

Conditions of Purchase

1. Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

"Business Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"Commencement Date" has the meaning set out in Clause 2.2.

"Conditions" means these terms and conditions as amended from time to time in accordance with Clause 17.10.

"Contract" means the contract between WPD and the Supplier for the supply of Goods and/or Services and/or Works in accordance with these Conditions.

"Deliverables" means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

"Goods" means the goods (or any part of them) set out in the Order.

"Goods Specification" means any specification for the Goods, including any related plans and drawings, that is agreed in writing by WPD and the Supplier.

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Order" means WPD's order for the supply of Goods and/or Services and/or Works, as set out in WPD's purchase order form.

"Services" means the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

"Service Specification" means the description or specification for Services agreed in writing by WPD and the Supplier.

"Supplier" means the person or firm from whom WPD purchases the Goods and/or Services and/or Works.

"WPD" means any of **Western Power Distribution (South West) plc, Western Power Distribution (South Wales) plc, Western Power Distribution (East Midlands) plc and Western Power Distribution (West Midlands) plc** (company numbers: 02366894, 02366985, 02366923 and 03600574 respectively) whose registered offices are at Avonbank, Feeder Road, Bristol, BS2 0TB.

"WPD Materials" has the meaning set out in Clause 5.3(i).

"WPD Group" means WPD, the subsidiaries of each of them, the holding companies of each of them and any subsidiaries of such holding companies, **"subsidiary"** and **"holding**

company" having the meanings ascribed to those terms in section 1159, Companies Act 2006.

"Works" means the works generally described in each Order issued pursuant to these Conditions which may include the provision of certain materials, plant or equipment which are necessary for those works and which have been requested to be carried out pursuant to and in accordance with these Conditions.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and emails.

2. **Basis of contract**

2.1 The Order constitutes an offer by WPD to purchase Goods and/or Services and/or Works from the Supplier in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

- (a) the Supplier issuing written acceptance of the Order; or
- (b) any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence ("**Commencement Date**").

2.3 Subject to Clause 2.4, these Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 Where WPD and the Supplier are party to a framework agreement for the provision of Goods and/or Services and/or Works, in the event that the terms of the framework agreement and the terms of these Conditions conflict, the terms of the framework agreement shall take precedence over the terms of these Conditions.

2.5 All of these Conditions shall apply to the supply of Goods, Services and Works except where the application to one or the others is specified.

2.6 Any company in the WPD Group may request the Goods, Services and Works in accordance with these Conditions and the Supplier shall provide them to the requesting company on the terms and conditions of these Conditions. Irrespective of the company in the WPD Group that requested the Goods, Services and Works, the Supplier may only enforce its rights and remedies under these Conditions against WPD and for these purposes only any breach of these Conditions by the company in the WPD Group that requested the Goods, Services and Works shall be deemed to be a breach by WPD.

3. **Supply of Goods**

3.1 The Supplier shall ensure that the Goods shall:

- (a) correspond with their description and any applicable Goods Specification;
- (b) be capable of any standard or performance specified in the Order;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by WPD, expressly or by implication, and in this respect WPD relies on the Supplier's skill and judgment;
- (d) where applicable, be free from defects in design, materials and workmanship; and
- (e) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 WPD shall have the right to inspect and test the Goods at any time before delivery.

3.4 If following such inspection or testing WPD considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at Clause 3.1, WPD shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and WPD shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. **Delivery of Goods**

4.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (c) if the Supplier requires WPD to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

- (a) on the date specified in the Order or, if no such date is specified, then within 14 days of the date of the Order (time being of the essence);
- (b) to such location as is set out in the Order or as instructed by WPD before delivery ("**Delivery Location**");
- (c) during WPD's normal hours of business on a Business Day, or as instructed by WPD.

- 4.3 Delivery of the Goods shall occur on the completion of unloading of the Goods at the Delivery Location. Any instructions or other information required to enable WPD to accept delivery of the Goods and/or performance of the Services must be provided to WPD at least seven days before the anticipated delivery/performance.
- 4.4 The Supplier will repair or replace, free of charge, Goods damaged or lost in transit provided WPD shall give the Supplier written notification of such damage or loss within such time as will enable the Supplier to comply with the carrier's conditions of carriage as affecting loss or damage in transit, or where delivery is made by the Supplier's own transport within a reasonable time.
- 4.5 In addition to any other right that WPD may have under these Conditions it shall be entitled to postpone the date of delivery for whatsoever period it thinks fit upon giving notice in writing to the Supplier provided that WPD shall pay such of the Supplier's reasonable storage charges as in the circumstances WPD shall in its absolute discretion see fit.
- 4.6 The Supplier shall not deliver the Goods in instalments without WPD's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle WPD to the remedies set out in Clause 7.1.
- 4.7 Title and risk in the Goods shall pass to WPD on delivery.

5. **Supply of Services**

- 5.1 The Supplier shall from the date set out in the Order and for the duration of the Contract provide the Services to WPD in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by WPD.
- 5.3 In providing the Services, the Supplier shall:
- (a) co-operate with WPD in all matters relating to the Services, and comply with all instructions of WPD;
 - (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
 - (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by WPD;
 - (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to WPD, will be free from defects in workmanship, installation and design;
 - (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
 - (h) observe all health and safety rules and regulations, and any other security requirements that apply at any of WPD's premises;

- (i) hold all materials, equipment and tools, drawings, specifications and data supplied by WPD to the Supplier ("**WPD Materials**") in safe custody at its own risk, maintain WPD Materials in good condition until returned to WPD, and not dispose or use WPD Materials other than in accordance with WPD's written instructions or authorisation; and
- (j) not do or omit to do anything which may cause WPD to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that WPD may rely or act on the Services.

6. **Works**

- 6.1 Where any Order issued by WPD includes Works, the provisions of Appendix 1 to these Conditions shall apply.
- 6.2 For the avoidance of doubt, where there is a conflict between the terms of Appendix 1 and the main body of these Conditions, the terms of Appendix 1 shall prevail.

7. **WPD remedies**

- 7.1 If the Supplier fails to deliver the Goods and/or perform the Services or Works by the applicable date, WPD shall, without limiting its other rights or remedies, have one or more of the following rights:
 - (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (b) to refuse to accept any subsequent performance of the Services and/or Works and/or delivery of the Goods which the Supplier attempts to make;
 - (c) to recover from the Supplier any costs incurred by WPD in obtaining substitute goods and/or services and/or works from a third party;
 - (d) where WPD has paid in advance for Services and/or Works that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums immediately refunded by the Supplier; and
 - (e) to claim damages for any additional costs, loss or expenses incurred by WPD which are in any way attributable to the Supplier's failure to meet such dates.
- 7.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in Clause 3.1, then, without limiting its other rights or remedies, WPD shall have one or more of the following rights, whether or not it has accepted the Goods:
 - (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
 - (b) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - (e) to recover from the Supplier any expenditure incurred by WPD in obtaining substitute goods from a third party; and
 - (f) to claim damages for any additional costs, loss or expenses incurred by WPD arising from the Supplier's failure to supply Goods in accordance with Clause 3.1.

7.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

7.4 WPD's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

8. **WPD's obligations**

8.1 WPD shall:

- (a) provide the Supplier with reasonable access at reasonable times to WPD's premises for the purpose of providing the Services and/or Works; and
- (b) provide such information as the Supplier may reasonably request for the provision of the Services and/or Works and WPD considers reasonably necessary for the purpose of providing the Services and/or Works.

9. **Charges and payment**

9.1 The price for the Goods:

- (a) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods and any duties or levies, unless otherwise agreed in writing by WPD. No extra charges or increase of the price for the Goods shall be effective unless agreed in writing and signed by WPD.

9.2 The charges for the Services and Works shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services and Works. Unless otherwise agreed in writing by WPD, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services and Works.

9.3 In respect of Goods, the Supplier shall invoice WPD on or at any time after completion of delivery. In respect of Services and Works, the Supplier shall invoice WPD on completion of the Services and Works. Each invoice shall include such supporting information required by WPD to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

9.4 In consideration of the supply of Goods and/or Services and/or Works by the Supplier, WPD shall pay the invoiced amounts by the last day of the month following the month WPD receives a correctly rendered invoice to a bank account nominated in writing by the Supplier or, if later, the month in which WPD receives the Goods and/or Services and/or Works.

9.5 All amounts payable by WPD under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to WPD, WPD shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services and/or Works at the same time as payment is due for the supply of the Goods and/or Services and/or Works.

9.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the base rate of the Bank of England from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This Clause shall not apply to payments that the defaulting party disputes in good faith.

9.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services and Works, and the Supplier shall allow WPD to inspect such records at all reasonable times on request.

9.8 WPD may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to WPD against any liability of WPD to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

10. **Intellectual property rights**

10.1 In respect of the Goods and any goods that are transferred to WPD as part of the Services and/or Works under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to WPD, it will have full and unrestricted rights to sell and transfer all such items to WPD.

10.2 The Supplier assigns to WPD, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services and Works, including for the avoidance of doubt the Deliverables.

10.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services and Works to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

10.4 The Supplier shall, promptly at WPD's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as WPD may from time to time require for the purpose of securing for WPD the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to WPD in accordance with Clause 10.2.

10.5 All WPD Materials are the exclusive property of WPD.

11. **Indemnity and Liability**

11.1 The Supplier shall keep WPD indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered incurred by WPD as a result of or in connection with:

(a) any claim made against WPD for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services and/or Works, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

(b) any claim made against WPD by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and

(c) any claim made against WPD by a third party arising out of or in connection with the supply of the Goods, Services or the Works, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

11.2 Nothing in these Conditions shall limit or exclude either party's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act and section 12 of the Sale of Goods Act 1979; and
 - (d) any other liabilities not capable of being limited or excluded by law.
- 11.3 Subject to Clause 11.2, WPD's total liability to the Supplier in respect of all other losses arising under or in connection with each Order, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price due to the Supplier under the relevant Order.
- 11.4 This Clause 11 shall survive termination of the Contract.
12. **Insurance**
- 12.1 The Supplier undertakes to take out and maintain insurance cover in full force and effect at its own cost with an insurance office of repute to cover its liabilities under the Contract.
- 12.2 The Supplier shall produce at WPD's reasonable request a copy of the insurance policy or policies and the relevant renewal receipts for inspection by WPD.
13. **Confidentiality**
- 13.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes and initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this Clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 13.2 This Clause 13 shall survive termination of the Contract.
14. **Termination**
- 14.1 Without limiting its other rights or remedies, WPD may terminate the Contract:
- (a) in respect of the supply of Services and/or Works, by giving the Supplier written notice; and
 - (b) in respect of the supply of Goods, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier, whereupon the Supplier shall discontinue all work on the Contract. WPD shall pay the Supplier properly evidenced, fair and reasonable costs for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 14.2 In any of the circumstances in these Conditions in which a party may terminate the Contract, where Goods and Services and/or Works are supplied, that party may terminate the Contract in respect of the Goods, or in respect of the Services and/or Works, and the Contract shall continue in respect of the remaining supply.

- 14.3 Without limiting its other rights or remedies, WPD may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- (a) the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing to do so;
 - (b) the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
 - (c) the Supplier passes a resolution for its winding-up or a court of competent jurisdiction makes an order for the winding-up or dissolution of the Supplier;
 - (d) any steps are taken for the making of an administration order or the appointment of an administrator under the out-of-court procedure under the Enterprise Act 2002 or notice is given of an intention to appoint an administrator in relation to the Supplier or any steps are taken for the appointment of a receiver or administrative receiver, or an encumbrancer takes possession or sells, any of the Supplier's assets; or
 - (e) the Supplier is unable to pay its debts (within the meaning of Section 123, Insolvency Act 1986), ceases for any reason to carry on business or takes or suffers any similar action which in the opinion of the innocent party means that the Supplier may be unable to pay its debts.

14.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

14.5 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

15. **Consequences of termination**

15.1 On termination of the Contract for any reason, the Supplier shall immediately deliver to WPD all Deliverables whether or not then complete, and return all WPD Materials. If the Supplier fails to do so, then WPD may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

16. **Alternative dispute resolution**

16.1 Subject to Clause 16.4, if a dispute arises out of or in connection with the Contract, the parties shall:

- (a) within 28 days of written notice of the dispute being received by the receiving party in good faith seek to resolve the dispute through negotiations between the parties' senior representatives who have the authority to settle it; and
- (b) not pursue any other remedies available to them until at least 28 days after the first written notification of the dispute.

16.2 The parties shall use reasonable endeavours to resolve the dispute.

16.3 If the dispute is not resolved in accordance with this Clause, either party may propose to the other in writing that the matter be referred to a non-binding mediation. If the parties are unable to agree on a mediator either party may apply to the Centre for Dispute Resolution (CEDR) to appoint one.

16.4 Nothing in this Clause shall prevent any party from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage.

17. General

17.1 WPD may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.2 The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of WPD.

17.3 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

17.4 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 17.3; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

17.5 The provisions of Clause 17.4 shall not apply to the service of any proceedings or other documents in any legal action.

17.6 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of the Contract.

17.7 A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17.8 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

17.9 A person who is not a party to the Contract shall not have any rights to enforce its terms.

17.10 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by WPD.

17.11 The Supplier shall, and shall procure that each of its subcontractors shall, take reasonable steps to ensure that slavery and human trafficking (as such phrase is defined in section 54(12), Modern Slavery Act 2015) is not taking place in any of its supply chains or in any part of its own business. The Supplier shall, at WPD's request, provide WPD with a statement of any such steps it has taken, and such other information as WPD may reasonably require in order to enable it to prepare a slavery and human trafficking statement in accordance with section 54, Modern Slavery Act 2015. The Supplier shall notify WPD immediately if it becomes

aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract.

- 17.12 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 17.13 Subject to Clause 16, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

Appendix 1 (Works)

1. Definitions

1.1 For the purposes of this Appendix the following definitions shall apply:

"**CDM Regulations**" means the Construction (Design and Management) Regulations 2015.

"**CIS Regime**" means Chapter 3, Part 3 of Finance Act 2004 and any regulations made under Section 74 of the Finance Act; the CIS Regulations, the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2007 (CIS 2007/672) and any other statute or subordinate legislation relating to the construction industry scheme as modified from time to time or replaced whether before or after the date of the Contract.

"**CIS Regulations**" means the Income Tax (Construction Industry Scheme) Regulations 2005 (CIS 2005/2045) as amended from time to time.

"**Defects Liability Period**" has the meaning as set out in Clause 3.5 of this Appendix.

"**Event of Force Majeure**" means an event beyond the reasonable control of a party including but not limited to: (i) strike, lock out or other form of industrial action, other than by a party's own employees or agents; (ii) outbreak of hostilities, riot, civil disturbance or acts of terrorism; (iii) fire, explosion, flood, or severe weather; (iv) widespread loss of electricity; (v) pandemic resulting in significant staff reductions; or (vi) theft and malicious damage including, without limitation, cyber-attack; provided that no event shall be treated as an Event of Force Majeure if it is an act, default or omission of a party's suppliers or sub-contractors or if it is attributable in whole or part to any wilful act or omission or any failure to take reasonable precautions by a party.

"**Notified Sum**" has the meaning as set out in Clause 7.7 of this Appendix.

"**Pay Less Notice**" has the meaning as set out in Clause 7.8 of this Appendix.

"**Practical Completion Date**" has the meaning as set out in Clause 5.10 of this Appendix.

"**Site**" means the lands and other places on under, in or through which the Works are to be constructed as set out in each Order and any other lands or places provided by the WPD for the purposes of the Contract, together with such other places as may be designated in the Order or subsequently agreed by WPD as forming part of the Site.

"**Works Commencement Date**" means the date specified in an Order for the commencement of any Works, as such date may be varied in accordance with Clause 5.1 of this Appendix.

"**Works Completion Date**" means the date specified in an Order when Works must be completed, as such date may be varied in accordance with the Contract.

2. Appointment

2.1 Any Order issued by WPD shall detail the agreed particulars of the Works to be carried out including:

- (a) the Works Commencement Date;
- (b) the Works Completion Date;
- (c) the price;
- (d) Site access details; and

- (e) any priority or special requirements and any other matters than WPD considers relevant.

2.2 The Supplier shall be deemed to have inspected and examined the Site and its surroundings and all information available in connection therewith and to have fully acquainted and satisfied itself so far as is practicable, before commencing the Works as to:

- (a) the form and nature thereof including the ground, subsoil and hydrological conditions;
- (b) the means of communication with and the access to the Site and the accommodation it may require;
- (c) the Site conditions,

and generally to have obtained for itself all necessary information as to risks, contingencies and all other circumstances which may influence or affect the Works and/or the price and shall make no claim for additional loss expense and/or time to complete the Works founded on its failure to do so as required by this Clause 2.2.

2.3 WPD shall have power to vary the Works and such variations may include additions and/or omissions and may be ordered at any time up to the end of the Defects Liability Period for the Works. All such variations shall be ordered in writing and any oral instruction for a variation will not be regarded as a variation until the Supplier receives written confirmation of the variation from WPD. No variation ordered under this Clause shall in any way vitiate or invalidate the Contract. The valuation of variations ordered by WPD in accordance with this Clause 2.3 shall be ascertained and agreed by WPD and the Supplier in writing (signed by WPD and the Supplier) and added to the price.

3. **Supplier Obligations**

3.1 The Supplier shall keep detailed records of all acts and things done by it in relation to the provision of the Works including (without limitation) the date(s) the Works are carried out, equipment used and Supplier's personnel involved. At WPD's request the Supplier shall make the records available for inspection and/or provide copies to WPD.

3.2 The Supplier shall, at all times when carrying out Works:

- (a) obey all lawful and reasonable directions of WPD;
- (b) comply with all applicable law in relation to the Works;
- (c) be responsible for making appropriate PAYE deductions for tax and national insurance contributions from the remuneration which it pays to its personnel and the Supplier agrees to indemnify WPD in respect of any claims or demands which may be made by the relevant authorities against WPD in respect of income tax relating to the provision of the Works by the Supplier;
- (d) comply with any instructions, rules or policies issued by WPD from time to time; and
- (e) comply with the CDM Regulations and discharge the role of Principal Contractor, Principal Designer, Designer or Sub-Contractor (as applicable and as specified in each Order) to the extent that the CDM Regulations apply to the Works (having regard at all times to WPD's policies).

3.3 The Supplier shall:

- (a) perform and complete the Works and make good any defects in the Works in a good and workmanlike manner so as to meet all requirements of the Contract and shall provide all supervision, labour, materials, plant, transport and temporary works which may be necessary therefor;

- (b) perform and complete the Works in accordance with good industry practice and in compliance with WPD's instructions, rules and policies issued from time to time;
- (c) not cause or exacerbate any harm to the environment;
- (d) comply at all times with WPD's applicable policies in respect of the removal, treatment, storage and/or disposal of any waste material produced by the Supplier in carrying out the Works;
- (e) not use or permit to be used any materials generally known at time of specification or use to be deleterious to health or safety or to the integrity of buildings and/or by their nature or application contravene any British Standards or codes of practice or European Union equivalent current at the date of specification or use;
- (f) ensure that both it and the Supplier's personnel have the skill and expertise required to carry out the provision of the Works to the standards required in the Contract; and
- (g) ensure at its cost that the Works are carried out so as to cause minimum disturbance and to minimise as far as practicable any nuisance and inconvenience to occupants of properties adjacent to the Site and the general public. The Supplier shall comply with all applicable laws and WPD's policies with regards to noise and pollution and keep noise and pollution to a minimum and shall use the best methods that are reasonably practicable to suppress noise on vehicles, compressors, road breakers and other similar equipment.

3.4 The Supplier shall:

- (a) keep the Site in a clean and tidy state during the Works;
- (b) on completion of the Works, ensure that the Site is (as far as reasonably practical) restored to the condition it was in prior to the Works being carried out; and
- (c) remove rubbish or surplus materials from the Site. If the Supplier fails to do so within three days of such request then WPD may remove the rubbish and surplus materials and charge the reasonable costs of doing so to the Supplier.

3.5 Where WPD informs the Supplier of any defects, excessive shrinkages or other faults to the Works which appear during the term of the Contract or within 24 months from the Works Completion Date (or within 36 months from the Works Completion Date where the Works involve excavations greater than 1.5 metres in depth) (the "**Defects Liability Period**") and which are due to materials or workmanship not being in accordance with the terms of the Contract, the Supplier shall, at WPD's option, either:

- (a) remedy such defect at its own cost forthwith (in which case the Supplier shall also be liable to WPD for any costs arising out of any damage caused by the Supplier in remedying such defects); or
- (b) pay to WPD the costs incurred by WPD in having such defect remedied.

3.6 In addition to its rights under Clause 3.5, WPD reserves the right to withhold any sums which may be due to the Supplier under the Contract that are necessary for the remedying of any defect or breach.

3.7 WPD shall notify the Supplier when in WPD's opinion the Supplier's obligations under this Clause 3 have been discharged.

3.8 Copyright in the Works and all and/or any documents or materials produced by the Supplier in connection with the Works shall remain vested in the Supplier but WPD shall have an unconditional, irrevocable, royalty free, non-exclusive licence to use or reproduce any item of the Works, documents or materials provided by the Supplier for any purpose in relation to the

Works. Such licence shall carry the right to grant sub-licences and shall be transferable without the consent of the Supplier.

- 3.9 All fossils, coins, articles of value or antiquity and structures or other remains or things of geological or archaeological interest discovered on a Site shall as between WPD and the Supplier be deemed to be the absolute property of WPD, and the Supplier shall take reasonable precautions to prevent its workmen or any other persons from removing or damaging any such article or thing and shall immediately upon discovery thereof and before removal acquaint WPD of such discovery and carry out at the expense of WPD, WPD's orders as to the disposal of the same.
- 3.10 In the event that the Supplier encounters dangerous substances or causes harm to the environment in carrying out the Works it shall immediately notify WPD and follow the protocol set out in WPD's environmental policy documents.

4. **Safety and Training**

- 4.1 The Supplier shall, at its own expense and at all times:
- (a) comply and procure that the Supplier's personnel comply with all applicable laws and relevant WPD policies and the Contract in performing the Works; and
 - (b) provide the Supplier's personnel with all necessary safety equipment to enable them to perform the Works safely, including (but not limited to) barriers and hazard warnings at the Site as are required to ensure the safety of all persons in the vicinity of the Site.
- 4.2 The Supplier and the Supplier's personnel may, in order to comply with this Clause 4, be required, at their expense, to attend training courses. The Supplier and the Supplier's personnel may either attend WPD run courses or other courses that WPD has agreed to in writing. The number of the Supplier's personnel who attend these courses is at the discretion of the Supplier. The Supplier shall ensure that the numbers that do attend shall be sufficient for undertaking the Works.
- 4.3 The Supplier shall ensure that sufficient numbers of the Supplier's personnel are trained and authorised by WPD to receive safety documents as required by WPD's distribution safety rules.
- 4.4 The Supplier shall throughout the progress of the Works have full regard for the safety of all persons entitled to be on the Site and shall keep the Site (so far as the same is under its control) and Works (so far as the same is not completed or occupied by WPD) in an orderly state appropriate to the avoidance of danger to persons. The Supplier shall provide and maintain at its own cost all lights, guards, fences, warning signs and watching when and where necessary or as required by WPD's or by any statutory or competent authority for protection of the Works or the safety of the public or others.
- 4.5 The Supplier will provide the following information to WPD to the satisfaction of WPD before the Works Commencement Date:
- (a) the names, training and qualifications of the Supplier's personnel;
 - (b) proof that the Supplier's personnel have valid authorisations to carry out the Works;
 - (c) the risk assessment carried out by the Supplier or the risk assessment carried out jointly by the Supplier and WPD in accordance with WPD's health and safety policy documents;
 - (d) the method statement detailing how the Works will be carried out in accordance with WPD's health and safety policy documents; and

- (e) a health & safety statement in accordance with WPD's health and safety policy documents.
- 4.6 If there is a breach of this Clause 4 or in WPD's reasonable opinion the Supplier's personnel are in default or breach of the Contract or in default or breach of any statutory duty without prejudice to its rights elsewhere under the Contract, WPD may, instruct that:
- (a) the Works are suspended;
 - (b) any or all of the Supplier's personnel leave the Site; and/or
 - (c) the Supplier's and any sub-contractor's equipment be removed.
- 4.7 The Supplier shall:
- (a) make WPD aware of any accidents which occur due to or arising from the carrying out of the Works as soon as reasonably practicable; and
 - (b) inform the WPD purchasing team by e-mail (wpdpurchasing@westernpower.co.uk) of any accidents which occur due to or arising from the carrying out of the Works within 24 hours of the incident occurring.
- 4.8 If so requested by WPD the Supplier must, at its own expense recommence the Works as soon as reasonably practicable.
- 5. Timing of the Works**
- 5.1 The Supplier shall commence the Works specified in the Order on the Works Commencement Date, which may be varied following a meeting on Site, provided such later date is confirmed in writing by WPD.
- 5.2 The Supplier shall complete the Works by the Works Completion Date. The Works Completion Date may be extended by WPD in accordance with Clause 5.3. WPD shall inform the Supplier in writing of any revised Works Completion Date.
- 5.3 If the progress of the Works or any part thereof is delayed for any of the following reasons:
- (a) an instruction given by WPD (including any suspension instructed under Clause 5.8 where such suspension has not been caused or contributed to by any act or omission of the Supplier in breach of the Contract);
 - (b) delay in receipt by the Supplier of necessary instructions drawings or other information;
 - (c) failure by WPD to give access to the Site or possession of land required to perform the Works;
 - (d) delay in receipt by the Supplier of materials to be provided by WPD under the Contract;
 - (e) any delay impediment prevention or default by WPD; and
 - (f) the occurrence of an Event of Force Majeure,
- then subject to the following provisions of this Clause 5.3 and 5.7, the Supplier may claim an extension to the period for completion of the Works. To claim an extension to the period for completion it is a condition precedent that:

- (i) the Supplier notifies WPD in writing as soon as reasonably practicable and in any event within 14 days of the commencement of the occurrence causing the delay; and
 - (ii) the Supplier has taken all reasonable steps to avoid or minimise the delay.
- 5.4 Following receipt of the Supplier's notice, pursuant to Clause 5.3(f)(i) above WPD shall by notice in writing grant such extension of the period for completion of the whole or part of the Works as may in its opinion be reasonable.
- 5.5 Notwithstanding any other provision of the Contract the Supplier shall not be entitled to any extension to the period for completion of the Works on account of any circumstances arising by reason of any error, omission, negligence or default of the Supplier or any of its employees or agents or any sub-contractor or supplier.
- 5.6 The extended period or periods for completion shall be subject to regular review provided that no such review shall result in a decrease in any extension of time already granted by WPD.
- 5.7 Should the Supplier fail to complete the Works by the Works Completion Date, WPD (without prejudice to any other right or remedy which it may have) may:
 - (a) cancel that part of the Works which have not been completed by the Works Completion Date; and/or
 - (b) charge to the Supplier any additional costs, losses or expenses that WPD may incur, including the extra costs of employing a replacement contractor to complete the Works, due to the Supplier's failure to complete the Works by the Works Completion Date.
- 5.8 In addition to any other right that WPD may have under the Contract it shall be entitled to suspend the Works at any time.
- 5.9 Practical completion of the Works shall occur when the Works reach a state when, notwithstanding any defect or outstanding items therein, they are taken or are fit to be taken into use or possession by WPD and (if relevant) the Supplier has delivered operation and maintenance manuals to WPD.
- 5.10 When WPD is satisfied that the Works are completed, WPD shall issue a certificate of practical completion as soon as reasonable practicable certifying the date on which the Works achieved practical completion (the "**Practical Completion Date**").
- 6. **Inspection**
- 6.1 WPD shall have the right to inspect the Works at any time. Irrespective of whether the right of inspection under the Contract is exercised WPD shall have the right to request that the Supplier remedies any defects during or after completion of the Works.
- 6.2 The Supplier shall, upon request, provide WPD with copies of all test reports and all data arising from the testing any materials or equipment used in the Works.
- 7. **Payment**
- 7.1 WPD shall pay the Supplier the price (plus VAT) for the Works.
- 7.2 The Supplier shall be entitled to payment on completion of the Works. The Supplier shall within 7 days of the Practical Completion Date issue a VAT invoice to WPD for the price.
- 7.3 Each invoice submitted by the Supplier must:
 - (a) contain all the following information:

- (i) the Site where the Works have been carried out;
 - (ii) the period to which the invoice relates;
 - (iii) the Supplier's details for payment;
 - (iv) the date of completion of the Works;
 - (v) the name of WPD's representative responsible for the Works;
 - (vi) the sum which the Supplier considers will become due on the payment due date in respect of the Works, together with a list of any goods or materials delivered to the Site and their value;
 - (vii) the corresponding purchase order number; and
 - (viii) any other information that WPD may reasonably request;
- (b) where relevant, be accompanied by as-laid drawings in respect of the Works to which the invoice relates;
 - (c) be sent to Western Power Distribution Accounts Payable;
 - (d) be accompanied by a copy of the relevant Order; and
 - (e) be dated the date that it is issued.
- 7.4 Payment shall become due 5 days after receipt by WPD of the relevant invoice and any supporting documents in accordance with Clause 7.3
- 7.5 Not later than 5 days after payment has become due in accordance with Clause 7.4, WPD shall notify the Supplier of the sum that WPD considers to have been due at the payment due date in respect of the Supplier's invoice and the basis on which that amount is calculated.
- 7.6 The final date of payment by WPD to the Supplier of sums due shall be 57 days after the date on which payment becomes due.
- 7.7 Unless WPD has served a notice under Clause 7.8, WPD shall, subject to Clause 7.9, pay the Supplier the sum referred to in WPD's notice under Clause 7.5 (or, if WPD has not served notice under Clause 7.5, the sum contained in the Supplier's invoice referred to in Clause 7.2 (in this Clause 7, the "**Notified Sum**") on or before the final date for payment of each invoice.
- 7.8 If WPD intends to pay less than the Notified Sum WPD shall give notice ("**Pay Less Notice**") to the Supplier at least one day before the relevant final date for payment that it intends to pay less than the Notified Sum. The Pay Less Notice shall state the amount that WPD considers to be due on the date of the notice and the basis on which the sum is calculated. Providing that such notice has been given and subject to Clause 7.9, WPD shall be obliged to pay the reduced sum so notified.
- 7.9 Payment under this Clause 7 shall be subject to receipt by WPD of an invoice from the Supplier for the Notified Sum, or where a Pay Less Notice has been issued, for the reduced amount stated in the Pay Less Notice, together with the Value Added Tax that WPD is required to pay to comply with Clause 9.5 of the Conditions.
- 8. CIS Scheme**
- 8.1 WPD is a "contractor" for the purposes of the CIS Regime. The Supplier warrants that it is registered as a sub-contractor for the purposes of the CIS Regime. The Supplier shall within 7 days of the Order, (and in any event prior to the Works Commencement Date) supply WPD with such details as WPD may reasonably require (including confirmation of its national

insurance number/company registration number and unique tax reference number) in order to allow WPD to verify the Supplier's identity with HMRC in accordance with the CIS Regime and to determine whether the Supplier is registered for gross payment or payment under deduction for the purposes of section 69 of the Finance Act 2004 and Regulation 6 of the CIS Regulations.

- 8.2 Where the Supplier is not registered for gross payment under section 63(2) of the Finance Act 2004 or where the Supplier fails to provide the details required pursuant to Clause 8.1 to enable WPD verify the Supplier's identity in accordance with the CIS Regulations, then not later than 7 days before the final date for payment of any sum due, the Supplier shall give WPD details of the direct cost of materials included in the payment and WPD shall be entitled to make such deduction from that part of the payment which is not in respect of the direct cost of materials at the relevant percentage rate in force at the time of payment as required by the CIS Regime. Where WPD has failed to deduct the correct amount of taxation in respect of any such payment, WPD may correct the error by making deductions from subsequent payments due to the Supplier.
- 8.3 Where the Supplier is verified as a sub-contractor entitled to receive gross payments under the CIS Regulations then WPD shall pay any amount due without making the statutory deduction.
- 8.4 The Supplier agrees that it shall comply in full with all of its obligations under the CIS Regime.
- 8.5 In the event of a dispute or difference between WPD and the Supplier as to the operation of this Clause 8 or this Appendix, then the provisions of Clause 16 (Alternative Dispute Resolution) of the Conditions shall apply .