

# NGED General Conditions for Works (The "General Conditions")

These should be read in conjunction with your Offer Letter and Specific Conditions for Works

## 1. Definitions and Interpretation

1.1 All words and expressions defined in the Offer Letter and the Specific Conditions (if any) shall, unless the context otherwise requires, have the same meanings in these General Conditions.

1.2 Unless the context otherwise requires, the following words have the following meanings:

**"Acceptance Form"** means the form attached to the Offer Letter to be completed and signed by the Customer confirming the Customer's acceptance of the terms of the Works Offer.

**"Act"** means the Electricity Act 1989 as amended from time to time.

**"Adoption"** means the transfer by a Connection Provider to NGED of the property in and responsibility for the Contestable Assets with full title guarantee and the expression "Adopt" and "Adopted" shall be construed accordingly.

**"Agreement"** means the contract between NGED and the Customer on the terms of the Works Offer (including these General Conditions for Diversion Works), which is formed when NGED date the Customer's Acceptance Form

**"Business Day"** means a day (other than a Saturday or a Sunday) on which clearing banks are open for business in the City of London.

**"Charge"** means the payment to be made by or (where agreed by NGED) on behalf of the Customer to NGED for the provision of the Works in accordance with this Agreement.

**"Conditions Precedent"** means the conditions which must be fulfilled for the carrying out, continuation and completion of the Works as detailed in clause 2 and the Specific Conditions, if applicable.

**"Connection Provider"** or **"ICP"** means a person with appropriate accreditation to undertake all or part of the Contestable Works.

**"Contestable Assets"** means those Contestable Works that will form part of the Distribution System.

**"Contestable Works"** means the works that the Customer has an option to carry out itself or by appointing a Connection Provider as more particularly described in the Specific Conditions.

**"Customer Works"** means any works to be carried out by the Customer or the Customer's contractor, excluding the Contestable Works, as set out in the Specific Conditions.

**"Distribution System"** means NGED's electricity distribution system.

**"Event of Force Majeure"** means an event beyond the reasonable control of a party including but not limited to acts, defaults or omissions of sub-contractors, strike, lock out or other form of industrial action, other than by a party's own employees or agents, act of God, fire, explosion or flood, any third party obstruction preventing access to the Land, theft and malicious damage or an electrical system emergency, provided that no event shall be treated as an Event of Force Majeure if it is attributable in whole or part to any wilful act or omission or any failure to take reasonable precautions by the affected party.

**"Framework Network Access and Adoption Agreement"** means the agreement containing the overarching terms under which NGED provide a Connection Provider with access to NGED's Distribution System and adopt a Connection Provider's Contestable Works.

**"Non-contestable Works"** means that part of the Works which will always be carried out by NGED and which the

Customer is not entitled to carry out itself or through an appointed Connection Provider as more particularly set out in the Specific Conditions.

**"Land"** means any land in relation to which Rights in Freehold Land and/or Rights in Leasehold Land must be granted to NGED for the purpose of carrying out the Works, placing or installing and keeping installed any of the NGED Equipment and thereafter using, siting, laying, repairing, replacing, renewing, altering, maintaining, removing or gaining access to the NGED Equipment.

**"Premises"** the any land, building or structure, owned or occupied by the Customer where or in relation to which the Works are to be carried out..

**"Rights in Freehold Land"** means (but is not limited to) the grant of an easement in perpetuity, a lease for a term of 99 years (granted out of the freehold), the transfer of ownership of any part or parts of the Land to NGED and/or a wayleave, on terms acceptable to NGED, for the purposes of (but not limited to):

- a) carrying out the Works; and
- b) installing, siting, laying, using, repairing, replacing, renewing, adding to, improving, altering, maintaining, removing or gaining access to the accommodation and the NGED Equipment and at NGED's absolute discretion to supply Third Parties from the NGED Equipment;

**"Rights in Leasehold Land"** means (but is not limited to) the grant of an easement, a wayleave and/or a lease for a term equivalent to the then unexpired residue of the term of the leaseholder's interest (on the assumption that their only interest is in a leasehold and they have no freehold interest) originally granted less one day in Land to NGED, on terms acceptable to NGED, for the purposes of (but not limited to)

- a) carrying out the Works and;
- b) installing, sitting, laying, using, repairing, replacing, renewing, adding to, improving, altering, maintaining, removing or gaining access to the accommodation and the NGED Equipment and at NGED's absolute discretion to supply Third Parties from the NGED Equipment.

**"Security Interest"** means any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

**"Standard Technique"** means the NGED standard techniques, published on the NGED Technical Information Site, applicable to the Contestable Works (as may be amended or updated from time to time).

**"Third Party"** means any person, individual, legal entity, partnership, firm, association, corporate body, local authority, Court, competent authority or government, who is not a party to the Agreement, including any company within the same group of companies as a party to this Agreement.

**"Works"** means the works on the Distribution System that are required to enable the diversion of the existing Distribution System as requested by the Customer comprising the Contestable Works and the Non-Contestable Works.

**"Works Dispute"** means any dispute, claim, proceedings, actions or steps taken (including before the issue of any proceedings) by a Third Party relating to, or arising from the Agreement including (i) any claim relating to arising in relation to an interest in, ownership of or title to any Land or to any other land required for the Works or the Customer Works or for the installation, siting, repairing, renewing, altering, maintenance or access of or to the NGED Equipment, the Works or the Customer Works; and/or (ii) any claim relating to or arising from an assertion that the Works or the Customer Works have been carried out and/or the NGED Equipment has been installed or constructed without, or not in

accordance with, any required land rights or consents, permissions or licenses, which (in either case) delays, halts or postpones the Works and/or the Customer Works, regardless of whether that is the intention of the Third Party or simply the effect of their action.

**"NGED Equipment"** means all electric lines, materials, structures, equipment, plant, cables and apparatus which forms, or will form, part of the Distribution System.

**"NGED Technical Information Site"** means the website: [www.nationalgridtechno.co.uk](http://www.nationalgridtechno.co.uk) where NGED publish Standard Techniques and other guidance.

1.3 In this Agreement, unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa and words in one gender include any other gender;
- (b) a reference to a statute or other statutory provision includes:
  - (i) any subordinate legislation (as defined in Section 21(1) Interpretation Act 1978) made under it;
  - (ii) any repealed statute or statutory provision which it re-enacts (with or without modification); and
  - (iii) any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it;
- (c) references to:
  - (i) any party include its permitted successors in title and permitted assigns;
  - (ii) clauses and schedules are to clauses and schedules of this Agreement and references to sub-clauses and paragraphs are references to sub-clauses and paragraphs of the clause or schedule in which they appear;
- (d) the headings are for convenience only and shall not affect the interpretation of this Agreement.

## 2. Commencement and continuation of Works and Conditions Precedent

2.1 As soon as reasonably practicable after NGED has dated the Customer's Acceptance Form, but without prejudice to any other provision of this Agreement, the parties shall agree in writing a date for commencement of the Works.

2.2 NGED shall be under no obligation to commence or continue with its Works (including placing any order for plant or equipment required for the Works) unless and until the following Conditions Precedent have been met and, where relevant, continue to be met (to NGED's satisfaction, in its absolute discretion):

- (a) the Customer has completed any necessary Customer Works and any relevant Contestable Works that the Customer opts to undertake itself or through appointing a Connection Provider that are necessary to enable NGED's Works to commence or continue in accordance with this Agreement, and any other works that are necessary to enable NGED's Works to commence or continue in accordance with this Agreement have been completed;
- (b) NGED has been provided with or has otherwise secured, obtained or procured all necessary Rights in Freehold Land and/or Rights in Leasehold Land (and such rights are subsisting);
- (c) the Customer has complied, and is continuing to comply, with its obligations under clause 4.1 and, where relevant, all approvals and consents to be obtained by NGED have been so obtained (and are subsisting);
- (e) the Customer has completed and returned the Health and Safety Questionnaire attached to the Works Offer identifying any hazards specific to the Premises together with the risks that they may pose to people working on the Premises and the control measures planned;

- (f) the Customer has paid all invoices and any other sums due to NGED under or in connection with this Works Offer;
- (g) (where relevant) the Customer (or the Customer's appointed Connection Provider) is party to NGED's Framework Network Access and Adoption Agreement and/or any Site Specific Agreement thereunder; and
- (h) any and all Works Disputes have been fully resolved and/or settled.

2.3 NGED shall be under no obligation to certify the Works as complete (including in circumstances where NGED have previously commenced or continued with its Works notwithstanding clause 2.2) until the following conditions have been met (to NGED's satisfaction, in its absolute discretion):

- (a) the Customer has provided or procured all necessary Rights in Freehold Land and/or Rights in Leasehold Land in accordance with clause 3 (and such rights are subsisting);
- (b) the Customer has complied, and is continuing to comply, with its obligations under clause 4.1 and, where relevant, all approvals and consents to be obtained by NGED have been so obtained (and are subsisting);
- (c) the Customer has paid in full the Charge and all and any other sums due or invoiced by NGED in cleared funds, provided that NGED shall not be obliged to certify the Works as complete until a period of seven (7) days following such payment;
- (d) all Works and any other works necessary in order to complete the Works, including (where relevant) any NGESO or other third party works, have been completed;
- (e) any other requirements set out in any relevant Framework Network Access and Adoption Agreement and/or any Site Specific Agreement thereunder required to be satisfied prior to completion have been so satisfied, in each case to the reasonable satisfaction of NGED; and
- (f) any and all Works Disputes have been fully resolved and/or settled.

2.4 If the Conditions Precedent set out in clauses 2.2(d) and/or (e) has not been met by the Customer or waived by NGED within (6) months of the date of the Acceptance Form, NGED may terminate the Agreement with immediate effect on notice without prejudice to any accrued rights or obligations to either party under it.

2.5 If any of the Conditions Precedent set out in clauses 2.2(a) to (g) cease to be met at any point prior to completion of the Works, or if the Customer is otherwise in breach of the Agreement, NGED may, at its absolute discretion, suspend its Works for such period of time as NGED (at its absolute discretion) may deem to be reasonable in the circumstances.

2.6 If any of the Conditions Precedent set out in clause 2.3(a) to (e) have not been met by the proposed date for completion of the Works NGED may, at its absolute discretion, delay the certification of completion of the Works for such period of time as NGED (at its absolute discretion) may deem to be reasonable in the circumstances.

2.7 If a Third Party takes any steps to cause, raise or pursue a Works Dispute or should the Conditions Precedent at clauses 2.2(h) or 2.3(g) cease to be

- satisfied at any time up to the date of certification of completion of the Works, NGED may, at its discretion:
- (a) not commence the Works or any part or parts of the Works; or
  - (b) where any part or parts of the Works have commenced:
    - (i) cease all Works and/or delay certification of completion of the Works immediately; or
    - (ii) cease immediately all those Works and/or any certification of completion of the Works which are or is directly affected by any Works Dispute.
- 2.8 Without prejudice to any other provision of this Agreement if, after proceeding with any of the steps outlined in clause 2.7, NGED is unable to commence, recommence and/or proceed with part or all of the Works and/or certification of completion of the Works within (12) months from taking such step, NGED will be entitled to vary the Agreement, or to terminate the Agreement on notice. Where NGED requires a variation to the Agreement (including, where relevant, the Charge) NGED shall give notice of such required variation to the Customer and the Agreement shall be deemed to be varied accordingly as from the date of deemed service of such notice. For the avoidance of doubt, clause 14 shall not apply to any such variation. If the Customer does not accept (in accordance with its terms) or disputes any variation to the Agreement required by NGED as notified to the Customer then NGED shall have the option to terminate (with immediate effect by notice) the Agreement.
- 2.9 The Customer shall not in any way obstruct or impede Works or the delivery of any NGED Equipment to the Premises, and shall procure that its sub-contractors or agents shall not in any way obstruct or impede the Works or the delivery of any NGED Equipment to the Premises so as to prevent NGED from, or hinder or delay NGED in performing its obligations under this Agreement.
- 3. Property Matters**
- 3.1 Where the Customer holds a freehold interest or a leasehold interest in the Land, the Customer will provide for NGED all of the necessary Rights in Freehold Land and/or the Rights in Leasehold Land (the type and extent of which are to be determined by NGED) for the sum of £1.00.
- 3.2 Where the Customer does not hold a freehold interest or a leasehold interest in the Land, the Customer will:
- (a) provide all reasonable assistance to NGED as may be required from time to time in order for NGED to secure all necessary Rights in Freehold Land and/or Rights in Leasehold Land to be obtained by NGED (the type and extent of which are to be determined by NGED) in the Land; and
  - (b) where an ICP is undertaking any part of the Contestable Works, procure that the ICP obtains all necessary Rights in Freehold Land and/or Rights in Leasehold Land (the type and extent of which are to be determined by NGED) in the Land for NGED in accordance with the Framework Network Access and Adoption Agreement; or
  - (c) where the Customer is an ICP, obtain all necessary Rights in Freehold Land and/or Rights in Leasehold Land (the type and extent of which are to be determined by NGED) in the Land for NGED in accordance with the Framework Network Access and Adoption Agreement.
- 3.3 NGED shall not be required to enter into any documents for the grant of the rights in Freehold Land until:
- (a) there has been a full release of any Security Interest holder and/or any Third Party's interest or right in any part or parts of the Land which will be transferred to NGED;
  - (b) where NGED will be granted an easement in perpetuity, a lease for a term of 99 years or a wayleave, it has been provided with evidence of the written consent of any Security Interest holder and/or any Third Party with an interest or right in the Land, to the proposed grant; and
  - (c) it has been provided with documentary evidence to establish the ownership of (to include confirmation of all relevant rights held in) the Land.
- 3.4 NGED shall not be required to enter into any documents for the grant of the rights in Leasehold Land until:
- (a) it has been provided with evidence of the written consent of the freehold owner, any Security Interest holder and/or any Third Party with an interest or right in the Land, to the proposed grant; and
  - (b) it has been provided with documentary evidence to establish the ownership of (to include confirmation of all relevant rights held in) the Land.
- 3.5 The Customer shall indemnify NGED and keep NGED indemnified fully on demand against any liabilities, losses, damages, costs (including all reasonable legal costs), expenses and charges suffered or incurred by NGED arising out of or on in connection with any Works Dispute provided that this indemnity shall not apply to the extent that such Works Dispute arises directly as a result of NGED's own negligence or wilful breach of this Agreement.
- 3.6 If the Customer or any Third Party prevents NGED from entering the Land or any other land required for the Works or the NGED Equipment, with the result that NGED is unable to carry out the Works, or the Works are suspended on the Customer's instruction for which NGED is not responsible or where the Works cannot be carried out due to alterations to the layout of the Land or any other land required for the Works or the NGED Equipment or due to necessary alterations (the nature and extent of which determined solely by NGED) to the route of the Works, NGED shall not be deemed to be in breach of this Agreement and any additional costs reasonably incurred by NGED in consequence thereof shall be added to the Charge.
- 3.7 If, at any time, any Rights in Freehold Land and/or Rights in Leasehold Land are terminated or varied in any way so as to adversely affect (in NGED's opinion) NGED's ability to carry out the Works and installing, siting, laying, repairing, replacing, renewing, altering, maintaining, removing or gaining access to the accommodation and the NGED Equipment then, without prejudice to any rights of NGED under clause 2.2, NGED shall have the right to terminate the Agreement with immediate effect on notice, without prejudice to any accrued rights of NGED or obligations on the Customer.
- 3.8 The Customer shall except and reserve out of any conveyance or lease it makes to any purchaser/lessee of the Premises any Rights in Freehold Land and/or Rights in Leasehold Land which are necessary in order to lawfully authorise the Works.
- 3.9 Any legal costs incurred in connection with, or arising from, securing, obtaining or procuring the terms, and executing the grant, of Rights in Freehold Land and/or Rights in Leasehold Land shall, unless otherwise set out in this Agreement or expressly agreed in writing between NGED and the Customer, be satisfied by the Customer, or if incurred by NGED, shall be invoiced by NGED to the Customer.
- 4. Compliance, consents, safety and access**
- 4.1 4.1 Unless otherwise notified by NGED in writing to the Customer, the Customer shall:
- (a) before the time specified for delivery of any of NGED's Connection Equipment to the Land, obtain all consents and approvals in connection with the regulations and by-laws of any local or other authority

- which shall be applicable to the Works on the Land including, without limitation, all planning, environmental and statutory consents;
- (b) provide all accommodation, equipment, buildings, structures, foundations, approaches or work equipment of the quality specified in the Specific Conditions, if any;
  - (c) where relevant, ensure that the 'Co-ordinator' and the 'Principal Contractor' as defined by the Construction (Design & Management) Regulations 2015 ("**CDM Regulations**") carry out all their duties and obligations as set out in the CDM Regulations;
  - (d) at all times provide and maintain suitable access to the Premises for the purposes of carrying out the Works or delivering, installing, laying, repairing, replacing, renewing, altering or maintaining the NGED Equipment and on production of written identity the Customer shall allow any NGED representative to enter the Premises provided that such visits are made during normal working hours (being between 07:00-19:00 hrs, Monday to Friday except for bank holidays), and at other times with the Customer's consent.
- 4.2 Each party shall take all reasonable steps to ensure the safety of the other party's employees, sub-contractors and agents while the Works are in progress or while NGED is maintaining or repairing the NGED Equipment.
- 5. Performance of the NGED Works and basis of the Works Offer**
- 5.1 In consideration of the Customer complying with its obligations as set out in the Agreement (including but not limited to payment of the Charge) NGED shall:
- (a) perform the NGED Works with reasonable skill and care and in accordance with the terms of this Agreement; and
  - (b) provide such information as is reasonably required by the Customer from time to time to keep the Customer informed of the progress of the NGED Works.
- 5.2 NGED specifically excludes all warranties, express or implied, including but not limited to any implied term, condition, representation or warranty of satisfactory quality or fitness for a particular purpose, that the NGED Works or NGED Equipment will meet the Customer's requirements except those that cannot be excluded at law.
- 5.3 NGED's proposals (including the Charge) have been calculated on the basis of NGED's current charge-out rates and the information available to NGED at this time. Without prejudice to any other provision of the Agreement, the Customer acknowledges that the Agreement (including the Charge) may be adjusted to take into account the following (where relevant):
- (a) any requirement for the NGED Works to be undertaken out of regular working hours or on an overtime basis;
  - (b) the unavailability of the proposed cable/overhead line routes (which includes where the Rights in Freehold Land and/or Rights in Leasehold Land required in respect of such routes may only be obtained other than on NGED's standard terms or rates) or the variation, cancellation, termination or non-completion of any third party (including NGESO) works or associated works (being works provided for in an agreement between NGED and another customer or third party) necessary in order to provide the Works on the basis set out in this Agreement;
  - (c) any subsequent information made available to NGED relating to health, safety and the environment that influences the design of the Works;
  - (d) final competitive tenders and increases in labour, contract, or material costs. For schemes with long lead in times this may be some time after acceptance of the Works Offer; and
  - (e) any surveys undertaken by NGED in respect of the Works, including any site survey.
- 5.4 Unless otherwise stated, the Works Offer (including the Charge) does not take account of (including any costs, charges or expenses incurred or arising in connection with) any of the following:
- (a) save to the extent provided for in this Works Offer, the diversion of NGED's existing assets (if any) or any third party apparatus (including without limitation any gas pipes and telephone lines) or any other special engineering solutions or consents required (including for crossing any existing or proposed railway / rail track schemes, roads, rivers and/or canals) that are required for, or undertaken as a consequence of, the Works including (but not limited to) costs for any supervision by a relevant authority that may be required, highway / rail track or road closures, application fees, design fees, fees to employ Chartered Engineers to prepare and/or approve designs, pre work surveys, inspection fees, monitoring, post work surveys, testing, witness testing, indemnities, completion certificates and any other associated works;
  - (b) specialist disposal of soil (in accordance with The Landfill (England and Wales) Regulations 2007) and import of suitable backfill;
  - (c) excavation and cable laying at abnormal depth, or through rock or other hard substances or in contaminated soil;
  - (d) foundations for buildings, towers etc. to be established in ground which is not normal ground bearing type;
  - (e) construction of access roads to the substation site;
  - (f) the extension of existing system inter-tripping;
  - (g) compliance with any requirements of a Highway Authority in respect of NGED's Works, including the Traffic Management Act 2004 and any permit scheme made thereunder, including obtaining any permits, alterations to the route or restrictions on working hours;
  - (h) permanent reinstatement of any excavation on the Land;
  - (i) unless an offer specifically for this, service connections to public lighting columns which, where required, will be the subject of a separate connection offer;
  - (j) unless an offer specifically for this, temporary service connections required which, where required, will be the subject of a separate connection offer;
  - (k) any impact on the transmission system and/or NGESO requirements arising as a result of or in connection with this Agreement and the proposed development (including the Works (as based on information available to NGED at the date of this Agreement)) including (i) all fees and/or costs charged by NGESO in relation to any modification application (including under section 6.9 of the Connection and Use of System Code (the "CUSC")) or Statement of Works request and subsequent modification application under section 6.5.5 of the CUSC that may be required at any time or (ii) the costs of any works required on the Distribution System and/or transmission system and any NGESO cancellation charge and/or security requirement in respect of the same; and
  - (l) NGED's external solicitors fees incurred in securing, obtaining or procuring all of the necessary Rights in Freehold Land and/or all of the necessary Rights in Leasehold Land.
- 5.5 NGED reserves the right to amend this Agreement, its proposals and/or the Charge and/or recover from the Customer any costs and/or fees incurred or arising in connection with any of the matters set out in clauses 5.3 and/or 5.4. NGED will notify the Customer in writing as soon as is reasonably practicable after it becomes aware of any such costs and/or fees, change to the Charge and/or any change to its proposals (which the Customer acknowledges may be after such costs

and/or fees arise and/or NGED's proposals are amended and after termination or expiry of this Agreement) and, in respect of any costs and/or fees or Charge increase, will issue an invoice to the Customer which the Customer shall pay within 28 days of the date of the invoice. Without prejudice to any other provision of this Agreement, clause 14 of these General Conditions for Diversion Works does not apply to any such recalculation of the Charge, amendment to NGED's proposals and/or the recovery by NGED of any costs and/or fees under clause 5.5. Notwithstanding the above, where NGED requires a signed variation to the Agreement (including, where relevant, the Charge), NGED shall give notice of such required variation to the Customer and the Agreement shall be deemed to be varied accordingly as from the date of deemed service of such notice. If the Customer does not accept (in accordance with its terms) or disputes any variation to the Agreement required by NGED as notified to the Customer then NGED shall have the option to terminate (with immediate effect by notice) the Agreement.

5.6 NGED shall not be liable to the Customer for any delay in the anticipated date for certification of completion of the Works or any related costs, damages, expenses or losses resulting from any of the matters set out at clauses 5.3 or 5.4 or resulting from the Customer's failure to pay any invoice raised pursuant to clause 5.5, in the agreed timescales.

## **6. Charges and payment**

6.1 The Customer will pay to NGED the Charge as may be amended in accordance with this Agreement. The Customer acknowledges and agrees that any payment of the Charge, even where such payment is made by a Third Party, shall be deemed by NGED to have been made by the Customer.

6.2 Payment of the Charge shall be made in accordance with the Specific Conditions. NGED shall invoice the Customer the amount stated. The Customer shall pay NGED within 28 days of receipt by the Customer of such invoice.

6.3 Without prejudice to any other rights and remedies which NGED may have, if the Customer fails to pay NGED any invoice when due, NGED may, at its absolute discretion, charge interest at a rate of 5% over the base rate of the Lloyds Bank, until it receives full payment of such invoice in cleared funds from the Customer.

6.4 Where under this Agreement any party agrees to pay to any other party any sum or to furnish to any other party consideration which (in either case) is consideration for a taxable supply that sum or consideration shall be exclusive of Value Added Tax payable on it and the recipient of the supply shall pay an amount equal to such Value Added Tax in addition to any sum or consideration on receipt of a valid Value Added Tax invoice from the relevant party.

6.5 NGED shall be entitled to require security for any Customer obligation (including any payment obligation) from the Customer at any time.

6.6 NGED shall have the discretion to make any payment due to the Customer from NGED (including any credit note issued in accordance with clause 13.2) by crediting the source of the original payment (notwithstanding that such payment may have been made by a Third Party). Where the Customer requests that any payment be made by NGED to a Third Party, whether or not such Third Party made the original payment, and NGED at its sole discretion agrees to that request, the Customer shall undertake to complete, and to require the Third Party in question completes, the form entitled "Authority for payment to a party other than the Customer" that will be provided to the Customer by NGED prior to the payment taking place.

In the event that NGED issues a credit note to a Third Party in accordance with this clause, then NGED shall have discharged its obligation in full to make payment to the Customer and shall not be liable to the Customer for such issue or for any failure to issue such credit note to the Customer.

## **7. Ownership and use of NGED Equipment**

7.1 The NGED Equipment shall be installed in a position agreed by NGED.

7.2 The property in the NGED Equipment shall remain with NGED who may use it to connect its other customers.

## **8 Customer Works and Certification of Works Completion**

8.1 The Customer shall carry out all Customer Works with reasonable skill and care and in accordance with all applicable laws, rules and regulations.

8.2 NGED shall be under no obligation to certify completion of the Works unless it is satisfied that

(a) they will not cause danger or damage to, or undue interference with the Distribution System or the electricity supply to any third party; and

(b) it has been granted, and enjoys the benefit of, all of the necessary rights in Freehold Land and/or all of the necessary Rights in Leasehold Land and there are no disputes or potential disputes concerning the ownership of, or in any way connected generally with, the Land and there are no Connection Works Dispute.

8.3 The Customer shall produce such evidence as may be reasonably required by NGED to show that the Customer has complied with its obligations under clause 8.2 above.

## **9. EU Procurement Regulations**

Where the EC Procurement Regulations apply to the procurement by NGED of works, goods or services which are necessary to carry out the Works, NGED shall comply with such Regulations and provide any details reasonably required by the Customer to prove such compliance.

## **10. Liability**

10.1 Each party accepts unlimited liability for death or personal injury caused by its negligence.

10.2 NGED's aggregate liability for physical damage to the Customer's tangible property (save where provided in clause 10.3) resulting from any act, default or omission (whether negligent or otherwise) of NGED, its employees, agents or sub-contractors, or from NGED's breach of the Agreement or breach of statutory duty, shall be limited to £2,000,000 per event or series of connected events.

10.3 NGED shall have no liability whatsoever, arising in contract, tort (including negligence) or breach of statutory duty, for any:

(a) defect, malfunction or otherwise in the Customer's electrical equipment or the Customer's Works, if applicable;

(b) defects in the NGED Equipment and the Distribution System which are a result of any Customer Works;

(c) loss of profit, business, contract, revenue, opportunity, goodwill, use of software or data, anticipated savings or for any administrative and overhead costs, which such losses NGED would strongly recommend are insured against by the Customer;

(d) indirect or consequential loss; and

(e) loss arising from any claim made against the Customer by any other person, unless such loss results directly from NGED's negligence or breach of contract in which event NGED's liability shall be limited to £2,000,000 per event or series of connected events.

10.4 Nothing in this clause 10 shall exclude or restrict or otherwise prejudice or affect the rights, powers, duties and obligations of either party which are conferred or

created by the Act, NGED's distribution licence or the Electricity Safety, Quality and Continuity Regulations 2002, as amended.

## **11. Force Majeure**

- 11.1 Neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay or non-performance of any of its obligations (other than any payment obligations) under this Agreement to the extent that such delay or non-performance is due to an Event of Force Majeure. Such obligations shall be suspended while the Event of Force Majeure continues.
- 11.2 The party affected by an Event of Force Majeure shall immediately notify the other party in writing of the nature and extent of the Event of Force Majeure and the affected party shall use all reasonable endeavours to mitigate its effects.
- 11.3 If the Event of Force Majeure continues for more than 2 calendar months, the unaffected party shall be at liberty to terminate this Agreement with immediate effect by giving written notice on the other. The service of such notice shall be without prejudice to any rights or obligations that have accrued prior to termination.

## **12. Termination**

- 12.1 The Customer may by 30 days' prior notice in writing terminate the Agreement at any time without cause.
- 12.2 Without prejudice to any other right to terminate as set out in the Works Offer, either party may by notice in writing terminate the Agreement with immediate effect by notice at any time if the other party commits a material breach of the Agreement provided that where such breach is capable of remedy the party in breach has been advised in writing of the breach and has not rectified it within thirty (30) days of receipt of such advice/notice. For the purposes of this sub-clause a breach shall be considered capable of remedy if time is not of the essence in performance of the obligation and if that party can comply with the obligation within the 30 day period.
- 12.3 Without prejudice to any other right to terminate as set out in the Works Offer, NGED may by notice in writing terminate the Agreement with immediate effect by notice on or at any time on the happening of any of the following events:
- (a) the Customer fails to pay any amount that is due and payable to NGED under or in connection with this Works Offer;
  - (b) the passing of a resolution for the Customer's winding-up or the making by a court of competent jurisdiction of an order for the winding-up or the dissolution of the Customer;
  - (c) the making of an administration order or the appointment of an administrator under the out-of-court procedure under the Enterprise Act 2002 or the appointment of a receiver or an administrative receiver over, or the taking possession or sale by an encumbrancer of, any of the Customer's assets;
  - (d) the Customer making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally;
  - (e) the Customer being struck off the Register of Companies or the making of an application for it to be struck off; or
  - (f) the Customer ceasing to do business at any time for 30 consecutive days or it otherwise ceasing to exist.
- 12.4 On certification of completion of the Worksthis Agreement shall automatically expire save as set out in clause 13.
- 12.5 The provisions of this clause 12 are without prejudice to any other right or remedy either party may have against the other for breach or non-performance of this Agreement.

## **13. Consequences of Termination or Expiry**

- 13.1 All rights and obligations of the parties shall cease to have effect immediately upon expiry or termination of this Agreement (howsoever effected) except that termination or expiry shall not affect:
- (a) the accrued rights and obligations of the parties at the date of termination or expiry. This includes, but is not limited to, the recovery from the Customer of all and any sums owing to NGED as a result of any steps taken by either party under Clause 3; and
  - (b) the provisions contained in clauses 5, 7, 8, 10,13, 15, 17, 18, 19 and 20 of these General Conditions for Diversion Works, together with any other provisions of the Works Offer which are expressed to survive, shall survive the expiry or termination of this Agreement howsoever caused and shall continue in full force and effect.
- 13.2 If on termination of the Agreement any staged payments made by the Customer exceed the actual costs incurred by NGED in carrying out the Works up to and including the date of termination, NGED shall issue a credit note in respect of such excess amount and reimburse the Customer accordingly, provided that NGED shall have the right to set off from such amount any sums due to NGED by the Customer under this Agreement. This includes, but is not limited to, any sums incurred by NGED pursuant to Clause 3.
- 13.3 On termination of the Agreement by the Customer pursuant to clause 12.1 or termination by NGED for any reason, NGED may submit an invoice to the Customer for any Works carried out by NGED and/or for any costs incurred by NGED in expectation of the NGED Works to the extent not yet invoiced, together with any other costs or losses suffered or incurred by NGED in consequence of such termination (including the removal of any NGED Equipment and/or carrying out network reinforcement works (including buying equipment) in order to provide the Works which such works the Customer is not liable to pay for in full). NGED may require the Customer, at no cost to NGED, to assist NGED in removing the NGED Equipment. Any costs payable pursuant to this Clause 13.3 are payable within 7 days of invoice by NGED.

## **14. Variation**

- 14.1 Each party shall be entitled to propose variations to the terms of this Agreement provided no purported variation to the Agreement shall be effective unless it is in writing and signed on behalf of both parties.
- 14.2 The Charge shall be adjusted by such an amount as is reasonable to reflect the increased or, as the case may be, decreased cost to NGED of meeting its obligations under this Agreement as a result of the variation.
- 14.3 If the parties are unable to agree a proposed variation, the parties shall attempt to resolve the matter in accordance with the dispute resolution procedure set out in clauses 15.1 and 15.2.

## **15. Dispute Resolution**

- 15.1 Subject to clause 15.3 if a dispute arises out of or in connection with this Agreement, the parties shall:
- (a) within 7 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;
  - (b) not pursue any other remedies available to them until at least 28 days after the first written notification of the dispute.
- 15.2 The appointed representatives shall use all reasonable endeavours to resolve the dispute.
- 15.3 Nothing in this clause 15 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.

## **16. Assignment**

16.1 This Agreement shall be binding on and endure for the benefit of the successors in title of the parties but, except as set out in sub-clause 16.2, shall not be assignable by either party without the prior written consent of the other. In addition, a party to this Agreement may not hold the benefit of the Agreement or any rights under it on trust for any third party or parties.

16.2 NGED may assign the benefit of this Agreement to any company within its Group. For the purposes of this Agreement, "Group" means a company's subsidiaries, its holding companies and any subsidiaries of such holding companies, "subsidiary" and "holding company" having the meanings ascribed to those terms in Section 1159 of the Companies Act 2006.

## **17 General**

17.1 This Agreement and any documents referred to in this Agreement set out the entire agreement and understanding between the parties in respect of the subject matter of this Agreement.

17.2 To the extent that any of the provisions in these General Conditions conflict with the provisions in the other documents which constitute this Agreement, the order of precedence shall be as follows:

- (a) the Specific Conditions;
- (b) the Offer Letter; and
- (c) these General Conditions.

17.3 To the extent that any provision of this Agreement is found by any court or competent jurisdiction to be invalid, unlawful or unenforceable it shall not affect the enforceability of the remainder of the Agreement.

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

17.5 No express term of this Agreement or any term implied under it is enforceable pursuant to the Contracts (Rights of Third parties) Act 1999 by any person who is not a party to it.

17.6 Joint and several liability

- (a) where any liability or obligation is undertaken by two or more persons, the liability or obligation of each of them shall be joint and several;
- (b) the release or compromise in whole or in part of the liability of or grant of any time or indulgence to any one or more of joint and several obligors shall not affect the liability of the other or others.

17.7 Where the words "includes", "including" or "in particular" are used in this Agreement, they are deemed to have the words "without limitation" following them and where the context permits the words "other" or "otherwise" are illustrative and shall not limit the sense of the words preceding them.

17.8 This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart, when executed, shall be an original of this Agreement and all counterparts shall together constitute one instrument.

## **18. IP rights and confidentiality**

18.1 All rights in the design, specification, plans or drawings contained or accompanying this Works Offer belong to and remain with NGED and shall not be used by the

Customer or any other person without NGED's written consent.

18.2 All data and information acquired or reviewed by the parties in connection with this Works Offer is confidential and shall not be divulged to any third party without the prior written consent of the other party except insofar as may be required by law.

## **19. Notices**

19.1 Any notice to a party under this Agreement 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 email to the address of the party as set out in this Agreement or as otherwise notified in writing from time to time.

A notice shall be deemed to have been served:

- (a) at the time of delivery if delivered personally;
- (b) 48 hours after posting; or
- (c) 2 hours after transmission if served by email on a Business Day prior to 3 pm or in any other case at 10 am on the Business Day after the date of despatch.

19.2 A party shall not attempt to prevent or delay the service on it of a notice connected with this Agreement.

## **20. Governing law and jurisdiction**

The Agreement shall be governed by and construed in accordance with the laws of England and Wales and subject to clause 15 the parties irrevocably submit for all purposes to the exclusive jurisdiction of the courts of England and Wales.

