

CABLE TRACK AGREEMENT
Project No

CABLE TRACK AGREEMENT

-BETWEEN-

SCOTTISH HYDRO ELECTRIC POWER DISTRIBUTION PLC

-AND-

[CUSTOMER]

AGREEMENT relating to Customer trenching and backfilling on third party property

BETWEEN:-

- (1) Scottish Hydro Electric Power Distribution plc (SHEPD) a company registered in Scotland whose registered office is at Inveralmond House, 200 Dunkeld Road, Perth, PH1 3AQ which expression includes its successors and assignees whomsoever; and
- (2) [*Customer Name*][of [*Customer Address* (if an individual)] **OR** [a company registered in [Scotland] with Registered Number [SC][] whose registered office is at [] (if a corporate entity)] (the “Customer” which expression, where appropriate, includes its permitted successors and assignees).

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WHEREAS

- (A) SHEPD has agreed to provide a new electricity connection to the Site pursuant to the Offer;
- (B) The Customer has elected to carry out and complete the Customer Works in accordance with the Offer and to the additional terms and conditions set out herein; and
- (C) SHEPD has (where applicable) agreed to adopt the Adoption Assets upon satisfactory completion of the Customer Works.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

In this Agreement, the following words and expressions shall (unless the context clearly requires otherwise) have the following meanings:

“**Adoption**” shall mean the adoption by SHEPD of the Adoption Assets (if any) in accordance with Clause 8;

“**Adoption Assets**” means all ducts installed by the Customer as part of the Customer Works, provided that at the time of completion of the Works such ducts are solely use by underground electricity cables and/or for the purposes of installing underground electricity cables;

“**Business Day**” means any day, other than a Saturday or Sunday on which banks in Edinburgh are open for business;

“**Confidential Information**” means all information provided by SHEPD to the Customer in connection with SHEPD’s business and/or the Works;

“**Customer Works**” shall mean (i) the excavation of a cable trench to SHEPD’s specification as set out in the Offer along the agreed wayleave route highlighted in the plan contained in the Schedule, (ii) the provision of such quantity of sand, tape, tiles or ducts of an appropriate specification approved in writing by SHEPD as may be required for the completion of the SHEPD Works; and (iii) following

completion of the SHEPD Works, the reinstatement of the land to a condition at least equal to its condition prior to the commencement of the Customer Works;

“**Defects Liability Period**” shall be a period of 2 years from the date of completion of the Customer Works;

“**Offer**” means an offer from SHEPD dated [DATE]] to the Customer to provide a connection at the Site, as amended, replaced or superseded from time to time;

“**SHEPD Works**” shall mean the laying of an underground cable in the track provided by the Customer;

“**Site**” means the property at [*insert the details of the Site to be provided with electricity connection*]; and

“**Works**” means the Customer Works and the SHEPD Works.

2. GENERAL TERMS APPLICABLE TO THE WORKS

- 2.1 The Customer shall perform the Customer Works in a proper and workmanlike manner and in accordance with the terms of the Offer, this Agreement and any agreements in place between the Customer and/or SHEPD and any third parties in connection with those matters set out in Clause 3 (Consents for Customer Works).
- 2.2 SHEPD shall not be obliged to perform the SHEPD Works unless and until the relevant parts of the Customer Works have been completed to the satisfaction of SHEPD.

3. CONSENTS FOR CUSTOMER WORKS

- 3.1 Where the Customer Works, or any part thereof, requires any form of landowner consent or statutory consents, the Customer shall apply for and obtain such and the Customer shall meet the costs of obtaining same. For the avoidance of doubt SHEPD shall apply for and obtain all landowner consents and statutory consents as are required in relation to the SHEPD Works subject to and on the terms set out in the Offer.
- 3.2 The Customer undertakes and agrees to comply with the terms of all landowner consents and statutory consents as the Customer has obtained pursuant to clause 3.1 and to comply with such further conditions as SHEPD may notify to the Customer from time to time in relation to the Customer Works.

4. SUBCONTRACTING

- 4.1. The Customer may appoint one or more contractors to carry out all or any part of the Customer Works.
- 4.2 Nothing in this clause 4 shall relieve the Customer of any its obligations or liabilities under this Agreement or the Offer.

5. CUSTOMER OBLIGATIONS

- 5.1 The Customer shall not commence the Customer Works nor carry out any inspection or preparation for the Customer Works or any other acts on the site of the Customer Works prior to (i) the Customer obtaining all required landowner consents and statutory consents as are referred to in clause 3.1; and (ii) SHEPD obtaining all necessary servitudes, wayleaves, any other form of consent and/or statutory consents which SHEPD may require in connection with the SHEPD Works and/or as may be required pursuant to the Offer and confirming the same to the Customer in writing.
- 5.2 Prior to commencement of the Customer Works and during the period of undertaking the Customer Works, the Customer shall procure that such risk assessments as would be

considered suitable or appropriate by a reasonable contractor carrying out works of a type similar to the Customer Works are carried out at appropriate intervals. The Customer shall procure that all findings of such risk assessments are acted upon promptly and any risks are addressed in a manner that would be expected of a reasonable contractor in the circumstances.

- 5.3 The Customer shall ensure that the Customer Works are carried out in a safe manner and not to the detriment of other users of the land.
- 5.4 The Customer shall be responsible for and shall ensure the safety of its staff, contractors, other users of the land and the general public during the course of the Customer Works and shall indemnify SHEPD for any loss or damage, costs or other liabilities of whatsoever nature SHEPD may incur as a result of any accident or incident involving any persons for whom the Customer is responsible pursuant to this clause 5.4.
- 5.5 The Customer shall ensure that all personnel carrying out the Customer Works have all necessary safety equipment and applicable qualifications to enable them to work in a safe manner. The Customer shall provide all signage, lighting and guarding (if applicable) and all other appropriate measures to ensure the safety of those parties referred to in clause 5.4.
- 5.6 The Customer shall immediately report to SHEPD details of any accident, dangerous incident, fault or damage occurring as a result of or in connection with the Customer Works.
- 5.7 The Customer shall undertake all Customer Works in accordance with the specification set out in the Schedule and along the agreed wayleave route and subject to any conditions placed upon SHEPD by the granter of the servitude, wayleave, any other form of consent and/or statutory consent obtained by or granted to SHEPD from the owner and/or occupier of the site of the Customer Works or the relevant statutory body or authority including without limitation restrictions or conditions of access, timescales, work methods or processes or otherwise.
- 5.8 Following completion of the SHEPD Works, the Customer shall be responsible for completion of the final part of the Customer Works, being the reinstatement of the land to the same or no worse a condition as was in place prior to commencement of the Works. In the event that such reinstatement is not possible or the Customer is unable to procure such reinstatement, the Customer agrees and undertakes to provide financial compensation to the landowner or occupier or consenting authority (as appropriate) for any loss or damage, costs or other liabilities of whatsoever nature the landowner or occupier or consenting authority (as appropriate) may incur as a result of such failure and agrees to pay all such compensation amounts on demand directly to the relevant party to be compensated or, if such compensation is paid by SHEPD, to indemnify SHEPD for any such outlays and pay any such compensation amounts on demand by SHEPD, subject to SHEPD providing an invoice for the same.
- 5.9 The Customer shall comply at all times with the Construction (Design and Management) Regulations 2015 and all other appropriate rules and legislation which may be applicable to the Customer Works. The Customer undertakes to indemnify SHEPD at all times from and against any demands, actions, proceedings, damages, losses, costs and expenses which are made or brought against or incurred by SHEPD as a result of a breach by the Customer.

6. SUSPENSION

The Customer shall on receiving notice from SHEPD immediately suspend the Customer Works or any part thereof.

7. SHEPD INSPECTION RIGHTS

- 7.1 The Customer shall allow SHEPD access at all times to the locations where the Customer Works are to be or have been carried out for the purposes of inspecting the Customer Works and all materials (if any) used or intended for use in the Customer Works. If SHEPD

reasonably believes such an inspection requires to be undertaken in an emergency it may inspect any works installed or carried out under this Agreement without prior notification.

- 7.2 No inspection, checking, testing or approval of the Customer Works or any part thereof by or on behalf of SHEPD shall relieve the Customer of any of its obligations or liabilities under this Agreement.
- 7.3 If any inspection carried out under this clause reveals a defect SHEPD shall as soon as reasonably practicable give the Customer written notification of such defect. SHEPD shall where reasonably practicable also notify the Customer's nominated contact verbally whilst on site.
- 7.4. If any inspection carried out under this clause 7 reveals a defect, SHEPD shall be entitled to perform such remedial work as it determines necessary. The Customer shall indemnify SHEPD against the costs of such remedial work. The Customer shall also pay the reasonable cost of any further inspections which are required to verify that the defect has been remedied.
- 7.5 Notwithstanding the provisions of Clause 7.4, SHEPD shall be under no obligation to rectify any defects in the Customer Works.

8. COMPLETION AND ADOPTION OF CUSTOMER WORKS

- 8.1 When the Customer considers that all or the relevant part of the Customer Works have been completed, the Customer shall give written notice to that effect to SHEPD.
- 8.2 If SHEPD is not satisfied with the Customer Works or any part thereof following receipt of the notice referred to in Clause 8.1, the provisions of Clauses 7.3 to 7.5 shall apply.
- 8.3 If applicable, adoption of the Adoption Assets or any part thereof shall take place on the date upon which SHEPD is satisfied that the Customer Works have been performed and completed in accordance with the provisions of this Agreement and provides written notice of that fact to the Customer.
- 8.4 From the date of Adoption in accordance with clause 8.3 the Customer shall ensure that all Adoption Assets are treated in all respects as the property of SHEPD, subject always to the provisions of Clause 9 (Liability and Guarantee).
- 8.5 Following Adoption of the Adoption Assets the Customer shall no longer undertake any work on the cable trench or related ground or equipment without the prior written consent of or unless required to do so by SHEPD. Unless otherwise agreed between the Parties, SHEPD shall carry out all necessary repair and maintenance work (including without limitation any drainage remedial works and remedying any defect in the Customer Works) which SHEPD considers necessary or desirable, the cost of which shall be borne by the Customer. The Customer, by its signature of this Agreement agrees to indemnify SHEPD for the cost of all such repair and maintenance work (including without limitation any drainage remedial works and remedying any defect in the Customer Works) undertaken by SHEPD.

9. LIABILITY AND GUARANTEE

- 9.1 The Customer shall indemnify SHEPD against any loss or damage, costs or other liabilities of whatsoever nature SHEPD may incur howsoever arising from a breach of the terms of this Agreement or any term of the Offer relating to Customer Works by the Customer or any persons operating on the Customer's behalf or at its instruction including, without limitation, the provisions of Clause 5 and/or the terms of any wayleave or access or other agreement of the type referred to in Clause 3.
- 9.2 Without prejudice to the terms of any other indemnity in this Agreement, the Customer will indemnify SHEPD against any loss or damage costs or other liabilities of whatsoever nature SHEPD may incur howsoever arising from the Customer Works except where such loss or damage arises as result of the negligence of SHEPD.

10. TERMINATION

Unless otherwise agreed in writing by SHEPD this Agreement shall terminate automatically on termination of the Offer. .

11. EFFECT OF TERMINATION

11.1 Upon expiry or termination of this Agreement:

- (i) the Customer shall return, delete or destroy any Confidential Information provided to it by SHEPD; and
- (ii) the Customer shall immediately cease to perform the Customer Works save that it shall do everything necessary to leave the Customer Works in a secure and safe manner.

11.2 The termination or expiry of this Agreement shall not affect:

- (i) the rights or liabilities of either Party accrued prior to and including the date of termination or expiry; or
- (ii) the continued existence and validity of the rights and liabilities of the Parties under those clauses which are intended expressly or by implication to survive termination or expiry. In particular the provisions of clauses 1, 3, 5, 6, 8.4, 8.5, 9, 11, 12, 13, 14, 16, 18 and any other provisions of this Agreement necessary for its interpretation or enforcement shall survive termination.

12. CONFIDENTIALITY

12.1 In respect of all Confidential Information relating to SHEPD, the Customer shall both during this Agreement and for 5 years after it ends:

- (i) keep all such information confidential and use it only as far as necessary to perform its obligations under this Agreement; and
- (ii) not disclose any such information to any third party.

12.2 Notwithstanding Clause 12.1 the Customer may disclose Confidential Information if and to the extent:

- (i) that information is in or has come into the public domain through no fault of the Customer;
- (ii) SHEPD has given prior written consent to the disclosure;
- (iii) the disclosure is required by law;
- (iv) the disclosure is required by any regulatory or governmental or other authority with relevant powers to which the Customer is subject or submits (whether or not the requirement for information has the force of law); or
- (v) the disclosure is required by any securities exchange on which either Party's securities are listed or traded.

13. NOTICES

13.1 Any notice or other communication to be given in connection with this Agreement shall either be delivered personally or sent by fax or first class recorded post.

- 13.2 A notice marked for the attention of the relevant person shall be sent to the address or the fax number set out below or to such other address or fax number as may be communicated to the other Party in accordance with this clause 13.2.

SHEPD:

For the Attention of:

Address:

Fax number:

Customer:

For the Attention of:

Address:

Fax number:

- 13.3 A notice sent according to clause 13.2 shall be deemed to have been served:
- (i) if delivered personally, at the time of delivery;
 - (ii) if sent by first class pre-paid recorded post, at the expiration of three clear days after the time of posting; or
 - (iii) if sent by fax, at the time of completion of transmission by the sender;

provided that if a notice would otherwise be deemed to have been delivered after 5pm on a Business Day it shall be deemed to have been received at 9am on the next Business Day.

- 13.4 In proving receipt of the notice it shall be sufficient to show:
- (i) that personal delivery was made;
 - (ii) that the envelope containing the notice was properly addressed and posted as a first class recorded letter; or
 - (iii) that the fax was despatched and a confirmatory transmission report received.

14. SEVERANCE

- 14.1 If any provision of this Agreement is held to be invalid or unenforceable by any judicial or other competent authority all other provisions of this Agreement will remain in full force and effect and will not in any way be impaired.
- 14.2 If any provision of this Agreement is held to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted the provision in question will apply with the minimum modifications necessary to make it valid and enforceable.

15. WAIVER AND VARIATION

- 15.1 A waiver of any right, power, privilege or remedy provided by this Agreement must be in writing and may be given subject to any conditions thought fit by the Party giving the waiver. For the avoidance of doubt any omission to exercise, or delay in exercising, any right, power, privilege or remedy provided by this Agreement shall not constitute a waiver of that or any other right, power, privilege or remedy.
- 15.2 A waiver of any right, power, privilege or remedy provided by this Agreement shall not constitute a waiver of any other breach or default by the other Party and shall not constitute a continuing waiver of the right, power, privilege or remedy waived or a waiver of any other right, power, privilege or remedy.
- 15.3 Any single or partial exercise of any right, power, privilege or remedy arising under this Agreement shall not preclude or impair any other or further exercise of that or any other right, power, privilege or remedy.

15.4 Any variation of this Agreement is valid only if it is in writing and signed by or on behalf of each Party.

16. ENTIRE AGREEMENT

This Agreement and the documents referred to or incorporated in it constitute the entire agreement between the Parties relating to the subject matter of this Agreement and supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, between the Parties in relation to the subject matter of this Agreement.

17. ASSIGNATION [ASSIGNMENT (if English law)]

17.1 The Customer shall not assign, novate or transfer any of its rights or obligations under this Agreement without the prior written consent of SHEPD.

17.2 SHEPD shall be entitled at any time to assign, novate or transfer any of its rights or obligations under this Agreement to any member of its group from time to time.

18. GOVERNING LAW

This Agreement (and any dispute or claim relating to it, its enforceability or its termination) is to be governed by and construed in accordance with the laws of Scotland. The Parties irrevocably submit to the exclusive jurisdiction of the Scottish courts in respect of any dispute or matter arising or conducted out of or connected with this Agreement.

IN WITNESS WHEREOF these presents consisting of this and the preceding 6 pages together with the Schedule are executed as follows:

CABLE TRACK AGREEMENT
Project No

Signed for SHEPD
at _____ on _____ 20[]

NAME:

TITLE

in the presence of:

_____ Witness signature
_____ Print Witness **full** name
_____ Print Witness Address

Signed for the Customer

at _____ on _____ 20[]

NAME:

TITLE

in the presence of:

_____ Witness signature

_____ Print Witness **full** name

_____ Print Witness Address

ADDITIONAL CLAUSES FOR USE IN PARTICULAR CIRCUMSTANCES

1. SECURITY

- 1.1 In the event that the Customer does not hold an Approved Credit Rating SHEPD in its sole opinion requires the costs and potential liabilities in connection with the Customer Works to be guaranteed, secured or underwritten, for any reason, the Customer shall provide to SHEPD Security on the following basis:
- (i) the value of the Security to be provided by the Customer will be the amount reasonably assessed by SHEPD as may be required to rectify defects, or breaches of the Agreement, howsoever caused, in the Customer Works;
 - (ii) the Security provided by the Customer shall remain in full force and effect for the duration of the Defects Liability Period; and
 - (iii) upon the expiration of the Defects Liability Period and provided that all amounts owed by the Customer in respect of rectification of defects under clauses 7.4 and 8.5 of the Agreement or breaches of the Agreement have been duly and finally paid (including any interest outstanding) the Customer shall be released from the obligation to maintain the Security and SHEPD shall consent to the revocation of any outstanding Security.
- 1.2 The Customer shall, whenever requested in writing by SHEPD, provide SHEPD with any confirmation that SHEPD reasonably requires that the Security provided by or on behalf of the Customer pursuant to this clause remains current.
- 1.3 The Security may be drawn upon by SHEPD:
- (i) to effect remedial works due to defects or breach of this Agreement. SHEPD will notify the Customer of defects or instance of breach and the proposed course of action by SHEPD for the correction of the defects or breach. Upon completion of the remedial works SHEPD will advise the Customer of the cost of the remedial works and the Customer shall make payment of the cost due. If the Customer fails to pay the amount due SHEPD will draw down an equivalent amount from the Security to recover its costs; and/or
 - (ii) to protect SHEPD from loss in the event that the Customer ceases to trade.
- 1.4 In the event SHEPD draws down from the Security the Customer shall to the reasonable satisfaction of SHEPD and within 14 days of the draw down event renew or maintain the Security at least equal to the aforesaid value and duration.
- 1.5 Notwithstanding the provisions of this clause Clause 1 Security, in the event that the Security is of insufficient value to satisfy the actual costs and liabilities of the Customer during the Defects Liability Period, the Customer shall remain liable for any and all sums due and payable by it pursuant to this Agreement and shall pay any such excess amount not satisfied by the drawdown of the Security to SHEPD on demand.

This is the Schedule referred to in the foregoing agreement between Scottish Hydro Electric Power Distribution plc and []

SCHEDULE

[Specification and drawing of the Customer Works to be set out in detail]