

## Schedule 1

### Conditions of Contract for Minor Works

#### Background:

The Contractor is in the business of undertaking construction works. WPD wishes to appoint the Contractor to provide Works on a when needed basis to WPD on the terms and conditions set out in the Contract.

It is agreed as follows:

#### 1. Definitions and interpretations

##### 1.1 Definitions

In the Contract (as hereinafter defined) the following words and expressions shall have the meanings assigned to them except where the context otherwise requires:

"CDM Regulations"	the Construction (Design and Management) Regulations 2015.
"CIS Regulations"	the Income Tax (Construction Industry Scheme) Regulations 2005 (CIS 2005/2045) as amended from time to time.
"Certificate of Practical Completion"	means a certificate issued by WPD pursuant to clause 6.6 substantially in the form attached at Schedule 3 to the Framework Agreement.
"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.
"Confidential Information"	all designs, drawings, data, specifications, manufacturing processes, testing procedures and all other technical business and similar information relating to the business of WPD including all readable or computer or other machine readable data.
"Contract"	the Work Instruction together with these Conditions of Contract, including any documents referred to therein and the schedules and appendices to the Framework Agreement.
"Contractor's Nominated Person"	an employee nominated by the Contractor for the purposes of the Contract named in the Contract Agreement or as notified to WPD in writing from time to time.
"Contract Period"	the period between the Works Commencement Date and the Works Completion Date for carrying out the Works which shall be as set out in each Work Instruction.

<b>"Contractor's Personnel"</b>	the Contractor's employees (by name, number, or title) and any sub-contractors or agents (and their personnel) engaged by the Contractor to carry out the Works who are approved by WPD for undertaking any Works instructed under the Contract.
<b>"Contract Price"</b>	the price agreed between WPD and the Contractor for the carrying out of the Works under each Work Instruction in accordance with the Contract to be paid in accordance with clause 9 of the Conditions of Contract.
<b>"Defects Liability Period"</b>	shall have the meaning ascribed to it in clause 4.6
<b>"Effective Date"</b>	The date that WPD receives the signed Work Instruction from the Contractor;
<b>"Environment"</b>	means the environment as defined in section 1(2) of the Environmental Protection Act 1990.
<b>"Environmental Law"</b>	means, with respect to any person, property, transaction, event or other matter, any law, rule, statute, regulation, instrument, order, judgment, decree, treaty, guidance or other requirement having the force of law in any jurisdiction relating or pertaining to the Environment, any Substance, human health, safety or the welfare of any other living organism.
<b>"Event of Force Majeure"</b>	<p>means the following events:</p> <ul style="list-style-type: none"> <li>(a) strike, lock out or other form of industrial action, other than by a party's own employees or agents,</li> <li>(b) act of God,</li> <li>(c) outbreak of hostilities, riot, civil disturbance or acts of terrorism,</li> <li>(d) fire, explosion, flood, or severe weather (severe weather for the purposes of this definition shall mean a weather event occurring less frequently than once in ten years, as determined by reference to weather data recorded by the Met Office),</li> <li>(e) pandemic resulting in significant staff reductions, or</li> <li>(f) theft or malicious damage associated with the Works including, without limitation, cyber attack,</li> </ul> <p>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</p>

precautions by a party; and

provided further that the following shall not be treated as Events of Force Majeure (i) a strike by or lockout or other industrial dispute or trade dispute involving any sub-contractor, supplier or any employees of the Contractor or (ii) non-supply of materials, goods, equipment or machinery for the Temporary or Permanent Works by any supplier to the Contractor or (iii) the Contractor's failure to hire suitably qualified personnel or labour or (iv) mechanical or electrical breakdown or failure of equipment, machinery, or plant owned by or provided to the Contractor.

**"Excepted Risks"**

are:

- (g) the use or occupation by WPD its agents servants or other contractors (not being employed by the Contractor) of any part of the Works;
- (h) any fault defect error or omission in the design of the Works (other than a design provided by the Contractor pursuant to his obligations under the Contract); and
- (i) the occurrence of an Event of Force Majeure.

**"Framework Agreement"**

means the agreement between WPD and the Contractor setting up the framework under which Works are to be carried out.

**"Good Industry Practice"**

means the exercise of such degree of skill, care and diligence as would reasonably and ordinarily be expected from a skilled and experienced contractor carrying out works, complying with its contractual obligations and complying with all Statutory Requirements, Environmental Law, WPD's Environmental Policy Documents, WPD's Health and Safety Policy Documents and engaged in activity of similar type, nature and complexity as the Works.

**"Method Statement"**

the statement which may be required by WPD in accordance with clause 5.5 from the Contractor detailing how the Works will be carried out in accordance with the guidance in WPD's Health and Safety Policy Documents.

**"Policy Documents"**

means any instructions, rules or policies issued by WPD from time to time, including without limitation the Drug and Alcohol Policy, Code of Ethics and Anti-Bribery Policy, WPD's Distribution Safety Rules, WPD's Environmental Policy Documents and WPD's Health and Safety Policy Documents.

**"Practical Completion Date"**

has the meaning given to it by clause 7.

**"Principal Designer",**

Has the meaning given to it in the CDM Regulations.

**"Principal Contractor",  
"Sub-Contractor",  
"Contractor", "Designer"  
and "Client"**

**"Quotation"** a quotation issued by the Contractor on the request of WPD pursuant to the Framework Agreement.

**"Risk Assessment"** a risk assessment carried out by the Contractor or a risk assessment carried out jointly by the Contractor and WPD in the accordance with the guidance in WPD's Health and Safety Policy Documents.

**"Site"** means the lands and other places on under, in or through which the Works are to be constructed as set out in each Work Instruction 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 Work Instruction or subsequently agreed by WPD as forming part of the Site.

**"Statutory Requirements"** all general or local Acts of Parliament and the regulations and bye-laws of any local or other statutory authority which may be applicable to the Works and the rules and regulations of all public bodies and companies whose property or rights are or may be affected in any way by the Works.

**"Statutory Scheme"** the Scheme for Construction Contracts (England and Wales) Regulations 1998 (SI 1998/649) as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011 (SI 2011/2333) and the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (Wales) Regulations 2011 (SI: 2011/1715) (as appropriate) or any such enactment or amendment to such legislation as is in force from time to time.

**"VAT"** means value added tax as provided under the VATA.

**"VATA"** means the Value Added Tax Act 1994 and references to the VATA shall include all statutes, laws, regulations, notices, directions or similar provisions, relating to value added tax and any value added, turnover, sales, purchase or similar tax of the United Kingdom or of any other jurisdiction and references to value added tax or to VAT shall be construed accordingly.

**"Work Instruction"** an instruction issued by WPD pursuant to clause 2.2

**"Works"** the works generally described in each Work Instruction issued pursuant to the Contract 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 the Contract.

<b>"Works Commencement Date"</b>	the Date specified in a Work Instruction for the commencement of any Works, as such date may be varied in accordance with clause 6.1
<b>"Works Completion Date"</b>	the date specified in a Work Instruction when Works must be completed, as such date may be varied in accordance with the Contract.
<b>"WPD Group"</b>	means Western Power Distribution (South West) plc, Western Power Distribution (South Wales) plc, Western Power Distribution (East Midlands) plc, Western Power Distribution (West Midlands) plc and the subsidiaries of each of them, 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.
<b>"WPD's Distribution Safety Rules"</b>	the rules for working on or near WPD's electricity distribution system which are available for inspection at WPD's offices.
<b>"WPD's Environmental Policy Documents"</b>	means the environmental policy documents issued to contractors or available for inspection at WPD's registered office and other places of business setting out the environmental requirements for contractors working for WPD as may be updated from time to time.
<b>"WPD's Health and Safety Policy Documents"</b>	means the health and safety policy documents issued to contractors or available for inspection at WPD's registered office and other places of business setting out the health and safety requirements for contractors working for WPD as may be updated from time to time.

## 1.2 ***Headings and marginal notes***

The headings and marginal notes in the Conditions of Contract shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof or the Contract.

## 1.3 ***Singular and Plural***

Words imparting the singular also include the plural and vice – versa where the context requires.

## 1.4 ***Clause references***

All references herein to clauses are references to clause numbers in the Conditions of Contract and not to those in any other document forming part of the Contract.

## 1.5 ***Communications in writing***

Communications which under the Contract are required to be 'in writing' may be hand-written, typewritten or printed and sent by hand, post, e-mail, facsimile or other means resulting in permanent record.

1.6 ***Documents mutually explanatory***

The several documents forming the Contract are to be taken as mutually explanatory of one another and in case of ambiguities or discrepancies the same shall be explained and adjusted by WPD who shall thereupon issue to the Contractor appropriate instructions in writing. For the avoidance of doubt where there is a discrepancy between the Conditions of Contract and any other document comprising of the Contract, the Conditions of Contract shall take precedence. If there is a discrepancy or inconsistency between any of the standards with which the Contractor shall be required to comply the most onerous or highest standard shall take precedence.

2. ***Appointment***

2.1 Unless otherwise agreed in writing by WPD, no Works are to be carried out by the Contractor unless and until a Work Instruction has been issued by WPD and signed and returned by the Contractor.

2.2 Any Work Instruction issued by WPD shall be substantially in the form set out in Schedule 2 to the Framework Agreement or in such other computer generated form as WPD may require and shall detail the agreed particulars of the Works to be carried out including: the Works Commencement Date, the Works Completion Date, the Contract Price, Site access details, any priority or special requirements and any other matters that WPD considers relevant.

2.3 No provision of the Contract shall operate to exclude limit or restrict the Contractor's liability under statute or at common law in respect of the carrying out and completion of the Works and/or defects in them.

2.4 These Conditions of Contract shall prevail over any terms and conditions contained in or attached to any Quotation and/or any correspondence between the parties unless the parties agree to vary the terms of the Contract in accordance with these Conditions of Contract or the Work Instruction expressly amends these Conditions of Contract.

2.5 The Contractor 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 himself so far as is practicable, before submitting his Quotation and/or 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 he may require;
- (c) the Site conditions;

and generally to have obtained for himself all necessary information as to risks, contingencies and all other circumstances which may influence or affect the Works and/or the Contract Price and shall make no claim for additional loss expense and/or time to complete the Works founded on his failure to do so as required by this clause

2.5

2.6 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 Contractor 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 2.6 shall be ascertained and agreed by WPD and the Contractor in writing (signed by WPD and the Contractor) and added to the Contract Price.

### 3. **WPD's Representative**

WPD may appoint the person named in the Work Instruction to be its representative for the purposes of the Contract. WPD may change such person at any time on notice to the Contractor and such person may delegate any of its responsibilities at its discretion.

### 4. **Obligations of the Contractor**

4.1 The Contractor agrees to use the Contractor's Personnel to perform the Works and to, in particular, appoint a Contractor's Nominated Person and keep WPD updated of his contact details. The Contractor shall ensure that all Contractor's Personnel on Site shall work the hours specified by WPD in a Work Instruction.

4.2 The Contractor 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 Contractor's Personnel involved, such records being signed by the Contractor's Nominated Person. At WPD's request the Contractor shall make the records available for inspection and/or provide copies to WPD.

4.3 The Contractor shall, at all times when carrying out Works under a Work Instruction:

- (a) obey all lawful and reasonable directions of WPD;
- (b) comply with all Statutory Requirements applicable to the Works;
- (c) be responsible for making appropriate PAYE deductions for tax and national insurance contributions from the remuneration which it pays to Contractor's Personnel and the Contractor 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 Contractor;
- (d) comply with the Policy Documents; 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 Work Instruction) to the extent that the CDM Regulations apply to the Works (having regard at all times to WPD's Health and Safety Policy Documents and Policy Documents).

4.4 The Contractor 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 (subject to any provision in the Contract) 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 Health and Safety Policy Documents and Policy Documents;
- (c) not cause or exacerbate any harm to the Environment and shall comply at all times with Environmental Law and WPD's Environmental Policy Documents;
- (d) comply at all times with Environmental Law and WPD's Environmental Policy Documents in respect of the removal, treatment, storage and/or disposal of any waste material produced by the Contractor 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 Contractor'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 Contractor shall comply with all Statutory Requirements, Environmental Law, WPD's Environmental Policy Documents, WPD's Health and Safety Policy Documents 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.

4.5 The Contractor 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 Contractor 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 Contractor.

4.6 ***Defects in the Works***

- (a) Where WPD informs the Contractor of any defects excessive shrinkages or other faults to the Works which appear during the Contract Period or within 12 months from the Works Completion Date (or within 24 months from the Works Completion Date where the Works are subject to the New Roads and Street Works Act 1991 and or the Traffic Management Act 2004) (the "**Defects Liability Period**") and which are due to materials or workmanship not being in accordance with the terms of the Contract the Contractor shall, at WPD's option, either:



- (i) remedy such defect at its own cost forthwith (in which case the Contractor shall also be liable to WPD for any costs arising out of any damage caused by the Contractor in remedying such defects); or
  - (ii) pay to WPD the costs incurred by WPD in having such defect remedied.
- (b) In addition to its rights under sub-clause 4.6(a), WPD reserves the right to withhold any sums which may be due to the Contractor under the Contract that are necessary for the remedying of any defect or breach.
- (c) WPD shall notify the Contractor when in WPD's opinion the Contractor's obligations under this Clause 4.6 have been discharged.

4.7 Copyright in the Works and all and/or any documents or materials produced by the Contractor in connection with the Works shall remain vested in the Contractor 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 Contractor 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 Contractor.

#### 4.8 ***Fossils and other antiquities***

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 Contractor be deemed to be the absolute property of WPD, and the Contractor shall take reasonable precautions to prevent his 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.

#### 4.9 ***Substances***

In the event that the Contractor encounters 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.

#### 4.10 ***Modern Slavery Act***

The Contractor 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 Contractor 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 Contractor 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.

### 5. **Safety and Training**

5.1 The Contractor shall, at its own expense and at all times:

- (a) comply and procure that the Contractor's Personnel comply with all Statutory Requirements, Environmental Law, WPD's Environmental Policy Documents,

WPD's Health and Safety Policy Documents, Policy Documents and the Contract in performing the Works; and

- (b) provide the Contractor'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.
- 5.2 The Contractor and the Contractor's Personnel may, in order to comply with this Clause 5 be required, at their expense, to attend training courses. The Contractor and the Contractor's Personnel may either attend WPD run courses or other courses that WPD has agreed to in writing. The number of the Contractor's Personnel who attend these courses is at the discretion of the Contractor. The Contractor shall ensure that the numbers that do attend shall be sufficient for undertaking the Works.
- 5.3 The Contractor shall ensure that sufficient numbers of the Contractor's Personnel are trained and authorised by WPD to receive safety documents as required by WPD's Distribution Safety Rules.
- 5.4 The Contractor 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 his 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 Contractor shall provide and maintain at his 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.
- 5.5 The Contractor 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 Contractor's Personnel;
  - (b) proof that the Contractor's Personnel have valid authorisations to carry out the Works;
  - (c) the Risk Assessment;
  - (d) the Method Statement; and
  - (e) a health & safety statement in accordance with WPD's Health and Safety Policy Documents.
- 5.6 If there is a breach of this Clause 5 or in WPD's reasonable opinion the Contractor'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 Contractor's Personnel leave the Site; and/or
  - (c) the Contractor's and any sub-contractor's equipment be removed.
- 5.7 The Contractor 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 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.

5.8 If so requested by WPD the Contractor must, at its own expense recommence the Works as soon as reasonably practicable.

## 6. **Timing of the Works**

6.1 The Contractor shall commence the Works specified in the Work Instruction on the Works Commencement Date, which may be varied following a meeting on Site, provided such later date is confirmed in writing by WPD.

6.2 The Contractor shall complete the Works by the Works Completion Date. The Works Completion Date may be extended by WPD in accordance with clause 6.3 WPD shall inform the Contractor in writing of any revised Works Completion Date.

6.3 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 6.5 where such suspension has not been caused or contributed to by any act or omission of the Contractor in breach of the Contract);
- (b) delay in receipt by the Contractor 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 Contractor of materials to be provided by WPD under the Contract;
- (e) exceptional adverse weather;
- (f) any delay impediment prevention or default by WPD; and
- (g) the occurrence of an Event of Force Majeure

then subject to the following provisions of this clause 6.3 and 6.4, the Contractor 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:

- (h) the Contractor 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
- (i) the Contractor has taken all reasonable steps to avoid or minimise the delay.

Following receipt of the Contractor's notice, pursuant to 6.3(h) 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 his opinion be reasonable.

Notwithstanding any other provision of the Contract the Contractor 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 Contractor or any of its employees or agents or any sub-contractor or supplier.

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.

6.4 Should the Contractor 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 Contractor 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 Contractor's failure to complete the Works by the Works Completion Date.

6.5 In addition to any other right that WPD may have under the Contract it shall be entitled to suspend the Works at any time.

6.6 ***Certificate of Practical Completion for the Works***

- (a) 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 Contractor has delivered operation and maintenance manuals to WPD.
- (b) 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**").

7. **Inspection**

7.1 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 Contractor remedies any defects during or after completion of the Works.

7.2 The Contractor 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.

8. **Obligations of WPD**

8.1 WPD shall provide the Contractor such access to the Site as the Contractor may reasonably require to carry out the Works provided always that WPD shall be obliged to afford such access only during normal business hours.

9. **Payment**

9.1 WPD shall pay the Contractor the Contract Price (plus VAT) for the Works.

9.2 The Contractor shall be entitled to payment on completion of the Works. The Contractor shall within 7 days of the Practical Completion Date issue a VAT invoice to WPD for the Contract Price.

9.3 Each invoice submitted by the Contractor 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 Contractor'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 Contractor 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 Work Instruction; and
  - (e) be dated the date that it is issued.
- 9.4 Payment shall become due 5 days after receipt by WPD of the relevant invoice and any supporting documents in accordance with Clause 9.3
- 9.5 Not later than 5 days after payment has become due in accordance with Clause 9.4, WPD shall notify the Contractor of the sum that WPD considers to have been due at the payment due date in respect of the Contractor's invoice and the basis on which that amount is calculated.
- 9.6 The final date of payment by WPD to the Contractor of sums due shall be 57 days after the date on which payment becomes due.
- 9.7 Unless WPD has served a notice under Clause 9.8, WPD shall, subject to Clause 9.9, pay the Contractor the sum referred to in WPD's notice under Clause 9.5 (or, if WPD has not served notice under Clause 9.5, the sum contained in the Contractor's invoice referred to in Clause 9.2 (in this Clause 9, the "**Notified Sum**") on or before the final date for payment of each invoice.
- 9.8 ***Notice of intention to pay less***
- If WPD intends to pay less than the Notified Sum WPD shall give notice ("**Pay Less Notice**") to the Contractor 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 9.9, WPD shall be obliged to pay the reduced sum so notified.
- 9.9 Payment under this Clause 9 shall be subject to receipt by WPD of an invoice from the Contractor 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 18.8
10. **Liability**
- 10.1 WPD shall be relying upon the Contractor's skill, expertise, and experience in performing the Works and also upon the accuracy of all statements made and any advice given by the Contractor in connection with the provision of the Works.

- 10.2 The Contractor undertakes to indemnify WPD and keep it indemnified fully at all times against all claims, demands, proceedings, damages, losses, costs, expenses, fines and charges which are made or brought against or incurred by it in consequence of, and are attributable to, any default or breach of the Contract or delay by the Contractor in duly performing its obligations under the Contract (whether arising from the Contractor's breach of the Contract, breach of statutory duty or negligence).
- 10.3 The Contractor's Personnel shall at all times be deemed to be the Contractor's employees whether such personnel are at the Site or anywhere else for the purposes of the Contract. The Contractor undertakes to indemnify WPD and to keep it indemnified fully at all times against all claims, liability, costs, expenses and demands which it incurs arising from any Contractor's Personnel who were employed or engaged by the Contractor bringing a claim against WPD or any future provider of works where such a claim arises out of:
- (a) anything done or omitted to be done by the Contractor in relation to the employment or engagement of the same during the term of the Contract; and/or
  - (b) arising on or as a result of the termination or expiry of the Contract or Framework Agreement (howsoever caused).
- 10.4 The Contractor undertakes to indemnify WPD and to keep WPD indemnified fully at all times against all claims, liability, costs, expenses and demands which it incurs arising from any noise disturbance, nuisance or other pollution caused by the performance of the Contractor's obligations under the Contract.
- 10.5 The Contractor accepts liability for death, personal injury or damage to property howsoever resulting from the Contractor's acts or omissions in connection with the provision of the Works or in connection with any other activities undertaken or any equipment supplied by the Contractor for its sub-contractors pursuant to or for any purpose related to the Contract.
- 10.6 WPD shall not be liable to the Contractor under the Contract or otherwise for the following loss or damage however caused, and even if foreseeable:
- (a) economic loss including without limitation loss of profits, business, contracts, revenues, goodwill, production and anticipated savings of every description;
  - (b) loss arising from any claim made by any third party; or
  - (c) loss or damage arising from the Contractor's failure to fulfil its responsibilities or any matter under the Contractor's control.
- 10.7 WPD accepts liability for physical damage to the Contractor's tangible property resulting directly from WPD's negligence up to £25,000 (twenty five thousand pounds) on an annual aggregate basis commencing on the Effective Date. WPD's liability in respect of all other defaults or breaches under the Contract shall be limited to £50,000 (fifty thousand pounds) on an annual aggregate basis, commencing on the Effective Date.

## 11. **Insurance**

The Contractor undertakes and agrees to:

- (a) take out and maintain insurance at its own cost to cover its liabilities under the Contract, employer's liability insurance and public liability insurance and any other insurance the Contractor deems is required in respect of the Contractor's liability for death or injury to any person or loss or damage to any property, arising out of the performance of its obligations under the Contract, in an amount not less than £5,000,000 for any one occurrence or series of occurrences consequent upon one event or original cause;
- (b) produce to WPD whenever required evidence as is reasonably requested by WPD of the policy or policies of insurance and the receipts for the payment of the current premiums;
- (c) take out and maintain all risks insurance, without limiting his or WPD's obligations and responsibilities under clause 10, for carrying out of the Works together with materials, plant and equipment for incorporation therein to their full replacement cost plus an additional 10% to cover any additional costs that may arise incidental to the rectification of any loss or damage including professional fees, cost of demolition and removal of debris. The insurance required under this clause 11(c) shall cover the Contractor against all loss or damage from whatsoever cause arising other than the Excepted Risks from the Works Commencement Date until the date WPD is satisfied that the Works are complete and all defects have been rectified; and
- (d) ensure that its insurance policies shall, where relevant, include an indemnity to principals clause.

## 12. **Notification**

If the Contractor becomes aware of any matter which might give rise to a claim against or loss to WPD, it shall:

- (a) immediately give written notice to WPD;
- (b) consult with WPD and, if the matter has become the subject of any proceedings, deliver any notice to WPD within sufficient time to enable WPD to contest the proceedings before any final judgement;
- (c) provide access to WPD to its premises, personnel and records for the purposes of taking the action referred to above;
- (d) take such action and institute proceedings and give information and assistance as WPD may reasonable request to dispute, resist, appeal settle or mitigate the matter; and
- (e) not admit liability in respect of or settle the matter without the prior written consent of WPD.

## 13. **Cancellation and Termination**

13.1 WPD may, in writing, cancel any Work Instruction. On the cancellation of any Work Instruction WPD shall:

- (a) reimburse the Contractor such direct costs as may have been reasonably incurred in carrying out the Works by the Contractor prior to the date of cancellation; and

- (b) accept any work or supply which may (in WPD's opinion) have been properly carried out by the Contractor against any such Work Instruction after taking into account any amounts previously paid, and the provisions of Clause 9 shall apply as appropriate.
- 13.2 Notwithstanding the duration of the Works under each Work Instruction the appointment of the Contractor under the Contract may be determined by WPD provided 4 weeks written notice shall have been given to the Contractor.
- 13.3 Where such appointment of the Contractor is determined in accordance with Clause 13.2, WPD shall pay the Contractor (in accordance with Clause 9) any sums properly due as a result of Works carried out up until the date of termination.
- 13.4 On receipt of the notice in Clause 13.2 the Contractor shall not, unless otherwise agreed with WPD, be under any obligation to carry out any subsequent Work Instructions which cannot reasonably be completed before the expiration of such notice, provided that the Contractor shall not be relieved from his obligation to complete such Work Instructions as may have been properly given prior to the receipt of such notice.
- 13.5 WPD shall by notice in writing terminate the Contract if (in the opinion of WPD):
  - (a) the Contractor is incompetent, guilty of gross misconduct and/or any serious or persistent negligence in the provision of the Works;
  - (b) the Contractor commits a material breach of the Contract which in the case of breach capable of remedy shall not have been remedied within 30 days of the receipt of written notice from WPD identifying the breach and requiring its remedy; or is the passing of a resolution for the winding-up of the Contractor or the making by a court of competent jurisdiction of an order for the winding-up or the dissolution of the Contractor;
  - (c) the Contractor 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 WPD means that the Contractor may be unable to pay its debts; or enters into compulsory or voluntary liquidation, administration or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed or ceases for any reason to carry on business or takes or suffers any similar action which in the opinion of WPD means that the Contractor may be unable to pay its debts; or
  - (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 Contractor or any steps are taken for the appointment of a receiver or administrator receiver, or an encumbrances or takes possession or sells, any of the Contractor's assets.
  - (e) the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 88(8) of the UCR 2016;
  - (f) the Contractor has, at the time of contract award, been in one of the situations referred to in Regulation 57(1) of the Public Contracts Regulations and should



therefore have been excluded from the procurement procedure in accordance with Regulation 80(2) of the UCR 2016; or

- (g) the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Utilities Contracts Directive that has been declared by the European Court in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

13.6 All rights and obligations of the parties shall cease to have effect immediately on termination except for:

- (a) the accrued rights and obligations of the parties which have accrued at the date of termination; and
- (b) the continued existence and validity of the rights and the obligations of the parties under Clauses 4.6, 9, 13, and 14.

#### 14. **Confidentiality**

14.1 Except as referred to in clause 14.3(a), each party shall not disclose to any third party, and shall treat as strictly confidential all information received or obtained as a result of entering into or performing this Contract or which relates to the subject matter of this Contract, to any other party and, in particular, this Contract or shall treat as confidential all of the Confidential Information.

14.2 The Contractor shall procure that each of the Contractor's Personnel engaged on or about the Works sign a "Confidentiality Undertaking" if required by WPD.

14.3 Any party may disclose information which would otherwise be confidential if and to the extent:

- (a) it is required to do so by law or any securities exchange or regulatory or governmental body to which it is subject wherever situated; or
- (b) it considers necessary to disclose the information to its professional advisers, auditors and bankers provided that it does so on a confidential basis; or
- (c) the information has come into the public domain through no fault of that party; or
- (d) each party to whom it relates has given its consent in writing.

#### 15. **Assignment**

15.1 The Contractor shall not assign the Contract or any part thereof or any benefit or interest therein or thereunder without the prior written consent of WPD which consent shall not be unreasonably withheld.

15.2 WPD may assign the benefit of all or any of the Contractor's obligations under the Contract and/or any benefit arising under or out of the Contract to any other company within the WPD Group.

16. **Force majeure**

Neither party shall be deemed to be in breach of the Contract, or otherwise be liable to the other, by reason of any delay in performance or non-performance of any of its obligations under the Contract to the extent that such delay or non-performance is due to an Event of Force Majeure.

17. **Emissions**

17.1 The Contractor shall provide WPD with operational fuel usage data each month during the Term.

17.2 If WPD requires information on other parameters WPD shall notify the Contractor as and when such information may be required.

17.3 The Contractor acknowledges that WPD has regulatory emission reduction targets (which includes Scope 3 emissions – external contractors) and that as part of the Contractor's contributions towards these targets the Contractor is expected to make every effort to reduce its operational fleet emissions whether by reduced fuel use or vehicle type.

17.4 The Contractor will provide WPD with an annual emissions reduction plan and report to WPD against this plan.

18. **General**

18.1 ***Sub-contracting***

The Contractor shall not sub-contract the Contract in whole or in part without the prior written consent of WPD.

18.2 ***Entire Agreement and Conflicts***

The Contract, the schedules and appendices and the documents referred to therein set out the entire agreement and understanding between the parties in respect of the subject matter of the Contract. In the event of conflict of these documents they shall be read in the following order of priority, the Contract, the Work Instructions, any schedule or appendices and the documents referred to in the Contract.

18.3 ***Invalidity***

To the extent that any provision of the Contract is found by any court or competent authority to be invalid, unlawful or unenforceable, that provision shall be deemed not to be party of the Contract, it shall not affect the enforceability of the remainder of the Contract.

18.4 ***Variation***

No purported variation of the Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties.

18.5 ***No Partnership***

Nothing in the Contract shall:

- (a) create a partnership or joint venture between the parties or render a party the agent of the other, nor shall a party hold itself out as such (whether by an oral or written representation or by any other conduct); and

- (b) save as expressly provided by the Contract neither party shall enter into or have authority to enter into any engagement or make any representation or warranty on behalf of or pledge the credit or otherwise bind or oblige the other party.

#### 18.6 ***Releases and Waivers***

No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy under the Contract or otherwise.

#### 18.7 ***Exclusion of third party rights***

Unless expressly provided in the Contract, no term of the Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

#### 18.8 ***VAT***

- (a) All consideration under this Agreement shall be exclusive of VAT (if any). Where one party (the "**supplier**") makes or is deemed to make a supply to another party (the "**recipient**") for the purposes of VAT:
  - (i) the recipient shall pay VAT in addition to the consideration,
  - (ii) provided that the supplier shall first have issued to the recipient a valid VAT invoice.
- (b) If any VAT is found to have been overpaid the supplier shall repay such VAT and issue to the recipient a VAT credit note (where by law it is required to do so).

#### 18.9 ***CIS Scheme***

- (a) WPD is a "contractor" for the purposes of the CIS Regime. The Contractor warrants that it is registered as a sub-contractor for the purposes of the CIS Regime. The Contractor shall within 7 days of the Commencement Date, (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 Contractor's identity with HMRC in accordance with the CIS Regime and to determine whether the Contractor 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.
- (b) Where the Contractor is not registered for gross payment under section 63(2) of the Finance Act 2004 or where the Contractor fails to provide the details required pursuant to Clause 18.9(a) to enable WPD verify the Contractor'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 Contractor 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 Contractor.

- (c) Where the Contractor 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.
- (d) The Contractor agrees that it shall comply in full with all of its obligations under the CIS Regime.
- (e) The relevant procedures applicable under the Contract to the resolution of disputes or differences between WPD and the Contractor shall apply to any dispute or difference between WPD and the Contractor as to the operation of this Clause 18.9 except where the CIS Regulations

## 19. Notices

19.1 Any notice to a party under this Contract shall be in writing signed by or on behalf of the party giving it and shall, unless delivered to a party personally, be left at, or sent by prepaid first class post, prepaid recorded delivery or facsimile to the address of the party on the Contract Agreement or as notified in writing from time to time.

### 19.2 *A notice shall be deemed to have been served:*

- (a) at the time of delivery if delivered personally;
- (b) 48 hours after posting in the case of an address in the United Kingdom and 96 hours after posting for any other address; or
- (c) 2 hours after transmission if served by facsimile on a business day prior to 3pm or in any other case at 10am on the business day after the date of despatch.

## 20. Dispute Resolution and Adjudication

Any dispute or difference between the parties with the Contract may be referred to in adjudication in accordance with the Statutory Scheme.

## 21. Governing law and jurisdiction

21.1 The Contract and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by the laws of England and Wales.

21.2 Subject to clause 20, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with the Contract, its subject matter or formation.

**Schedule 2**

**Work Instruction**

**This Work Instruction shall be subject to, and all Works performed hereunder shall be carried out in accordance with the Conditions of Contract attached at Schedule 1 to the Framework Agreement entered into between WPD and the Contractor.**

**The Contractor must sign and return the Work Instruction to WPD within 7 days of receipt.**

<b>Framework Agreement:</b>			
<b>Contractor:</b>			
<b>Date of Work Instruction:</b>			
<b>Work Instruction Reference:</b>		<b>Purchase Order No:</b>	
<b>WPD's Representative:</b>		<b>Phone Number:</b>	
<b>Contractor's Representative:</b>		<b>Phone Number:</b>	
<b>Description of the Works:</b>			
<b>Site(s):</b>			
<b>Customer Contact, Name/Address/Phone No:</b>			
<b>Works Commencement Date:</b>			
<b>Works Completion Date:</b>			
<b>Hours of Working:</b>			

<b>Contract Price:</b>			
<b>RAMS have been/are to be provided by the Contractor</b>	Yes/No	<b>Comments and Date Required by:</b>	
<b>Documents Issued to Contractor (put cross in box if issued):</b>	Pre-Construction Information <input type="checkbox"/> Method Statement <input type="checkbox"/> Utility Plans <input type="checkbox"/> State any other issued information / documents not included above (E.g. Drawings, Surveys, Specifications)  Additional Risks: Yes <input type="checkbox"/> No <input type="checkbox"/> If Yes, please state:	Risk Register/Assessment <input type="checkbox"/> Construction Phase H&S Plan <input type="checkbox"/>	
<b>Particular provisions of the Contract</b>	1. Contractor design responsibility: ..... ..... 2. The Principal Designer is: ..... ..... 3. The Principal Contractor is: ..... .....		

**Signed for and on behalf of WPD:**

**Name:** .....

**Signature:** .....

**Date:** .....

**Signed for and on behalf of the Contractor:**

**Name:** .....

**Signature:** .....

**Date:** .....

**Schedule 3**  
**Certificate of Practical Completion**

Framework Reference	
Framework Description	
Practical Completion Date:	<i>[insert date on which practical completion was achieved]</i>
Work Instruction Reference	
Site address:	
Contractor:	
Contractor's address:	
Date of Work Instruction:	
Description of Work:	
Date of expiry of Defects Liability Period:	<i>[insert date falling [12/24] months after Practical Completion]</i>

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Notes: The issue of this Certificate of Practical Completion is subject to all items on the attached schedule of outstanding items and defects being completed.

The obligations and liabilities of the Contractor under the Contract shall not be released, diminished or in any other way affected by issuing this Certificate of Practical Completion.

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Signed for and on behalf of WPD:

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Date: