 above, you must agree the routes of all cables required and the dimensions and specifications of the ducts, with the DNO before you commence Your Works. The ducts must be laid, as a minimum, at the following distances below the surface:
- (i) unmade land: 450mm
  - (ii) driveways/carriageway: 600mm
  - (iii) arable land: 1,100mm.
- 2.3.5 The DNO may inspect Your Works and where Your Works are not in conformity with your obligations under the Notice you must rectify all shortcomings at your own expense. Each subsequent inspection required by the DNO must be paid for by You and shall be carried out after the DNO's receipt in cleared funds of the relevant fee in respect of the abortive visit and subsequent inspection, as specified in Schedule of Rates.
- 2.3.6 You must ensure that Your Works, and any Premises owned, occupied, controlled or to be constructed by you are designed and so constructed that the operation of the Distribution System shall not cause any nuisance, inconvenience, annoyance or disturbance to any person using or occupying such Premises or those adjoining it.

## **2.4 Provision of Information and Assistance**

- 2.4.1 You must give to the DNO free of charge and within a reasonable time to prevent delay and/or disruption to the Works, all necessary and relevant data and information in your possession or under your control relating to the Works, Your Installation, Your Site and Your Works.
- 2.4.2 You are responsible for errors, omissions or discrepancies in drawings and written information supplied by you and shall pay the DNO the Costs it incurs as a consequence of such errors, omissions or discrepancies.
- 2.4.3 You must give at your expense such assistance in connection with the Works as reasonably requested by the DNO.

## **2.5 Contamination**

- 2.5.1 It is your responsibility to identify whether Your Site is contaminated and to remove any contamination at your expense before the DNO begins the Works.

2.5.2 The DNO may suspend the Works while contamination wherever discovered is removed and recover from you the additional Costs it incurs as a result of such suspension and (if it shall remove the same) removal.

2.5.3 If contamination migrates to or from the Site during or after the Works you shall indemnify the DNO against all Costs, claims, demands, and liabilities it incurs as a result of such migration other than those arising from its negligence.

## **2.6 Breach of Your Obligations**

2.6.1 In the event that you are in breach of any of your obligations under the Notice, the DNO's estimate of the Costs that may be incurred by the DNO as a result of such breach shall be added to the Price and the DNO shall be entitled to such extension of time for the performance of its obligations as it shall reasonably require but in all cases equal at least to the period of delay.

## **3 THE DNO'S OBLIGATIONS**

### **3.1 The Works**

3.1.1 The DNO shall, subject to the provisions of the Notice, design, supply, and execute the Works with reasonable skill and care but such duty does not extend to determining the existence of Adverse Ground Conditions.

**3.2** The DNO shall not be obliged to begin or continue the Works until:

3.2.1 a UMS Agreement is in place between you and the DNO;

3.2.2 it has received the Price (or, where applicable, the next instalment thereof) and any Costs then due under the Notice in cleared funds; and

3.2.3 it has obtained the Land Rights and any Consents in such terms as it shall require to carry out the Works; and

3.2.4 you have obtained the Consents as required in paragraph 2.2 and have provided copies of them to the DNO; and

3.2.5 you have provided access to the Site in accordance with paragraph 2.1.1;

3.2.6 you have provided the information required under Paragraph 2.1.4;

3.2.7 you have carried out Your Works in conformity with the Notice; and

3.2.8 the DNO, or, if paragraph 2.2.5 applies, you, have given (following satisfaction of the conditions in paragraphs 3.2.1-3.2.6) notice required by the TMA and NRSWA and any period required to have elapsed before that part of the Works is commenced, has elapsed; and

3.2.9 the DNO is satisfied that the circumstances in respect of which the Works are being requested fall within the required circumstances for unmetered supplies set out in section 3 of The Electricity (Unmetered) Supply Regulations 2001.

### **3.3 Consents and Land Rights**

3.3.1 The DNO will use reasonable endeavours to obtain, at your Cost, the Land Rights and the Consents free of conditions that it requires for any Works that are not on Your Site.

- 3.3.2 If the Consents and/or Land Rights that the DNO requires cannot be obtained on its terms, lapse, are terminated or revoked, it may in its absolute discretion, exercise its powers under the Act, and in such case:
- (i) The DNO may (but shall not be obliged to) exercise its powers under the Act without first having notified you of its intention to do so and without having regard to any comments that you may make;
  - (ii) as a condition precedent to it continuing to use such powers you must pay to the DNO its estimate of the Costs of it preparing to exercise and exercising those powers, the Costs of proceedings before the Lands Tribunal and of the compensation that it considers may be awarded by the Lands Tribunal; and
  - (iii) if the DNO's estimates are too low you must pay the shortfall before it proceeds further. If its estimates are too high the DNO will re-pay the excess to you within 21 days of the conclusion of all proceedings.
- 3.3.3 If the DNO does not within 6 months of your acceptance of the Notice acquire the Land Rights under paragraph 2.2.3 or paragraph 3.3.1 or the Consents, or it is not given access by you as required by paragraph 2.1.1 within that period, the DNO may terminate its obligations under the Agreement. You may make another request to the DNO to make a connection to its Distribution System.

#### **4 HOURS OF WORK**

- 4.1 You may request that the Works be carried out at times other than the normal working hours (08.00-16.30 Monday to Friday, public holidays excepted). The DNO shall carry out the Works outside such hours if in the circumstances it shall be practicable to do so and its estimate of the Costs of doing so shall be added to the Price and be paid by you in advance of it undertaking such work. If the DNO's estimate is too low it will require that you pay the shortfall of any re-estimate made by it before it proceeds further. If its estimate is too high it will repay the excess to you within 21 days of its completion of the Works.

#### **5 FORCE MAJEURE**

- 5.1 The DNO may suspend the progress of the Works at any time owing to Force Majeure.
- 5.2 If suspension as a result of Force Majeure has continued for more than ninety (90) days you or the DNO may terminate the Agreement, in which event paragraph 12.4 shall apply.
- 5.3 If following suspension under this paragraph 5 (Force Majeure) the DNO proceeds with the Works, you must pay to the DNO, before the DNO resumes the Works, the Costs incurred..

#### **6 VARIATIONS**

- 6.1 Either Party may at any time propose Variations by notice in writing to the other Party. Subject to paragraph 6.6, no Variation shall be effective unless agreed by both Parties in writing.
- 6.2 As soon as possible after having received a request for, or proposed, a Variation (other than in relation to any required by the DNO under paragraph 6.6 to which the provisions of paragraphs 6.1 - 6.3 shall not apply) the DNO will notify you:
- (i) if, in its reasonable opinion, the Variation will involve an addition to or deduction from the cost of the Works; and
  - (ii) what it then considers to be the effect upon their completion date.
- 6.3 The Cost incurred by the DNO in preparing a Variation requested by you shall be added to the Price whether or not you instruct the DNO to proceed with the Variation



- 6.4** Within seven (7) days of the DNO's notification under paragraph 6.2 you must confirm in writing whether the DNO is to proceed with the Variation. The Price shall be adjusted accordingly and any increase in the Price shall be paid with your instruction. Any reduction in the Price shall be re-paid to you within twenty one (21) days of the completion of the Works. Where Plant has been supplied or is being supplied or an order has been placed for it to be supplied or any work or service has been performed or is being performed or an order has been placed for either of them to be performed the Costs of the variation shall be paid by you. Once instruction is given the DNO's obligations shall be deemed to have been modified to such an extent as would enable the DNO to fulfil its obligations without any prejudicial effect upon them.
- 6.5** No Variation shall constitute or be construed as a waiver of any of the Terms and Conditions or obligations of either of us.
- 6.6** If before or during the carrying out of the Works (or any part of the Works or their means of execution is affected by:
- 6.6.1 Force Majeure; and/or
  - 6.6.2 the existence of Adverse Ground Conditions; and/or
  - 6.6.3 a Change of Law; and/or
  - 6.6.4 the absence of any Consents for the Works or by the terms upon which they are granted or an inability to obtain access to any Premises (including those belonging to the DNO); and/or
  - 6.6.5 alterations to your requirements or incomplete or incorrect information provided by you; and/or
  - 6.6.6 adjustment to your installation programme; and/or
  - 6.6.7 the need to comply with NRSWA or TMA pedestrian requirements or traffic sensitivity constraints; and/or
  - 6.6.8 any Legislation the object or effect of which is intended to achieve the efficient and/or secure conduct of the 2012 Olympic Games or the effects of an event for which emergency Regulations have been made under the Civil Contingencies Act 2004; and/or
  - 6.6.9 industrial action by the DNO's employees or its agents except where such industrial action is solely limited to the employees of the DNO; and/or
  - 6.6.10 the act of default of anyone other than the DNO's officers employees or its agent; and/or
  - 6.6.11 a network system emergency that causes the DNO (or its affiliates) to re-direct its resources and thereby prevents it from completing action required by regulations under which GS Payments may be required,

The DNO shall be entitled to require a Variation to take account of such and any increase or decrease in the cost to the DNO consequent upon such circumstance or event shall be added to or deducted from the Price and the date for completion of the Works shall be extended by such time as the DNO considers reasonable but in all cases equal at least to the period of delay except where an event described in paragraph 6.6.11 occurs where the DNO shall only be entitled to an extension of time.

## **7 PAYMENT**

### **7.1 Terms of Payment**

- 7.1.1 You shall pay the Price at the time that you return the Order Form or Acceptance of Offer form in the Letter (as appropriate) to the DNO unless notified otherwise by the DNO.

- 7.1.2 If the DNO becomes entitled to claim Costs; an indemnity under these Terms and Conditions; or any other sum, it will submit an invoice to you and you must pay it within fifteen (15) days of its date or before Energisation, whichever is the sooner.
- 7.1.3 For the purposes of the Housing Grants Construction and Regeneration Act 1996 (and this paragraph 7) a payment becomes due fifteen (15) days after receipt of an invoice by You ('payment due date') and final date for payment shall be fifteen (15) days after the payment due date ('final date for payment').
- 7.1.4 You shall give notice to the DNO not later than 5 (five) days after the payment due date (determined in accordance with paragraph 7.1.3 above) specifying the amount (if any) of the payment made or proposed to be made, and the basis on which the amount was calculated.
- 7.1.5 Unless You have served notice under paragraph 7.1.6 You shall pay to the DNO the sum referred to in Your notice under paragraph 7.1.4, or if you have not served a notice under paragraph 7.1.4 the sum referred to in the invoice referred to in paragraph 7.1.3) (the 'notified sum') on or before the final date for payment.
- 7.1.6 You may give written notice to the DNO not later than 1 (one) Business Day prior to the final date for payment (determined in accordance with paragraph 7.1.3) that You intend to pay less than the notified sum (a pay less notice'). Any pay less notice shall specify the sum that You consider to be due on the date the notice is served and the basis on which that sum is calculated.
- 7.1.7 If payment of any sum payable under the Notice is delayed past the final date for payment, the party entitled to payment is entitled to receive interest on the amount unpaid during the period of delay. The interest shall be at the rate of 4% per annum above the base rate of HSBC Bank plc and shall accrue from day-to-day compounded quarterly. the DNO is entitled to interest without formal notice and without prejudice to any other right or remedy. The DNO shall not pay interest or give credit for interest received on any element of the Price paid by you in advance of the Works.
- 7.1.8 If you fail to make any payment to which the DNO is entitled, the DNO shall be entitled:
- (i) to stop the Works until the failure has been remedied, by giving seven (7) days notice to you in which event the Costs of any demobilisation and resumption of the Works, shall be paid before resumption of the Works; and/or
  - (ii) to terminate the Notice in accordance with paragraph 12.1 whether or not the DNO has previously stopped the Works under this paragraph 7.1.4(ii).
- 7.1.9 All amounts becoming due under the Notice shall be exclusive of Value Added Tax which, subject to express provision to the contrary, shall be payable in addition thereto and at the rate prevailing at the date upon which payment is due.

## **7.2 Variations to the Price**

The DNO may vary the Price:

- 7.2.1 if at the later of:
- (i) the date of your acceptance of the Notice; and
  - (ii) the date upon which it places its order with its suppliers of materials or plant to be comprised in the Works,

the price of those materials shall have increased from those included in the Price, the Price may be varied by an amount equal to the increase or decrease (if any) in its supplier's prices for such materials to be comprised in the Works and that are required to be paid by the DNO by reason of the price of the relevant material being less or more than the relevant price thereof in the allowed Price; and/or

- 7.2.2 to reflect any change in the Exchange Rate between the date of the Letter and the Exchange Rate prevailing at the date upon which its bank transfers the currency to the payee for the goods and/or services comprised in or required for the Works.
- 7.2.3 if the DNO issues a new Schedule of Rates before the Works are completed, provided that the reason for the delay in completing the Works is not due solely to negligent breach of this Notice by the DNO and disregarding that element of the Works which but solely for the DNO's breach of this Notice would have been completed before the issue of the new Schedule of Rates. That portion of the Price that may be increased is that which is referable to that part of the Works as has not been completed at the date the new Schedule of Rates is issued. The increased Price shall be calculated in accordance with the new Schedule of Rates.
- 7.2.4 if the Price is apportioned between you and/or a third party and/or the DNO and that third party varies or terminates the relevant agreement for carrying out the relevant works.
- 7.2.5 The DNO may vary the Price in accordance with paragraph 6.6.

### **7.3 Additional Costs**

- 7.3.1 If alterations to the Design are required reasonably by the DNO otherwise than due to its want of reasonable skill and care the Cost of making those changes and any changes to the Works shall be borne by you.
- 7.3.2 The Costs of obtaining all Consents and the Land Rights required by the DNO lawfully to carry out and retain the Works shall be paid by you in accordance with paragraph 3.3.1 but in any event before Energisation.
- 7.3.3 Any Costs incurred by the DNO due to the suspension of residential parking bays and/or the suspension of bus stops shall be borne by you.
- 7.3.4 If the DNO installs electric lines and/or electrical plant for itself and/or others in the Site at the same time as it carries out the Works the Price of such part of the Works shall be apportioned as provided in its Connection Charging Methodology from time to time issued pursuant to the Licence.
- 7.3.5 If the Works include or comprise Diversionary Works, that element of the Price identified in the Letter as being referable to the Diversionary Works is **an estimate only**. You will bear all Costs suffered or reasonably incurred by the DNO in performing its obligations in this Agreement in relation to the Diversionary Works.
- 7.3.6 If you are an Highway Authority, a Bridge Authority or a Transport Authority (as defined by respectively Sections 86(1), 88(1) and 91(1) of NRSWA) carrying out major highway works, major bridge works or major transport works (as defined respectively by sections 86(3), 88(2) and 91(2) of NRSWA) which affects or may affect the DNO's Apparatus (as defined by Section 105(1) of NRSWA) that is in a Street the reference to Costs in paragraph 10.7 is a reference to the allowable costs of the measures needing to be taken in relation to that apparatus and which shall be borne by you and the DNO in the proportions prescribed by The Street Works (Sharing of Costs of Works) (England) Regulations 2000.
- 7.3.7 The Price does not include any traffic management costs under the TMA or NSRWA.
- 7.3.8 If on your instruction the DNO attends the Site and is unable to undertake all or any of the Works due to you failing to fulfil all or any of your obligations pursuant to this Agreement, you shall pay the DNO's costs of the aborted call.

## **8 PROPERTY IN THE WORKS**

- 8.1** The Works shall form part of the Distribution System and shall be owned, operated and maintained by the DNO.

## **9 COPYRIGHT OF DOCUMENTS**

- 9.1** Each Party owns the copyright in all documents and data created or provided by it for use in connection with the Works, Your Works and Your Installation as the case may be and each Party hereby grants a non-exclusive, irrevocable, royalty free licence to the other Party to use such documents and data solely for the purposes of performing their respective obligations under this Notice and in the case of the DNO for the purposes of owning, operating and maintaining its Distribution System. Except with the other Party's prior written consent neither Party shall make copies or permit copies of such documents or data to be made nor may the other Party use or permit those documents or that data to be used other than in accordance with this paragraph 9.1.

## **10 LIABILITY**

- 10.1** Save in respect of any fraudulent misrepresentation it has made, or having caused the death of or personal injury to any person by its negligence (as to which in each case no limitation or exclusion of liability shall apply):

10.1.1 The DNO will be liable to you (and any third party) only:

- (i) for its negligent act or omission that causes delay in completing the Works and then only in the amount of the GS Payment paid or payable in relation to such delay (allowance being made there from in respect of any *ex gratia* payment paid or agreed to be paid); and
- (ii) in respect of physical damage only in a sum or sums that in the aggregate does not exceed the lower of the reasonable Cost of making good any physical damage caused by the DNO and the Price set out in the Letter excluding Value Added Tax and after deducting therefrom any discount allowed by the DNO pursuant to the regulations referred to in paragraph 7.

- 10.2** The DNO will not be liable to you for any special, indirect or consequential damage or loss nor any economic loss, loss of profit, loss of opportunity, loss of savings, loss of goodwill, loss of use, or any like losses.

- 10.3** If the only works to be carried out by the DNO are Diversionary Works and they are otherwise unrelated to the making or modification of any connection to the Distribution System paragraph 10.1.1 shall not apply and subject to paragraph 10.3 The DNO will not be liable to you (or any third party) for any loss or damage arising from any breach of these Terms and Conditions or any tortious (including negligent) act or omission or otherwise in a sum or sums that in the aggregate exceeds the Price set out in the Letter excluding Value Added tax.

- 10.4** Each of us shall be liable to the other for and shall indemnify the other against all claims in respect of personal injury or death arising from your negligence and that of your sub Contractors and their and your officers, employees, servants and agents.

- 10.5** If The DNO shall receive any claim in respect of damage to the Premises of a third party arising out of the execution of the Works, it shall report the claim to you who shall then negotiate the settlement of and pay all sums due in respect of such claim. You must indemnify the DNO in respect of the claim and in respect of all proceedings, damages, Costs, charges and expenses relating to such claim but your indemnity does not apply to damage caused by the DNO's negligence.

- 10.6** Each of us shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that we can do so without unreasonable inconvenience or cost.

- 10.7 Set off**

10.7.1 The DNO shall be entitled but not obliged at any time or times without notice to you to set off any liability of you to the DNO against its liability to you (in either case howsoever arising and whether any such liability is present or future liquidation or un-liquidated). Any exercise by the DNO of its rights under this paragraph shall be without prejudice to any other rights or remedies available to the DNO under the Notice or otherwise.

## **11 ASSIGNMENT**

11.1 You may not assign or transfer the benefit of the Notice to anyone. The DNO may do so without your consent.

## **12 TERMINATION**

12.1 Either of us ("the Aggrieved Party") may (without prejudice to any other right or remedy) by written notice to the other ("the Defaulting Party") terminate the Notice with immediate effect if:

12.1.1 the Defaulting Party commits a breach of any of its obligations hereunder and fails to rectify the same (and notify the Aggrieved Party of such rectification) within fifteen (15) days of being notified thereof by the Aggrieved Party; or

12.1.2 If the Defaulting Party: becomes bankrupt; makes any composition or arrangement with its creditors, has a proposal for a voluntary arrangement for a composition of debts or a scheme of arrangement approved in accordance with the Insolvency Act 1986, has an application made under the Insolvency Act 1986 in respect of itself to the Court for the appointment of an administrator; has a winding up order made or a resolution for a voluntary winding up passed; a receiver or manager of its business or undertaking is duly appointed or has an administrative receiver as defined in the Insolvency Act 1986 appointed; or possession is taken by or on behalf of any creditor of any property the subject of a Price.

12.2 You may terminate the Notice on written notice to the DNO, provided that at the date of the Notice the Works and any part of them are not intended to or do not subsequently form part of or comprise works to provide a connection to anyone other than you. If the Works at the date of the Notice are intended to or subsequently form part of or comprise works to provide a connection to anyone other than you the DNO may subsequently terminate the Notice by written notice to you with immediate effect if such other third party does not accept the notice issued to them by the DNO in connection with such works or any such notice is terminated.

12.3 The DNO may terminate the Notice if the Works have not been completed within 12 months of the date of the Letter, in which case paragraph 12.3 shall apply and the DNO shall repay to you, within 30 days of termination, any part of the Price already received for those Works that are not complete at the date of termination.

12.4 Paragraphs 7, 9, 10, 12, 13 and 14 shall survive termination of the Notice.

12.5 Without prejudice to any antecedent breach of the Notice by the DNO, upon termination of the Notice by either of us, you shall pay to the DNO all undisputed sums then due and payable or accrued under or in connection with the Notice to the extent necessary to indemnify the DNO against the Costs it has reasonably incurred from the date your application to carry out the Works was received, in connection with preparing and issuing the Notice and in carrying out the Works, including the Costs of materials or goods reasonably ordered for the Works prior to the date of termination.

12.6 If the Notice is terminated for any reason the DNO shall be entitled to carry on and complete so much of the Works as it considers necessary to render the same stable and safe or to comply with any condition attaching to any Consent and/or Land Right and to ensure that its Distribution System can operate not less effectively than before the commencement of the Works. The Cost properly incurred by the DNO in relation thereto shall be borne by you except where the Notice is terminated due to a breach by the DNO.

## **13 NOTICES**

- 13.1** Any notice or consent given under the Notice shall have been properly given only if in legible writing and sent by first class prepaid letter post, by hand, or by facsimile transmission to the address of the party to be served specified in the Notice or in either case to such other address as has been given to that other in accordance with this paragraph 14.1.
- 13.2** Any notice given by post shall be deemed to have been given two working days after it was sent and a notice delivered by hand or by facsimile transmission shall be deemed to be served upon actual delivery or transmission.

## **14 LAW**

- 14.1** The Notice shall be governed by and construed in accordance with the law of England and Wales.

## **15 ENTIRE AGREEMENT**

- 15.1** The Notice is the entire agreement between you and the DNO and replaces all previous correspondence and any previous understanding between us. Neither of us has entered the Agreement in reliance on any statement that is not set out fully in the Agreement. Nothing in this paragraph shall exclude liability for fraud.
- 15.2** Nothing in the Agreement shall exclude or restrict the rights and powers, duties and obligations of the DNO conferred or created by the Act or the Licence.

## **16 NON-WAIVER**

- 16.1** None of the provisions of this Notice shall be considered waived by either of us except when such waiver is expressly given in writing.
- 16.2** No delay by or omission by either of us in exercising any right power privilege or remedy under the Agreement shall impair such right power privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right power privilege or remedy shall not preclude any other future exercise thereof or the exercise of any other right power privilege or remedy.

## **17 COMPLAINTS**

If you have followed the DNO's complaints procedure (available at [edfenergy.com](http://edfenergy.com) by visiting [www.ukpowernetworks.co.uk](http://www.ukpowernetworks.co.uk) (navigate to Customer Services then click on the complaints tab) and you are unable to resolve a dispute about the DNO's duty to connect and the conditions under which that duty is discharged (sections 16-21 of the Act), you have the right to contact the Energy Ombudsman which is the independent ombudsman for gas and electricity consumers. The Energy Ombudsman's contact details are provided below.

Telephone: 0845 055 0760  
Fax: 0845 055 0765  
Email: [enquiries@energy-ombudsman.org.uk](mailto:enquiries@energy-ombudsman.org.uk)  
Website: [www.energy-ombudsman.org.uk](http://www.energy-ombudsman.org.uk)

Energy Ombudsman  
PO Box 966  
Warrington WA4 9DF

In addition, you can refer the dispute to the Gas and Electricity Markets Authority (known as Ofgem) within twelve months of the date on which your connection was made to our network. Ofgem will require that you give the DNO and the Energy Ombudsman an adequate opportunity to resolve any complaint or dispute before any action is taken by them. Ofgem's decision will be enforceable as if it were a judgement of the Court and will include such provisions as it considers appropriate which may

include who pays its costs in determining the dispute. Ofgem may give directions to us as to the terms on which we are to make or maintain a connection pending determination of the dispute. Ofgem can be contacted at 9 Millbank, LONDON SW1P 3GE, or via their website [www.ofgem.gov.uk](http://www.ofgem.gov.uk)