

UNMETERED CONNECTION ADOPTION AGREEMENT

ADOPTION AGREEMENT

between

SCOTTISH HYDRO ELECTRIC POWER DISTRIBUTION PLC

and

[CONTRACTOR]

Date of Agreement: **[Insert Date]**

SHEPD Job Reference Number: **[Insert Job Number]**

THIS AGREEMENT is made the _____ day of _____

BETWEEN

1. **Scottish Hydro Electric Power Distribution plc**, a company registered in Scotland with Registered No. SC213460, whose registered office is at Inveralmond House, 200 Dunkeld Road, Perth, PH1 3AQ (the “Distributor”); and
2. **[Name of Contractor]** a company registered in [**Scotland*][**England and Wales*] with Registered No. [enter reg. number] and whose registered office is at [enter reg. address] (the “Contractor”); **Delete as required* |

each a “Party” and together the “Parties”.

WHEREAS

- (A) [enter name of Customer/End User/Asset Owner] has appointed the Contractor to carry out the Works (as defined below) for the replacement and upgrading of certain unmetered assets in [enter geographical area of works covered] |
- (B) The Distributor and the Contractor entered into the Access Agreement to allow the Contractor to access the Distributor’s Distribution System to carry out the Works.
- (C) The Distributor has agreed to Adopt the Assets upon the terms of this Agreement.

NOW IT IS AGREED AS FOLLOWS:

1. Definitions

In this Agreement, except where a different interpretation is necessary in the context, the words and expressions set out below shall have the following meanings:

Access Agreement means the unmetered connections network access agreement between the Distributor and the Contractor dated [insert date] in relation to street lighting works in [enter geographical area of works covered];

Accreditation means appropriate accreditation under the terms of the National Electricity Registration Scheme (“**NERs**”) or such other scheme as replaces it from time to time and “**Accredited**” shall be construed accordingly;

Adoption means the transfer by the Contractor to the Distributor of the property in and responsibility for the Works or a section thereof with Full Title Guarantee and “**Adopt**” and “**Adopted**” shall be construed accordingly;

Adoption Date means the date of completion of the Works or any section thereof in accordance with this Agreement and the Access

Agreement;

Approved Credit Rating	means monthly credit terms of not less than £100,000 by a reputable credit rating agency approved by the Distributor;
Assets	means those Works which will form part of the Distributor's Distribution System;
Bond	means a bond provided by the Contractor in favour of the Distributor which guarantees against defects in workmanship or materials in the Adopted Works for the duration of the Defects Correction Period;
CDM File	means all information which the Contractor is required to keep in terms of and to comply with the Construction (Design and Management) Regulations 2015 in relation to the Works;
Defects Correction Period	means the period of 5 years after the Adoption Date in relation to the Works or, where there is more than one Adoption Date, the 5 years after the last Adoption Date;
Distribution System	has the meaning given to "licensee's distribution system" in the Distributor's distribution licence granted under section 6(1)(c) of the Electricity Act 1989;
Force Majeure	means any act, event or circumstances beyond the control of a Party including those which arises from or are attributable to: <ul style="list-style-type: none">(a) a System Emergency;(b) fire, flood, explosion, earthquake, storm or other natural disaster;(c) civil commotion, hostilities (whether war is declared or not), sabotage, terrorist attack, chemical, biological or nuclear contamination;(d) the acts of any public authority or imposition of any government sanction, embargo or similar action;(e) compliance with any law, judgment, order or decree;(f) any labour dispute or strike; or(g) the existence and/or effects of an event qualifying as an emergency within the meaning of

Part 2 of the Civil Contingencies Act 2004;

Full Title Guarantee	means the covenant for the title implied by s.3(1) Law of Property (Miscellaneous Provisions) Act 1994 save that the words 'other than any charges encumbrances or rights which the person does not and could not reasonably be expected to know about' are added and s.3(2) shall be deleted in its entirety;
Intellectual Property Rights	Means rights in copyright, patent, trademark, service mark, design right, registered designs, sui generis rights, know-how, confidential information, trade or business names or other similar rights together with applications for any of the foregoing;
Licence	means the Distributor's distribution licence granted under section 6(1)(c) of the Electricity Act 1989 (as amended by the Utilities Act 2000);
Qualifying Guarantee	means a guarantee in favour of the the Distributor and in such form as may be agreed between Distributor and the Contractor and which is provided by an entity which holds an Approved Credit Rating;
Security	means a Bond or a Qualifying Guarantee;
Statutory Consents	means all consents, licences, permissions and approval of any kind required under any statute or subordinate legislation including planning permission, building regulation approval and permission under s.109 New Road and Street Works Act 1991;
Works	means the transfer, permanent or temporary disconnection, reconnection or extension of an existing single phase 230 volt service cable to a piece of street furniture in [enter geographic area covered] carried out under the Access Agreement.

2. Interpretation

In this Agreement:

- 2.1. any term importing one gender shall include any gender;
- 2.2. any term importing the singular includes the plural and vice versa;
- 2.3. the words “includes” and “including” are to be construed without limitation to the generality of the preceding words;
- 2.4. save where the context requires otherwise any reference to a clause or schedule is a reference to a clause or schedule of this Agreement;
- 2.5. headings are for reference only and do not form part of or affect the interpretation of this Agreement; and
- 2.6. any reference to a statute, statutory instrument, regulation, rule or order shall be construed as a reference to them as amended or re-enacted from time to time.

3. Contractor’s Obligations

- 3.1. The Contractor shall carry out and complete the Works in accordance with this Agreement and the Access Agreement and perform all other obligations as are identified in this Agreement to be performed by it.
- 3.2. Throughout the duration of the Works the Contractor shall maintain Accreditation and ensure that all Works are undertaken by persons holding appropriate Accreditation at the time such works are undertaken.

4. Wayleaves, Permanent Rights and Consents

- 4.1. If, in the Distributor’s sole opinion, the Works require permanent rights wayleaves, pre-wayleaves, easements or Statutory Consents, the Distributor shall apply for and obtain such rights or consents. The Contractor shall provide the Distributor with all reasonable assistance to obtain such consents and the Contractor shall meet the reasonable costs of obtaining the same.
- 4.2. Where the Works are within land under the control of the Contractor, the Contractor shall, if required, enter into agreements with the Distributor for any permanent rights wayleaves, pre-wayleaves or easements at no cost to the Distributor.
- 4.3. Where the Works are on land owned by a third party the Distributor shall be responsible for obtaining any permissions required for these works:
 - 4.3.1. prior to Adoption including obtaining pre-wayleaves required for access to the third party land by either the Distributor or the Contractor; and
 - 4.3.2. from adoption in accordance with clauses 4.1, 4.2 and 4.3.1 above;

provided that the Contractor shall give all reasonable assistance requested by the Distributor to obtain these and shall meet the Distributor's reasonable costs of obtaining the same.

5. Information and Documentation

- 5.1. The Distributor shall, within a reasonable period following receipt of a written request, supply the Contractor with all technical information, diagrams and drawings relating to the Distributor's Distribution System as may be reasonably required to carry out the Works.
- 5.2. The Contractor shall, within a reasonable period following receipt of a written request, supply the Distributor with all information (including technical information, diagrams and drawings) relating to the Works as the Distributor may reasonably request from time to time.

6. Construction

- 6.1. The Contractor shall not commence the Works without all necessary permanent rights, wayleaves, pre-wayleaves and Statutory Consents.
- 6.2. The Contractor shall construct and install the Works in accordance with this Agreement and the provisions of the Access Agreement.
- 6.3. The Parties acknowledge that in relation to the Works the Contractor shall be the "Client" for the purposes of the Construction (Design and Management) Regulations 2015 and the Contractor undertakes to indemnify the Distributor at all times from all liabilities for the performance of its obligations pursuant to the Construction (Design and Management) Regulations 2015 and against demands, actions, proceedings, damages, losses, costs and expenses which are made or brought against or incurred by the Distributor.
- 6.4. The Contractor shall be fully responsible for the Works until they are Adopted by the Distributor.
- 6.5. The Contractor shall indemnify and keep indemnified the Distributor from any liabilities which may arise from the Works prior to Adoption.

7. Inspection

- 7.1. The Distributor shall carry out inspections in accordance with clause 9 of the Access Agreement.
- 7.2. The Distributor reserves the right to access any site it deems necessary to carry out inspections in accordance with clause 7.1 and may inspect any works installed or carried out under this Agreement without prior notification. The Contractor shall allow the Distributor access at all reasonable times to any site for this purpose.

- 7.3. No inspection, checking, testing or approval of the Works or any part thereof by the Distributor shall relieve the Contractor of any of its obligations or liabilities under this Agreement.

8. Adoption

- 8.1. Adoption of the Works or part thereof shall take place when the following conditions are met:
- 8.1.1. all Statutory Consents are vested with the Distributor;
 - 8.1.2. Full Title Guarantee is provided to the Distributor in respect of all Assets to be Adopted;
 - 8.1.3. the Works have been performed in accordance with the provisions of this Agreement and the Access Agreement;
 - 8.1.4. the Contractor has delivered to the Distributor as-laid plans of the network to be Adopted;
 - 8.1.5. the Contractor warrants that all necessary Intellectual Property Rights have been acquired;
 - 8.1.6. the Contractor has provided the Distributor with the CDM File; and
 - 8.1.7. connection of the Works to the Distributor's Distribution System.
- 8.2. Following Adoption the Contractor shall treat the Adopted Works in all respects as the property of the Distributor and from that time as forming part of the Distributor's Distribution System and comply with all procedures and rules issued by the Distributor relating to work on or in the vicinity of the Distribution System.

9. Security

- 9.1. In the event that the Contractor does not hold an Approved Credit Rating the Contractor shall provide to the Distributor Security on the following basis:
- 9.1.1. the value of the Security to be provided by the Contractor will be the amount reasonably assessed by the Distributor as may be required to rectify defects, or breaches of the Agreement, howsoever caused, in the Adopted Works;
 - 9.1.2. the Security provided by the Contractor shall remain in full force and effect for the duration of the Defects Correction Period; and
 - 9.1.3. upon the expiration of the Defects Correction Period and provided that all amounts owed by the Contractor in respect of rectification of defects under clause 12 or breaches of the Agreement have been duly and finally paid (including any interest outstanding) the Contractor shall be released from

the obligation to maintain the Security and the Distributor shall consent to the revocation of any outstanding Security.

9.2. The Contractor shall, whenever requested in writing by the Distributor, provide the Distributor with any confirmation that the Distributor reasonably requires that the Security provided by or on behalf of the Contractor pursuant to this clause remains current.

9.3. The Security may be drawn upon by the Distributor:

9.3.1. to effect remedial works due to defects or breach of this Agreement. The Distributor will notify the Contractor of defects or instance of breach and the proposed course of action by the Distributor for the correction of the defects or breach. Upon completion of the remedial works the Distributor will advise the Contractor of the cost of the remedial works and the Contractor shall make payment of the cost due. If the Contractor fails to pay the amount due the Distributor will draw down an equivalent amount from the Security to recover its costs; and/or

9.3.2. to protect the Distributor from loss in the event that the Contractor ceases to trade.

9.4. In the event the Distributor draws down from the Security the Contractor shall to the reasonable satisfaction of the Distributor and within 14 days of the draw down event renew or maintain the Security at least equal to the aforesaid value and duration.

9.5. In the event the Contractor fails at any time to provide or maintain the Security to the reasonable satisfaction of the Distributor, the Distributor may terminate this Agreement.

10. Intellectual Property

10.1. Insofar as the Intellectual Property Rights existing in respect of anything used in or required for the Works or their operation, repair, maintenance or replacement are vested in the Contractor the Contractor grants to the Distributor a royalty-free, non-exclusive and irrevocable licence to use, reproduce, modify, adapt and translate any of the works, designs or inventions incorporated in anything used or required as aforesaid for all purposes relating to the Distributor's Distribution System.

10.2. The Contractor warrants that all necessary Intellectual Property Rights will be acquired prior to Adoption.

10.3. The Contractor indemnifies the Distributor against all reasonable losses, costs and expenses suffered or incurred by the Distributor arising out of any claim by any third party that the use by the Distributor of the licensed intellectual property infringes that third party's rights.

10.4. Any licence granted pursuant to clause 10.1 shall continue notwithstanding the termination of this Agreement for any reason.

11. Liabilities

11.1. The Parties shall not be liable for any breach of this Agreement caused directly or indirectly by Force Majeure or by a System Emergency.

11.2. Subject to clause 12 and save where this Agreement provides for an indemnity no Party nor any of its officers, employees or agents shall be liable to any other Party for loss arising from any breach of this Agreement other than for loss directly resulting from such breach and which at the date of this Agreement was reasonably foreseeable as likely to result in the ordinary course of events from such breach and which resulted from physical damage to the property of the other Party, its officers, employees or agents provided that:

11.2.1. no Party nor its officers, employees or agents shall in any circumstances whatsoever be liable to any other Party for any:

11.2.1.1. loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill;

11.2.1.2. indirect or consequential loss; or

11.2.1.3. loss resulting from liability of such other Party to any other person howsoever arising.

11.2.2. the liability of the Party liable in respect of claims for such loss shall not exceed the sum of £5,000,000 per incident or series of incidents arising out of any one event;

11.2.3. notwithstanding clause 11.2.1.3, the Contractor shall indemnify the Distributor against amounts it has a statutory or Licence obligation to pay to consumers (or for the benefit of consumers) in the event or as a result of any failure in the supply of electricity caused directly or indirectly by any defect or fault in the Works; and

11.2.4. the Distributor shall not adopt any reinstatement and any future liability will remain with the Party who obtained the licence/ notice to open; and

11.2.5. each of the sub-clauses of this clause 11.2 shall be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable the other sub-clauses shall remain in full force and effect.

11.3. Nothing in this Agreement shall exclude or limit the liability of any Party for death or personal injury resulting from the negligence of that Party or of any of its officers, employees or agents and the Party liable shall indemnify and keep

indemnified the other Party, its officers, employees or agents from and against any and all such loss or liability which that other Party may suffer or incur.

11.4. The rights and remedies provided by this Agreement are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of this Agreement including without limitation actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute and releases the Party liable to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein.

12. Defects Correction

12.1. The Contractor shall bear all reasonable costs incurred by the Distributor in fault repair or rectification of other defects associated with Adopted Works during the Defects Correction Period unless such faults are caused by the Distributor.

12.2. The Contractor shall bear all reasonable costs incurred by the Distributor in correcting any latent defects associated with Adopted Works subject to the provisions of the Limitation Act 1980 (as amended from time to time).

12.3. The Parties acknowledge that all work on Adopted Assets may only be performed by the Distributor and that the Contractor may not correct any defects after adoption.

13. Force Majeure and System Emergencies

13.1. Neither Party shall be liable to the other for its inability or failure to perform nor delay in performing any of its obligations (other than an obligation to make payments due) under this Agreement caused by a Force Majeure Event, provided such Party complies with clause 13.2.

13.2. If a Force Majeure Event occurs then the Party affected (the “**Affected Party**”) shall immediately notify the other Party of the nature and likely duration (if known) of the Force Majeure Event and take all reasonable steps in order to:

13.2.1. bring the Force Majeure Event to an end;

13.2.2. to reduce the effect of the Force Majeure Event; and/or

13.2.3. find a solution by which this Agreement may be performed despite the continuance of the Force Majeure Event.

14. Assignment

No Party may assign or transfer the benefit or burden of this Agreement without the written consent of the other Parties, such consent not to be unreasonably withheld or delayed.

15. Party Ceasing to Trade

- 15.1. If the Contractor ceases to trade before all of the Works have been Adopted all future obligations under this Agreement on the Distributor shall cease and this Agreement shall terminate.

16. Termination of Agreement

- 16.1. Any Party may terminate this Agreement by notice in writing in the event that:

- 16.1.1. the other Party shall be in material breach of the Agreement and shall have failed to remedy the same within 28 days after having been served a written notice requiring it to be remedied;
- 16.1.2. the Contractor does not provide or maintain the Security as required under this Agreement.
- 16.1.3. the Contractor is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, admits its inability to pay its debts as they fall due, commences negotiations with any one or more of its creditors with a view to the general re-adjustment or re-scheduling of its indebtedness or makes a general assignment for the benefit of, or a composition with, its creditors; or
- 16.1.4. the Contractor takes any corporate action or other steps are taken or legal proceedings are started for its winding up, dissolution or for it to enter into any arrangement or composition for the benefit of creditors or for the appointment of a receiver, administrator, administrative receiver, trustee or similar person of any of its revenues or assets or distress is executed against, or an encumbrancer takes possession of, any of its revenues or assets.

17. Effect of Termination

- 17.1. Upon expiry or termination of this Agreement the Contractor shall return, delete or destroy any Confidential Information provided to it by the Distributor.
- 17.2. The termination or expiry of this Agreement shall not affect:
- 17.2.1. the rights or liabilities of any Party accrued prior to and including the date of termination or expiry; or
- 17.2.2. 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 4.2, 6.3, 9, 10, 11.2.3, 12.1, 17.2.1, 18 and 23

below and any other provisions of this Agreement necessary for its interpretation or enforcement shall survive termination.

18. Confidentiality

18.1. In respect of all Confidential Information relating to the Distributor the Contractor shall during the term of this Agreement and for 5 years after it ends:

18.1.1. keep all such information confidential and use it only as far as necessary to perform its obligations under this Agreement; and

18.1.2. not disclose any such information to any third party.

18.2. Notwithstanding clause 18.1 the Contractor may disclose Confidential Information if and to the extent:

18.2.1. that information is in or has come into the public domain through no fault of the Contractor;

18.2.2. the Distributor has given prior written consent to the disclosure;

18.2.3. required by law;

18.2.4. required by any regulatory or governmental or other authority with relevant powers to which the Contractor is subject or submits (whether or not the requirement for information has the force of law); or

18.2.5. required by any securities exchange on which any Party's securities are listed or traded.

19. Waivers and Variations

19.1. 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.

19.2. 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.

19.3. 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.

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

20. Entire Agreement

With the exception of the Access 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.

21. Notices

21.1. 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.

21.2. 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 21.

Distributor		
For the Attention of:	Address:	Fax number:
System Commercial Manager, Southern Electric Power Distribution plc	No. 1 Forbury Place 43 Forbury Road Reading RG1 3JH	
Contractor		
For the Attention of:	Address:	Fax number:

21.3. A notice sent according to clause 21.1 shall be deemed to have been served:

21.3.1. if delivered personally, at the time of delivery;

21.3.2. if sent by first class pre-paid recorded post, at the expiration of three clear days after the time of posting; or

21.3.3. 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.

21.4. In proving receipt of the notice it shall be sufficient to show:

- 21.4.1. that personal delivery was made;
- 21.4.2. that the envelope containing the notice was properly addressed and posted as a first class recorded letter; or
- 21.4.3. that the fax was despatched and a confirmatory transmission report received.

22. Third Party Rights

This Agreement does not confer any rights on any person or party (other than the Parties to this Agreement) pursuant to the Contracts (Rights of Third Parties) Act 1999.

23. 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 English law. The Parties irrevocably agree that the courts of England shall have non-exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement.

AS WITNESS the hands of the Parties hereto or their duly authorised representatives the day and year first above written.

Signed by(print name) for and on behalf of Scottish Hydro Electric Power Distribution plc Authorised Signatory
Signed by(print name) for and on behalf of [name of contractor] Authorised Signatory